

**THE IMPACT OF THE *INDIAN ACT* ON INDIGENOUS WOMEN'S VOICES:
REREADING SEX-BASED DISCRIMINATION CASE LAW AGAINST INDIGENOUS
FEMINIST THEATRE MOVEMENT LITERATURE**

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A THESIS SUBMITTED TO THE FACULTY OF GRADUATE STUDIES IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF RESEARCH MASTER
OF LAWS

GRADUATE PROGRAM IN LAW
OSGOODE HALL LAW SCHOOL
YORK UNIVERSITY
TORONTO, ONTARIO

January 2025

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ABSTRACT

This thesis contextualizes the landmark cases of Lovelace and McIvor within the Indigenous Feminist Theatre Movement. A “law as literature” method is built on to note how legal pluralist law reform of the Indian Act’s Indian Status rules is necessary. The two plays of Strength Of Indian Women and Women Of The Fur Trade are read alongside the cases to contrast the ways in which women's lives are represented and understood in each. This juxtaposition reveals how Indigenous women's challenges to sex-based discrimination have historically been stifled. Canada’s laws fail to include cultural norms, reflecting Indigenous legal orders, that Indigenous women voice in the theatre. The narratives envision valuable Indigenous matriarchal identities despite the Indian Act’s requisite masking of them behind non-Indigenous marital identities. The masking is revealed to be a barrier to Indigenous women’s full representation and expression informed by their cultural identities. Positive fictional roles counter stereotypes of Indigenous women in the real world thereby contributing to normative reshaping and jurisgenesis.

DEDICATION

This thesis is dedicated to my Algonquin mother, Jocelyne (McKenzie) Robinson, and to my siblings.

ACKNOWLEDGMENTS

Thank you to Osgoode Hall Law School for awarding me with the following scholarships and bursaries: an Honourable Willard Z. Estey Teaching Fellowship in Law; a 2023-2024 Ontario Graduate Scholarship and a York University Graduate Fellowship.

Thank you to the following people for supporting my journey of writing this thesis: Professor Ruth Buchanan for her research supervision, Graduate Seminar I instruction and for recommending that I attend the Law, Culture + The Humanities Senses Of Law 2024 Conference; Professor Dayna N. Scott for sitting on my Supervisory Committee and for advising me on research related to Feminist Theory Of The Body and Indigenous Law; Professor Kate Sutherland for her correspondence on my research into Indigenous law and literature; Professor Emily Kidd White for her instruction in Jurisprudence Class; Professor Jonathon Penney for his instruction in the Regulation & Governance Study Group; Graduate Program Director Professor Susan G. Drummond for supervising our writing café; Dean Trevor C.W. Farrow and Associate Dean Carys J. Craig for their encouragement of graduate students; Jillian Rogin for recommending the Research LLM program; Dr. Shiri Pasternak and Jocelyn Formsma for encouraging me to apply to the program; all of my classmates in Graduate Seminar I and Regulation & Governance Study Group for participating in my research presentation discussions; Gwyneth Pheasant Lust for being my peer-reviewer; Osgoode Hall Law School and Osgoode Hall Law Library staff for their help with paperwork and borrowing key sources for my research; The Timiskaming First Nation Education Department; Melanie Morningstar and Andrew Bisson for their encouragement in the Assembly Of First Nations Health Sector; Kathleen McNenny for her instruction in theatre mask work in New York City; Fay Van Alstyne Simpson for her helping me to learn about the concept of persona within her lucid body movement-based theatre training in New York City; and my friends Mindi Taylor, Nancy & Marcus Gill for supporting my writing retreats to finish this thesis.

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INTRODUCTION

Thesis Overview

In this thesis I employ a law and literature method to examine case law and theatre that is by and about Indigenous women. I specifically examine how the *Indian Act*'s Indian Status registration provisions (marrying out rules) negatively impact the cultural identities of Indigenous women by excluding their voices.¹ My analysis focuses on the key United Nations Human Rights Council cases of *Lovelace v Canada* (1981) and *McIvor v Canada* (2018).² I read the above cases against the following two theatre plays respectively: Vera Manuel's *Strength Of Indian Women* (1998) and Frances Koncan's *Women Of The Fur Trade* (2022).³ The narratives expose gaps in understanding about Indigenous women's equality. The plays reflect Indigenous women's cultural *norms*.⁴ The emotional journeys and identity crises depicted in the theatre shed light on the real-life barriers that the claimants, Sandra Lovelace and Sharon McIvor, struggle with to challenge the law. The *Indian Act* lowers Indigenous women's position in relation to men and non-Indigenous people by creating a sex- and gender-based social hierarchy, based on assimilation and enfranchisement policies, aimed at eliminating maternal lineages of Indigenous 'race' from the population.⁵ The colonial hierarchy forces Indigenous women to create false identities connected to marriage and childbearing for survival. The *Indian Act* historically prescribed that if an Indigenous woman marries out of her 'race' then she loses her Indian Status. The same marrying out rule is not imposed on Indigenous men. Indigenous women

¹ *Indian Act*, RSC 1985, c I-5 at ss 6(1)-6(2). [**Indian Act**] The *Indian Act* was enacted in 1876. The Canadian Encyclopedia, "Indian Act" (14 August 2024), online: <<https://www.thecanadianencyclopedia.ca/en/article/indian-act#:~:text=The%20Indian%20Act%20attempted%20to,identities%20through%20governance%20and%20culture.>>>.

² *Sandra Lovelace v Canada* (1977), Communication No. 24/1977: Canada 30/07/81, UN Doc. CCPR/C/13/D/24/1977. [**Lovelace**]. *Sharon McIvor and Jacob Grismer v Canada* (2018), CCPR/C/124/D/2020/2010 (United Nations Human Rights Committee). [**McIvor**]. UNHRC, "Treaty Bodies Human Rights Committee" (30 January 2024), online: <<https://www.ohchr.org/en/treaty-bodies/ccpr>>. [**UNHRC**]

³ Shirley A Huston-Findley & Rebecca Howard, eds, "Strength Of Indian Women", *Footpaths & Bridges: Voices From The Native American Women Playwrights Archive* (Ann Arbor, Canada: University of Michigan Press, 2008) at 172-199. [**Strength Of Indian Women**] Frances Koncan, *Women of The Fur Trade* (Toronto, Canada: Playwrights Canada Press, 2022). [**Women Of The Fur Trade**]

⁴ See "Legal Pluralism & Indigenous Legal Orders (ILOs)" section for my explanation of cultural *norms*, ILOs and legal pluralism in my thesis.

⁵ See "*Indian Act* Discrimination & Its Racist Foundational Policies" section for an explanation of assimilation and enfranchisement policies.

are forced to mask themselves with their husbands' white identities.⁶ The plays point out that this legal construct is not an Indigenous cultural *norm* nor does it derive from Indigenous legal orders.

My research takes a legal pluralist approach.⁷ Indigenous women have been excluded from creating *Indian Act* law. I place the plays into conversation with the cases to offer insight into another normative frame. I argue that Indigenous women's voices can provide another source of legal meaning, in particular, the meaning of equality for Indigenous women. The plays demonstrate how the marrying out laws cause Indigenous women to fear authority, to hide their opinions about the choice to marry out, and to harbour deep sadness, anger and resentment about intergenerational loss of cultural belonging associated with loss of Indian Status. The playwrights expose what the cases do not capture about how Indigenous women behave in response to the *Indian Act*. The plays depict the codes, language and *norms* that Indigenous women use when they gather; *norms* that defy the government's inequality and allow them to reclaim matriarchal identities.

Research Question

My thesis poses the following research question: how did the *Indian Act* marrying out rules impact the voices and cultural identities of Indigenous women? After comparing the case law and the plays, my thesis finds that the subordinate role that government regulation places Indigenous women in, as compared to men and non-Indigenous people, that is reinforced by law, makes it difficult for Indigenous women to advocate for themselves in Canada's legal system. My research explores and elaborates on how Indigenous women's voices are suppressed by the marrying out rules. I find that the law imposes a *masking* of Indigenous female *personae* with non-Indigenous, male identities after marrying out. The masks render the Indigenous matriarchal identities of these women invisible. My research finds that the masking is anti-feminist because it promotes men's ideas

⁶ See "Adapting The Method Of Dramatization (MOD) Into My Method" section. I explain the terms 'mask' and 'personae' and how I use them in my method.

⁷ *Supra* note 4.

underpinning statute law (about Indigenous women's cultural identity) over Indigenous women's ideas.⁸ The law targets Indigenous women uniquely. The effect of the law is that Indigenous women are put in the position of participating in cancelling out their own race against their will through the political choices that they make concerning their bodies based on marriage and childbearing. The removal of race through the marrying out provisions enfranchises and assimilates Indigenous women in a way that men have not experienced.⁹

The beginnings of the challenges to the sex-based discrimination in the courts coincides with the beginnings of the Indigenous Feminist Theatre Movement.¹⁰ The *Indian Act* was enacted in 1876 although the marrying out provisions did not begin to be corrected until 1985. The corrections coincide with *Lovelace* and *McIvor* compelling the government to conform with international human rights standards for racial and gender equality.¹¹ Indigenous women's perspectives are becoming increasingly more visible about this need to reverse gender inequality because it is a barrier to their capacity for self-advocacy about cultural identity. Even as they recognize the inequality of the *Indian Act* provisions the cases fail to reveal what the literature exposes about the statute suppressing Indigenous women's voices and identities.

My thesis finds that Indigenous women heal from inequality by reclaiming matriarchal cultural belonging. This involves overcoming a fear of speaking up against the government to

⁸ See "*Adapting Feminist Theory Of The Body (FTB) Into My Method*". I explain how my research compares the male-dominated ideology underpinning the marrying out laws with Indigenous women's ideas that have developed in the theatre by inhabiting their own female bodies/masks. The male drafters of the *Indian Act*'s original ideas about (in)equality have resulted in sex-based discrimination that is still challenging Indigenous women's own expression about their cultural identity in law and theatre.

⁹ *Supra* note 5. My research refers to 'enfranchisement' and 'assimilation' terms/language as the foundational policies that are related to the language of 'race' characteristic of the *Indian Act* and its original purposes. The law has targeted the removal of Indigenous women's 'race' through the marrying out provisions using these policies. See also Lynn Gehl, "Canada's Indian Policy Is A Process Of Deception" (6 November 2024), online: <<https://briarpatchmagazine.com/articles/view/canadas-indian-policy-is-a-process-of-deception>>. Gehl connects treaty rights entitlements with *Indian Act* registration rules and states that the *Indian Act* deceives Indigenous women who are disenfranchised by the Indian Status registration process. I focus on how the IFTM plays expose Indigenous women's contrasting ideas about the regulation of their 'race'. They write about how their female gender and their Indigenous cultural identity is affected by the unique regulation of *both their race and sex* in the *Indian Act* that has silenced their concerns. The women's perspectives from the plays are normally omitted from jurisprudence such as *Lovelace* and *McIvor*. Similarly to Gehl, I point out that the *Indian Act* deceptively perpetuates the conflict of sex-based discrimination between the Indigenous women and Canada because the regulation of Indian Status entitlements has involved their relinquishing of racial identity based on their gender and marriage status. However, Gehl's focus on treaty rights language is out of the scope of my research.

¹⁰ Please see "Indigenous Feminist Theatre Movement (IFTM)" section for an explanation of this term.

¹¹ *Supra* note 5. Please see my summary of what the government was ordered to amend in the 'marrying out' provisions prior to 1985.

include Indigenous feminist assertions about what cultural *norms* and ILOs ought to be brought into conversations about gender equality laws. The enactment of the *Indian Act* pre-dates the representation of Indigenous women, or any women, in law.¹² The *Indian Act* was drafted by men and non-Indigenous people although it uniquely controls Indigenous women's decisions about who to marry and to procreate with in a way that devalues them based on race and gender. In the legal system, Indigenous women's cultural identity is rarely understood or celebrated after a century of exclusion in the *Indian Act*. In the plays, the valuing of Indigenous women is featured prominently, however, in the *Indian Act* it is more ambiguous. The statute does not explicitly acknowledge that Indigenous women deserve the sex-based equality that was fought for in the courts. The modern-day standard and expectation of sex-based equality in legislation for Indigenous women is based on the Canadian *Charter Of Rights And Freedoms* and the *International Covenant on Civil and Political Rights* that became available in the mid-1970's to early 1980's.¹³ This equality regime was unavailable to support Indigenous women's claims to reform the *Indian Act* pre-*Lovelace*-and-*McIvor*.

Archive & Architecture

In my thesis I read the plays and the commentary alongside the case law to better understand the impact/implications of sex-based discrimination even after the marrying out provisions have been overturned. The architecture of my thesis is an introduction, three chapters and a conclusion. I start with my methodologies chapter (chapter one) that includes a literature review and an explanation of my method and theoretical orientation. In chapter two, I interpret *Lovelace* against the

¹² The Canadian Encyclopedia, "Clara Brett Martin" (5 November 2024), online: <<https://www.thecanadianencyclopedia.ca/en/article/clara-brett-martin>>. The first female lawyer, Clara Brett Martin, was called to the bar by the Law Society of Upper Canada on February 2, 1897. See also note 18. I explain that the *Indian Act* criminalized Indigenous women's pursuit of any legal claims at all.

¹³ See notes 33-35. The sex-based inequality in the *Indian Act* was based on more general inequality against all women. See also notes 30-32. *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11. [**Charter**] *International Covenant on Civil and Political Rights*, UNHRC, 16 December 1966, General Assembly resolution 2200A (XXI) (entered into force 23 March 1976, accession by Canada 19 May 1976) (14 December 2024), online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>. [**Covenant**] UNHRC, "Status Of Ratification Interactive Dashboard" (6 November 2024), online: <<http://indicators.ohchr.org>>. Canada adopted the *Covenant* in 1976. The *Charter* and the *Covenant* have coincided with Indigenous women pursuing legal claims challenging the *Indian Act* to become in line with Canada's equality law regime.

cultural commentary from the *Strength of Indian Women*. In chapter three, I interpret *McIvor* against the commentary from the *Women Of The Fur Trade*.

Content Analysis

In chapters two and three of my thesis I reread the case law with regard to the IFTM cultural commentary that I generate from the plays. All of the primary sources involve Indigenous female complainants or Indigenous female playwrights and characters. In my analysis, I discover what the impact of the *Indian Act* is on the visibility of Indigenous women's voices. In the narratives Indigenous women promote visions of how they would like to be treated by the law. The narratives offer clues into what might be missing from the leading case law on sex-based discrimination. Indigenous women's views about their equality are more positive and favourable to them although they are merely prominent within the theatre in fictional form rather than in the law. My research yields the concrete strategies that Indigenous women have considered necessary to survive colonialism, racism and sex-based discrimination *i.e.* marrying out versus bringing legal claims to prove that marrying out is discriminatory.

Summary of Chapter 2 - Strength Of Indian Women Read Against Lovelace

Manuel's dramatic play depicts the context of *Lovelace*. Indigenous female characters are depicted exercising the cultural belonging that Lovelace fought for. In the play several generations of Indigenous women gather on reserve. The women practice traditional ceremonies to heal from colonial trauma stemming from *Indian Act* sex-based discrimination. The women's cultural belonging is rooted within the intergenerational relationships that the laws restrict along with Indian Status loss. *Lovelace* is the landmark case that first succeeded in challenging the marrying out provisions. The case challenged the government's prescription that Indigenous women were to disregard their own matriarchal identities in favour of their husbands' identities. Manuel's play points out how the marrying out practice has blocked Indigenous female strength and identity from flourishing. *Lovelace*

proved to the UNHRC that the marrying out rules violate their civil and political rights to ethnic and linguistic belonging because they are only applied to Indigenous women but not to Indigenous men.¹⁴ It is ironic that, while showcasing the empowerment that Lovelace did in standing up to the government, the “strength” among Indian women that Manuel speaks of in her play’s title is not something mentioned in the case. Lovelace instead identifies *fear* of permanent loss of her matriarchal identity due to the restrictions imposed on her by the *Indian Act*. The women reveal that they are negatively impacted by the law because it stifles their feminist voices. Lovelace was unable to reveal her own Indigenous identity when bringing her claim because the laws required her to wear a metaphorical white mask to hide her own maternal ancestry. To break the glass ceiling for Indigenous female gender equality, Lovelace sought international legal intervention to compel Canada’s domestic legislative amendments by revealing her true Indigenous self to the courts. Lovelace embodies the strength that Manuel writes about because she was able to demand a factual belonging to culture and matriarchy that is only fictionally depicted in the play. This chapter reveals how the ability to speak about reclaiming matriarchal cultural belonging brings healing to Indigenous women who have experienced trauma tied to colonialism.

Summary Of Chapter 3 - Women Of The Fur Trade Read Against McIvor

Koncan’s comedic play depicts how the marriage construct that *McIvor* challenged in the *Indian Act* is an assimilationist tool to prevent Indigenous female lineages from being passed onto future generations. *McIvor* is the second international landmark case to succeed in challenging the *Indian Act* to correct sex-based discrimination in denoting Indian Status to women. The experiences of Indigenous women, like *McIvor*, are articulated as having their origins in the fur trade era. Koncan’s play alludes to the development of a barrier to Indigenous women’s voices in the form of marriage and procreation survival strategies imposed on them by law. Indigenous women have been

¹⁴ Lovelace at paras 7.2 and 18-19. The marrying out restrictions violate article 27 of the *Covenant*.

hiding their invisible Indigenous female *personae*/matriarchal identities to be accepted by our society. The *Indian Act* has reinforced the concept that masking in husbands' non-Indigenous identities gives Indigenous women higher value. The play reveals context that emphasizes that Indigenous women pursued marriages to avoid starvation and the punishment of death associated with being seen as a rebel to the British colony. Koncan's narrative demonstrates that the pursuit of marriage subjugates Indigenous women although the women are still carrying men into the future as wives and mothers. The Indigenous female characters are conflicted about the imposition of colonial law on them in which they are demoted as less than men. The law forces the women to discount Indigenous cultural *norms* and ILOs in which they are cherished. There is no mention of *McIvor*'s legal remedy being available to the women of the fur trade. *McIvor* was subjected to the same masking as *Lovelace* and the women of the fur trade when bringing her legal claim. The masking dynamic makes it difficult for Indigenous women to express themselves because it lessens their worth even while asking for equality. Thus, the play points out that the loss of Indian Status has affected Indigenous women's ability to participate in legal pluralist law reform of the *Indian Act* by stifling their concerns. This chapter's analysis demonstrates that the statutory imposition of marrying out has resulted in Indigenous women losing personal jurisdiction and representation in law.

Strengths & Limitations

My thesis strengthens Indigenous women's feminist advocacy about sex-based inequality. I interpret the law by consciously building on Indigenous women's narratives that are normally not brought into conversation with *Lovelace* and *McIvor*. My research values the play narratives as unofficial laws that inform how official laws might change. I note that the play commentary is key cultural knowledge that provides meaning about how Indigenous women ought to be represented in the *Indian Act*. The plays value Indigenous women's cultural identity and equality whereas the *Indian Act* is ambiguous on the matter (despite having originated the harmful practice of marrying out).

CHAPTER 1: INDIGENOUS WOMEN'S VOICES IN LAW AND THEATRE

In this chapter I outline important information about the subject of my thesis, my assumptions, and how I approach and conduct my research. I situate my research within the field of law and literature and I narrow my approach to that of “law *as* literature”. I begin by introducing foundational information that is necessary to understand my interpretation of law and theatre narratives. Firstly, I explain how the *Indian Act* has historically enabled discrimination against Indigenous women that is part of a larger effort to eliminate the Indigenous race. I note the specific sex-based discriminatory provisions of the *Indian Act* and define the original underlying policies that Indigenous women have been challenging in the courts *i.e.* marrying out rules, assimilation and enfranchisement. Secondly, I outline what the culture of the IFTM is that I am contextualizing the cases in. Thirdly, I include an explanation of how my approach connects the principles and cultural *norms* that derive from ILOs, as reflected in the plays, to promote legal pluralism in the way that I interpret the cases.¹⁵ I explain that the *Indian Act* has suppressed the voices of Indigenous women by barring legal claims in combination with the marrying out provisions. I explain that the struggle of Indigenous women, thus, involves an overcoming of silence because the law has been devaluing their role in society, showing, how the sex-based discrimination creates a heightened struggle for Indigenous women who are put at odds with the law whenever they challenge new legal issues where precedent is lacking in support of their claims. Finally, I explain my methodology and theoretical orientation and how I apply it in my thesis. My method involves rereading cases alongside plays to

¹⁵ *Supra* note 4. I explain how my inclusion of Indigenous women's voices/narrative in my interpretation of case law is built on legal pluralist scholarship. My research values Indigenous laws and the need to connect the cultural *norms*, that are laws, reflecting the ILOs, with my analysis of case law. See also Val Napoleon, “What Is Indigenous Law? A Small Discussion” (6 November 2024), online: <<https://www.uvic.ca/law/assets/docs/ilruWhat%20is%20Indigenous%20Law%20Oct%2028%202016.pdf>>. Napoleon clarifies that “Indigenous societies were lawful”, that law matters, and she explains that that Indigenous laws are generated by Indigenous peoples and “within Indigenous communities, between Indigenous communities, and between Indigenous societies and the state (and settler society).” Napoleon states that “law is a human endeavour. It is an active collaborative and public process, and is never insulated from the larger social and political forces around it. Rather, law can be understood as being formed by forming those constant social, economic, and political dynamics.” Napoleon contrasts the decision-making processes of the Gitksan society that is matriarchal, non-state, and decentralized versus Canada’s “top-down” and “centralized” authority. She values legal pluralism by writing that Indigenous law “has endured through time” and that “people’s collective aspirations provide direction, order, standards and ethics, and the power of hope. As with all law, Indigenous law contains thinking processes and intellectual resources, and it changes to live in each generation.” Napoleon states that “Indigenous laws and legal orders are comprehensive in scope and depth, and require legitimacy and coherence just as Canadian law does.” I differentiate my approach from Napoleon’s by focusing on Cover’s theory to acknowledge the legal orders that she refers to.

provide a more fulsome account of the cultural meanings, contexts and implications of each primary source.¹⁶ My research highlights Indigenous women's storytelling to fill a gap of Indigenous feminist perspectives in law and literature scholarship. I have primarily adapted the theory of the American law and literature scholar, Robert Cover, to create my own method. I incorporate complex philosophy from the French philosopher, Gilles Deleuze, and critical theory from the Australian feminist, Elizabeth Grosz, to create a Critical Feminist Gender-Based Inquiry that guides my interpretation of primary sources.

***Indian Act* Discrimination, Assimilation & Enfranchisement Policies**

There has been severe legislative suppression of Indigenous women's voices due to the *Indian Act* related to registering for Indian Status.¹⁷ The *Indian Act*'s foundational policies of assimilation and enfranchisement targeted the removal of the Indigenous race from the population based on maternal ancestry *i.e.* marrying out provisions. A compounding issue is the former legal restriction on Indigenous people being able to bring legal claims forward between 1927 to 1951.¹⁸ In the *Indian Act*, "[s]ection 141 outlawed the hiring of lawyers and legal counsel by Indians, effectively barring [Indigenous] peoples from fighting for their rights through the legal system. Eventually, these laws expanded to such a point that virtually any gathering was strictly prohibited and would result in a jail term."¹⁹ This legal ban may explain why Indigenous women rarely publicly voice their concerns about law.

The policy of "assimilation" is rooted in the government's attempt to "civilize Indians" by legislating the removal of their race. In 1887, the Prime Minister John A. MacDonald stated that the *Indian Act*'s purpose was assimilation because "[t]he great aim of our legislation has been to do away

¹⁶ *Supra* notes 2-3. (primary sources)

¹⁷ *Supra* note 1. Indian Status is an official recording of Indigenous ancestry in federal government's Indian Register maintained under section 5.

¹⁸ First Nations Studies Program, "The Indian Act" (31 January 2024), online:

<https://indigenousfoundations.arts.ubc.ca/the_indian_act/#:~:text=Section%20141%20outlawed%20the%20hiring,result%20in%20a%20jail%20term>. Referring to former s 141 of the *Indian Act*. (The University Of British Columbia Indigenous Foundations Website)

¹⁹ *Ibid.*

with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion.”²⁰ In the 1820’s, before taking effect within the *Indian Act*’s registration provisions, the first assimilation project was attempted at Coldwater-Narrows near Lake Simcoe. The colonial administrators grouped Anishinaabe people into a “colonial-style village where they would be... encouraged to adopt Christianity and abandon hunting and fishing as a means of subsistence.”²¹

The other simultaneous policy of “enfranchisement” was referred to in the 1906 version of the *Indian Act* as removing Indigenous people from having Indian Status.²² In *Attorney General (Canada) v Larkman*, enfranchisement was noted by the Federal Court of Canada (FCC) to be “a euphemism for one of the most oppressive policies adopted by the... government in its history of dealings with [Indigenous] peoples”.²³ The FCC goes on to describe enfranchisement as “beginning in 1857 and evolving into different forms until 1985... aimed at assimilating [Indigenous] peoples and eradicating their culture” and “encouraging ‘the progress of [c]ivilization’ among [Indigenous] peoples”.²⁴ The sort of activities that were enabled under the policies were “disadvantage, stereotyping, prejudice and discrimination... with deep reluctance or at the high personal cost, and sometimes under compulsion, many spent decades cut off from communities to which they had a deep cultural and spiritual bond.”²⁵ In the 2020 case of, *Hele c Attorney General of Canada*, the Superior Court of Quebec found that enfranchising unmarried Indigenous women is oppressive.²⁶

In Marlisa Tiedemann’s 2023 report from the Library of Parliament entitled, *Bill C-38: An Act To Amend The Indian Act (New Registration Entitlements)*, she summarizes the amendments that were made to the *Indian Act* to correct sex-based discrimination post-*Lovelace*-and-*McIvor*. By 1985, “Bill C-

²⁰ *Ibid.*

²¹ Government Of Canada, “Part 4 – Legislated Assimilation – Development of the Indian Act (1820-1927)” (15 July 2024), online: <<https://www-rcaanc-cirnac-gc-ca.ezproxy.library.yorku.ca/eng/1307460755710/1536862806124>>.

²² Ian Peach & Aaron Mintz, “Daniels v. Canada: The Inevitable Comes to Pass, At Last”, 2013 CanLIIDocs 94.

²³ *Royal Commission on Aboriginal Peoples [RCAP]* cited in *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 10. [**Larkman**]

²⁴ *Ibid* at para 11. “: *An Act to Encourage the Gradual Civilization of Indian Tribes in the Province and the Amend the Laws Respecting Indians*, S. Prov. C. 1857, 20 Vict., c. 26 (initial law); *An Act to Amend the Indian Act*, S.C. 1985, c. 27 (the abolition).”

²⁵ *Corbiere v Canada (Minister of Indian and Northern Affairs)* cited in *Larkman* at para 13.

²⁶ , 2020 QCCS 2406.

31... introduced significant amendments... aimed at making the *Indian Act* compliant with the equality provisions of the... *Charter*... includ[ing] removing the discriminatory provisions that causes a First Nations women to be enfranchised and lose status when she married a man who did not have status.”²⁷ The registration provisions subjected Indigenous women to enfranchisement because sections 6(1) and 6(2) formerly prevented them from identifying with Indian Status or from passing it on to (grand)children.²⁸ The amendments aimed at a reversal of the racist foundational policies that underpinned the provisions to begin with. Tiedemann reports that a later Bill C-38

relates to individuals who were subject to enfranchisement... and their ability to transmit status to their direct descendants... The [*Indian Act*’s] operating premise was that by removing the legal distinctions between Indians and non-Indians through enfranchisement... it would be possible in time to absorb Indians fully into colonial society. An enfranchised Indian was, in effect, actually renouncing Indian status and the right to live on protected reserve land in order to join non-Aboriginal colonial society.²⁹

The “discriminatory ‘marrying out’ provisions” were subsequently amended to remove sex-based discrimination coinciding with *Lovelace*. Tiedemann explains that *Lovelace* was a pre-*Charter* complaint brought to the UNHRC under the *Covenant*.³⁰ Lovelace broke a glass ceiling as cases challenging the marrying out provisions had yet to succeed.³¹ By 1981, the UNHRC decided that “Canada had breached its obligation under the Covenant”.³²

The human rights lawyer and professor, Mary Eberts, describes the inequality against Indigenous women in the *Indian Act* as being a form of “double discrimination”. In her 2010 article, “McIvor: Justice Delayed – Again”, she explains that Indigenous women were restricted from passing on their Indian Status equally as compared to men because Indigenous men with the same

²⁷ Marlisa Tiedemann, *Bill C-38: An Act To Amend The Indian Act (New Registration Entitlements)* (Ottawa: Library of Parliament, 2023) (5 November 2023), online: <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/LegislativeSummaries/PDF/44-1/PV_44-1-C38-E.pdf> at 5. [Tiedemann] *Charter* cited in Tiedemann.

²⁸ *Indian Act* ss 6(1)-6(2) cited in Tiedemann.

²⁹ *RCAP* cited in Tiedemann at 9.

³⁰ *Lovelace* cited in Tiedemann at 6.

³¹ *The Attorney General of Canada v Jeannette Lavell; Richard Isaac et al. v Yvonne Bédard*, [1974] S.C.R. 1349. [Lavell and Bédard] Jeannette Corbiere Lavell and Yvonne Bédard challenged the marrying out provisions unsuccessfully. Indigenous women continued to be barred from registering for Indian Status or passing it on through maternal lines until *Lovelace*.

³² *Covenant* cited in Tiedemann.

ancestry can pass on Indian Status to their offspring regardless of who they marry. The legislative scheme, thus, targets Indigenous women to be discriminated against on the basis of both *race* and *gender*.³³ Eberts explains that the legal subjugation of Indigenous women was founded on racist policies as well as sexist policies. The assimilationist policy was based on perpetuating women's inequality that was already found in mainstream society as:

a woman lost all her civil rights upon marriage... the law of Victorian Canada ignored the vital role they played in numerous indigenous polities, but clearly furthered the government goal of assimilation. A registered Indian woman who married a non-registered male ceased to be a registered Indian. She was legally 'assimilated' and off the government rolls. The descent of status through the male line was also a function of applying to Indian women the inferior civil status then prevailing with respect to all women.³⁴

This double discrimination was still apparent when *McIvor*, again, successfully challenged the *Indian Act*. *McIvor* resulted in the UNHRC international ruling that Canada amend the *Indian Act* to further remedy the sex-based discrimination to prevent it from being perpetuated.³⁵

Indigenous Feminist Theatre Movement (IFTM)

I refer to the term IFTM in my thesis because I am using plays from this movement to contextualize the cases that I am researching. By 1975, Indigenous female playwrights began to write about Indigenous women's role in society publicly for the theatre. In "'Our Lives Will Be Different Now': The Indigenous Feminist Performances of Spiderwoman Theater", Katherine Young Evans writes about how the Spiderwoman Theater started in New York City's East Village experimental theatre scene by activists Lisa Mayo, Gloria Miguel and Muriel Miguel (Kuna-Rappahannock).³⁶ In the list of Indigenous female playwrights in, *Keepers Of The Morning Star: An Anthology of Native*

³³ Mary Eberts, "McIvor: Justice Delayed – Again" (4 October 2023), online: <<https://heinonline.org/HOL/Page?handle=hein:journals/ilj9&collection=journals&id=17&startid=&end=48>>. [Eberts]

³⁴ *Ibid* at 18.

³⁵ *McIvor* cited in Tiedemann at 7.

³⁶ , ed by Cheryl Suzack, Shari M Huhndorf & Jeanne Perreault et al, "'Our Lives Will Be Different Now': The Indigenous Feminist Performances of Spiderwoman Theater", *Indigenous Women and Feminism: Politics, Activism, Culture* (Vancouver, Canada: UBC Press, 2010) at 258-259. See also NYU Libraries, "Native America: Spiderwoman Theater: Sun, moon, and feather", online: <<https://sites.dlib.nyu.edu/hidv1/9zw3r2bz>>. The earliest IFTM play was *Sun, Moon and Feather* by Alex Anderson.

Women's Theatre, there are no plays found prior to 1975.³⁷ The movement continues on in modern times as there are still plays being written by Indigenous women such as Koncan's play that was staged at Stratford Theatre Festival in 2023.³⁸

The theme of Indigenous women's experiences with the *Indian Act's* sex-based discrimination is prominent in both of the plays that I selected. The IFTM culture responds to *Indian Act* inequality through the plays that are written by Indigenous feminist activists commenting on the unfairness that the law has enabled. The playwrights showcase the emotional experiences of Indigenous women who are overcoming inequality. The plays indicate how Indigenous women struggle to articulate what their role in society ought to be as a response against the lower position that has been imposed on their group by the *Indian Act*. The plays create a space where Indigenous women's storytelling is valued as a mechanism to reclaiming their voices.

Legal Pluralism & Indigenous Legal Orders (ILOs)

I next turn to how I label my research as legal pluralist scholarship because I rely on multiple legal orders and include Indigenous women's perspectives in my interpretation of the marrying out provisions. I draw inspiration from the legal pluralists of Roderick A. MacDonald, Ruth Buchanan, Jeffery G. Hewitt and Robert Cover. Law reform efforts drawing on *norms* deriving from ILOs have been key to Indigenous women achieving gender equality. I argue that Canadian law does not capture how valued Indigenous women are within the ILOs that are reflected in the IFTM narratives. Thus, there is a gap in *Indian Act* law reform with regards to the valuing of Indigenous women's voices and identities.

³⁷ Jaye T Darby & Stephanie Fitzgerald, eds, *Keepers Of The Morning Star: An Anthology of Native Women's Theatre* (Los Angeles: Regents of the University of California, 2003) at 375-378; all plays are published post-1975 in Ann Haugo's list of plays written by Indigenous Female Playwrights in North America.

³⁸ Stratford Festival, *Women Of The Fur Trade 2023* (London, ON: Stratford Festival, 2023) at 4. [Program]

My research aligns with MacDonald's 2014 article, "Law Reform For Dummies".³⁹ MacDonald explains how to reform the law through a legal pluralist lens.⁴⁰ He "explicitly adopt[s]" this "perspective so as to highlight the multiple roles that citizens play in the reform of official and unofficial law."⁴¹ He argues that citizens are often looked at as "dummies" but they "must be key players in the law reform enterprise".⁴² This type of law reform "engages citizens in dialogue through which they gain richer insight into their normative lives and learn to manage everyday interactions with each other." MacDonald states that the involvement of citizens is how the law responds to public concerns about any law reform process.⁴³

My research conducts what MacDonald might call legal pluralist law reform by showing how *norms* drawn from ILOs, reflected in Indigenous women's literary voices, are key to mitigating their inequality issues. Indigenous women have often been excluded from participating in setting *norms* that would enable them to exercise the equality rights protected by the *Charter* and the *Covenant*. The IFTM responds to this exclusion by breaking the silence about sex-based discrimination regardless of whether or not there is an open door in the courts to reform the *Indian Act*. Indigenous women are also breaking down barriers by advocating for themselves in the courts. However, the plays tell us that we still need more opportunities for promoting positive representations of Indigenous women in literature to counteract assimilationist laws. Indigenous playwrights have created these representations by showcasing strong Indigenous female characters in their plays that speak about their feelings, social and legal issues in an empowering way.

MacDonald explains what he means by legal pluralistic law reform: 1. "law reform, like law itself, need not be institutionalized in a particular way." It may be "under the bed" law that is more

³⁹ Roderick A MacDonald, "Law Reform For Dummies (3rd Edition)" (15 July 2024), online: <<https://digitalcommons.osgoode.yorku.ca/ohlj/vol51/iss3/7>>. [MacDonald]

⁴⁰ *Ibid* at 871.

⁴¹ *Ibid* at 870.

⁴² *Ibid* at 865.

⁴³ *Ibid* at 859.

broadly an unofficial expression of a citizen's view outside the legal system (unofficial law);⁴⁴ 2. the methodologies and outputs of the law reform process can be "broadened and pluralized". He notes that input is being privileged from legal players rather than citizens in any proposals for legislative change and this stifles legal pluralism;⁴⁵ 3. Law reform is "*episodic and discontinuous*" which is why we must encompass under the bed law as it is in "constant flux" and is based on the practices of citizens and their normative understandings of the world. Law reform is not only brought about by "discrete and explicit act of legislative or judicial will." In fact, citizens play an important role in law-making when they discuss the law. This event is seen when the common law overrules a former law due to "normative reshaping" by the public.⁴⁶ It is

[t]he central insight of a legal pluralistic approach is to recognize that, however static the law in books, the living law is always in motion... Quotidian interaction in myriad situations is the generator of the everyday law that is constantly being made and remade by citizens. Together, citizens renew the law by living the law, often managing to redress the injustices of an official law that legislature are unable or unwilling to change. The *unofficial* practices by which this everyday law is constituted, debated, followed, and ignored are the real engines of *official* law reform.⁴⁷

MacDonald argues that the law alone does not tell us how the law must be *reformed* because only legal subjects can speak to how the law ought to change to accommodate them. He argues that "meaningful interpersonal relationships" are created when people interact and that "[t]hese relationships develop through the interplay of social, cultural, religious and economic forces, which also shape how official law acknowledges them."⁴⁸ MacDonald is encouraging people to speak about their desired legal reform because their narratives apply the actual pressure to the law that is necessary to spark the changes.⁴⁹

⁴⁴ *Ibid* at 873.

⁴⁵ *Ibid* at 874.

⁴⁶ *Ibid* at 875-876.

⁴⁷ *Ibid* at 878.

⁴⁸ *Ibid* at 888.

⁴⁹ MacDonald corroborates Cover's legal pluralism that I explain several paragraphs later in this section.

I acknowledge MacDonald's above rendition of legal pluralism in my research because I point out how Indigenous women's narratives reflect their own under the bed laws that correlate with the demands they have made in *Lovelace* and *McIvor* to reform the *Indian Act*. Indigenous women have become more vocal in the public sphere about their civil and political rights along with the development of the IFTM culture. Indigenous female playwrights' visions for equality are contained within the cultural *norms* of their group, that are also unofficial law, that is revealed in their plays. The women's narratives are a promising development for law and literature scholarship. The availability of the narratives allows me to compare Manuel and Koncan's cultural commentary to point out what is missing from the *Indian Act* amendments.

MacDonald notes that in Indigenous Law the recognition of "locally-generated non-official law" with citizens is starting to shape the new directions for the law.⁵⁰ One example of how legal pluralist law reform works is the government's engagement of the public early in the development of any strategic planning.⁵¹ The recommendation is for "multiple sites of informal law" generation with citizens to inform formal law creation.⁵² Citizens' views and relationships are more accurately reflected in legal developments if they are given opportunity to discuss them.⁵³ The "[a]ppropriate policy responses require research into social, economic, and cultural contexts".⁵⁴ Otherwise, we rely only on formal laws that "often leave much to be desired" when used as a social diagnostic tool.⁵⁵ The former silence of Indigenous playwrights about sex-based discrimination suggests that Indigenous women were substantively restricted from what MacDonald describes as legal pluralist law reform. I build on MacDonald's insistence that citizens be involved in law reform by noting that Indigenous women are the key players who need to be consulted on how the law treats them.

⁵⁰ MacDonald at 869-870.

⁵¹ *Ibid* at 883. MacDonald notes the release of public information including consultation papers and surveys for input on the key issues to develop an agenda or work plan is an example of legal pluralist law reform in Indigenous Law.

⁵² *Ibid* at 884.

⁵³ *Ibid* at 886.

⁵⁴ *Ibid* at 886.

⁵⁵ *Ibid* at 887.

My thesis demonstrates that one of the sites of engagement for Indigenous women's perspectives is through law and literature scholarship. Indigenous women's voices are made more *available* to influence any legal reform by connecting literary commentary with case law. MacDonald suggests that citizens can reshape *norms* in the mainstream culture to accommodate them. My analysis suggests that legal reform of the *Indian Act* should not be such a struggle or require international intervention. I am generating new scholarship about how, although the *Indian Act* minimizes Indigenous women's voices, Indigenous women are revealing cultural and legal *norms* that deserve celebration. I am incorporating this idea from the theatre into legal scholarship where it might otherwise be omitted. My analysis is, thus, one manner of increasing the availability of Indigenous women's voices by bringing them into conversation with the cases to address blindspots in the law.

I now focus on how my research connects legal pluralism and ILOs. Buchanan & Hewitt bring these two ideas together in their 2017 article, "Encountering Settler Colonialism Through Legal Objects: A Painted Drum And Handwritten Treaty From Manitoulin Island".⁵⁶ They point out that an Indigenous drum is reflective of Anishinaabe legal order. They compare the cultural object of a specific painted drum from the 1800's that now sits mute in the British Museum with a Manitoulin Island handwritten treaty from Canada's Great Lakes region.⁵⁷ Their article compares the storytelling painted on the drum depicting the Anishinaabe peoples' encounter with the treaty when the drum was made. The article proves that treaty law and the drum can be put in conversation to learn more about Indigenous people's relationship to colonialism.⁵⁸ The article states that "[r]ead in parallel, the treaty's assertions of authority and the drum's mute resistance interrogate the form of

⁵⁶ Ruth Buchanan and Jeffery G Hewitt, "Encountering Settler Colonialism Through Legal Objects: A Painted Drum And Handwritten Treaty From Manitoulin Island" (15 July 2024) online: <https://digitalcommons.osgoode.yorku.ca/scholarly_works/2669>. [Buchanan & Hewitt]

⁵⁷ *Ibid.*

⁵⁸ *Ibid* at 291.

law itself, and the agency of law's objects."⁵⁹ The goal is to "contemplate each object on its own terms as a site of law-making, and then reflect on how their juxtaposition might help us to better understand the long history of relations between Anishinaabe Peoples, the British Crown and the Canadian state."⁶⁰ Similarly to how Buchanan & Hewitt place the legal object of the drum into conversation with the treaty, I am placing IFTM plays into conversation with cases. I am using narrative, instead of a legal object, to look at ILOs reflected in the cultural *norms* from the plays. The cultural *norms* are familiar to Indigenous women and yet have not been put into conversation with Western law very often. The *Indian Act* is given more importance than the ILOs and IFTM cultural *norms* that go ignored in the courts. Reading the Indigenous Law embedded in the plays at the same time as the cases, in the appropriate historical/cultural context, I minimize the gaps of understanding of the sources.

My method most closely aligns with Cover's legal pluralism.⁶¹ Narratives reveal ideas from a group contrasting mainstream law that become their visions for legal pluralist law reform. I am interpreting where the cultural visions emerging from the group's plays often diverge from the government laws. I am researching how the plays reveal Indigenous women's responses to *Indian Act* inequality. The playwrights note what better alternatives exist for Indigenous women. The plays indicate how sex-based discrimination restricts their ability to speak about their legal concerns about Indian Status loss. The fiction parallels the reality of how Indigenous women's ability to practice normative cultural traditions, and the depiction of positive Indigenous female roles in literature, helps them to overcome colonial trauma. The *Indian Act* replaced Indigenous women's culture with laws imposing a devaluing of their race and sex. Thus, their stories reflect otherwise discounted ideas

⁵⁹ *Ibid.*

⁶⁰ *Ibid* at 293.

⁶¹ See "*Adapting Robert Cover To My Method*" section. Cover justifies that cultural *norms* depicted in the narratives are unofficial laws.

about what their cultural *norms* and ILOs are that Indigenous women prefer to subscribe to. Their matriarchal relationships are more valued in IFTM narratives than in the law.

Given Cover's legal pluralism, it is interesting to briefly examine whether he would see the cultural *norms* reflected within the IFTM as law? I posit that Cover would see the cultural *norms* as unofficial laws, reflecting ILOs, that are closely connected to how the playwrights envision that official laws ought to include Indigenous women. The IFTM playwrights depict how the laws restrict the way Indigenous women would normally order themselves with higher status and as leaders of cultural ceremony at feminist gatherings. I align with Cover by indicating that the women's *norms* are capable of informing society at large about how formal laws could adapt to become fairer to them. If the law is seen as too violent to Indigenous women, as the marrying out provisions have proven to be, then Cover's theory supports the assertion that making a literary bridge available to include Indigenous visions of what the law ought to become is necessary. I argue that including cultural *norms* from IFTM plays in legal discourse is a starting point for recognizing ILOs historically excluded by the *Indian Act*. My method promotes that Indigenous women's *norms* about their equal position to men ought never to have been restricted by law. The plays allow for the physical overcoming of silence among Indigenous women on public stages to parallel with the cases' lack of attention to ILOs favouring Indigenous matriarchy.

Situating My Thesis Within the Field of Law and Literature

In this field, there is an importance placed on discovering what the culture and context is in which the law is created.⁶² In this section I first describe how a canonical scholar in the field, James Boyd White, places importance on lawyers writing imaginatively. I explain how he encourages a law and literature approach to generate new legal knowledge where rules are interpreted in reference to

⁶² Lorna Hutson, ed, *The Oxford Handbook of English Law and Literature, 1500-1700*, (UK, Oxford University Press: 2017) (15 July 2024), online: <<https://doi.org/10.1093/oxfordhb/9780199660889.001.0001>>. [Hutson] Hutson defines the field of Law & Literature as an "interdisciplinary critical movement" that developed in the 1970's and 1980's.

relevant cultural contextual information to strengthen our understanding of the law. I then refer to, Simon Stern, to identify my approach as being that of “law *as* literature” (law *as* narrative), as opposed to other common approaches.⁶³ I next highlight the works of modern scholars who have inspired me to contextualize the case law that I am researching within the IFTM such as: Eric Cheyfitz & Shari M. Huhndorf, Dian Million, and Kate Sutherland. I demonstrate that, similarly to the above scholars, I am rereading cases against commentary generated from the fictional narratives that reflect the cultural knowledge that might otherwise be left out of the analysis of the cases. This approach allows me to better understand the law by generating legal knowledge about what Indigenous women have envisioned that the concept of equality means. Finally, I note how I primarily build on the scholarship of Cover. I justify this choice by explaining how the IFTM plays that I have chosen have been written within a mainstream culture whereby Indigenous women find the need to speak up and to resist the *Indian Act* marrying out provisions. The law does not readily reflect a valued role for Indigenous women unless they publicly voice this need. Cover’s scholarship best allows me to generate specific legal knowledge about the impact of the *Indian Act* on Indigenous women’s voices by reflecting on what the IFTM cultural narratives indicate that the law has enabled.

White emphasizes the necessity of conducting both literary and legal analysis together rather than just relying on doctrinal analysis of cases and statutes.⁶⁴ He sees literary interpretation as an opportunity to respond to “real conditions and real needs” in society to create “space and opportunity” for legal changes to improve people’s lives.⁶⁵ The law itself could remain too static if scholarship does not provide a window towards more inspiring interpretations of the law. I am situating my research within the field, as White describes it, to assist with opening up new positive

⁶³ University of Toronto Faculty Of Law, “Simon Stern” (15 June 2024), online:<<https://www.law.utoronto.ca/faculty-staff/full-time-faculty/simon-stern>>.

⁶⁴ Jeanne Gaakeer, “Interview with James Boyd White” (2007) 105:7 Mich L Rev 1403 (16 July 2024), online: <[file:///Users/carrierobinson/Downloads/105MichLRev%20\(1\).pdf](file:///Users/carrierobinson/Downloads/105MichLRev%20(1).pdf)>. [Gaakeer]

⁶⁵ *Ibid* at 1418.

possibilities for scholarship that promotes Indigenous feminism in jurisprudence and in the theatre. I find the commentary from the plays arising out of the IFTM to be just as important to include in my interpretation as the law. I use my analysis to emphasize that law is being created in a context whereby Indigenous women's voices have rarely made it into case precedents. I am addressing this gap by bringing together the Indigenous feminist voices from the IFTM that are commenting on the *Indian Act*. The case holdings in *Lovelace* and *McIvor* confirm what the narratives are saying. Indigenous women are certainly still struggling to speak up about sex-based discrimination.

White defines "law" as "a complex inherited language of analysis and argument, which has its origins outside any of us, and a set of intellectual and social practices, again complex, by which that language can be put to use in the world- practices that can be done well or badly, with consequences, small and great."⁶⁶ He describes that law is very connected to literature because writers who live in our world are interpreting cultural information that allows them to comment on law. He emphasizes that writers utilize their narratives to either promote or to resist rules and authority depending on what is discovered about the context of the law. He states that "[w]hat we call law can on the one hand be a salient and powerful instrument of empire, denying humanity and trivializing human experience; or, on the other, it can be an important way- perhaps our best way- of seeing, recording, resisting empire."⁶⁷

White notes how he understands law in relation to Emily Dickinson's poem "I like a look of agony":⁶⁸ He states that Dickinson confronts nineteenth century America's "empire of force". The poet speaks of being *agonized* and breaks a social convention of the time that women would not write forwardly about their feelings. Indigenous women also respond to authority by writing plays about their feelings about legal gender inequality. White states that Dickinson's text reveals her internal

⁶⁶ Gaakeer.

⁶⁷ *Ibid* at 1405.

⁶⁸ Emily Dickinson, "I like a look of Agony" (15 July 2024), online: <<https://allpoetry.com/I-like-a-look-of-Agony>>. "I like a look of Agony, Because I know it's true-, Men do not sham Convulsion..."

point of view on how authority is at work in her world and she confronts it from her own cultural standpoint as a woman. Her poem pushes against an expectation of the time that she would only write “saccharine verse full of false feeling, one object of which would be to maintain a reduced and sentimental image of the woman herself.” Dickinson, instead, “confronts and resists those demands directly, insisting on the reality of her own experience.”⁶⁹ I draw out White’s above example to indicate where I have learned to interpret literary analysis and the legal concept of gender equality.

White encourages lawyers to create legal knowledge by drawing more on cultural contextual information from narratives.⁷⁰ He defines “Legal Knowledge” as:

a way of doing something with the rules and cases and other materials of law, an activity that is itself not reducible to a set of directions or any fixed description. It is a species of cultural competence, like learning a language; this may in fact be the closest analogy we have, for what a lawyer knows at the center is how to speak and write the language of the law, in actual situations in the world- how to use legal language to create legal meaning. Legal knowledge is in the end not factual but rhetorical and imaginative.⁷¹

He states that law is “cultural knowledge” that is developed out of disagreement. We create “legal language” when we test the limits of what we can claim. He argues that the communication and arguments ingrained in the law are “a way of establishing and confirming agreement”. White acknowledges that rules prescribe our “conceptual relations” and yet we also challenge the law with concepts arising from narratives. White argues that we are a part of creating legal knowledge and meaning when we engage with writing about how the law should change.⁷² He emphasizes that new interpretations of the law are possible because “[t]he lawyer must always be prepared to ask where the law itself has gone wrong, what voices or claims or understandings it improperly excludes or admits. Our law is capable of great evil, and the lawyer must be ready to see how that is so; ready, that is, to reimagine if necessary both the world and the law.”⁷³ White recommends that lawyers

⁶⁹ Gaakeer at 1406.

⁷⁰ James Boyd White, “Legal Knowledge,” (2002) 115:5 Harv L Rev 1396 (16 July 2024), online: <<https://repository.law.umich.edu/articles/2100/>>. [White]

⁷¹ White at 1399.

⁷² *Ibid* at 1398-1399.

⁷³ *Ibid* at 1402.

challenge the common assumption that legal knowledge is “objective, stateable, verifiable... reified, even commodified”. He argues that lawyers “learn the law in order to use it... to achieve a set of objectives, to establish and maintain a set of relations, to move yourself and others in a direction you wish to go”. White is explaining how legal writers are “claiming meaning for experience” by incorporating literary commentary from the narratives into arguments that are more informed by context.⁷⁴ My research does exactly what White is promoting. I piece together where Indigenous women resist federal law in their narratives urging a movement in law towards promoting their sex-based equality.

I next turn to Stern’s scholarship to demonstrate that I am narrowing my specific law and literature approach to “law *as* literature”. In Stern’s 2018 article, “Literary Analysis Of Law: Reorienting the Connections Between Law and Literature”, he defines “law *as* literature” to be “the use of literary methods to interpret legal texts, often focusing on hermeneutic approaches to constitutional or statutory interpretation”.⁷⁵ Stern differentiates this approach from two other common approaches defined as the following: “law *in* literature” whereby one studies “the literary depiction of legal actors and disputes, usually in drama or fiction”; and, “the law *of* literature” which is the study of “the regulation of the literary marketplace by laws involving libel, obscenity, and copyright”.⁷⁶ I exclude the two other approaches that Stern lists as not relevant to my research because I am not looking at law being directly depicted in the plays nor at any specific law regulating playwrighting. I focus, instead, on what literary analysis offers legal analysis by rereading narratives against cases to open up new interpretations of the law. My choice stems from a desire to make the valuable cultural knowledge arising out of the Indigenous women group more visible.

⁷⁴ *Ibid* at 1396-1397.

⁷⁵ Simon Stern, “Literary Analysis Of Law: Reorienting The Connections Between Law and Literature”, (2018) 5:2 Critical Analysis L 170 (24 September 2024), online: <file:///Users/carrierobinson/Downloads/5CriticalAnalysisL170.pdf> at 172. [Stern]

⁷⁶ *Ibid* at 171-172.

Stern identifies a modern shift in the field whereby writing about the *context of law* is becoming more important to understanding *who* the law is affecting and the reasons *why* the law is being made.⁷⁷ It is a “fundamental shift in understanding literature’s relation to law and in the reasons for exploring this relationship in the first place”.⁷⁸ Stern states that scholars traditionally favour a rhetorical, doctrinal and conceptual level approach to statutory or constitutional interpretation. He describes that this is the more rigid approach of law *serving as the assistant* to solving legal problems. His article notes that scholars are expanding the sorts of questions that they pose on literary material by increasingly inquiring into how the law affects problems with representation. To Stern, it is very necessary to understand the “circumstances that have made [law] what it is- and [to] treat... those enabling conditions, rather than a proposed alteration that might flow from them, as the object of analysis.”⁷⁹

I am aligning my thesis with the shift that Stern describes by focusing on an analysis of the representation of Indigenous women. I inquire about the “Indigenous Woman” role in IFTM plays and how this figure is treated by the mainstream culture. I compare this role in my analysis of the cases as well. For Indigenous women, their representation is relevant to the cultural context that involves their negative experiences with a proven history of inequality. This context may not be fully brought to light without the literary analysis of the cases. My research is indicating that the different perspectives arising in the plays are omitted from the cases. The narratives emphasize how Indigenous women *feel* about their lowered position in the *Indian Act* and what their struggle is with reclaiming an equal position in the world. The narratives do not have to prescribe to a legal argument to demonstrate how the various characters feel negatively about law.

⁷⁷ *Ibid.*

⁷⁸ *Ibid* at 173.

⁷⁹ *Ibid.*

Stern details the most common reasons for exploring the law using literary analysis. First of all, there is the need “to understand how non-lawyers perceive the law and to show how literature can illuminate aspects of legal conflicts in ways that judicial decisions cannot”.⁸⁰ Stern insists that there is a need to make visible what the law is not addressing and the law’s “shortcomings” and “blindspot[s]”.⁸¹ My research acknowledges that there is very little scholarship and case law precedent to support Indigenous women asserting legal claims because they only began to speak up about their concerns in the past several decades. Since Indigenous women are so new to asserting legal claims their narratives lend insight into what the law is not articulating about them.

Second of all, Stern asserts that the above need is a reaction to the fact that “law repeatedly ignores certain kinds of claims or dilemmas” and that literature can allow the reader to pinpoint both the sources and the solutions to their social problems. Stern states that literature can expose where people misunderstand the law and it can lead us to consider law reform and “how to improve the legal system or certain doctrinal or procedural provisions”.⁸² My literary analysis uses the play commentary to make the gaps in the law visible within the struggle of Indigenous women to overturn assimilationist marrying out rules. The narratives are *how* Indigenous women are developing the capacity to feel comfortable speaking up about the law from a cultural standpoint.

Thirdly, Stern asserts that law and literature scholars have also become interested in forensic inquiry into the “underlying conditions that foster the development of particular legal and literary practices”.⁸³ If this inquiry were not made, Stern suggests that we would be succumbing to an assumption that the only point of scholarship is to “diagnose and respond to doctrinal and conceptual failures in the legal system”. If this were true, then we would be confined to a cycle of legal interpretation without reference to any other literary study that could allow us to see how

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

improvements might be made to a legal problem using more than just legal resources.⁸⁴ Without the noted shift in the field over the past ten to fifteen years, Stern argues that the “conventional formula” has become “increasingly untenable”.⁸⁵ In my thesis, comparing plays with cases responds to Stern’s concern. The sex-based discrimination complained about in the cases resembles what is written about in the play narratives. However, in the plays there is more concentration on *how the law has made Indigenous women feel*, whether it impacts their ability to speak up about how the law has impacted them, and what sort of mistreatment of them the law has perpetuated.

I now explain how my research draws inspiration from Cheyfitz & Huhndorf’s article, “Genocide by Other Means: US Federal Indian Law and Violence Against Native Women in Louise Erdrich’s *The Round House*”.⁸⁶ The authors assert that it is important for Indigenous storytelling to be read against Western laws based on conceptualizations of sexual violence against Indigenous women. They point out that Western law, read alone, is used as an instrument for colonial expansion of territory through cultural genocide, whereas, Indigenous people see a need for storytelling to become more intertwined with reading the law. Cheyfitz & Huhndorf state that without Indigenous literature we would be missing the colonial context of law historically being used as a justificatory instrument to harm Indigenous women. Cheyfitz & Huhndorf cite Erdrich’s novel that is about the “legal aftermath” of an Indigenous woman, Geraldine, being raped by a white man, Linden, who goes free. Geraldine’s son, Joe, rejects Western law as he considers his mother’s trial to be unjust.⁸⁷

Cheyfitz & Huhndorf point out that Indigenous communities traditionally use storytelling to denote law orally or in wampum (beading) and, therefore, Western law is really “one kind of story in

⁸⁴ *Ibid.*

⁸⁵ *Ibid* at 172.

⁸⁶ Eric Cheyfitz & Shari M Huhndorf, “Chapter 15 Genocide By Other Means: US Federal Indian Law And Violence Against Native Women In Louise Erdrich’s *The Round House*” in Elizabeth S Anker & Bernadette Meyler, eds, *New Directions in Law and Literature* (2017) (15 July 2024), online: <<https://doi.org/10.1093/acprof:oso/9780190456368.0034.0016>>. [Cheyfitz & Huhndorf]

⁸⁷ *Ibid* at 270.

Indigenous terms”.⁸⁸ By contrast, literature is seen in the Western worldview as non-functional or purely aesthetic.⁸⁹ They state that Indigenous law and literature

are inseparably bound... [this] means that on the one hand a person cannot understand... [Indigenous] literatures without understanding the colonial context in and to which they are responding, a context structured by federal [Western] law; and on the other hand, a person cannot understand federal [Western] law without reading... [Indigenous] literatures, which make legible, as in a palimpsest, the genocidal violence that federal [Western] law, taken itself, erases.⁹⁰

Cheyfitz & Huhndorf read Erdrich’s novel in relation to federal law such as the *Johnson and Graham’s Lessee v M’Intosh* case, “which translated nonfungible Native communal lands into property... so that the federal government could claim title... to these lands.”⁹¹ They argue that the novel critiques federal law and asserts that racism and government policies designed to harm Indigenous communities are the root of sexual violence against Indigenous women.⁹² They state that “colonial policies designed to undermine the political autonomy and economic self-sufficiency of Native communities have disproportionately affected Native women, leading to poverty, dislocation, and violence.”⁹³ Thus, they assert that storytelling connecting law and colonization with the “reasons for the rape, the place where it occurs [in Indigenous communities], and the insurmountable barriers to prosecuting the rapist” is an important part of the context to bring about in interpretations of laws about Indigenous people.⁹⁴ They state that rape is “the very paradigm of ongoing colonial power enacted through violence” as attacks on Indigenous women are attacks on the cultural traditions of the Indigenous community itself.⁹⁵

Cheyfitz & Huhndorf emphasize that favourable conclusions for Indigenous women are unavailable when only Western legal interpretations are focused on.⁹⁶ My research builds on their

⁸⁸ *Ibid* at 264.

⁸⁹ *Ibid*.

⁹⁰ *Ibid* at 266. Since federal law governs Indigenous women in both Canada and USA Erdrich’s novel is written in a comparative setting to the plays.

⁹¹ *Ibid*. *Johnson and Graham’s Lessee v M’Intosh* cited in Cheyfitz & Huhndorf.

⁹² *Ibid* at 270.

⁹³ *Ibid* at 271.

⁹⁴ *Ibid*.

⁹⁵ *Ibid* at 272.

⁹⁶ *Ibid* at 276. The literature exposes unfavourable conclusions promoted by the law.

assertion by promoting the juxtaposition of the law with IFTM literature more often. The narratives from the plays place sex-based discrimination in the relevant social and cultural context by depicting the experiences of Indigenous women with the effect of the laws in their communities. The *Indian Act* has been privileged over Indigenous narratives. The IFTM, therefore, contains answers about how to restore social justice for women in Indigenous communities. I credit the literature with offering paths towards learning how to value the role of Indigenous women in ways that fill in the blanks around how their experiences can set *norms* for equality and fairness moving forward.

I will now describe how Million emphasizes the need for Indigenous feminist literature to support public discussions on cases such as *Lovelace*. In her article, “Felt Theory: An Indigenous Feminist Approach to Affect and History”, she describes the act of Indigenous women articulating their visions in narrative as a “Felt Theory”.⁹⁷ Million explains that this term means that their literature is felt knowledge from the heart of their struggles with colonialism and the *Indian Act*.⁹⁸ She asserts that women’s narratives coincide with Indigenous feminist legal advocacy and the resulting legal changes are due to the event of Indigenous women finally actively inserting their prior-domestic discourse/secrets into the public sphere.⁹⁹ She argues that the narratives are thus “political acts in themselves that in their time exploded the measured ‘objective’ accounts of Canadian... colonial histories.”¹⁰⁰

Million cites *Lovelace* as being a key example of a case where Indigenous women have been a part of the political and literary movement in the early 1970’s that has led to overcoming silence and pain about losing Indian Status.¹⁰¹ Given the lack of legal precedent, Lovelace relied mostly on her *felt experience* to challenge the *Indian Act*. Million argues that *Lovelace* coincides with poetry and novels

⁹⁷ Dian Million, “Felt Theory: An Indigenous Feminist Approach to Affect and History” (2 November 2023), online: <<https://www.jstor.org/stable/40587781>>. [Million]

⁹⁸ *Ibid* at 53 and 57.

⁹⁹ *Ibid*.

¹⁰⁰ *Ibid* at 54.

¹⁰¹ *Ibid* at 57.

becoming available to help her to advocate for herself. Million states that Indigenous women writers “participated in creating new language for communities to address the real multilayered facets of their histories and concerns by insisting on the inclusion of our lived experience, rich with emotional knowledges, of what pain and grief and hope meant or mean now in our pasts and futures.”¹⁰² The writers supported Lovelace’s struggle by “chang[ing] the tenor” of the political discussions about equality as their narratives became a part of the conversations about how the law must change.¹⁰³ Million notes how Indigenous women are bringing attention to how they *feel* about law in writing and public statements that were hidden before.¹⁰⁴ The Royal Commission on the Status of Women in 1970 included Indigenous women testifying that the *Indian Act* was “blatantly sexist”.¹⁰⁵

Without the political act of speaking up in literature Indigenous women’s voices are miniscule in the public sphere. Million states that “felt scholarship continues to be segregated as a ‘feminine’ experience, as polemic, or at worst as not knowledge at all.”¹⁰⁶ Million quotes Lovelace as saying, “‘The really painful stuff was right here at home.’”¹⁰⁷ Part of her struggle was the topic of sex-based discrimination being “taboo” even in Indigenous communities.¹⁰⁸ Million blames the *Indian Act* and colonialism for suppressing Indigenous women’s voices in the first place.¹⁰⁹ She clarifies that Indigenous women’s silence is part of the experience of sex-based discrimination that is written about. She argues that, after being governed by the “colonial apparatus” of the *Indian Act*, Indigenous women “need to create their own space” to speak about the terrifying history of their relationship with law.¹¹⁰ No other people possess the cultural knowledge that Indigenous women

¹⁰² *Ibid* at 54 and 58-59. Million cites Maria Campbell’s partially auto-biographical book, *Half-Breed*, published in 1973, about her personal journey with poverty. She exposes the colonial systemic abuses affecting her Indigenous community as well as her own growth as an Indigenous political activist.

¹⁰³ *Ibid* at 56.

¹⁰⁴ *Ibid* at 57. Million explains that she refers to “colonialism as it is *felt* by those whose experience it... Ending the silence was a significant political action.”

¹⁰⁵ *Ibid* at 55-57. Indigenous women were excluded from broader feminist campaigns in North America and labelled “quiet, obedient, and gendered passive” in the domestic sphere. Indigenous women led their own movements and their stories became about exposing private issues *i.e.* a lack of resources, patriarchy, sex-based discrimination in Indian/white marriages, and barring women from voting until 1951.

¹⁰⁶ *Ibid* at 53.

¹⁰⁷ *Ibid* at 56-57. Jane Silman’s 1987 book *Enough is Enough: Aboriginal Women Speak Out (As Told to Jane Silman)* cited in Million.

¹⁰⁸ *Ibid* at 57.

¹⁰⁹ *Ibid* at 55-56.

¹¹⁰ *Ibid* at 55.

have developed in response to the *Indian Act*. Therefore, the struggle to overcome inequality involves publicly breaking the silence about gender inequality rather than maintaining the private, silent *status quo* that Million and Lovelace describe.¹¹¹

I now explain how Sutherland's article, "Can Canadian Lit[erature] Help Us Explain Boushie?" applies to my research.¹¹² She answers her own question in her title affirmatively by stating that "[l]aw isn't the only way for us to understand what happened during the [Gerald] Stanley trial. Stereotypes embedded in our literature offer a broader context." Sutherland centers her argument on her adverse reaction to the verdict of the Stanley trial because the defendant was acquitted in the death of the 22-year old Cree man named Colton Boushie. She turns to literature to explain how stereotypes may have influenced the jury to view Boushie less favourably than the white defendant. Sutherland explains that:

If it's difficult to explain the outcome of a trial by focusing only on the laws and principles that were raised by the Crown and defence, we should look beyond the law for illumination. We can't know what was going on in the minds of the jury. But we can look at the ideas, perceptions and biases embedded in the broader culture; consider how these may have affected various legal actors and figured in the result.¹¹³

Sutherland analyzes the "representations of Indigenous peoples in fiction" to prove her point.¹¹⁴ She states that "literary texts not only reflect societal values but also shape them."¹¹⁵ Sutherland asserts that literature "influenced perceptions of and attitudes towards Indigenous peoples' legal status at various points in time."¹¹⁶ Sutherland provides a particular example of twentieth century Prairie novels.¹¹⁷ She argues that classic Canadian literature celebrates the connection of the white settlers to farmland and their transformation of the land as being heroic. By

¹¹¹ *Ibid* at 56. Million states that the sex-based discrimination issue was previously "unspeakable". *Supra* notes 107-109.

¹¹² Kate Sutherland, "Can Canadian Lit Help Us Explain The Boushie Tragedy?", *Policy Options*, (2018) (15 July 2024), online: <<https://policyoptions.irpp.org/magazines/october-2018/can-canadian-lit-help-us-explain-boushie-tragedy/>>. [Sutherland]

¹¹³ *Ibid*.

¹¹⁴ *Ibid*.

¹¹⁵ *Ibid*.

¹¹⁶ *Ibid*.

¹¹⁷ Martha Ostenso, *Wild Geese*; Frederick Philip Grove, *Settlers of the Marsh*; and Robert Stead, *Grain* cited in Sutherland.

contrast, the Indigenous characters are either ignored altogether or are portrayed as “interlopers in the Prairie landscape, unconnected to land or community, wishing ill on settlers, prone to theft, and threatening violence.”¹¹⁸ Sutherland also looks to the 2016 poetry collection of Jordan Abel, *Injun*, where racial epithets are used such as “injun”, or racially charged terms of violence such as “warpath” and “scalped”.¹¹⁹ She argues that the above literature reinforces *norms* of bias against Indigenous people by being included in libraries and school curriculums.¹²⁰ Sutherland looks to “dislodge the stereotypes” by advocating for the development of positive representations of Indigenous peoples in literature.¹²¹ Sutherland contrasts the literature that perpetuates negative stereotypes with Indigenous literature that depicts more “fully human characters”.¹²² One example is that of the character of, Saul Indian Horse, in Richard Wagamese’s novel, *Indian Horse*. This novel depicts a positive representation of Indigenous men because Saul finds refuge in playing hockey to overcome discrimination.¹²³

Sutherland’s article justifies that literary analysis is important to understand the society wherein normative law is formed. She notes that literature can diagnose the biases that may work against positive legal outcomes for Indigenous peoples. I build on Sutherland’s research by placing importance on Indigenous plays to discover what Indigenous women are noting that the broader context is in relation to their role in society based on rules about their marriages, race and sex. The plays counter negative stereotypes of Indigenous women. The playwrights articulate how laws have reinforced harmful views of Indigenous women. Similarly to Sutherland, my research finds, since Indigenous women’s lower status has already been a prevailing view in the *nomos*, that the Indigenous

¹¹⁸ Sutherland.

¹¹⁹ *Injun* cited in Sutherland.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Indian Horse* cited in Sutherland.

literature is thus a helpful “diagnostic tool in coming to grips with what might be going on beneath the surface of contemporary legal decisions”.¹²⁴

Sutherland warns that the interpretation of mainstream literature alongside cases can lead to the acceptance or perpetration of injustices done to Indigenous people.¹²⁵ I am finding the opposite when Indigenous women write their own plays about injustices. I am interpreting how Indigenous women are responding to legal outcomes through the literature to help with reclaiming their cultural identities restricted by law. Sutherland argues that literature can “build the capacity for empathy” among readers if it does not perpetuate the negative stereotypes.¹²⁶ My research is in line with her assertion because the IFTM plays include positive representations of Indigenous women that counter the lowered position of them that the *Indian Act* attempted to normalize.

I narrow my law and literature approach primarily to adapting Cover’s theory.¹²⁷ For the purposes of situating my approach in the field of law and literature it is necessary to note that I am using literary analysis in the same way that Cover would in a new context. I operate on the same assumption as Cover that law is formed by more than statutes and common law *dicta*.¹²⁸ I am researching how the “law as literature” is tied to creating opportunity for IFTM playwrights to shape the cultural *norms* that influence our laws.

White dedicates an essay to Cover in 1987 entitled, “Thinking About Our Language”. He acknowledged that Cover shared his interest in the relationship of language to law’s formation.¹²⁹

White describes what he finds inspiring about Cover’s theory in the following passage:

a sense of fusion or integration: of intellect and passion, sympathy and objectivity, politics and thought, all suffused with the sense that law has meaning, whether we like it or not, and

¹²⁴ Sutherland.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ Martha Minow, Michael Ryan & Austin Sarat, eds, *Narrative, Violence And The Law: The Essays Of Robert Cover* (Ann Arbor: University of Michigan Press, 1992). [Cover] For a more fulsome summary of what Cover’s theory is and how I adapt it to my method please see “Methodology & Theoretical Orientation” section.

¹²⁸ See note 148. Cover believes that interpretive commentary about law (from narrative) is also part of how law is formed.

¹²⁹ James Boyd White, “Thinking About Our Language”, (1987) 96 Yale L.J. 1960-83 (8 July 2024), online: <<https://repository.law.umich.edu/articles/2089>>.

meaning at many different levels- for the slave, or master, or other victim of the law, for the judge torn apart by the injustice of the laws he is sworn to apply, for the student and professor and community whose lives are so largely defined by the law they have not made. But the meanings of the law do not just lie inertly out there in the world. They must be actively created and sustained, for the most part by the people of the law, who live in the great paradox of human life that implicates us all in the systems of belief and action we seek to criticize and change. Bob Cover's great gift was for seeing law not simply as a set of rules, nor as an instrument for social control, nor as the expression of policy, but as a system of meaning in its own right. In this he spoke to those of us who are drawn to the law as a life not merely of power but of significance.¹³⁰

My justification for choosing Cover is that his theory lends itself well to researching the civil and political rights challenges of Indigenous women. He argues that juxtaposing law with literature aids in the ability to better understand the formation of normative law. Cover delves deep into how “law *as* literature” can be used to advocate and incorporate a vision of a group into an official, formal rule. Cover believes that our legal system is normative because of its ability to include plural visions and it is, as White also suggests, integrative, in this respect. Cover's theory accounts for the ability of women or racial groups, who would otherwise remain excluded in the law, to participate in generating jurisprudence. Cover's theory opens the door to discovering what the Indigenous women group envisions as a bridge to developing common understandings of what gender equality means *e.g.* equal opportunity to pass on Indian Status as compared to men.

I use Cover's theory to demonstrate that Indigenous women change the law by advocating for themselves in their narratives. They integrate their cultural visions into mainstream politics to counteract negative associations about them stemming from the *Indian Act*. In turn, the availability of the cultural commentary makes their arguments more accessible for assertion in legal claims. Arguments countering federal standards for gender inequality have coincided with the IF™ plays activating ideas about Indigenous women's wellbeing and equality as an alternative. I argue that

¹³⁰ *Ibid* at 1960.

IFTM plays are important to *continue* to nourish so that there is more opportunity for Indigenous women's voices in narrative to be heard in the *nomos*.

Methodology & Theoretical Orientation

In this section I summarize my methodology and theoretical orientation. I explain Cover, Deleuze and Grosz's theories in detail and how I incorporate them into my research.

Overview Of My Method (Table 1)

In my "law as literature" approach I first focus on generating what the IFTM cultural commentary is from the play narratives and I then reread the case law against the commentary. To generate the commentary, I employ a Critical Feminist Gender-Based Inquiry (CFGBI) that I have designed to guide my analysis. I have adapted Deleuze and Grosz's theories into questions within my CFGBI tool that I pose on the narratives (see Table 1).

Table 1. Critical Feminist Gender-Based Inquiry (CFGBI)¹³¹	
Method Of Dramatization Questions (Deleuze):¹³²	Feminist Theory Of The Body Questions (Grosz):¹³³
• <i>What is this? + who? how much? where? when? in what case?</i> • What "mask" does she wear in the narratives? (is it a mask that she relates to as created by her, someone from her group, or is it one created by an authority?) • I will ask whether she is able to express and represent herself by dramatizing her mask using the narratives in the legal system and theatrical medium? • Does her mask indicate a personal jurisdiction? <i>i.e.</i> does it differentiate her sexually, denote a lower status, or a legal personhood?	• Is the literature engendered with male-centred thought, or is it capable of reconceptualizing what thought is in relation to Indigenous women? • Is the literature "answerable" to feminists by placing value on what Indigenous women find ethical and political? • What thoughts are being materialized in the literature? • How are Indigenous women's voices and bodies involved in the literature? • What is the effect of Indigenous women's thought on the future? What is the foreseeable future of thought concerning Indigenous women's feminism?

My method allows me to contextualize the case law within the culture of the IFTM so that my analysis reflects a more imaginative interpretation of Indigenous Law than what might otherwise be too strict, or rhetorical, of an approach. My CFGBI helps me to identify a) where the plays contain cultural *norms* reflecting ILOs that contrast the *Indian Act*; b) what the playwrights are articulating about the role of Indigenous women in relation to their own culture and non-Indigenous

¹³¹ *Ibid.*

¹³² See "Adapting The Method Of Dramatization (MOD) Into My Method". I explain how I adapt Deleuze's MOD philosophy into the CFGBI questions.

¹³³ See "Adapting Feminist Theory Of The Body (FTB) Into My Method". I explain how I adapt Grosz's feminism (FTB) into the CFGBI questions.

culture due to the *Indian Act*; and, c) how Indigenous women are affected emotionally by the *Indian Act* based on their anecdotal experiences of responding to marrying out rules.

Limitations

I have limited my research based on two timelines. The first timeline is for the literature sources that I have chosen from between 1998 to 2022. The second timeline is of the cases that I have chosen from 1981 to 2018. My research is restricted by the lack of plays about Indigenous women's sex-based discrimination before 1975.¹³⁴ I have selected plays within the above two timelines that correspond with the corrective amendments to the *Indian Act* to reverse sex-based discrimination that began to be enacted in Canada by 1985 to the present day.

Adapting Robert Cover's Theory Into My Method

I utilize Cover's approach by referencing what each playwright's cultural visions are for Indigenous women and how they relate to the law. His approach assists with understanding how to change the law in a legal pluralist fashion by incorporating cultural perspectives that exist in society at large but are not official, positive, law.¹³⁵ Cover sees cultural *norms* (the social cues, language and codes of a cultural grouping) in narrative as the unofficial laws. Cover equates these cultural *norms* in narrative with visions for what a group would like the law to reflect in society that may contrast the official law (*Indian Act*). The unofficial law in the IF™ plays serve as a basis to reread the cases to advocate for how law might better serve Indigenous women.¹³⁶ I am employing Cover's approach to note how Indigenous female playwrights showcase their activism in their plays. They bravely break the silence around how Indigenous women have commonly been treated negatively by law.

I adapt Cover so that I can examine how unofficial laws in the IF™ narratives are interacting with the official law of the *Indian Act*, *Lovelace* and *McIvor*. In Cover's 1983 essay entitled,

¹³⁴ *Supra* notes 36-37.

¹³⁵ See "Legal Pluralism & Indigenous Legal Orders (ILOs)" section.

¹³⁶ *Supra* note 61.

“Nomos and Narrative”, he explains that the term *nomos* is the normative universe that we “inhabit” that includes law.¹³⁷ He describes narrative as “[t]he codes that relate our normative system to our social constructions of reality and to our visions of what the world might be”.¹³⁸ These visions are bridges, or potential alternatives, to the reality that the law poses on a subject as “[t]he normative universe is held together by the force of interpretive commitments- some small and private, others immense and public. These commitments – of officials and of others- do determine what law means and what law shall be.”¹³⁹ In the above manner, Indigenous women are making their cultural *norms* more available through literature in the *nomos* to respond with alternatives to discriminatory laws.

Cover defines ‘*norms*’ as the way that people communicate with each other. People’s cultural behaviour, language and practices tend to always be in relation to a *norm* as a sign or signal is.¹⁴⁰ He states, “We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void.”¹⁴¹ Our mainstream *norms* interact with visions/cultural perspectives about what ought to become normal within the black letter law. Judges and communities are both effective in creating *norms* although the judge is the authority on law. However, the social control that that law promotes is “but a small part of the normative universe that ought to claim our attention” because “[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic... Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.”¹⁴² Cover asserts that law and narrative are “inseparably related”. Law is informed by our discourse, history and literature just as much as our narratives seek a “prescriptive point” or “moral”.¹⁴³ All legal tradition is “part and parcel of a complex normative world... that includes

¹³⁷ Cover at 95. [Cover, “Nomos and Narrative”]

¹³⁸ *Ibid* at 102.

¹³⁹ *Ibid* at 98-99.

¹⁴⁰ *Ibid* at 99.

¹⁴¹ *Ibid* at 95.

¹⁴² *Ibid* at 95-96.

¹⁴³ *Ibid* at 96.

corpus juris, but also language and a mythos- narratives in which the corpus juris is located by those whose wills act upon it. These myths establish paradigms for behaviour. They build on relations between the normative and the material universe, between the constraints of reality and the demands of an ethic.”¹⁴⁴ Cover’s theory points to Indigenous women being able to create their own interpretations of law. This relational engagement with the legal system and its players opens the door to Indigenous women reshaping the law to include them rather than remaining silent.

My research specifically points out where IFTM cultural *norms* have developed in plays as a response to the *Indian Act* i.e. how Indigenous women gather and celebrate their femininity through ceremony and storytelling about adapting and being resilient in the face of gender inequality. I demonstrate that contrasting Indigenous cultural *norms* with mainstream *norms* indicates where the law has actually created the gender inequality problem that is tied to suppressing Indigenous women’s voices to begin with. Indigenous women’s voices reflected in their cultural visions, thus, must be included in creating legal solutions since they are directly responding to the law’s impact on them as legal subjects. This ability to help shape the law is important to promote legal pluralist law reform because it was restricted by the *Indian Act*.

I adapt Cover’s theory to indicate that Indigenous women can create legal meaning by connecting their narratives with new interpretations of the law. Cover theorizes on how legal meaning is created in the *nomos*. He asserts that our legal system is *jurispathic* because we create legal meaning, *jurisgenesis*, that makes normative activity possible.¹⁴⁵ There are coexisting groups/cultures (and their narratives) within the larger *nomos* and this produces culture-specific forces that are *paideic*, or world-building. Cover draws on a codifier of Jewish law, Joseph Karo, on *paideic* as “the term suggests: (1) a common body of precept and narrative, (2) a common and personal way of being

¹⁴⁴ *Ibid* at 101.

¹⁴⁵ *Ibid* at 103, 107 and 139.

educated into this corpus, and (3) a sense of direction or growth that is constituted as the individual and his community work out the implications of their law.”¹⁴⁶ Cover states that “human will” can be applied to the world of law to suggest alternative futures because a “*nomos* is a present world constituted by a system of tension between reality and vision.”¹⁴⁷ The narratives either align with the normative law or challenge it. The above process “permits those who live together to express themselves with it and with respect to it” and promotes predictability for normative activity or ordinary behaviour.¹⁴⁸ Thus, Indigenous women can present a vision of what law ought to be to a judge and it may become part of positive law based on legal decision-making outcomes. At other times the view may not take hold due to the mainstream *nomos*’ imperial world-maintaining trait.¹⁴⁹ Indigenous women are overcoming the law’s impact by displaying their cultural *norms* about their resiliency. It would be difficult to gauge what the impact of the law actually is without the IF’TM because some of women’s key ideas about equality would be missing from the jurisprudence.

In Cover’s essay, “Violence and the Word”, he cautions that “legal interpretation takes place in a field of pain and death”.¹⁵⁰ This dramatic landscape imagery encompasses his view that there is a rehearsed violence in the act of rendering legal decisions as

legal interpretative acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life. Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence. Neither legal interpretations nor the violence it occasions may be properly understood apart from one another.¹⁵¹

¹⁴⁶ *Ibid* at 105.

¹⁴⁷ *Ibid* at 101.

¹⁴⁸ *Ibid* at 107.

¹⁴⁹ *Ibid* at 106.

¹⁵⁰ Cover at 203. [Cover, “Violence and the Word”]

¹⁵¹ *Ibid* at 203.

To Cover, there is a “social construction of interpersonal reality through language” that occurs. A judge’s decision results in the shared world that the interpretation “calls up” with the legal subject being painfully destroyed through the judge’s imposition of authority.¹⁵²

Cover offers a way of explaining why the law is more violent and consequential than legal scholars generally consider it to be. He cites the scholarship of Elaine Scarry to point to abiding by law as being a torturous process for legal subjects. Scarry asserts that there is pain attached to being uncommunicative with larger societal *norms*, mirrored and codified by the government into official law. The law overpowers and its *norms* are enforced by the legal system and then upheld through the behaviour of the legal subject. The torture of enforcing the law causes the pain, as an interrogation does, because the victim’s world is undoubtably ended.¹⁵³ Cover interprets Scarry to mean that torture is the “deliberate infliction of pain in order to destroy the victim’s normative world and capacity to create shared realities”.¹⁵⁴ Scarry compares the pain from torture with an *absence of language* because babies cry before learning how to communicate what will stop their pain. Judicial interpretation works as an interrogation that is intended to be an “end of the normative world of the victim- the end to what the victim values, the end of the bonds that constitute the community in which the values are grounded.”¹⁵⁵ The government interpreter/torturer and the legal subject/victim’s interactions “end up creating their own terrible ‘world,’ but this world derives its meaning from being imposed upon the ashes of another.”¹⁵⁶

Scarry’s view of the law and torture harkens to the suppression of Indigenous women’s voices through *Indian Act* provisions that have minimized their worth in relation to men and settlers. The law’s onerous scheme prescribing the weeding out of Indigenous maternal lines of ancestry

¹⁵² *Ibid* at 205.

¹⁵³ Elaine Scarry, *The Body In Pain* 4 (1985) cited in Cover, “Violence and the Word”.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Ibid* at 205.

¹⁵⁶ *Ibid* at 206.

from the population surely is tortuous to Indigenous women subjects. This scheme also silences narratives that might comment on the cultural *norms* of Indigenous women that became illegal to express as they counter assimilation and enfranchisement policies. Cover's theory allows me to reveal what that cultural normative behaviour is in the plays that now compels Indigenous voices into the *nomos* to push back against the *Indian Act*. Through these lenses *i.e.* those of Cover and Scarry it is possible to see how the law has been overly violent towards Indigenous women. Until *Lovelace*, the *Indian Act* was upholding inequality in the law rather than correcting it. The lack of domestic intervention to the *Indian Act* marrying out provisions meant a tortuous sex-based scheme was being carried out and harming Indigenous women for over a century without any recourse from the government who imposed the problem. The law, having been used in this way, stifled Indigenous women's engagement with the law that is now a trust-building exercise given the need for legal pluralist law reform. The IFTM assists with demanding that the law protect Indigenous women rather than perpetuate harms toward them.

Cover clarifies that judge's decisions are forceful acts within his definition of "legal interpretation" that is: "(1) a practical activity, (2) designed to generate credible threats and actual deeds of violence, (3) in an effective way."¹⁵⁷ Firstly, Cover asserts that law imposes what it means on institutions and restructures them to conform with that legal meaning. This is a practical activity as rules are language that helps to restructure and align society according to the law.¹⁵⁸ Secondly, he also notes that law is the credible source of violence to deal with the deviance. The judge represents the authority and can legitimately exercise violence through legal decision-making to create law-abidance. By contrast, most people in society are unable to credibly assert violence as a judge's actions officially generate the common law in the courts.¹⁵⁹ Thirdly, Cover points out law's

¹⁵⁷ *Ibid* at 214.

¹⁵⁸ *Ibid* at 216-217.

¹⁵⁹ *Ibid* at 218-219.

effectiveness by noting that an authoritative legal deed is required to express what normative law is dominating over the subject.¹⁶⁰

Cover is equating legal interpretation, and the power that that it holds, to the imposition of violence because the decision following legal interpretation inevitably forces a subject to obey the law. Normative law is generating what is (un)equal or (non)discriminatory and *vice versa*. The legal subject must learn to speak through *norms* that can help her avoid the pain of being uncommunicative with the law.¹⁶¹ In reality, the law judiciously bars certain activity to conform subjects to *norms* that are upheld by legal decision-making. If a community's vision in a narrative is interpreted favourably by a judge then it transcends as "miraculous" having overcome such a powerful journey of justification.¹⁶² Applying Cover's theory of the violence of the law to Indigenous women's equality, it becomes very clear that the legal system omitted to utilize this power that Cover describes to overturn statutory discrimination within the common law; that is, without the international compulsion from *Lovelace* and *McIvor*. The effect was to discriminate against Indigenous women rather than to exercise a necessary imposition of authority. If a legal subject knows that this is the case, and the law restricts their ability to fight back, then silence seems to be the only option and the plays speak to that unjust and confusing dynamic. Silence is not promoted by the IFTM. I utilize law and literature to counter the silence that took hold of Indigenous women due to the *Indian Act's* violent imposition of gender inequality.

In this paragraph I provide a literary example of how Cover's approach strongly asserts that literary narratives comment on the law. He opens "Nomos and Narrative" referencing a poem by the American modernist, Wallace Stevens, that states that "A Violent order is disorder... A great order is an order. These/ two things are one".¹⁶³ In his poem, Stevens suggests that law has power

¹⁶⁰ *Ibid* at 221-223.

¹⁶¹ *Ibid* at 205-206.

¹⁶² *Ibid*.

¹⁶³ Cover, "Nomos and Narrative" at 95.

and reflects (dis)order through legal decision-making. In the context of a rights-seeking group/culture in the *nomos*, this poem implies that judges have the ability to cease the disorder associated with an unfavourable *norm* by ordering against it. Cover is attentive to literature's ability to activate ideas from communities that might take hold in "law as literature". Cover's title emphasizes the importance of connecting "Narrative" with political views in the "Nomos". In my analysis, like Cover, I juxtapose quotes from the plays with *dicta* from the cases to demonstrate Indigenous women's views along with my interpretation of the cases. I show where they are voicing their experiences within the literature to expose where their cultural *norms* indicate unfairness in the law. I am attentive to the fact that only Indigenous women have the ability to activate the powerful ideas that arise from the IFTM. They construct visionary bridges using their own ideas in support of their rights. If there were no IFTM literature about sex-based discrimination then Indigenous women would be forced to continue to subscribe to the old *Indian Act* scheme that discourages their voices (to the extent that no one felt comfortable speaking about colonial harms at all).

I will now relate Cover's "redemptive constitutionalism" to Indigenous women's relationship with law and the legal process. Cover relates the use of literature with redemptive constitutionalism when it reveals "positions of associations whose sharply different visions of the social order require a transformational politics that cannot be contained within the autonomous insularity of the association itself". The redemption exists within an "eschatological schema that postulates: (1) the unredeemed character of reality as we know it, (2) the fundamentally different reality that should take its place, and (3) the replacement of the one with the other." Redemption through narrative was exemplified in radical antislavery constitutionalism and advocacy for Black American freedom. Thus, "[t]he term 'redemptive' also has the connotation of saving or freeing *persons*, not only 'worlds' or understandings."¹⁶⁴ A group/culture can voice experiences with law and visions about how to

¹⁶⁴ *Ibid* at 132.

improve their rights. Cover states that “[t]he vision of slavery destroyed by the power of law requires for its fulfillment the participation of the larger community that exercises state power” and a *nomos* capable of redemption.¹⁶⁵ He argues that women’s movements find this vocabulary useful for activism.¹⁶⁶ I apply Cover’s theory to the Indigenous women’s group/culture and the IFTM.

Cover’s assertion that redemptive constitutionalism applies to women is applicable to my research. Indigenous women must subscribe to the colonial legal system that harmed them to ask for legal changes. *Lovelace* describes fear about being governed by the *Indian Act*.¹⁶⁷ Her fear is corroborated in the plays that depict racial slurs, rape and name-calling as being part of the mainstream culture that the law has enabled.¹⁶⁸ I analyze how the plays indicate that the narratives are redemptively engaging with the law to replace former concepts about a lowered position in law with a more positive and equal role. Their narratives are shaping what their role ought to mean given their own interpretations of what equality means.

Critical Feminist Gender-Based Inquiry (CFGBI)

In the rest of this chapter I outline why and how I am incorporating Deleuze’s MOD and Grosz’s FTB into my CFGBI analysis referenced in Table 1. To employ my method, that starts by noting *what the commentary is*, it became necessary to create several analytical questions to pose on the plays. I move through the CFGBI questions and explain how I use them in my analysis. The CFGBI helps me to mine the Indigenous playwrights’ “law as literature” to note what their commentary is that reflects their feminist gender-based concerns, emotions and internal forces.

Adapting The Method Of Dramatization (MOD) Into My Method

I now explain how my method incorporates Deleuze’s theory. I relate the MOD to the IFTM plays to indicate what the plays say about the cases contextually through the dramatization of

¹⁶⁵ *Ibid* at 137.

¹⁶⁶ *Supra* note 165.

¹⁶⁷ *Lovelace* at para 9.6-9.7. Lovelace wishes to live “permanently” on her reserve with her mother and it is against the law.

¹⁶⁸ *Strength Of Indian Women*.

fictional Indigenous female characters. In Deleuze's 1967 essay entitled, "The Method of Dramatization", he describes the elements of the MOD and how it can be used to analyze literature to better understand what a subject represents.¹⁶⁹ Deleuze's theory literally involves a questioning of the legal subject's representation (mask) and how expression (ideas/invisible conceptual *personae*) moves through the mask's physical aesthetic form. Deleuze's theory illustrates how the MOD clearly manifests itself in literary characters. I apply the MOD to my own analysis of the masking of the Indigenous female characters in the plays versus the cases.

The MOD opens up questions of what perspectives are expressed by the Indigenous women represented within the plays. Indigenous playwrights expand on what the status of Indigenous women has historically meant in our *nomos*. The fictional contexts offer examples of how lowering the status of Indigenous women in the law has negatively impacted their voices and identities. I am applying Deleuze's MOD to analyze how the *status* of Indigenous women is a mask that is brought to *nomos* and narratives. Depending on how they are represented, and what they are able to express, the masking of Indigenous women has both helped and hindered their ability to influence the law and to state how they ought to be represented and treated by the law *i.e.* whether the representation/mask worn in court is created by Indigenous women or by the government. By juxtaposing the masks of Indigenous women in the plays with the masks worn by legal claimants I am able to demonstrate whether the *Indian Act* is imposing itself on the identity of Indigenous women or if they are free to present themselves as who they are.

The key to Deleuze's theory is the philosophy that develops through the questioning of the subject *e.g.* "Indigenous Woman". He finds that only asking the question of "*what is this?*" is not

¹⁶⁹ Gilles Deleuze, "The Method Of Dramatization", *Desert Islands And Other Texts 1953-1974*, ed by David Lapoujade (Los Angeles, CA: Semiotext(e), 2004) at 94 and 96. [Deleuze, "The Method Of Dramatization"] See also Gilles Deleuze, "The Image Of Thought", *Difference & Repetition* (New York: Columbia University Press, 1994) at 156. He alludes to Lewis Carroll's famous fairy tale, *Alice in Wonderland*. The Cheshire Cat character demonstrates a masked *persona* due to the "marvelous account of these paradoxes: that of the neutralising doubling appears in the form of the smile without a cat".

sufficient “for discovering the essence or the Idea” of the subject. Instead, Deleuze recommends posing further questions such as: “*who? how much? where? when?*” and “*in what case?*”.¹⁷⁰ This process allows one to better understand the essence of an Idea and to “determine something more important about the Idea”.¹⁷¹ Deleuze calls his questions “Spatio-temporal dynamisms” and they possess several properties listed as the following:

- 1) they create particular spaces and times; 2) they provide a rule of specification for concepts, which without these dynamisms would remain unable to receive their logical articulations; 3) they determine the double aspect of *differentiation*, qualitative and quantitative (qualities and extensions, species and parts); 4) they entail or designate a subject, though a ‘larval’ or ‘embryonic’ subject; 5) they constitute a special theatre; 6) they express Ideas.

The spatio-temporal dynamisms result in a pressure and a movement towards a “dramatization” that occurs in the discovery of an idea/concept.¹⁷² Deleuze’s theory, thus, lends itself very well to looking at theatrical plays whose whole purpose is to bring to life fictional characters to resolve conflict together on stage in the play that mimics real life. The play’s aim is to impact an audience member emotionally and this builds empathy. I utilize these spatio-temporal dynamisms in my analysis by posing the same questions that Deleuze recommends on my primary sources (see Table 1).

Deleuze proposes that applying his questions to a subject and her mask opens up possibility for new interpretations and meanings based on the differentiation that develops. He states that “a whole is represented in the complex concept of differentiation”.¹⁷³ There is a field of differences within the same idea and the system of questioning it. An idea actualizes itself and differentiates itself simultaneously.¹⁷⁴ To illustrate this complex term, Deleuze provides the metaphor of the “egg” that contains both an “ideal half” and an “actual half” that are not the same size although part of the same egg.¹⁷⁵ Deleuze states “a thing in Idea can be completely determined (*differential*), and yet lack

¹⁷⁰ Deleuze, “The Method Of Dramatization” at 94 and 96.

¹⁷¹ *Ibid* at 96.

¹⁷² *Ibid* at 94.

¹⁷³ *Ibid*.

¹⁷⁴ *Ibid* at 100.

¹⁷⁵ *Ibid* at 96, 100 and 102.

the determinations that constitute actual existence (*the thing is undifferentiated*)”.¹⁷⁶ Thus, it is the questioning that operates in the field of individuation created by the subjects that spurs ideas to actualize themselves through differentiation.¹⁷⁷ The singularity that develops is an “*ideal event*”.¹⁷⁸ He states that “we can always discover its drama, and the concept would never be divided or specified in the world of representation without the dramatic dynamisms that thus determine it in a material system beneath all possible representation.”¹⁷⁹ Until dramatization is sparked through the dynamisms ideas remain larval or embryonic.¹⁸⁰ This is the case with the IFTM plays because Indigenous women did not express themselves in this form of literature right away. Even speaking up publicly was unimaginable and Indigenous women were stifled from claiming differentiations of the idea of ‘gender equality’ that remained unrealized until the 1970’s.

Deleuze explains how to apply the MOD to the subject in his essay, “Response To A Question On The Subject”. He elaborates on the importance of differentiation when he states that

[a] philosophical concept fulfills one or more *Functions* in fields of thought that are themselves defined by internal variables. There are also external variables (states of things, moments in history) in a complex relationship with the *internal variables* and the functions. This means that a concept is not created and does not disappear at whim, but to the extent that new functions in new fields dismiss it relatively.¹⁸¹

Deleuze argues that the subject has “two functions” for differentiation to be made possible. Firstly, the subject has a “universalizing function”. This means a subject speaks a word “necessary” instead of merely thinking the word. The field of knowledge becomes the field of belief as the new basis of knowledge that was expressed. A person’s ideas can also be universally represented as an “*I*” non-person (physical mask).¹⁸² The second function is “individuation” and the subject is fulfilling this

¹⁷⁶ *Ibid* at 100.

¹⁷⁷ *Ibid* at 94 and 102-103.

¹⁷⁸ *Ibid* at 100.

¹⁷⁹ *Ibid* at 98.

¹⁸⁰ *Ibid* at 97-98.

¹⁸¹, *Two Regimes Of Madness: Texts and Interviews 1975-1995*, ed by David Lapoujade (New York, NY: Semiotext(e), 2006) at 353. [Deleuze, “Response To A Question On The Subject”]

¹⁸² *Ibid* at 355. Deleuze states that subjects are made up of many individualizations and concepts based on experiences such as “a life... a battle.”

function by becoming two things in one marking the differentiation. My CFGBI analysis generates the above functions in relation to the Indigenous female masks found in my primary sources. I note when Indigenous women are made to mask themselves with white identities or are able to differentiate themselves by wearing their own Indigenous masks to reveal their whole identity.

Deleuze sees differentiation leading to subjects forming new ideas about the same concepts that they may be discussing. Deleuze asserts that there is a resolution in the subject due to the active becoming of the subject's new representation based on what is expressed.¹⁸³ In this respect, Deleuze asks if "one [can] assign new functions and variables capable of bringing change?" He argues that it is possible because he understands the subject's final state as an idea's *extension* from the universal:

Singularity should not be understood as something opposing the universal but any element that can be extended to the proximity of another such that it may obtain a connection: a singularity in the mathematical sense. Knowledge and even belief thus tend to be replaced by notions like 'assemblage' or 'arrangement' that indicate a discharge and distribution of singularities. Discharges like this, of the 'toss of the dice' type, form a transcendental field without a subject. The multiple becomes the noun, multiplicity, and philosophy becomes the theory of multiplicities that refer to no subject as a pre-established unit.¹⁸⁴

Deleuze sees this process of differentiation occurring in law because often the "case" or "jurisprudence" dismisses the need for generality. Legal concepts narrow from the original ideas that were in conflict.¹⁸⁵ Deleuze explains that with this exercise we "recognize ourselves and our community better."¹⁸⁶ I apply Deleuze's philosophy to open up interpretations of law without assuming the court holdings are the only answer. Deleuze states that "[i]t is not enough to oppose concepts to learn which is best, we must oppose the fields of problems to which they respond to discover what forces make the problems change and require the formation of new concepts."¹⁸⁷ My

¹⁸³ *Ibid* at 353-354.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid* at 355.

¹⁸⁷ *Ibid.*

research suggests that we better understand the meaning of Indigenous women's equality after engaging with IFTM storytelling that raises contrasting ideas that challenge the marrying out laws.

I use the MOD to research how the Indigenous women subject's experience of masking her identity is articulated in literature rather than silenced or stifled. I point out how new *extensions* of what gender equality means are formed when the playwrights' opinions about the unfairness of masking are expressed. By questioning the subject with spatio-temporal dynamisms I am able to point out how Indigenous women oppose the *Indian Act*. The marrying out provisions enabled a *nomos* wherein Indigenous women have been made to silently mask themselves with identities other than their own to abide by law. This context becomes more apparent when reading the plays with the cases because the impact of the *Indian Act* is spoken about through representations and dialogue of Indigenous women in narrative. Indigenous women's conflict with the *Indian Act* becomes more apparent knowing if/when they are able to reveal their whole selves. The plays parallel this real world conflict to comment on it being a struggle for Indigenous women to overcome inequality if the law prevents them from removing their white masks (that silence them) or from revealing their Indigenous masks (that allow for full expression of identity).

In, *What Is Philosophy?*, Deleuze explains the complex terms of “conceptual *personae*” and “aesthetic figures” (masks) that relate to normative law formation in plays.¹⁸⁸ Since *personae* produce concepts that flow through a mask, in a play, a *plane of immanence*, or the image of a universe (*phenomenon*), is created whereby differentiation of ideas occurs.¹⁸⁹ A “thinker” (playwright) can “decisively modify what thinking means, draw up a new image of thought, and institute a new plane of immanence” that is a force field where ideas can change *i.e.* the “Indigenous Woman” masked

¹⁸⁸ Gilles Deleuze and Félix Guattari, *What Is Philosophy?* (New York: Columbia University Press, 1994). [*What is Philosophy?*]

¹⁸⁹ *Ibid* at 65-66.

persona is a force field. The *persona* (invisible identity) works through the mask/body.¹⁹⁰ Deleuze

clarifies that this process involves language-creation because

The role of conceptual personae is to show thought's territories, its absolute deterritorializations and reterritorializations. Conceptual personae are thinkers, solely thinkers, and their personalized features are closely linked to the diagrammatic features of thought and the intensive features of concepts. A particular conceptual personae, who perhaps did not exist before us, thinks in us.¹⁹¹

Deleuze thanks philosophy for the ability of people to think about new solutions rather than return to the same problems repeatedly. He notes that jurisprudence also offers opportunity for opening up new meanings about legal concepts. The subject loses interest in former ideas before new concepts were possible due to the singularity and extension that differentiation allows within the dialogue of various masked *personae*.¹⁹² I am researching whether Indigenous women are able to express themselves in a way that allows domestic courts to extend the concept of gender equality to mean that they no longer have to mask themselves with white identities. I conclude that this would have been more difficult without the UNHRC.

Deleuze describes how a *persona* aids in the dramatization of a subject's thoughts.¹⁹³ The *persona* working through the mask of the judge may think and then express thoughts that change what the judge represents in the setting of the courtroom. Deleuze describes a relational feature of the friend that may work through the judge mask.¹⁹⁴ If the judge *persona* is thinking friendly thoughts then his mask will express friendly language (gestures, words). Thus, what the judge represents to Indigenous women (violence, authority figure that is punishing them) can change to become a friendly judge (with a favourable verdict). This is an extension of the original universal idea that was represented by the physical mask that is made possible by the body language expressed due to the

¹⁹⁰ *Ibid* at 65.

¹⁹¹ *Ibid* at 69.

¹⁹² *Ibid*.

¹⁹³ *Ibid*.

¹⁹⁴ *Ibid* at 71.

underlying *persona*. Deleuze states that “friend, or judge do not lose their concrete existence but... take on a new one as thought’s internal conditions for its real exercise with this or that conceptual *persona*.”¹⁹⁵ Deleuze resolves that the

physical and mental movements of psychosocial types, their pathological symptoms, their relational attitudes, their existential modes, and their legal status, become susceptible to a determination purely of thinking and of thought that wrests them from both the historical state of affairs of a society and the lived experience of individuals, in order to turn them into the features of conceptual *personae*, or *thought-events* on the plane laid out by thought or under the concepts it creates.¹⁹⁶

My CFGBI relates to how Deleuze draws inspiration from ancient Greek actors working with masks in the theatre. To demonstrate relationship, the *personae* express concepts through the masks to signify what they are thinking of in relation to themselves and other characters on stage.¹⁹⁷ Conflict is created by dialogue, *doxa*, between the masked *personae* (friends/rivals) and a reconciliation develops through the MOD.¹⁹⁸ Deleuze explains that *personae* create the events that are moving through the subject where the MOD occurs.¹⁹⁹ A “transcendence” and a power occurs to express concepts through the subject’s own force field/masked *persona*. An Indigenous woman subject’s *persona* thinks about concepts that then generate *force* flowing through the mask of her Indigenous female body. Deleuze relates this power to “false problems” such as a legal hypothetical scenario. Deleuze understands the ideas being expressed by the subject as the solutions to any conflict since they act as “bridges” to differentiate the subject from others who are expressing contrasting ideas.²⁰⁰ A criticism from the point of view of a subject/masked *persona* in a literary work can be applied to legal advocacy for that subject.²⁰¹ My analysis engages with examples from the plays where Indigenous women have generated ideas that are visionary bridges about what cultural

¹⁹⁵ *Ibid* at 69

¹⁹⁶ *Ibid* at 70.

¹⁹⁷ *Ibid* at 4, 9-10, 67, 145, 147, 188 and 202.

¹⁹⁸ *Ibid* at 145 and 202-204.

¹⁹⁹ *Ibid* at 75-76.

²⁰⁰ *Ibid* at 76 and 80-81.

²⁰¹ *Ibid* at 77-80 and 82.

norms the law ought to reflect. By applying the MOD I discover how expression changes the original representation of the Indigenous woman subject. My research suggests that the IFTM playwrights introduce new concepts about Indigenous women's equality in narrative. The fictional problems in the plays, that expose Indigenous women's experiences with *Indian Act* discrimination, offer opportunities to extend the concept of what gender equality means by putting the commentary from the plays into conversation with the cases.

My research examines what sort of solutions are generated by the plays wherein Indigenous female characters interact and discuss their position in society. To Deleuze, "[e]verything is vision, becoming. We become universes."²⁰² The plays reveal alternatives that describe how to improve Indigenous women's equality by commenting on their unfair masking. I compare how the masks and *personae* that the playwrights describe greatly differs from the masks and *personae* that the *Indian Act* imposes in the courts. Indigenous women's cultural *visions* emanating from their fictional masked *personae*, such as 'I ought to be equal to men and to be allowed to pass on Indian Status', are transcending from the plays into legal discussions. The MOD offers possibility for continued future expression and representation built on the inclusion of Indigenous women's version of how they would like to be treated. The above vision is more easily expressed in the IFTM than in the cases.

Adapting Feminist Theory Of The Body (FTB) Into My Method

I also draw from the FTB that is outlined in Part IV of Elizabeth Grosz's book, *Time Travels: Feminism, Nature, Power*, entitled "Identity, Sexual Difference, and The Future".²⁰³ I am using FTB-inspired questioning of the plays to accomplish two tasks: first, to incorporate feminism that overlaps with Deleuze into my analysis; secondly, to compliment Cover's approach whereby cultural visions of the Indigenous women group can inform the law through narrative. FTB encourages women to

²⁰² *Ibid* at 169.

²⁰³ Elizabeth Grosz, *Time Travels: Feminism, Nature, Power* (USA: Duke University Press, 2005) at Part IV "Identity, Sexual Difference, and The Future". [Grosz]

articulate ideas that challenge prevailing views about women rather than to stay silent. Grosz sees women speaking up about their experiences related to their physical bodies as a necessary endeavour because this female insight may not otherwise come to light. The FTB, thus, encourages the act of playwrighting that Manuel and Koncan use to expose sex-based discrimination experiences among their cultural grouping. The FTB frame adds to my analysis because the plays allow me to generate Indigenous women's commentary that contrasts the male-dominated ideas in law that have been suppressing them.

The FTB lends itself well to my CFGBI because its underlying intention is that women's conscious voicing of their opinions within societal discourses will improve their own representation and inclusivity. I use FTB to examine if Indigenous women can voice their claims for equality in the *nomos*. Grosz primarily aims to make philosophy more "answerable" to women and to include what women have struggled for, valued, held as ethical or political in relation to female bodies in feminist discourse.²⁰⁴ Grosz finds that feminist theory needs to "reconceptualize what thinking is, how it relates to the world of practice, and how it may productively serve the political interest of feminism and its related struggles (class, race, etc.)."²⁰⁵ FTB responds to the reality that feminists have had to identify why the dominating male-centred world does not represent what women believe in relation to their bodies. My research emphasizes that Indigenous women's narratives strengthen their ability to bring their unique voices to law and literature to create solutions for sex-based discrimination.

Grosz gives credit to Deleuze's concept of force to support FTB on what it takes for women to voice their concerns against men's ideas that are more material within law. Deleuze sees power and the subject's expression as being based on what the subject's physical mask represents *e.g.* an

²⁰⁴ *Ibid* at 156.

²⁰⁵ *Ibid*.

Indigenous woman's female body. Deleuze finds that subjects have "the power to affect (others) and to be affected (by others again), such that [it] implies power relations."²⁰⁶ Grosz states that force is

not only that which produces competition and struggle between forces functioning in the same sphere and level, but it is also that which produces relations of alignment, cooperation, and tension between forces functioning at different levels. Force is thus also the condition of the assemblage (in Deleuzian terms), the complex, the molecular.²⁰⁷

To Grosz, force explains how women's internal thoughts/views can surface into public discourse if they are articulated. She argues that sexual difference matters and that her philosophy is promoting the articulating of *female* thoughts more to create space as women that is historically lacking in discussions that they have been excluded from by men. Grosz relies on Deleuze to recognize how feminine force pushes new ideas into practice/dialogue with male ideas when he refers to the

force of concepts, the impetus or push that they play both within philosophical systems... and within broader social relations... Discourses are not just the repositories of truths, of concepts and knowledges; they are also... modes of action, practices we perform to facilitate or enable other practices, ways of attempting to deal with and transform the real.²⁰⁸

To Grosz, there is a field of physical "particles" existing in women that form "entities and actions" that can confront male-dominated ideas.²⁰⁹ It is this form of action that Grosz refers to as F'TB force. I argue that F'TB force is applicable to the IF'TM. The asserting of Indigenous women's force requires space that they are creating for themselves with playwrighting now. This space was formerly substantively impossible due to the *Indian Act's* restrictions on Indigenous women's claims.

Grosz interprets Deleuze to assert that female force allows for rethinking and transforming of male-dominated ideas to include women. She elaborates that the thoughts moving through female subjects generate "ever-realigning relations of intensity or force" and that is why inclusion in discourse is important. Women's ideas become actionable articulations to contrast with what men have already materialized when they articulate them *e.g.* on the ethical matter of gender equality.

²⁰⁶ Gilles Deleuze, *Foucault* (Minneapolis: University of Minnesota Press, 1988) at 71.

²⁰⁷ *Ibid* at 188.

²⁰⁸ *Ibid* at 158.

²⁰⁹ *Ibid* at 189.

Indigenous women generate force fields within their female bodies containing their own views about gender inequality that are starkly different from the white male force fields that shaped the marrying out provisions. Grosz argues that female subjects and objects develop modifications based on the substantial matter of the spirit working through them.²¹⁰ Thus, FTB is agreeable to how Deleuze notes extension of ideas are possible due to the MOD. My research shows that the mobilization of the Indigenous feminist internal spirit requires a power that only Indigenous women possess.

Indigenous women are demonstrating their power in their plays that are also activism. The plays reveal cultural visions about gender equality that exemplify the need for the freedom of Indigenous women to voice their concerns in an unrestricted manner. This is because the plays speak about legal restrictions causing female bodies emotional and psychological harm tied to the male ideas in law.

Grosz is inspired by Deleuze's conceptualization of desire as force that is "symbiotic" to other "heterogeneities" as it "co-functions" in force fields that materialize into "power assemblages".²¹¹ He states that pleasure arises in the same movement and process as desire.²¹² Grosz draws on Deleuze to relate desire to the female body's ability to experience pleasure, as defined by women subjectivity, while also being differentiated sexually as compared to men.²¹³ She states that

Pleasure and power spiral inward on each other, pleasure inducing itself in its engagement with, or its resistance to, power, and power proliferating itself and enabling for itself a more microscopic access to bodies through the investment and intensification of the body's pleasurable forces. Pleasures are directly inscribed by the tactics and procedures of power.²¹⁴

Grosz draws on desire functioning as a "mobilizing impetus" for resistance because it forces "conjunctions and disjunctions" that can result in "entwined" modes of "territorialization and deterritorialization".²¹⁵ Women can use the force of their desires to advocate for themselves to push

²¹⁰ *Ibid* at 189.

²¹¹ Gilles Deleuze, *Desire & Pleasure*, translated by Melissa McMahon (1997), (22 April 2024), online: <<http://www.artdes.monash.edu.au/globe/delfou.html>>. [unpublished notes to Michael Foucault in 1977] Grosz at 190-195.

²¹² *Ibid*.

²¹³ Grosz at 191.

²¹⁴ *Ibid*.

²¹⁵ *Ibid* at 193.

against male forces resting ideologically in the world or materially in the law. The requisite force is exemplified in the IFTM as the cases coincide with the development of the plays that have become an available tool for women's voices to surface.

Grosz credits desire and pleasure with the mobilization of a way of "thinking through key feminist strategies".²¹⁶ She asserts the need to reconceptualize the terms for understanding subjectivity through FTB. Where feminist politics center around struggles about rights and needs of female subjects who are subjugated by male subjects "who require a more adequate and respectful recognition" of women; instead, feminists might look to insert what is pleasurable to them into political discourse "as a mode of rendering the subject the backdrop to a play of forces which are themselves what constitute the ever shifting and uncontrollable terrain of politics and identities." To Grosz, the struggle of women is not for recognition and value so much as "to mobilize and transform the position of women, the alignment of forces that constitute that 'identity' and 'position,' that stratification which stabilizes itself as a place and an identity" that is desirable and pleasurable to them.²¹⁷ I rely on FTB to integrate a feminist importance for mobilizing Indigenous women's ideas about their own identity and position in society to combat the suppression of their voices involved with abiding by the law pre-*Lovelace-and-McIvor*.

I align with FTB because it supports Indigenous women to pursue *materiality* of their concerns. Women must force their views into reality by articulating them into the public sphere where they have historically been excluded in the law. Grosz sees politics as a space where men and women can struggle with forces to mobilize their concepts of "pleasure, pain, and desire" and in voicing their opinions to clarify questions of subjectivity related to identity and gender. The act of voicing female thought aloud in politics/plays is the FTB force whereby powerful female concepts

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

of what is desired by their bodies, according to women, is found; thereby, transforming and rethinking pre-established male-centered concepts from being perpetuated in the future. I apply FTB to Indigenous feminism. Indigenous female thoughts are brought into focus through Indigenous women's bodies (actors in Indigenous women's masks) in the plays. The playwrights make Indigenous women's ideas less subjective/invisible and more objective/visible.²¹⁸ The FTB force is particularly important for the Indigenous women cultural group as it is overcoming systemic racial and gender discrimination that was built into the federal law that silenced them. The unimaginable fear that Indigenous women must overcome to speak up about legal concerns involves the imposition of the power of the material law that requires them to otherwise metaphorically mask and hide their own identities.

Grosz's FTB is well suited to my CFGBI analysis of the IFTM. I am focusing on both: a) the commentary about what the gaps are within the legal discourse related to the impact of the *Indian Act* on Indigenous women's voices; and, b) the Indigenous FTB visions in narratives that create bridges allowing for movement towards the inclusion of more equitable legal *norms* (how FTB overlaps with Cover's approach to normative law formation). It follows that this inevitably requires the promotion of the full inclusion of Indigenous feminist expression in jurisprudence. I look to where Indigenous feminist force is available in the *nomos* using my FTB questioning in Table 1. My CFGBI opens up relevant FTB questions for me to interpret about how the plays are responding to the *Indian Act*. FTB allows me to note how Indigenous women's devalued position in society makes it difficult to materialize concerns about law. Since Indigenous women have had to fight for gender equality I assume that Canadian law is male-dominated. I discover what Indigenous women *feel* that inclusion of their internal thoughts and desires means. I discover how Indigenous women *feel* about

²¹⁸ *Ibid* at 193-195.

being forced to mask themselves in their husband's white identities to subvert their own. I need to turn to the plays because women's internal emotions are not emphasized in the cases.

FTB lends itself to the notion that the force of Indigenous female expression requires opportunity to surface by being articulated in the IFTM plays because it is then available to come into the political and legal conversations about sex-based inequality. FTB allows me to point out that the barriers to Indigenous women's equality depicted in the narratives impacts what they desire laws to reflect. FTB suggests that Indigenous women's ideas are just as important as their bodies because when they are articulated they can form precedent for claims about a more inclusive, feminist future. Indigenous women's plays depict a motion towards transforming their internal repulsion to the former discriminatory *Indian Act* laws towards the need to articulate literary visions and legal claims about how to improve their representation in the law. In the IFTM, there is a specific Indigenous female force of resistance to both male-dominated subjectivity about their legal rights as well as any regulation that affects their own *Indigenous female* expression.

The FTB, as I am using it, allows me to demonstrate how the plays reconceptualize the role of Indigenous women that has been asserted in the *Indian Act* by contrasting it with their own cultural commentary. In my CFGBI questioning, I incorporate both the consideration of how the law impacts the mental/internal as well as the physical/material aspects of Indigenous women. The incorporation of the FTB questions helps me to explore the constitution of subjectivity in relation to identity politics understood as having both dimensions. I focus on how the IFTM literature is mobilizing powerful rethinking of how Indigenous women are treated by law.²¹⁹ Indigenous women's bodies are important topics for FTB discourse in cases where their choices become unpleasurable to them. Case law suggests that there is a strong connection between Indigenous women's thoughts (about marriage and procreation) and what their bodies are subject to (due to

²¹⁹ *Ibid.*

claims of sexist ideology in marrying out provisions). I apply FTB to show that Indigenous women are leading the way through playwrighting by writing down these connections that center around their visions for equality. My CFGBI reveals how Indigenous women's "law *as* literature" contrasts the unequal concepts underpinning the *Indian Act's* marrying out provisions.

CHAPTER 2: *STRENGTH OF INDIAN WOMEN READ AGAINST LOVELACE*

In this chapter I am interpreting *Lovelace* with Manuel's play entitled *Strength of Indian Women*. I am setting the first case that ordered corrective amendments to reverse sex-based discrimination in the *Indian Act* within the context of the IF'TM. Manuel is a Secwepemc-Ktunaxa feminist playwright.²²⁰ Her play's setting is an imagined Indigenous space where Indigenous women depict how to exercise the right to the 'cultural and linguistic belonging' that *Lovelace* proved. I am rereading the play against the case to better understand what Manuel's narrative reveals about the impact of the *Indian Act* on Indigenous women's voices.²²¹ I start by generating cultural commentary from the play using my CFGBI. I argue that the play reflects ILOs and cultural *norms* that do not align with Canada's marrying out provisions. I thus compare what the play reveals that the case does not capture. My analysis focuses on how *Lovelace* changed the law to reverse sex-based discrimination, however, there is still more work to do to shift societal *norms* so that Indigenous women are represented and included in shaping the law. Manuel's Indigenous feminist point-of-view comes alive through her fictional characters who hypothetically depict experiences of gender inequality as it is simultaneously being reversed in the courts. Manuel's characters reveal Indigenous women's fear of the *Indian Act* rules that create silence about the inequality. The characters defy colonial power by refusing to mask themselves to hide their own Indigenous identities anymore. Manuel looks beyond the law and proves that Indigenous women are valuable people who deserve to be heard on their own terms. Manuel values the reclaiming of Indigenous women's voices because her play depicts how Indigenous women are building belonging, healing and strength through their cultural gatherings.

²²⁰ Wikipedia, "Vera Manuel" (31 July 2024), online: <https://en.m.wikipedia.org/wiki/Vera_Manuel>.

²²¹ The *Indian Act* regulates who is eligible to be registered as an Indian in Canada (First Nations). Tiedemann. The Government of Canada has been amending the statute to address sex-based discrimination since 1985 to "mak[e] the *Indian Act* compliant with the equality provisions in the [*Charter*]", in response to the *Lovelace* and *McIvor* cases, and to reverse policies of enfranchisement and assimilation that involved "absorb[ing] Indians fully into colonial society".

Summary of Cultural Commentary

In this section I outline the specific cultural commentary voiced by Manuel in her script that I analyze later in this chapter. Manuel's play emphasizes that Indigenous women's voices and identities matter. Indigenous women are speaking about how they have been excluded and put in an inferior position to men and non-Indigenous people by the law. Manuel's play uniquely responds to the impact of the *Indian Act* because it is about Indigenous women's own cultural behaviour/language/codes that were excluded from the statute's formation. The play models Indigenous women's ways of overcoming the suppression of their voices and the fear of violent harm associated with the law. Indigenous women are unmasking from false white identities imposed on them by Canada. The play reveals strong Indigenous feminist *personae* that better suit their representation in the *nomos* post-*Lovelace*. Manuel's commentary greatly contrasts the *status quo* of silence around inequality that Indigenous women have been subjected to.²²²

Indigenous women are repairing relationships that were disrupted by sex-based discrimination.²²³ Manuel describes the whole purpose of her play as being to strengthen Indigenous women by addressing multigenerational grief and wounds that need healing due to colonialism.²²⁴ The play brings to light that this healing involves reclaiming matriarchal voices through cultural belonging that comes from the partaking in traditional activities.²²⁵ Indigenous women's concept of 'belonging' greatly differs from the original *Indian Act* concept of Indian Status.²²⁶ The Indigenous women's version of belonging goes so far as to include an important need for them to also participate in the *jurisgenesis* that creates legal meaning and makes normative activity possible in the

²²² *Supra* note 111.

²²³ *Supra* note 3 at x-xi.

²²⁴ *Ibid.*

²²⁵ *Strength Of Indian Women* at 198. Sousette leads a traditional coming-of-age ceremony for her granddaughter Suzie.

²²⁶ *Ibid* at 190-192. Elder Mariah speaks of experiencing exclusion and bullying. She recounts being mistreated by others in the community who express feeling superior to them based on a higher non-Indigenous legal status by calling them derogatory names and insults based on being Indigenous women.

nomos.²²⁷ Manuel's play depicts a gathering on reserve that defies the discriminatory *Indian Act* rules that the government originally enacted because, embedded within this activity, Indigenous women are voicing their own cultural *norms* instead of Canada's legal *norms*.²²⁸ Indigenous women's need to speak up is to overcome intense intergenerational fear of violence that has been experienced as a cultural grouping within the mainstream *nomos* and justified by law directly and systemically. The character Mariah states that "I get afraid to talk... Even the old people before used to tell me, 'Don't tell stories; if you attack the church you make hard times for everybody.' Now I'm old and I keep my mouth shut, and still we have hard times."²²⁹

Indigenous women's literature allows Indigenous women to refer to the context of the important legal struggles, such as *Lovelace*, so that they can hold the government accountable to substantively and systemically reversing sex-based discrimination.²³⁰ Indigenous women's journeys with overcoming discriminatory statutory law includes a necessity to overcome a deep distrust for non-Indigenous people and anyone that represents the law and the administration of justice.²³¹ The *Indian Act* marrying out rules cause pain, displacement and disruption of Indigenous women by targeting their intergenerational relationships to spouses, family and community in a way that compounds racial discrimination *e.g.* Residential Schools. The character Agnes describes "trying to survive... We thought we'd find work but nobody wanted two Indian girls fresh off the rez, at least nobody who would pay an honest wage. You try makin' it in the city when you got nothin' and nobody to back you up. When you're hungry, or thirsty, you just sell whatever you can just to get that few bucks."²³²

²²⁷ *Supra* notes 145-146.

²²⁸ *Strength Of Indian Women* at 189. Agnes describes the necessity of speaking up for herself and Indigenous women as part of her gift from the Creator (God) despite having become a victim of residential school abuse, physical and sexual abuse from men, prostitution and alcoholism: "the Creator left me alive for one reason. It could just as easily have been me that got killed. Somebody has to talk about it."

²²⁹ *Ibid* at 190.

²³⁰ *Million* at notes 99-101.

²³¹ *Strength Of Indian Women* at 198. Indigenous grandmothers surround and protect the younger generation of women on reserve.

²³² *Ibid* at 187. First Nations Studies Program, "The Residential School System" (8 December 2023), online:

<https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/>. Residential Schools "refers to an extensive school system set up by the Canadian government and administered by churches that had the nominal objective of educating Indigenous children but also the more damaging and

Manuel's play centers around the recounting of experiences of Indigenous women at Residential Schools, the trauma suffered there and its long-lasting effects on their self-esteem, health and relationships (along with the overcoming of the trauma). Indigenous female 'belonging' within matriarchal circles is depicted as 'protection' for a group whose grandmothers have been victimized by law that affects intergenerational relationships.²³³ Thus, the play is generating protective cultural *norms* that Indigenous women's equality ought to align with such as the reclamation of positive representation of Indigenous women's roles. Alignment of Indigenous women's *norms* integrates the ILOs reflected in Manuel's play into society to contrast law that otherwise proposes that inequality for Indigenous women is legal.

In the above manner, Manuel expands on the concept of equality that Lovelace fought for in the courts. Manuel describes what else is involved with reclaiming Indian Status for women that is not readily apparent. The rest of the analysis in this chapter connects the case and the cultural *norms* evidenced in Manuel's play.

Generating Cultural Commentary from Manuel's Play With CFGBI

In this section I generate the cultural *norms* that arise out of Manuel's narrative. Before juxtaposing the case and the play, I briefly outline Manuel's cultural commentary by moving through the questions listed within my CFGBI in Table 1. I first focus on applying Deleuze's spatio-temporal dynamisms and then I move through the FTB questions.

*Deleuze-Inspired Interpretation Applying The MOD*²³⁴

At first glance, Manuel's play is about the term "Indian Women". To answer the question, "What is this?", the play's title delineates its subject as being the *strength* of these particular women. There are no men depicted except through memories of the female characters being victimized by

equally explicit objectives of indoctrinating them into Euro-Canadian and Christian ways of living and assimilating them into mainstream white Canadian society."

²³³ *Supra* note 231.

²³⁴ See "Adapting The Method Of Dramatization (MOD) Into My Method" for a full explanation of MOD and how I am using it in my thesis.

male authority figures in institutions mandated by the *Indian Act* assimilation and enfranchisement policies *i.e.* Residential Schools trauma.²³⁵ The women identify a sense of belonging to their cultural group regardless of any government restrictions targeting “Indian Women” because they were born knowing their ancestry. Manuel’s use of the term “Indian Women” refers to an *Indian Act* term and this is her purposeful way to comment on what Indigenous women with Indian Status means. They are not hiding their Indian Status among multiple peers although they may hide it off reserve.

Lovelace was denied the ability to exercise this sense of belonging.

To apply Deleuzean theory, the answers to the above ‘What’ question are too simple. To discover what the “Strength Of Indian Women” means the analysis needs to be complimented by several more questions such as ‘Who? How much? Where? When? And in What Case?’. The answers to this litany of questions help to derive knowledge about the subject more dynamically. The “Indian Women” in the play are represented by four elders named Mariah, Agnes, Lucy and Sousette. These women interact with Sousette’s daughter, Eva, and granddaughter, Suzie. The three generations of women are depicted coping with trauma together through storytelling. Mariah recounts fear within her lifetime due to being told to “[b]e quiet, shut up, don’t say nothin’” about the killing of a female child in Residential School who opposed an Indigenous language restriction.²³⁶ Stereotypes and slurs used by non-Indigenous people to insult the women, such as “Pocahontas”, allude to the marrying out construct created by the government.²³⁷ The play brings to light some of the feelings around why reclaiming Indigenous belonging is actually a struggle to overcome silence about sex-based discrimination that has manifested itself as this sort of name-calling. The impact of the *Indian Act* involves a contextual threat of unavoidable abuses underpinning Indigenous women’s decisions with

²³⁵ *Strength Of Indian Women* at 173-175. The elders recount attending the St. Eugene’s Residential School where men abused them.

²³⁶ *Ibid* at 190-191.

²³⁷ *Ibid* at 190-192. Mariah recounts fear-based warnings of her grandmother telling her *not* to speak up or else she would be seen walking in two worlds and name-called as a “Wannabe”, “Little Indian Squaw”, “Bill C-31”, or a “Pocahontas, you want to come with me and be my little Indian princess?” and “bad... need to be taught a lesson”. Karen Ordahl Kupperman, “The Full Story Of Pocahontas Is Rarely Told. Here’s What We’re Missing,” *Time*. (31 July 2024), online: <<https://time.com/5548379/pocahontas-real-meaning/>>. Pocahontas refers to an Algonquin girl who risked her own life to save an adult man, John Smith, from being harmed in 1624. Pocahontas is an insult when it is used across racial boundaries in the play.

fear *i.e.* to keep Indian Status or to marry out. The choice becomes to hide identity based on the illegality of identifying as having Indian Status. In addition to being denied Indian Status the women are bullied for identifying as Indigenous.

The Indigenous characters gain collective strength and belonging by practicing a cultural coming-of-age ceremony for Suzie that is connected to becoming an Indigenous woman. The play is set in the 1990's which is a time when women were first legally allowed to reclaim their Indian Status post-*Lovelace*. In the case of the women in the play, they are within a cultural group whose identity is tied closely to living on ancestral land (reserves) where they are able to speak their Indigenous languages and to practice their culture. The women are revealing a need to speak about being targeted by harms perpetuated by the law. They discuss how they have learned to overcome the suffering that stems from being governed by the *Indian Act*. The law has been tied to the abuses that the Indigenous women recount suffering *i.e.* violent crimes, sexual harassment and rape tied to leaving the reserve and interacting with non-Indigenous people and colonial institutions. The women have all been harmed physically, emotionally, spiritually, and mentally by non-Indigenous people directly or intergenerationally and this is the root of the resulting pain and fear fused to the identification of Indian Status. Their fear is particularly true among Sousette's generation. The elders formerly silenced themselves about the assimilation and enfranchisement measures.²³⁸ In Mariah's monologue she states that she enjoyed belonging to matriarchy and ceremony instead of being abused at Residential School:

And when I walk in the white world, I hear them tauntin' me... [']You're not really like one of them, you're almost white. Well, almost is not good enough.' I've come home to find out who I really am. I knew who I was when I was a little girl livin' in my titti's house before they took me away to that school. I knew who I was when she would light the juniper and guide my tiny hands over the smoke, pulling it up over my hair, across my heart, and down the rest of my body. She would turn me in a circle, always to my right, and she would tell me that the Creator gave me as a special gift to her, to watch over for a time. That, at the time, I

²³⁸ *Supra* note 229.

was the most perfect and precious being; there was no doubt. I believed that with all my heart. What I seen in that school shocked me into silence...²³⁹

The play depicts the women reclaiming the rights that *Lovelace* fought for together in cultural ceremony rather than in the courts. Indigenous women's fear of being restricted from their reserves is stated in her legal claim as she "wishes to live permanently on the reserve".²⁴⁰ She was denied the right to live in her home on reserve and separated from her mother and her community. Her loss of Indian Status and the ability to reside at home are all tied to her and her children's eligibility for federal government programs as well as cultural benefits such as "emotional ties to home, family, friends, neighbours, and the loss of identity".²⁴¹ Lovelace's worry is that this government-prescribed loss would be permanent without legal intervention and remedy.²⁴² *Lovelace* proves that restricting women's Indian Status prevents connection to their homes on reserve where their Indigenous culture and language is. Manuel expands on what Lovelace's struggle is by depicting the bullying that Indigenous women face when advocating for eligibility for Indian Status.²⁴³

Manuel has constructed a fictional plane (the play) that parallels real life experiences of Indigenous women in the mainstream normative universe (Canada) surrounding their cultural world (the reserve). In this plane, the Indigenous women roles are designed to be cast with physical representations that are Indigenous and female. Manuel places "Indigenous Woman Elder", "Indigenous Grandmother", "Indigenous Daughter", and "Indigenous Granddaughter" *masks* on her characters. The masks are based on Manuel's envisioning of the physical aesthetic bodies of the actors (young/old) that will be playing the roles. In the journeys and interrelations of each masked woman she differentiates herself from the other women. These characters recount their intergenerational stories about overcoming inequality. The masks have been created by the

²³⁹ *Strength Of Indian Women* at 191.

²⁴⁰ *Supra* note 167.

²⁴¹ *Lovelace* at paras 9.9 and 13.1. Lovelace lost access to programs that might have benefited her and her children's education, housing, social assistance, bank loans, tax exemption, medical care, hunting and fishing rights.

²⁴² *Ibid* at paras 9.6-9.9, 13.1 and 14.

²⁴³ *Supra* note 239.

Indigenous feminist playwright rather than by the white, male government writers of the *Indian Act*. The characters' representations greatly differ from the masks that Indigenous women were prescribed to wear in the law before amendments for correcting sex-based discrimination. Indigenous women were previously asked to mask themselves with their husband's white identity despite their underlying Indigenous female *personae*. In the play, the women are able to reclaim their identities by wearing their own Indigenous masks rather than facing the barrier that Lovelace had of walking into court with a restriction on wearing her Indigenous mask. The Deleuzean concept of the mask, therefore, tells us that Manuel poses a challenge to this barrier by demonstrating that the women's expression of reclaiming their Indigenous female heritage/identity is restricted when the representation of the white mask is placed on Indigenous female *personae*.²⁴⁴ The women reclaiming their identity by masking *as themselves* in the play defies the "Bill C-31" slur that alludes to the masking of themselves in white masks and the loss of Indian Status from marrying out.²⁴⁵ I assume that the Indigenous women are relating more to the Indigenous masks that they are wearing in the play than to the colonial masks.

The position of Indigenous women depicted in the play greatly differs from Lovelace's lower footing when she began her legal claim. Lovelace was being asked to remain masked in her ex-husband's white identity to hide her own Indigenous female *persona* identity. The women in Manuel's masks are allowed and encouraged to practice their cultural belonging by participating in ceremonies led by their Indigenous grand(mothers). Sousette dramatizes her Indigenous mask and *persona* as she describes the ceremony that she will lead Suzie through. She reveals that part of her identity as an "Indigenous Grandmother" is being a ceremony leader:

²⁴⁴ Deleuze, "The Method Of Dramatization". In the Deleuzean concept of 'masking' there is a difference between the underlying *personae* and the mask that leads to expression of a subject through its physical representation. There is a difference in wearing an Indigenous female mask or a white mask based on marrying out and what expression that allows the subject. In the play's Indigenous masking of women they are able to reclaim their heritage/identity in a way that *Lovelace* was restricted from because her husband's white mask was being prescribed for her to wear in court (instead of her own Indigenous mask) based on the lowered position of her race and sex in the *Indian Act*.

²⁴⁵ *Supra* note 237.

Everyone is waiting for you... Your mom and your Granny Agnes will cover you with the blanket again. The blanket is a gift from your great-granny Marceline. We will surround you when you come into the hall, and the aunties who helped you will lead the way... There is an arbor built of spruce and cedar inside the middle of the hall. All the medicine people will sit inside this arbor.²⁴⁶

Manuel's setting is isolated from the rest of the world that is harming the women. They are free of the pressures of responding directly to colonial authorities who have upheld the law in their lives such as administrators of the *Indian Act* and Residential Schools or judges in the courts.

Although all the women represent females governed by the *Indian Act*, the play only mentions the statute once indirectly by referring to the slurs that the elder Mariah grew up hearing about herself such as "You dirty, savage Indian!"²⁴⁷ Manuel is alluding to the marrying out laws because Indigenous ancestry is considered something to be hidden by the government. However, in Manuel's fiction Indigenous feminism is prominent.

The characters demonstrate that gathering in their own space helps them to push forward from sex-based inequality regardless of whether the law is valuing their race and gender. Manuel goes further than *Lovelace* in explaining the emotional qualities that are involved with reclaiming Indian Status for women and not only the legal rights and benefits involved. She focuses on the law's affect on the characters *e.g.* there is a necessity to overcome fear because of the bullying and discrimination that they are hiding from when gathering in their own cultural grouping. The women are not entrusting the law with the ability to delineate what their cultural belonging means, what their identity means, or what their Indigenous matriarchy means. Manuel publicly voices, through playwrighting, what the cultural *norms* are that are developing in the IFTM to overcome the colonial trauma *i.e.* cultural gathering and Indigenous feminist belonging. Manuel's commentary suggests that Indigenous women deserve a safe space to practice their culture despite the *Indian Act* having

²⁴⁶ *Strength Of Indian Women* at 198.

²⁴⁷ *Supra* note 237.

lowered their position in society. Manuel suggests that only Indigenous women can now communicate their own cultural knowledge to others.

Manuel's use of the MOD reveals that Indigenous women are special and that their voices are worthy of reproduction by building on the concept of 'belonging' that is also dealt with in Lovelace's claim. *Lovelace* makes it clear that the *Covenant* protects Indigenous female belonging to matriarchy and culture. However, Manuel infuses her knowledge of Indigenous women's strength by moving internal conceptual *personae* (diverse Indigenous women's voices) through the Indigenous women's masks *i.e.* this is how Manuel engages the MOD. In the play, Mariah expresses her belonging by telling the other women that "I believe what my grandmother told me, that I am the most perfect and precious being in all of Creation."²⁴⁸ The women articulate that they matter numerous times throughout the play in contrast to the abuse they are overcoming. The *personae* in the play note that their lower status is inflicted by the government and that it does not suit their own renditions of their value. As Indigenous women in their own oasis/*nomos*, however, they take on a more powerful role that is re-emerging. A sense of belonging to their cultural group increases their self-worth because they learn teachings from elders that are valuable to the younger generation. Sousette's blanket ceremony brings her granddaughter Suzie into her future with a strong sense of cultural belonging.²⁴⁹ The women no longer need to hide their Indigenous *personae* to avoid discrimination when they are together. Lovelace describes a similar need for cultural belonging when she states that being prevented from the reserve causes social dysfunction and violence:

At the present time, Sandra Lovelace is living on the Tobique Indian Reserve, although she has no right to remain there. She has returned to the reserve with her children because her marriage has broken up and she has no other place to reside. She is able to remain on the reserve in violation of the law of the local Band Council because dissident members of the tribe who support her cause have threatened to resort to physical violence in her defence should the authorities attempt to remove her.²⁵⁰

²⁴⁸ *Strength Of Indian Women* at 192.

²⁴⁹ *Supra* note 246.

²⁵⁰ *Lovelace* at para 9.7.

Once Lovelace was successful with her legal case, Indigenous women began to be included, slowly but surely, through the reversal of sex-based discrimination. This is the opposite of being told to silence themselves like Mariah in Residential School.²⁵¹ The play suggests that traditionally the Indigenous women all had valuable roles within their matriarchy that should not be weeded out of society. Manuel differentiates between elders, with first hand trauma due to colonization, and the younger women who are experiencing the inequality intergenerationally. It becomes clear that if the *Indian Act* was not amended it may have separated these women from their protective, nurturing environment forever instead of allowing for the reclamation of matriarchal lineages that they are valuing. In *Lovelace*, this argument was tied to her fear in her legal claim that she would lose access to social supports that are tied to Indian Status and to living on reserve.²⁵² The play stands for a vision that the Indigenous women's 'world'/culture should be able to co-exist in the mainstream *nomos* if their cultural *norm* of being special and valuable is made publicly available (and is not being restricted by *Indian Act* law). Inclusion is further demonstrated by the ability of Indigenous women to stand in traditional cultural roles whereby they are able to protect the younger generations such as Sousette's blanket honouring ceremony for Suzie.²⁵³ This freedom to be a part of matriarchal relationships is contrasted by the exclusion in law that occurs when a woman loses the ability to legally return to reside with her Indigenous family after marrying out.

The characters are able to express and represent themselves in the Indigenous masks that they wear in Manuel's narrative. However, a 'moment before' looms over the script as this was not always the case. The characters speak about how not hiding their Indigenous *personae* would result in *Indian Act* discrimination and resulting violence and bullying. The play is commenting on how Indigenous women did not always have a legal personhood that was equal. The discrimination in the

²⁵¹ *Supra* note 236.

²⁵² *Lovelace* at para 9.8-9.9.

²⁵³ *Supra* note 246.

registration provisions was not just on paper. It was taken off the page as it became legally acceptable in society to harm Indigenous women with law that upheld that Indigenous women were not equal to men. Indigenous women in Manuel's play recount needing to overcome victimization and silencing of their concerns stemming from a childhood impacted by the *Indian Act* laws. Residential School abuses presupposed the marrying out rules that Indigenous women would then be subjected to after leaving the traumatic schools. The trauma is recounted while in their own cultural group as they leave behind a tougher front posed back at, usually white, authority figures off reserve. Grandmother Sousette remembers being angry at a priest who molested her and her classmates in the infirmary when she was sick in Residential School off reserve. She explains that "[h]e did awful things to us... I used to think that I was the only one that happened to, so I took my anger out on everybody. The other women began to speak up. Even my mother, before she died, she said that same thing happened to her. And my Eva, I couldn't protect her. I was too busy running away."²⁵⁴

Indigenous women in Manuel's play present a deep distrust of Canadian laws and the non-Indigenous people that are associated with administering the law. The distrust has led Indigenous women into a choice to either: a) maintain a silent *status quo* about their own cultural *norms* that are not given opportunity to be a part of shaping the laws that govern them; or, b) create narratives (reflecting ILOs) to influence normative law by voicing the idea that Indigenous women's gender equality matters in the mainstream *nomos*. Indigenous women display a vision in the play that they are just as valuable as men. Lovelace's vision similarly involves the idea that Indigenous women ought to have equal rights to Indian Status as men. However, Lovelace was still up against domestic Supreme Court of Canada (SCC) interpretations that found the discriminatory marrying out provisions to be legal upon judicial review. Lovelace's concern was addressed in the UNHRC's

²⁵⁴ *Strength Of Indian Woman* at 196.

international jurisdiction on behalf of all Indigenous women whose rights were not being addressed within the Canada's laws. Lovelace's struggle to break this glass ceiling shows the difficulty to bridge the cultural visions of equality within Canada's *nomos*.

Without voicing any Indigenous cultural *norms* at all there is no reshaping of any discriminatory views about women's equality to bridge with legal precedent.²⁵⁵ The cultural *norms* from the IFTM spark discourse on what changes to reverse gender discrimination among Indigenous women ought to be. The play suggests that it has not been easy to build new visions of the law coming from Indigenous women because their voices were being silenced or blocked from being realized due to the bullying depicted in the play. The distrust that the characters express in the play is justified by Lovelace's *real* struggle for equality.

*Grosz-Inspired FTB Interpretation*²⁵⁶

I now turn to Grosz's FTB to examine how Manuel has voiced her Indigenous female thoughts into her narrative to contrast *Indian Act* law. I am using the FTB questions in Table 1 to interpret the cultural *norms* from Manuel's narrative along with *Lovelace*. My interpretation is a fairly recent, ground-breaking phenomenon because of the former restrictions on Indigenous women's Indian Status that resulted in their complete silence about sex-based discrimination. The usefulness of the literature is that the contextual commentary contrasts what discriminatory laws have purported to be the correct interpretation of the law by upholding gender *inequality* over gender equality. This very problem was the whole premise behind Lovelace's claim. *Indian Act* gender inequality was not an Indigenous female idea because the discriminatory statutory provisions are written by white men, thus, it is male ideas that *Lovelace* challenges in the marrying out laws. Manuel's Indigenous feminism showcased in her play is a part of the contextual struggle surrounding *Lovelace*

²⁵⁵ See "Indigenous Feminist Theatre Movement (IFTM)" section where I explain that no plays were written about these concerns before 1975.

²⁵⁶ See "*Adapting Feminist Theory Of The Body (FTB) Into My Method*".

because her narrative also challenges the *Indian Act's* male-dominated ideology. Manuel makes her Indigenous female point-of-view available in literature by alluding to sex-based discrimination through her Indigenous female characters' dialogue thereby encouraging legal pluralism.

I am relying on the FTB concept of *materiality* as a theoretical way of understanding and examining both the mental/internal and the physical/material aspects of Indigenous women. FTB allows me to label Manuel's playwrighting as action that makes female thought available for discussions about transforming law. There is a relationship between the world that Indigenous women live in and their ideas/thoughts because they live in certain bodies that have both material and ideological connections. My FTB questions are pointed at whether Indigenous women can force their ideas/desires into expression informed by their feminist space/female bodies. I am concerned with what the barriers to expressing their female ideas are that involve the domination of male ideology in law preventing their own expression from Indigenous women's bodies.²⁵⁷ Despite the barrier of being governed by male-dominated ideas contained within the statutory rules, Manuel's script specifically compels Indigenous female actors to speak from her narrative to allude to how Indigenous women really feel about sex-based discrimination. The play puts Manuel's female-centered thoughts into focus by moving her ideas outside of her internal self and into a form of expression that she envisions the actors playing the roles will dramatize based on her script. The rules governing her have shaped the ideology that acts as a barrier to materializing her own Indigenous female ideas in her play based on male ideas about marrying out. Therefore, Manuel counters the force of law by placing her own ideas into expression in a way that our *nomos*, controlled by *Indian Act* law, makes difficult.

²⁵⁷ *Ibid.* I explain materiality noting how Grosz draws on Deleuze to say that Indigenous women can use a physical force within their female bodies as a mobilizing impetus to bring into expression what it is that they desire (specifically as women that may be ignored by the controlling ideology in the world they live in). This material feminist space is a force field of internal ideas within women that must be physically moved by the women into speech, and not men, to insert their narratives aloud to counter male-dominated power/ideas prevailing and acting as a barrier to female ideas materializing. An overarching example is the fact that Indigenous women are governed by *Indian Act* laws that men wrote that control the choices they make in relation to their Indigenous feminine bodies *e.g.* marriages to non-Indigenous men forces women to hide undervalued Indigenous identities behind their husbands' identities and women are defying this rule in their narratives and legal claims.

Lovelace's desire to return home to her mother where she grew up on reserve makes more sense by contextualizing the case with Manuel's play in mind. At the forefront, Manuel uses syntax to reconceptualize what being an Indigenous woman means so that male ideas cannot continue to take hold over Indigenous women's ideas of the subject. The title emphasizes Manuel's feminine-engendered writing approach that values intergenerational Indigenous women's relationships because of the collective strength that belonging to these relationships encourages. Manuel builds on this sense of belonging to stand for the idea that Indigenous women's thoughts are worthy of moving from their internal self into a reproduction of their thoughts aloud so that they cannot be silenced about discrimination. In this FTB manner, the title literally turns a government constructed term "Indian Woman" into a positive connotation by fusing it with the word "Strength".²⁵⁸ Manuel actively uses syntax to demonstrate what her play is aiming to do, which is to strengthen Indigenous matriarchy for future generations of girls by modeling Indigenous feminist healing practices that the *Indian Act* disrupted. The journey of the Indigenous elders towards taking charge of the cultural ceremony to guide younger generations, like Manuel's use of syntax in her title, transforms stereotypes of the "Indian Woman" into more positive imagery to move through future discourse with. Thus, the uneducated, uncivilized Indian Savage slur becomes the "Loving Cultural Ceremony Leader" (Sousette's *persona*). The transformation of the negative role to the positive role does not only occur due to the law providing a woman with Indian Status; but the transformation is solidified when Indigenous women can substantively return home to exercise their Indigenous practices. Manuel's play indicates that the future of Indigenous feminism is demonstrated by the intergenerational gathering of the women where protective and positive language is used to anticipate a healthier journey into the future for women.

²⁵⁸ *Strength of Indian Women* at 172.

The play emphasizes the ability to build strength and resilience through the belonging that comes from accessing the language that is built among matriarchal relationships rather than the language used in the courts. Lovelace conforms to legal formats to materialize her thoughts about discrimination using claimant terms such as “Indian Status”, “sex-based discrimination”, “*Covenant*”, “article 27” and “cultural and linguistic belonging”.²⁵⁹ Lovelace’s concerns are tightly contained within a fact scenario for the Canadian judges and the UNHRC to read that corresponds with language in *Indian Act* and International Law. While Lovelace was challenging the law she was also conforming with it to bring her legal claim. Manuel looks beyond the legal terms in a fictional setting with more freedom to express the context that makes the *Covenant* relevant. Manuel participates in what Cover calls *paideic* world-building by forcing her cultural-specific *norms* into the mainstream *nomos* to counter prevailing legal *norms* that are harmful.²⁶⁰

In the imagined space of the theatre, Manuel shows us what Indigenous women need for resilience and healing that includes: a place to gather that is familiar and rooted in culture, a place to speak traditional languages and prayers; and, a place to host ceremonies. Most importantly, Manuel’s characters speak from a trauma-informed place as their experiences of being subjected to discriminatory law reflects an intense desire to retreat to their oasis where there is no physical or sexual abuse by male authority figures.²⁶¹ The harms inflicted on Indigenous women are difficult to express in legal terms because the law has alienated Indigenous women from being in control of the solution to sex-based discrimination. The space to belong to female relatives is, thus, also culturally appropriate because the women can speak about their own concerns without having to conform to the speech that is acceptable in a courtroom containing legal jargon and male-dominated law. Sousette demonstrates what a trauma-informed, culturally appropriate space to encourage

²⁵⁹ *Lovelace*.

²⁶⁰ *Supra* notes 145-146.

²⁶¹ *Supra* note 248.

Indigenous feminism looks like that is not found in the legal system. Sousette contrasts the positive ceremony with her experiences around the same age that were harmful to her female body while going through puberty and adolescence. In Residential School Sousette learned about young girls becoming pregnant after being sexually violated/raped by teachers/priests: “We decided that you need to know everything, about the school, and about us. You need to know because of Suzie. It’s her history, too. Everybody suspected it was the priest who [impregnated] Lucy. Not just Lucy; other girls had babies, too... lots of babies buried behind the school...”²⁶²

For Indigenous women, the legal system that they must conform with to ask for support to solve the sex-based discrimination problem is tied up with memories of the harm that the law perpetuates in their lives. The trauma associated with the *Indian Act* law is, therefore, deterring the Indigenous women from bringing up their concerns more publicly off reserve without experiencing fear. This fear is part of the FTB struggle with voicing what the impact of the *Indian Act* is. Sousette’s revealing of the harms against Indigenous women tied to the *Indian Act* is coupled with a solution for cultural healing that is only available from Indigenous women. Manuel’s depiction of Indigenous elders teaching younger generations about healing is a cultural *norm* in the play.

The play’s plot revolves around indicating why it is Indigenous matriarchy and feminist belonging that makes Indigenous women stronger and not the experience of having to leave the reserve. Manuel alludes to the real struggle of *Lovelace* with being excluded from living on reserve by the law. The thoughts of the characters that are articulated in the play are the playwright’s own ideas about how Indigenous women can build strength and heal past trauma by speaking up about abuse with other Indigenous women. The ability to speak with other Indigenous women about her rights was not something that Lovelace expressed in her claim specifically; but it is implied by her desire to return home with her mother on reserve. The women’s bodies in the play are depicted in a setting

²⁶² *Strength Of Indian Woman* at 175.

that is familiar to them where usually only Indigenous people live. Even though the reserve is a setting that was restricted to the Indigenous women after marrying out it is in this setting, on the land, celebrating female life, that the women talk to each other about what they usually hide. The reason for gathering among other women is clearly stated as being a need for protection from being violently victimized by men.²⁶³ All of the elders have been abused by non-Indigenous men off reserve. They are protecting the younger family members from the abuse. Sousette shows a picture of herself as a child with her classmates and points to Annie who was murdered off reserve. Sousette states “You know, out of all these girls there must only be a handful of us still alive. Most of them died, pretty violent too... alcohol, suicide... murder. This one here, her name was Annie. She got murdered in the city. She was Agnes’ friend, and Agnes was my best friend.”²⁶⁴ Sousette’s dialogue indicates that friendships with other Indigenous women make her stronger despite the trauma of being harmed and witnessing or hearing about abuse that still upsets her.

Manuel applies a more appropriate emotional quality to the concepts of strength and cultural belonging than *Lovelace* does. In the play, Sousette notes that her granddaughter will “need her strength and all our love” to prepare for a traditional fasting ritual.²⁶⁵ The marrying out laws preclude the ability to make connections between Indigenous female belonging and the passing on of maternal love within cultural ceremonies. The play indicates that Indigenous women must create safe spaces to make these connections for themselves. This space of feminist belonging is only possible if the *Indian Act* restrictions are overridden by Indigenous women’s practice of their cultural belonging. By comparison, in *Lovelace*, she returned to her reserve and remained there in defiance of the law. The play demonstrates a literary effort to *overpower* past discrimination by promoting the concept that Indigenous women deserve the supportive space envisioned in Manuel’s narrative.

²⁶³ *Supra* notes 231 and 248.

²⁶⁴ *Strength Of Indian Woman* at 176.

²⁶⁵ *Ibid* at 173.

Lovelace fought for this right in the courts and Manuel expands more on what Lovelace fought for by revealing anecdotally what the cultural *norms* are that were being restricted from Indigenous women who married out *i.e.* expressing love to younger generations of women and creating safe spaces free of violence from men.

The masking of Indigenous women *as Indigenous women* in Manuel's play is an Indigenous FTB construct. Manuel articulates her literary vision of equality by representing women in Indigenous masks that value themselves and their ability to speak about their concerns. The women dramatize only Indigenous female thoughts through their own Indigenous female *personae* that is alive beneath the physical masks of their bodies. The play contrasts the material *Indian Act* construct that would otherwise have Indigenous *personae* hiding behind white masks (the opposite concept). The latter representation, however, has not allowed Indigenous women to express themselves within the legal system to the extent that Manuel is able to by dramatizing the private conversations of Indigenous women on stage. In fact, Canada has a history of using the *Indian Act* to place a literal bar on expressing Indigenous women's legal concerns.²⁶⁶ The play shows that Indigenous women's physical racial representations are literally ignored by society in favour of a higher status white representation that is a false construct on its face due to the masking. Indigenous women were restricted from feminism more generally as well because it was both illegal to be themselves and to speak about feeling that the restriction was wrong. The dramatization of legal concerns that might have been articulated between Indigenous claimants and judges was not available to Indigenous women because they were not allowed to voice their concerns in the courts *as themselves*. Thus, it is clear that Manuel utilizes the IFTM to freely defy the contrasting idea of gender inequality by demonstrating what representation and expression of Indigenous women ought to ideally resemble.

²⁶⁶ *Supra* notes 17-18.

Manuel retrospectively points out that the positive outcome of Lovelace's reversal of sex-based discrimination is only a starting point for reconceptualizing gender equality. The law's original resistance to *Lovelace* indicates there is a greater contextual need to bridge what equality means in the law with Manuel's cultural *norms*. The discriminatory *Indian Act* provisions prescribed the suppression of the representation and expression of Indigenous female identity *to carry out* the assimilation and enfranchisement policies within the specific marrying out provisions. This fact only breeds and fuels the fears expressed by Manuel's characters about revealing their identities to non-Indigenous men. Manuel is not restricted by any legal structure of a claim and instead is able to demonstrate her vision of equality using metaphor. Her Indigenous women's masks parallel real Indigenous women on reserve exercising their rights to cultural belonging in a way that Lovelace remained general about in her legal descriptions using *Covenant* language. Thus, Manuel's play is answerable to women in a way that the case is not.

The suppression of Lovelace in the courts by the government's imposition of a white mask instead of her own Indigenous mask illustrates the difference between Lovelace's starting point in the law (with a lower personhood) compared to Manuel's characters starting point in her play (as valuable females embodying their own Indigenous identities). Manuel suggests that the ability to express concerns about *Indian Act* discrimination in one's own Indigenous mask leads to healing. Thus, preventing Lovelace from wearing her own mask prevents her from healing from sex-based discrimination. Manuel implies that if you silence an Indigenous woman about a legal issue, or force her to hide her identity in any way, then that qualifies as suppressing her. One example of this type of suppression is found in the play when Agnes' character is overcoming a cycle of prostitution and alcoholism symptomatic of her memories of abuse. Agnes remembers sexual violence inflicted by a non-Indigenous man against an Indigenous female friend at a bar off reserve:²⁶⁷ "They didn't find

²⁶⁷ *Strength Of Indian Women* at 188.

Annie for a whole week. I went crazy day and night lookin' for her. She just never came home. When they found her, she was all beat up. You couldn't even recognize her except for that red sequined dress... [I] felt so alone... so sad."²⁶⁸ The play depicts how Indigenous women are physically hurt correlating with not marrying out.

Agnes later states that her act of speaking up about the abuse is tied to a desire to inform others about how the government has harmed her cultural grouping. Agnes states that "Somebody has to tell the truth about what happened to all these little girls" in Residential School.²⁶⁹ Agnes's use of her voice in the play is rooted in an important need to showcase her cultural *norm* of encouraging Indigenous women to break cycles of abuse by speaking about them. She is urging the other women to move through victimization and mistreatment by belonging to their cultural grouping where this Indigenous female expression is celebrated.

The elder Agnes' cultural *norm* of speaking up about abuse is a concern about legal pluralism arising from Manuel's narrative. She is not making a claim to change the law specifically; instead, she is commenting on the need for mainstream culture itself to change by reflecting Indigenous female voices that are not readily apparent in the law. Manuel's commentary aligns with my FTB argument on the concept of *materiality* because she promotes using Indigenous female bodies/actors to express feelings about *Indian Act* discrimination in way that creates a safer, more female-engendered space for Indigenous women to express ideas about their feminism in the future.²⁷⁰ She asserts the idea that Indigenous women ought to be welcome to speak about their identity without being burdened by a need to conform with more realized patriarchal legal concepts such as marrying out. Manuel provides this space more readily than the law does because she is encouraging Indigenous women to defy *Indian Act* law that would prescribe them to make a choice about their bodies that is contrary to

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid* at 189.

²⁷⁰ *Supra* note 249. See also note 276.

their own self-worth *i.e.* masking Indigenous women in white masks presenting a barrier to expressing ideas about reclaiming identity in Indigenous female bodies. Manuel addresses the issue of being able to express Indigenous female ideas without the barrier of having to move the ideas through a male, non-Indigenous form that has prevented their expression in the past.

The above assertion that Manuel provides a space for Indigenous feminist thoughts to surface through Indigenous female bodies aligns with Cover's theory on normative law building and legal pluralism. Manuel's narrative reshapes discussions about the representation of Indigenous women and how to make law more answerable to them because speaking as themselves counters the male-dominated *Indian Act* concepts about their lowered position to men. By allowing for Indigenous masked *personae* to publicly express Indigenous feminist ideas about being suppressed by the marrying out rule Manuel challenges the law's reflecting of the *norm* of exclusion for Indigenous women in the mainstream *nomos*. The cultural group is given no opportunity to create law and Manuel's narrative, by contrast, actually voices the visions/cultural *norms* that counteract the *Indian Act* discrimination through the expression of her characters. Manuel's narrative indicates that the need for inclusion is actually a need to contribute to forming the *norms*, as informal laws in society, that can influence what is reflected in the law to prevent discriminatory conduct from going unchecked. Manuel makes her FTB concerns readily available to compete against less sympathetic lines of argument, negative stereotypes, or even silence, that might otherwise prevail.

Manuel's legal pluralist narrative makes the concern about raising Indigenous women's voices publicly available through her character Agnes' dramatization of the problem. Part of the effect of Manuel's writing is empathy-building arising out of her hypothetical scenario based on better understanding how Indigenous women have overcome the bullying tied to the *Indian Act* rules (that includes suppression of Indigenous women's ideas). Within Agnes' concern that she must talk about the abuse against Indigenous women to prevent it is also a legal pluralist concern that women

are given opportunity, through narrative, to express how the law has harmed them. It becomes clear from the storytelling that if the mainstream culture was not encouraged to look at Agnes as less than white people and less than men then it would be more difficult to succeed in abusing her and her peers. Agnes's concern is that the colonial abuse targeting Indigenous women will not be visible to others and will be swept under the rug if it is not expressed by her.

Legal pluralism is not the focus of Lovelace's struggle that takes a more tunnel-visioned, rhetorical and doctrinal approach to changing the specific marrying out provisions only. In the play, many of the characters' memories of abuse might be solved with modern law since the law has become more inclusive post-*Lovelace*. However, the women in Manuel's play do not speak of a legal remedy, instead, they focus on simply voicing what they noticed the *Indian Act* enabled non-Indigenous people to do to them that was abusive. The FTB need to freely voice Indigenous women's own perspectives is evidenced by Manuel's focus away from less imaginative and narrower interpretations in the law. Manuel developing Indigenous women's voices in literature, such as the Agnes anecdote, demonstrates her FTB ability to move internal thoughts into writing. Manuel makes visible Indigenous feminist ways of healing and protecting Indigenous women from sex-based abuse. The *Indian Act* is unable to authentically generate these cultural *norms* that Manuel builds into her play because its drafters have never fully considered the commentary from the play that is only true to Indigenous women's struggles with the *Indian Act*.

The inequality that *Lovelace* proved still likely makes many Indigenous feminists wary of law because it is part of the law's history of how it has mistreated Indigenous women to begin with. Manuel's play emphasizes that there is still work to do to move towards familiarity, equality, trust for the administration of justice among Indigenous women. This struggle is part of the impact of the *Indian Act*, which is the very legislation that articulated the harmful laws and policies that became the obstacles that Indigenous women are fighting. Manuel suggests that Indigenous women's

perspectives are the key to solving problems that the law cannot possibly solve without involving Indigenous women. However, as evidenced with *Lovelace*, Indigenous women are still up against a century-long wave of ‘upholding’ *Indian Act* discrimination rather than a ready willingness from Canada to correct the problem that is still wreaking havoc on their identities.

The example of Agnes’ cultural *norm* about challenging abuse is relevant to the timelines of the *Lovelace* case and the IFTM because not speaking up about abuse corresponds with preventing or delaying legal challenges to the *Indian Act*. Even after *Lovelace* started to challenge the government it still took far too long to address the inequality. *Lovelace* began her legal challenge in the early 1970’s and it was not addressed by the UNHRC or by the government for over a decade. The *Indian Act* marrying out provisions are still being amended today over fifty years later.²⁷¹ In the case of the IFTM playwrights, like Manuel, they did not originally see the theatre as a space to put a loudspeaker on sex-based discrimination. Manuel’s play, therefore, is quite important as a narrative that aligns with FTB. Manuel agrees with Grosz that Indigenous women’s ideas *need* to be included by moving from internal thoughts towards the realizing of the thoughts out of female bodies and into public speech. In this way, the law becomes ‘answerable’ to Indigenous women through the legal discourse and jurisprudence that develops in response to the voicing of cultural *norms*.²⁷² The lack of IFTM plays, in fact, correlates with the lack of legal challenges to the *Indian Act*.

The cultural *norm* of utilizing prayer and song to strengthen Indigenous women’s belonging is a part of Manuel’s commentary about how the *Indian Act* targeted Indigenous women in an attempt to disempower them privately in their homes forever. The Indigenous elders pray over the younger Indigenous generation. The elder Mariah states that “Maybe if I pray on it, I’ll know what to do. I’ll leave it up to the Lord. He’ll tell me what to do.”²⁷³ Sousette tells Lucy that it is important

²⁷¹ Tiedemann. The Library Of Parliament report centers around Bill C-38 in 2022 signifying there will be more legislative amendments to continue to correct sex-based discrimination in the *Indian Act*.

²⁷² See “Limitations”.

²⁷³ *Strength Of Indian Woman* at 178.

to think “good thoughts, and I really want to hear that song. Think of something happy, Lucy, it always sounds so much better when we’re happy. Think of Suzie in the lodge, and all the things she’s learning to become a strong young woman.”²⁷⁴ The play emphasizes this positive action of praying and practicing cultural ceremony as an enduring strength that is passed on from one generation to the next. The Indigenous women are looking to transform the negative colonial past into a more positive future by using Indigenous prayer that was once restricted from them to empower themselves. The women are able to build resiliency for future generations by intergenerationally supporting each other because the elders are passing on cultural knowledge to the younger women.²⁷⁵ Lovelace was able to express that this domestic issue could be solved with law because belonging to her cultural group is tied to the registration rules that she was challenging. Before *Lovelace*, the government’s sex-based restriction on Indian Status even silenced Indigenous women’s private prayers because they are tied to the cultural ceremonies that were prevented by the law.²⁷⁶ Manuel promotes the opposite of hiding away or self-destructing from discrimination. Manuel uses her feminist perspective to draw up characters that showcase that moving Indigenous concepts of equality into public discourse is a better option. The play’s written dialogue around Indigenous prayer being healing leads to the promotion of this private cultural *norm* aloud on stage.

Manuel’s play remarks on how feminist body identity has come to be associated with potential victimization based on expressed Indian Status or looking Indigenous and feminine.²⁷⁷ The government denoted terms in the *Indian Act* are about Indigenous women, but Indian Status symbolizes racism and hate, exclusion, inequality and danger for Indigenous women like the elders. Pre-*Lovelace*, the government’s solution to this problem was to tell a ‘white-lie’ by ‘civilizing’

²⁷⁴ *Ibid* at 179.

²⁷⁵ *Supra* notes 237 and 247.

²⁷⁶ *Lovelace* at para 9.3.

²⁷⁷ *Supra* note 269. Elder Agnes associates being an Indigenous woman like herself and her friend Annie with potential harm due to being perceived as themselves by perpetrators who inflict violence on Indigenous women.

themselves through marriage. Manuel makes it clear that being forced into false identities was never a *humane* option for women because it reflects the inequality that they are subjected to. The play poses a feminist challenge to the legality and constitutionality of discriminatory *Indian Act* law coming directly from Indigenous female points-of-view rather than filtered through a husband's male mask perspective. The play, as a fictional vehicle of drama, allows for the articulation of what positive Indigenous feminist identity is that has been suppressed by the law.

Manuel uses her play to allow Indigenous women to see themselves in the Indigenous female roles that she writes about. Manuel is *norm*-shaping to include these more familiar roles in society so that Indigenous women have the opportunity to relate to and/or to mirror the overcoming of feminine suppression to reclaim their own voices in the *nomos*. If these characters were not depicted speaking out about abuse then a silent alternative could persist. Maintaining silence would mean that only non-Indigenous and male-centred thought would be prevailing in literature. The FTB theory indicates that if Indigenous women like Manuel could not promote their ideas in literature then there would be a barrier to feminism. There would be less representation and expression of positive roles for Indigenous women available to contrast the historical legal assertions of what being an Indigenous woman means. In this sense, it would also be a restriction of legal pluralism and of Manuel's ability to create 'law *as* literature'.

Manuel's narrative indicates that there is a movement from exclusion to belonging for Indigenous women in the IFTM culture that coincides with Lovelace's key struggle of speaking up in the legal system *as herself*. This event contrasts the impact of the *Indian Act* that is rooted in ideology that is reflective of patriarchy, colonialism and racism that has been proven to oppress Indigenous women's public expression in the *nomos*. Starting from fear-based silence, Indigenous women's intelligent and ongoing efforts have greatly contributed to what contextual information, knowledge and precedent can be successfully included within claims that challenge lingering

discriminatory *norms* in the *nomos*. The effect is Indigenous female empowerment and feminism with Indigenous women's voices at the helm. Manuel's play defies Canada's history of silencing Indigenous women on *Indian Act* inequality. Manuel uses sexual difference and femininity as a force to build feminist vision/precedent into the *nomos*. She contributes to quashing legislative inequality by inserting cultural *norms* into public discourse. Manuel's ideas contrast negative stereotypes of Indigenous women prevailing in the *nomos*. More positive roles for strong Indigenous women are now available to inspire those women who may still be struggling with inequality in the real world. The law may not always be agreeable to the visions arising from the IFTM culture but the suppression of these narrative visions would be more discouraging to *Indian Act* law reform.

Analysis of Cultural Commentary Read Against *Lovelace*

In this section I more closely reread *Lovelace* against Manuel's cultural commentary from the play with specific comparative examples in mind. I focus on three blindspots of the case that are dealt with in Manuel's narrative: 1. Reclaiming Indigenous matriarchy through cultural belonging; 2. Overcoming fear of *Indian Act* discrimination; and, 3. Healing from colonial trauma by building strength as Indigenous women. Manuel's play contrasts the legal outcome in *Lovelace* and points out that the *Indian Act*'s gender inequality has impacted Indigenous women's ability to voice concerns about law without fear of repercussion. In this section I elaborate on what the Indigenous characters in Manuel's play being made to reveal their Indigenous *personae* working through their own Indigenous female masks means in comparison to the case.

Lovelace was a Status Indian and lived on the Tobique First Nation until she was married on May 23, 1970.²⁷⁸ The *Indian Act* "provided that an Indian woman who married a non-Indian man would lose her status as an Indian".²⁷⁹ It was held that the inequality lies in this rule's non-

²⁷⁸ *Lovelace* at para 1.

²⁷⁹ *Ibid* at para 5.

application to Indigenous men. At the time, section 14 of the *Indian Act*'s provisions prescribed that "[an Indian] woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band".²⁸⁰ Accordingly, Lovelace lost her Indian Status under, then, section 12(1)(b) of the *Indian Act*. Lovelace brought her concern to the UNHRC who met on July 30, 1981 to hear on the issue of whether "because she is denied the legal right to reside on the... [r]eserve, has by that fact been denied the right guaranteed by article 27 to persons belonging to [ethnic and linguistic groups], to enjoy their own culture and to use their own language in community with other members of their group[?]"²⁸¹ The case was decided affirmatively in Lovelace's favour and Canada was ordered to correct the sex-based discrimination in the *Indian Act* by legislative amendment.²⁸² However, this legal outcome does not tell the whole story of what Indigenous women have been doing to correct sex-based discrimination by developing cultural *norms* in the IFTM culture. Manuel's narrative fills in gaps of understanding about what Indigenous women's concerns with the concepts of gender (in)equality are that are not mentioned in the case.

1. *Reclaiming Indigenous Matriarchy Through Cultural Belonging*

Manuel's writing of her narrative is a powerful feminist act because it depicts how Indigenous women reclaim their matriarchal roles. Narratives can apply what Cover calls 'tension to the law' that is capable of bridging Manuel's cultural *norms* with new possibilities for what legal concepts ought to reflect.²⁸³ The women's ideas about themselves do not readily align with the *Indian Act* that has been suppressing them. Lovelace utilizes the legal system to ask for direct statutory changes and Manuel instead utilizes literary narrative to target the reversing of adverse ideology lingering systemically in the *nomos*. Lovelace and Manuel's public assertions are capable of reshaping

²⁸⁰ *Indian Act* cited in *Lovelace* at para 9.3.

²⁸¹ *Ibid* at para 13.2.

²⁸² *Ibid* at para 18.

²⁸³ *Supra* note 148.

and redeeming societal *norms* because their visions are bridges from their group/culture to help others to understand what is lacking in legal interpretations of Indigenous equality by comparison.

Before *Lovelace* was rendered Indian Status was a ‘wearable’ mask that could be taken off and discarded by women to assimilate into society. Indigenous *personae* were required to be hidden behind white identity to promote the women’s enfranchisement. The ability to gather with other Indigenous women to practice cultural ceremony was restricted because it was part of having Indian Status. Lovelace fought against this dynamic when she expressed concern that there is only one place where she can reclaim her cultural belonging and that was in her childhood home on reserve:

the essence of the present complaint concerns the continuing effect of the Indian Act, in denying Sandra Lovelace legal status as an Indian, in particular because she cannot for this reason claim a legal right to reside where she wishes to, on the Tobique Reserve... access to her native culture and language ‘in community with the other members’ of her group, has in fact been, and continues to be interfered with, because there is no place outside the Tobique Reserve where such a community exists.²⁸⁴

Manuel’s play reinforces what *Lovelace* fought for by promoting positive representations of Indigenous women in literature who do not have to hide their identities anymore and are able to reclaim cultural belonging by gathering with peers. In the play, Eva speaks about the importance of her cultural gathering that is being led by her mother Sousette:

When I hear your stories, I feel so lucky that you are one of the handful of girls who did survive [Residential School]. I can’t imagine what my life would have been like without you. Even when you were not there, you taught me something. You taught me how get through tough times, and how to survive... I feel proud sitting here among you.²⁸⁵

The example of Eva and the grandmothers evidences the need for reclaiming matriarchy.

Manuel’s play demonstrates that if Indigenous women are not treated equally to men then they are being devalued. The masking of Indigenous women tells us that a main part of the impact of the *Indian Act* has been lowering Indigenous women’s position by taking their Indian Status away

²⁸⁴ *Lovelace* at paras 13.1 and 14.

²⁸⁵ *Strength Of Indian Women* at 197. Eva emphasizes the storytelling aspect/tradition within her culture.

from married women and not married men. The UNHRC held that Lovelace's loss of status was "based on a distinction *de jure* on the ground of sex";²⁸⁶ and that it "entails serious disadvantages on the part of the Indian woman who wants to marry a non-Indigenous man".²⁸⁷ The violation was an unnecessary and unreasonable withholding of her article 27 *Covenant* rights that must be applied equally to both sexes as, "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."²⁸⁸ The taking away of Indian Status from women has led Indigenous women towards now needing to *reclaim* matriarchy by promoting their own value in literature.

The masking of Indigenous women reveals an Indigenous feminist cultural *norm* arising from the play and not the case. Indigenous women do not have to mask themselves with an identity other than their own to voice their perspectives about who they are and how they will reclaim their matriarchy within their own cultural grouping. Manuel's masking of Indigenous women *as Indigenous* in her play and the *Indian Act's* masking of Lovelace *as non-Indigenous* in the courts denotes personal jurisdictions that greatly differ. The *Indian Act* forcing Indigenous women who marry out of their race to enfranchise themselves led to the devaluing of their own cultural belonging. In *Lovelace* this belonging had to be fought for and demanded to the courts as it was not readily available due to the federal laws. On the other hand, Manuel's narrative allows Indigenous women to reclaim a personal jurisdiction that is equal to non-Indigenous people and to men. Manuel assumes that Indigenous women deserve the equality that is omitted from law. The case is not as freeing of a vehicle for Indigenous women's voices as one might like to believe. The legal system's requirement for Lovelace to mask herself in white identity demeaned her position within the legal system.

²⁸⁶ *Ibid* at para 10.

²⁸⁷ *Ibid* at para 7.2.

²⁸⁸ *Ibid* at para 13.2, 16-19. The *Covenant* and the UNHRC's use of the term 'minorities' also means cultures/groups for the purposes of my research.

The play demonstrates that the women are reclaiming Indigenous women's version of the concept of belonging that is much more fulsome than what the case reveals. Sousette shares a teaching about how Indigenous women are special when she gifts a deer hide dress heirloom to her granddaughter Suzie:

The deer hides were brought from the hunt by my grandfather, and tanned and sewn together with beads and shells by my grandmother. I was a girl like Suzie when this first dress first came to me. I can still see my grandmother, 'I made this special for you,' she said, and she slipped it over my head. It was so soft. She took me outside to show grandpa. He told me a story about the hunt, that the deer just stood and waited for him... like they knew they were offering up their lives for something special. They made me feel special.²⁸⁹

Sousette reveals that patriarchy allows Indigenous women to feel special by belonging to their own ancestral lineages. In the play, Sousette reclaims her personal jurisdiction as an Indigenous matriarch by leading traditional cultural ceremony. She performs a cultural *norm* of reclaiming cultural belonging within Indigenous women's private sphere. In *Lovelace*, however, her real-life experiences were shaped by a *restriction* of that private sphere, her Indian Status, or that "Indian Woman" mask, and her right to Indigenous maternal belonging. The above example shows that the leadership of Indigenous women is key to remedying the historical restrictions of belonging on reserve that are tied to Indian Status restrictions.

Rereading *Lovelace*, it becomes clear that she was made to unfairly mask her identity when the *Indian Act* imposed a 'marrying out' construct on her life and this restricted her ability to reclaim her cultural belonging. Lovelace was abiding by law that did not acknowledge that her expression of her identity ought to be considered legal. She had to reveal that the "Indian Woman" mask/identity is rightfully hers and deserves inclusion within the term Indian Status despite marital status. Lovelace was not able to represent or express the same Indian Status rights as Indigenous men in her 'white' mask. Lovelace pushed back at what was being lost by legally imposing a white mask on her in the

²⁸⁹ *Strength Of Indian Women* at 175.

Indian Act. Lovelace's real identity is closer to the spectrum of the Indigenous female masks in the play. Indigenous women's conceptual *personae* moves through a more inclusive vision of what strong Indigenous women are rather than 'married-out-formerly-Indian-women-who-are-now-white' (the Pocahontas stereotype) or 'enfranchised-and-assimilated-grandchildren-of-an-Indian-woman-who-married-out' (the Bill C-31 Indian stereotype). To break the glass ceiling for Indigenous women's equality, Lovelace had to ignore the stereotypes that Manuel makes visible in her play and demand equality *as herself*. Manuel points out that Lovelace's struggle involves pushing against the false identity imposed by the government that is used to bully her in society.

It was not until the UNHRC linked *Indian Act* discrimination to a violation of *Covenant* rights that Lovelace was able to reveal her Indigenous *persona* in the courts and to have her own identity reflected in the normative rules of the statute.²⁹⁰ Lovelace's struggle was that her feminist force was not actually able to align with the rulings of Canadian courts. Lovelace wanted the judges to extend the concept of gender equality to women by amending the *Indian Act* but the SCC was not ruling in her favour.²⁹¹ Since the expression of demanding gender equality was brought with Lovelace's Indigenous mask she was defying the requirements of the legal system that she was asking to help her. Lovelace, like the women in Manuel's play, refused to accept that masking herself in her husband's identity was the proper interpretation of Canadian equality laws. Manuel's positive vision of Indigenous women demonstrates, by contrast, that the SCC was not agreeable to creating legal meaning around the concept of Indian Status to include Indigenous women. Lovelace led the way in changing the mainstream *nomos* to reflect a more inclusive world for Indigenous women both on paper and in reality by challenging the SCC's position. The good news is that this challenge is not

²⁹⁰ *Lovelace* at para 17. UNHRC confirms "to prevent... recognition as belonging to the band is an unjustifiable denial of her [*Covenant*] rights".

²⁹¹ *Supra* note 31. By noting a 'glass ceiling' I am referring to *Lavell and Bédard*.

presented to Indigenous playwrights now because literature allows for more imaginative ideas about equality to develop in fictional form that parallel what is possible in reality.

Manuel places importance on overcoming trauma tied to law instead of re-traumatizing Indigenous women by perpetuating exclusion in the *nomos*. The language in the play, such as “strength” in the title, builds positivity into what Cover calls a code, or a *norm*, for reclaiming culture with matriarchy. This code neutralizes rather than perpetuates destructive *Indian Act* rules tied to the bullying of Indigenous women in relation to other people. Manuel’s narrative is thus redemptive because the *nomos* contains both laws and visions for what law could be in real life.²⁹² Manuel’s code contains the positive language that can be used to describe the role of “Indigenous Women” moving forward considered as strong people rather than as the weaker sex. I assert that the *norms* in Manuel’s play are uniquely influencing normative law building because her ideas are otherwise not visible in the law’s version of equality.

Lovelace’s claim is limited to legal argument and there are no hypotheticals referred to in her case. In the play, however, imaginative stories help to illustrate how the *Indian Act* has silenced Indigenous women based on what it has enabled in the *nomos* to occur to them. Reclaiming Indigenous female voices is a struggle to literally bring abuse to light by voicing the concern so that it can be made available for legal discourse to compel correction to the problem. The struggle to speak up about the harms is a critical part of the shock, pain and fear associated with overcoming *Indian Act* harms. When Sousette refers to knowing, as a child, that there were babies dying in Residential School she also states that her peer, Lucy, ‘would never talk about it though.’²⁹³ This *Indian Act* trauma is exemplified by the characters’ experiences showcased in her feminist narrative. Manuel’s writing points out that since the discrimination against Indigenous women was written into

²⁹² *Supra* notes 164-165.

²⁹³ *Strength Of Indian Women* at 175.

federal law that the resulting harm is more difficult to overcome than just amending legislation. Manuel's literary vision of healing (by breaking silence about abuse) may take generations to repair since the law normalized harming Indigenous women. Manuel suggests that any healing journey must be led by Indigenous women precisely because their visions assert value, equality and the expression of Indigenous women in the *nomos* e.g. Lucy's knowledge of abuse is underpinned with Sousette's peer support that condemns the wrong against Indigenous children and women. *Lovelace* parallels what Manuel depicts anecdotally. Without some reclamation of Lovelace's Indigenous feminist voice in her claim, similar to the example of Lucy not being able to speak about her concerns about abuse, *Lovelace's* legal challenge would not have become possible at all. The *status quo* that Lucy demonstrates in the play, of remaining silent about the problem, would put Indigenous feminism back at square one to when the *Indian Act* marrying out provisions were first enacted.

The play expands on what *Lovelace* and the *Covenant* protects for Indigenous women. Manuel places importance on encouraging and building belonging within her cultural group to combat colonial suppression of Indigenous feminism in the future. Every page of Manuel's play points out examples of what belonging to an Indigenous community is for Indigenous women through culture and language expression generated as under the bed law. The play alludes to the official law with an example of the necessity of Indigenous women who are overcoming *Indian Act* inequality to, now, take charge of their community ceremony to build collective strength as women. One main example in this chapter is Sousette's leading of Suzie's blanket ceremony.²⁹⁴ Sousette's matrilineal lineage is written to be more crucial to cultural belonging than the legal changes to the *Indian Act* because Western law is not referred to in the Indigenous context. The ceremony suggests that the discrimination in the law is not succeeding in restricting this important relationship from Sousette and her grandchild. This gender-based 'privileging' that Sousette overcomes was an imposition due

²⁹⁴ *Supra* note 261.

to colonialism that was systemically embedded within the standard-setting federal law and the government is frightening to oppose. To reclaim Indigenous matriarchy, Indigenous women have had to take it upon themselves to overcome the privileging of white males/husbands and Indigenous males/brothers/fathers/uncles/cousins over Indigenous women/wives/family members. Sousette is exemplifying this difficult task. The privileging of men over Indigenous women is a significant barrier to the narratives being written because the IFTM *norms* stand for female expression becoming just as important as male expression. Manuel's cultural *norm* of leading Indigenous ceremony is revealed in the play but it is not something that the law is able to acknowledge for married out Indigenous women until *Lovelace*. Manuel's narrative encourages the removal of all barriers to FTB expression by depicting Indigenous female expression that contrasts male-dominated legal *norms* that the women did not create to govern their bodies.

My FTB perspective argues that Lovelace's experience with challenging the *Indian Act* was unjust and unfair and that her masking impeded her ability to raise her voice about sex-based discrimination in the courts. The play points out that Indigenous women's cultural belonging within matriarchal circles is a cultural tradition, it offers Indigenous women protection from harm by valuing identity, and it opens up opportunities to heal using language and culture generated by the women's own force fields. In the play's last scene, the women use the metaphor of being "old buffalos" to represent the elders who are circling the younger women with protective "Indigenous Grandmother" force. The elder women are helping the younger generations to overcome oppression and to reclaim strong Indigenous feminist voices in a way where they are not alone dealing with intergenerational trauma.²⁹⁵ Manuel is articulating that this important cultural *norm* is what is restricted from the Indigenous women who cannot physically return home when they leave

²⁹⁵ *Strength Of Indian Women* at 198-199.

the reserve. The play demonstrates the difference between the protection offered by Indigenous women to each other rather than the lack of support in courts.

Manuel's play thinks even further than the UNHRC holding on 'belonging' in relation to Indigenous women's voices. The play demonstrates that practicing culture and ceremony is tied to the rights protected by the *Covenant*. The positive aspect of women reclaiming culture is not demonstrated in the case although it is part of its substantive outcome. By contrast, in the play the women gathering on the reserve are free to talk to each other about how the government rules have harmed them. Manuel's play depicts the relationship of peers that occurs when Indigenous women are speaking with each other using their own language and cultural behaviour. The women are not speaking to an authority set up by the same colonial system that set up the *Indian Act*. In the play, the women speak to each other differently than they would within the institutional setting of the courts. Lovelace was requesting this belonging on reserve and it was being denied by the courts. The fictional women do not silence themselves about abuse that they have suffered when they are speaking to other Indigenous women. However, in the courts it is clear that Lovelace was being asked to make her identity invisible presenting a barrier to fully voicing her legal claim.

Manuel offers commentary on the struggle to raise matriarchal voices after colonial abuse by emphasizing that the ability of Indigenous women to belong to their cultural group is a victorious event. The play alludes to how the disruption of *Covenant* rights also denied Indigenous women a 'winning' of their specific cultural strength that comes from cultural belonging. Manuel's characters make it clear that Indigenous women are reclaiming their voices despite being impacted by harmful laws as they have a victory call to celebrate and to protect other women. Sousette states that "There will be an honor song and a special prayer, which we will all stand for. When this is done, all the women will make the victory call."²⁹⁶ Surely, Indigenous women celebrate Lovelace's victory in court

²⁹⁶ *Ibid* at 198.

as well. By making the plot about the strength of Indigenous female belonging, Manuel contrasts the discriminatory registration provisions that were written down by the government. The conflict, thus, lies in the difference of perspective around what Indian Status means. To Indigenous women victory lies in exercising *Covenant* rights from their own masked *personae*.

2. *Overcoming Fear Of Indian Act Discrimination*

The play points out how difficult it was for Lovelace to advocate on behalf of all Indigenous women. The fear of speaking up against the government does not explicitly come up in her case. Ironically, it is this fear that is involved with the difficulty to make her voice visible. This fear is overlooked in Indigenous women's struggle for equality in the courts although it is dealt with in the play directly. The context from the play spells out why the emotion of fear underpins Indigenous women's views about equality in *Lovelace*. Her speaking up defied over a thousand years of compounding systemic abuse that the fictional characters expose. The play depicts the abuse that Lovelace did not elaborate on in her claim by narrowing her concern strictly to her legal argument.

Manuel is attentive to the power dynamics involved with Indigenous women who are governed by the *Indian Act* that cause the fear. The play indicates a colonial-patriarchal-versus-Indigenous-matriarchal divide that is obvious when Indigenous women leave the reserve. The play showcases that this divide influences the choices that Indigenous women make based on interactions with law or non-Indigenous people that may uphold discrimination in their lives. In *Lovelace*, she points out that Indigenous women were criminalized by section 30 of the *Indian Act* that made Lovelace residing in her mother's house an illegal trespass and an offence despite the fact that her community was allowing her to live there.²⁹⁷ The ability to register for Indian Status also meant that Lovelace could return home free of punishment based on her expressed desire to do so. The *Indian Act* was overriding the community's resolution that Lovelace could come home. The punishment

²⁹⁷ *Lovelace* citing former *Indian Act* provision at para 9.3.

perpetuated fear of legal repercussions for breaking the federal law instead of protecting Lovelace. Canada assured the UNHRC that Lovelace would become entitled to reregister as an Indian again once corrective amendments were made.²⁹⁸ However, the wait for the amendments had already left Lovelace in limbo and framed her as a law-breaker before the law was found to be discriminatory.

In the play, this criminalization aspect of the marrying out provisions contrasts the pride that Indigenous women take in their cultural ceremonies. Lucy notices that Indigenous women lose access to the knowledge of their culture when they leave the reserve. Lucy is proud of her ability to maintain cultural knowledge by residing on reserve when she states “I’m probably the only one who never left from around here. I’ve lived here all my life you know. I never went off to the city, not once.”²⁹⁹ Lucy points out what women who leave the reserve are afraid of. She has heard that many Indigenous women, including Agnes, do not come home after leaving the reserve and instead are exposed to alcoholism and sexual violence.³⁰⁰ Agnes describes a need to survive off reserve that leads to being refused employment and then introduced to prostitution.³⁰¹ Sousette recounts Annie crying and sad to leave other Indigenous women ‘sisters’ on reserve.³⁰²

Manuel’s Indigenous female characters’ conversations mirror possible internalized shame attached to the fear of practicing their forbidden culture that is also relevant to *Lovelace*. Sousette describes hiding her Indigenous ceremonies and blaming herself when she says that “I suppose it was my fault. We quit having puberty ceremonies when your mom was a girl. People were afraid of the Indian ways back then”.³⁰³ Manuel’s play points out the barrier that Indigenous women are forced to abide by law even if it is restricting their culture. Sousette is reclaiming her cultural belonging by continuing to practice her culture although it still brings up memories of the trauma of

²⁹⁸ *Ibid* at para 9.5.

²⁹⁹ *Strength Of Indian Women* at 180.

³⁰⁰ *Ibid* at 180-181.

³⁰¹ *Ibid* at 187-188.

³⁰² *Ibid* at 182.

³⁰³ *Ibid* at 176.

having to hide it. The restrictions the women face due to marrying out provisions only compound the feeling of shame about being punished for desiring to belong to an Indigenous culture. The play suggests that a *norm* developed whereby Indigenous women were victimized and recognized as less valuable than white people based on identification of Indian Status. This sort of displacement, pain and disruption of identity based on gender, by targeting women's belonging to their reserve, has impacted Indigenous women's relationships with what normally might be protective factors such as judges, family and community. The *Indian Act* made Indigenous women shameful of their culture even though the maternal relationships protect them from their encounters with colonialism.

The prevention of Indigenous women from returning to protective factors after marriage leads to a victimization effect off reserve. The Indigenous grandmothers break the silence of victimization and share stories of being violently harmed by authority figures and non-Indigenous people who view them as 'less-than'. This is done in an effort to build knowledge that can lead to healing from harmful colonial practices. Indigenous women in the play hide their pain stemming from racial and gender oppression. In her cultural group, Agnes thanks the Creator/God for giving her the gift of being able to speak up about violent abuse to help younger generations.³⁰⁴ It is clear that since Indigenous women have been targeted by abuse that it fuels a deep distrust for law and law-makers or anyone that represents colonialism, settlers, government or the *Indian Act*. In this sense, there is a fear that screams out of the characters in the play who are bravely speaking up among themselves as women. Agnes demonstrates that silence is no longer an option if she wants to protect future generations when she states that, "I figure the Creator saved me because he knew my big mouth would come in handy someday. Still, it's hard to talk about the things that people are so

³⁰⁴ *Ibid* at 189.

afraid to hear.”³⁰⁵ The Agnes example shows that the restrictions on Indigenous women that made them fearful of expressing their concerns are a barrier to Indigenous women’s healing gift of speech.

Agnes’ victimization is not called this term in the case although it clearly does come up in court. Lovelace’s claim is based on not being afforded the protection of the *Covenant* because she is a mere woman. Lovelace describes living on the reserve and then being prevented from the benefits of this belonging and this victimized her by forcing her to reside with non-Indigenous communities *i.e.* to assimilate. Manuel points out this victimization of Indigenous women and to the solution of healing from the trauma by promoting cultural practices in her narrative regardless of the legal treatment of Indigenous women. My comparison of the play and the case on this point indicates that there is evidence that the law has been terribly wrong and has asserted authoritative rules that harm Indigenous women rather than protect them. The literature indicates that part of the impact of the *Indian Act* has definitely been victimization of Indigenous women. The play focuses on the resulting necessity for empowerment of Indigenous women to rise above this undesirable state of being a female victim. Lovelace was denied this empowerment because she was unable to freely express herself to the Canadian courts as a strong Indigenous woman.

3. *Healing From Colonial Trauma By Building Strength As Indigenous Women*

It is apparent in the play that there is a great need to heal from *Indian Act* inequality. Manuel’s play is promoting intergenerational healing among Indigenous women.³⁰⁶ Manuel is not shy about expressing what the trauma stemming from the *Indian Act* is and how it has suppressed Indigenous women directly and indirectly. The concept of Indian Status, being a government construct that women are ‘subject’ to, is written within laws that Indigenous women would never draft for themselves. It is true that the law is being corrected. However, instead of focusing on a legal claim to

³⁰⁵ *Ibid.*

³⁰⁶ *Supra* note 261.

specifically address the discrimination Manuel focuses on the experiential point-of-view of Indigenous women about the inequality. The characters demonstrate that they are capable of leading the path to healing for themselves by practicing cultural belonging that means so much more than what is noted in *Lovelace*. For example, the play points out what Indigenous culture *is* and how a private ceremonial gathering on reserve is carried out by women without restricting their identities.³⁰⁷ Manuel's play mirrors real life rather than what was constructed by legislation without consulting Indigenous women.

Manuel's play suggests the law will not be able to fully address or repair what was lost. As part of the evidence in *Lovelace*, Canada's statistics indicate how many women were harmed by the marrying out provisions within just a thirteen year period: "from 1965 to 1978, on an average, 510 Indian women married non-Indian men each year. Marriages between Indian women and Indian men of the same band... were 590 on the average each year; between Indian women and Indian men of a different band 422... and between Indian men and non-Indian women 448..."³⁰⁸ Given the *Indian Act's* enactment in 1876, there were many more women harmed by its marrying out provisions before 1985. Manuel's play also notes that the impact of the statute is intergenerational based on the relationships in her play. Manuel suggests that there must be more efforts to allow Indigenous women to heal the disruptions to their cultural and linguistic belonging for quite some time in the future.

To promote the intergenerational healing of Indigenous women from colonial trauma Manuel focuses on the energetic strength that is built among Indigenous women when they gather together in their communities. Her focus encompasses the force of Indigenous women speaking about what gives them strength within their cultural understandings of the world. Her play is

³⁰⁷ *Ibid.*

³⁰⁸ *Lovelace* at para 9.2.

symptomatic of the need to make Indigenous women's real feelings about the *Indian Act* visible because they stem from their violent and harmful experiences with law. Manuel suggests that the removal of gender inequality in marrying out laws required publicly breaking the silence about *Indian Act* abuse that acted as an actual barrier to the expression of cultural *norms* in her narrative.³⁰⁹ Manuel's play reinforces this necessity by showcasing Indigenous women's anecdotal experiences of 'telling their stories and truths' in an effort to overcome bullying based in legal *norms*. The play's Indigenous matriarchs are depicted enjoying article 27 rights that Lovelace fought for. The women are demonstrating that silence is no longer the option because it does not allow for healing let alone for any legal change that requires an expression of an Indigenous woman's claim. In Agnes' words, overcoming colonial abuse is about using her "big mouth" to call it out.³¹⁰ In the final scene of the play, the characters also find strength in the healing force fields that they generate together as women. The women's ceremonies teach them how special and valuable they are regardless of any "Indian Status" concept created by the government:

SUZIE: Aunt Agnes, there was an eagle flying around the lodge every time I came out to take a swim.

AGNES: Now that's a good sign. Did you see anything else?

SUZIE: I saw the two little deer that came to great-grandpa when he was hunting for the hides for this dress. They came right inside the lodge, and they talked to me.

SOUSETTE: What did they say?

SUZIE: That I was going to have a long life, and that my daughter will someday wear this dress.

AGNES: Another good sign...³¹¹

Conclusions

Indigenous women's voices matter in the *nomos* because they help to reshape *norms* that can make law more equal. Manuel's narrative extends the static idea that Indian Status registration after marriage is only available to men to the more flexible idea that the same registration is also available

³⁰⁹ *Supra* note 304. (The example of Agnes speaking up about abuse)

³¹⁰ *Supra* notes 300-304.

³¹¹ *Strength Of Indian Women* at 197-198.

to Indigenous women. It is true that Indigenous women have already successfully fought for this equality measure. However, Manuel further indicates that there needs to be a solid ability to voice cultural *norms*/visions in narrative for Indigenous women to be able to fully participate in normative law creation. The play points out that this ability was effectively restricted to *Lovelace* even as she won her case because she had to participate in the legal system masked in her husband's white identity rather than her own.

Indigenous women's voices are not lost forever despite having endured *Indian Act* sex-based discrimination and having remained silent for so long. My research indicates that Indigenous women were suppressed by the *Indian Act* as both literature and law reveals, not only the context of what it was like being discriminated against and why it was wrong, but also that the inequality did exist and it is being remedied. The literature indicates that, yes, Indigenous women are now able to dramatize themselves in the theatrical medium to express their thoughts in public discourse. However, some of the damage done through the *Indian Act* is intangible (racism, pain, fear, bullying, intergenerational identity loss) and does not seem repairable by restoring Indian Status. There needs to be an associated reclaiming of Indigenous women's feminism so that they may continue to help to reform the material law that is governing them. Any other proposition of equality would continue to systemically perpetuate the historical lowering of Indigenous women's position in society.

Each time an Indigenous woman steps into her own voice, masked with her own strong identity, the difference between legal equality and inequality becomes clearer through her representation and expression. In this way, Manuel's narrative demonstrates Cover's theory and legal pluralism. The ideas in her play about Indigenous women's equality are available to compare with concepts of this term articulated in the law. Indigenous women writing and speaking for themselves builds a literary bridge for legal interpretation, for 'world-building', and for co-existing in the *nomos*. The availability of their narratives forces courts to confront and differentiate what ought to be

lawful, based on the cultural *norms* that are now making it into the conversation about marrying out, rather than only based on the male ideology already reflected in the *Indian Act*.

Manuel's play develops empathy for Indigenous women who have struggled with challenging the law while also being disrespected by law. Even though *Lovelace* was successful, the literature tells us that there is still work to do to encourage Indigenous women's representation and expression within the legal system. The marrying out laws only govern Indigenous women and yet no Indigenous women wrote them. The alternative to including Indigenous women is a traumatic silencing of their cultural group that has already been victimized by the laws they are challenging. My analysis demonstrates the silence of Indigenous women as being symptomatic of *Indian Act* abuses on their sex. The silence is not a recommended option in the IFTM because it perpetuates colonial suppression of Indigenous women's voices that does not coincide with legal action. Indigenous women belong as full participants in law as equal persons. If this is the case then there is a bridging of their narrative visions along with the law promoting legal pluralistic law reform.

The *Indian Act*, in its unequal respects, did not allow for a merging of Indigenous women's high status in their domestic spheres within the legal system. As protective feminist matriarchs, this will only occur with Indigenous women's involvement because their cultural *norms* are capable of reversing the negative impacts of the law. The above rereading of *Lovelace* reveals that the *norm* of male-centred thought domination is not the only available construct to work from as Indigenous women are now involved in writing their own narratives. Articulating Indigenous women's thoughts into plays is a valid legal pluralist law reform effort because their cultural group is normally excluded from opportunities to materialize their ideas in law. In chapter two, I will next discuss that, beyond *Lovelace*, the legal battle for gender equality continues along with the IFTM.

CHAPTER 3: WOMEN OF THE FUR TRADE READ AGAINST MCIVOR

In this final chapter I am interpreting the *McIvor* case and Koncan's comedic play entitled, *Women Of The Fur Trade*.³¹² Koncan is an Anishinaabe playwright from the Couchiching First Nation in the Treaty 3 territory.³¹³ She creates a fictional world within her narrative that comments on the context of Indigenous women's voices being suppressed when they are governed by marrying out laws. Her play takes place on an unspecified date in the 1800's during the fur trade around the time that the *Indian Act* was first enacted.³¹⁴ The setting is in a fort in Winnipeg, Manitoba.³¹⁵ The protagonists include two Indigenous women, Marie-Angelique and Eugenia, who discuss marriage and childbearing at a tea party with their pregnant Caucasian friend, Cecelia. The women start a letter writing campaign to make contact with Louis Riel and Thomas Scott. Marie-Angelique is adamant that she will marry the Métis leader, Riel, instead of a white man like Scott to keep her own identity intact.³¹⁶ The narrative depicts Indigenous feminist cultural *norms* among the women who encounter sex-based discrimination for the first time in history. I posit that the cultural *norms* reflect ILOs from the IFTM that are not regularly brought into conversation with law.³¹⁷ I first summarize the cultural commentary from Koncan's play generated from my CFGBI.³¹⁸ I then reread the case against the commentary to understand what the blindspots of the law are that the play addresses. Finally, I list my conclusions that state that the narrative points out how *McIvor*'s voice was suppressed as an Indigenous woman while challenging the government in her case. I focus on Koncan's play because it depicts how the marrying out laws became a mechanism to prevent

³¹² *McIvor, Women Of The Fur Trade*.

³¹³ *Women Of The Fur Trade* at 91.

³¹⁴ *Indian Act*.

³¹⁵ *Women Of The Fur Trade* at 2 and 8. The Canadian Encyclopedia, "Fur Trade In Canada" (7 August 2024), online: <<https://www.thecanadianencyclopedia.ca/en/article/fur-trade>>. "Fur Trade" means "a vast commercial enterprise across the wild, forested expanse of what is now Canada. It was at its peak for nearly 250 years, from the early 17th to the mid-19th centuries. It was sustained primarily by the trapping of beavers to satisfy the European demand for felt hats. The intensely competitive trade opened the continent to exploration and settlement. It financed missionary work, established social, economic and colonial relationships between Europeans and Indigenous people, and played a formative role in the creation and development of Canada."

³¹⁶ *Women Of The Fur Trade* at 22.

³¹⁷ See "Indigenous Feminist Theatre Movement (IFTM)" and "Legal Pluralism & Indigenous Legal Orders (ILOs)" sections for explanations of how I relate these terms to my research.

³¹⁸ Table 1.

Indigenous female identity from being passed on from generation-to-generation. This mechanism impacted McIvor more recently in the legal system. Twenty-eight years after *Lovelace*, McIvor brought the government back to the UNHRC again claiming that further legislative amendments were required to the *Indian Act*. However, the timeline of *McIvor* is intertwined with a mountain of silence about sex-based inequality among the cultural group.³¹⁹ The IFTM is addressing this silence because Koncan's play indicates that marrying out lowers the value of being an Indigenous female by forcing Indigenous women to mask themselves in white identity. The play tells us that marriage and childbearing survival strategies are a response to the sex-based social hierarchy created by the *Indian Act*. McIvor's ability to advocate for herself in the legal system is restricted in correlation with the existence of sex-based discrimination.

Summary Of Cultural Commentary

In this section I outline the cultural commentary from Koncan's play that I analyze later in this chapter. Koncan's play publicizes the behaviour and social codes/cultural *norms*/unofficial laws that Indigenous women are developing in the theatre. Her play reveals how difficult it is for Indigenous women to raise their voices in *nomos* and narrative based on the negative impact of the *Indian Act* i.e. forcing them to mask their identities. McIvor, like Marie-Angelique and Eugenia, was left with little legal opportunity to address sex-based discrimination without bringing her claim to the international sphere. The play emphasizes the fact that the law forced Indigenous women to survive through marriage and childbearing tied to the marrying out construct.³²⁰ Marie-Angelique sees marriage as a key opportunity to survive although it requires hiding her Indigenous identity. The play exemplifies the early origins of how Indigenous women are made to use the *Indian Act* concept of marriage even though it goes against their own beliefs. Marie-Angelique and Eugenia are pressured

³¹⁹ *McIvor*.

³²⁰ See the "*Indian Act* Discrimination & Its Racist Foundational Policies" section for my explanation of assimilation and enfranchisement policies.

to emulate their friend Cecelia to assimilate into the British colonial order. Marie-Angelique's desire to marry is contrasted with Eugenia's desire to keep her own identity instead. The choices that the women must make around marriage and identity in the play relates to *McIvor's* inability to obtain sufficient domestic legal remedies that have been restricted from Indigenous women who have married out. The play contrasts the case in that *McIvor's* struggle was similar to the fur trade struggle with marrying out being presented as the main acceptable legal option for Indigenous women (even though it meant losing their Indigenous identities unfairly). Part of *McIvor's* UNHRC claim was that she had exhausted all domestic legal remedies. *McIvor* states that "any attempt to challenge the failure of the legislature to fully correct the sex discrimination [by legislative amendment] would have entailed an unreasonably prolonged process in court."³²¹

Koncan's narrative showcases that Indigenous women have been acquiring Indigenous feminist and cultural knowledge about the struggle to maintain Indigenous female identities. The play depicts, what *McIvor* proves, which is that Canada was reenforcing a sex-based social status hierarchy in the marrying out provisions that harms Indigenous women. Specifically, Koncan's narrative points out the emotional decision-making process that Indigenous women have historically been faced with. Eugenia states that marriage is "not fun. I don't intend to ever get married".³²² Indigenous women have had to decide who to marry based on who is in power and whether or not an Indigenous wife and mother is eligible for Indian Status. Koncan's characters speak about how Indigenous women are made to feel that their marriages to non-Indigenous men give them higher race-based value than marriages that would allow them to keep their own maternal Indigenous identities. Cecelia reminds Marie-Angelique and Eugenia that "You must submit to your husband fully. Every decision he makes, you must support."³²³ Regardless of whether or not an Indigenous

³²¹ *McIvor* at para 2.14.

³²² *Women Of The Fur Trade* at 23.

³²³ *Ibid.*

woman sees their own identity in the classification within the social hierarchy constructed by the *Indian Act* it was imposed on them through legitimate federal law. This law was inequitable and it was non-negotiable despite ongoing violation of the women's equality rights as evidenced by the positive outcome of *McIvor*. Koncan's characters dramatize the experiences of the women being governed by the *Indian Act* through their discussions about their decision-making in relation to the social hierarchy in the colonial *nomos*.

Koncan's play comments on the most striking impact of the *Indian Act* being an effective devaluing of Indigenous women's voices along with the inequality it imposed. Koncan's play depicts how Indigenous women are disempowered while encountering sex-based discrimination. The suppression of Indigenous women's voices originated through the enactment of the discriminatory provisions during the fur trade that were *still* being imposed on *McIvor*. Juxtaposing the timeline of *McIvor*'s struggle and the experiences of unfairness during the fur trade emphasizes that the law is taking an abnormally long time to begin to correct sex-based discrimination *because* Indigenous women were restricted from advocating for themselves about the problem. Koncan's play depicts how Indigenous women's trust for the government is broken in terms of having confidence in whether authority figures will value their voices. The length of time it has taken to begin to correct marrying out rules makes it difficult to unequivocally state that Indigenous women can trust the legal system to uphold their gender equality rights.

Koncan's play makes it obvious how long it takes to change the law when Indigenous women's voices are not supported. Instead of pinpointing an exact date within the fur trade Koncan purposely blends the olden days with modern times and creates a surreal quality to the play by jumping back and forth between the past and the future. She does not follow a traditional three act structure for theatre plays. Thirteen short acts detail the journeys of how marrying out rules affect women's identities over time. The structure emphasizes how Indigenous women wait for survival

opportunities whether that be marrying out, or later, the legal avenues that became available with the *Covenant*. Koncan looks at what Indigenous women's marrying out practice means for their ability to be represented as a part of their future descendants' lineages. It becomes horrifyingly clear that the marrying out issue was never fully addressed before *McIvor*. The play showcases that being an Indigenous woman has historically meant mirroring *Indian Act* exclusion despite any internal desire to protest. This is demonstrated by having to hide racial identity to actually abide by the law when getting married regardless of whether or not women agreed with the legal construct.

Koncan points out that the ability to challenge the *Indian Act* was next to impossible for Marie-Angelique and Eugenia as they would not have questioned authority publicly. Koncan is telling us that the fur trade *nomos* was not Indigenous feminist nor legal-pluralist-friendly. The *Indian Act* reflects a static view of Indigenous women's lower position in society based on sex. The women's own Indigenous feminism is not something that the *Indian Act* relies upon in the same way as marriage because marrying out allows for the prescribed masking of Indigenous *personae* with white masks. The women's cultural *norm* of valuing Indigenous female identity/*personae* is exercised in defiance of assimilationist law. The play describes the early remnants of the same restrictions on *McIvor* as being reflective of the original rules that are controlled by the white male drafters of the *Indian Act*. The difficulty of obtaining a legal remedy for Indigenous women is based on positive law representing *norms* that are finally challenged by *McIvor*.

Generating Cultural Commentary From Koncan's Play With CFBGI

In the next section, I move through my CFBGI into the above key points arising from the commentary in Koncan's play. I start with Deleuze's philosophy before using the FTB theory.

Deleuze-Inspired Interpretation Applying The MOD

The answers to Deleuze's spatio-temporal dynamisms demonstrate how Koncan uses her characters to create a pressure and a movement towards a dramatization that occurs in the discovery

of concepts arising from the dialogue of the masked *personae*. The answer to the question of ‘what is this?’ in Koncan’s narrative is stated by Marie-Angelique that “[w]e are the [w]omen of the [f]ur [t]rade”.³²⁴ More specifically, Eugenia represents a full “Indian Woman” (Ojibwe) mask and Marie-Angelique represents a mixed-race “Half Indian Woman” (Métis) mask.³²⁵ The Indigenous masks are aesthetically darker than Cecelia’s because she represents the British “White Pregnant Woman” mask.³²⁶ The answers to the rest of Deleuze’s questions help to reveal what the *personae* are expressing underneath the women’s physical representations. The answer to the question of ‘who’ is that Cecelia is a friend of the Indigenous women, Eugenia is an Indigenous hunter/fur trapper who sustains herself in the forest, and Marie-Angelique desires a marriage to survive.³²⁷ The question of ‘how much?’ can relate to there being three women with varying levels of Indian Status (zero to one hundred percent).³²⁸ The ‘where?’ question is that the women are sitting in rocking chairs surrounded by portraits of the men who are involved in creating the laws and the wars that are controlling their lives.³²⁹ To answer the ‘when’ question, the women are within a surreal time space where they are communicating with the men from various eras despite the fact that the men are not present. The women “*rock back and forth*” to sleep and are able to jump into the future by taking a nap or writing a letter.³³⁰

The interactions among the characters’ masked *personae* indicate the differences in their personal jurisdictions and positions in the colonial social order. The Indigenous characters are members of the female sex, in a lower status based on quantum of Indigenous race, and in a devalued legal personhood for Indigenous women as compared to both white women and all men.

³²⁴ *Women Of The Fur Trade* at 12.

³²⁵ *Ibid* at 2. *Indian Act* at s 2(1). “**Indian** means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian; (*Indien*)” An Indian has “Indian Status”. However, this term would not be used to refer to Indigenous women who marry out.

³²⁶ *Women Of The Fur Trade* at 2 and 16.

³²⁷ *Ibid* at 18-23, 73.

³²⁸ *Supra* notes 325-326.

³²⁹ *Women Of The Fur Trade* at 3.

³³⁰ *Ibid* at 3-4, 55 and 86-88. Letters are sent via ‘FedEx’ and this company did not exist in the fur trade. Riel and Scott portraits come to life.

Eugenia's *persona* underneath her "Indian Woman" mask indicates that she is a fur hunter/trapper who can support herself through a traditional lifestyle.³³¹ Marie-Angelique's *persona* underneath her "Half Indian Woman" mask is a woman who values her Indigenous heritage although she is forced to choose marriage or starvation since she cannot hunt and trap as well as Eugenia. Marie-Angelique states that "I'm not like you Eugenia. I can't just leave here whenever I want. I can't trap or hunt or take care of myself. If I get married. I'll be protected... and maybe then I can protect others".³³² Cecelia's *persona* beneath her "Pregnant White Woman" mask is a friend to Indigenous women rather than a social construct that the Indigenous women are forced to emulate by the *Indian Act*.³³³ The Indigenous masks in the play represent the women who are governed by the marrying out laws in their earliest renditions. These masks indicate racial representation right away and the audience can see that the women are not all the same as they interact together.

Koncan uses the theatre to comment on how the characters are able to voice Indigenous feminist thoughts through their conduit onto a public stage through a fictional plane (the play). Koncan uses this play to comment on the mainstream fur trade *nomos* that governs Indigenous women's relationships with white settlers based on the social hierarchy created by the law. Similarly to McIvor, Marie-Angelique and Eugenia are not able to fully represent or express themselves by dramatizing their Indigenous *personae* through their Indigenous masks. At the tea party, the Indigenous women's choices about marriage and identity are revealed but they are still pressured to choose to marry out of their race to survive even though they have spoken about the issue. Marie-Angelique states that "I am like the Scarlett O'Hara of the prairies" suggesting that, like the *Gone With the Wind* heroine, she must either marry a man or struggle and work.³³⁴ By showcasing Marie-

³³¹ *Women Of The Fur Trade* at 23.

³³² *Ibid.*

³³³ *Supra* notes 326-327.

³³⁴ *Women Of The Fur Trade* at 22. Wikipedia, "Gone With The Wind (film)" (7 August 2024), online:<[https://en.wikipedia.org/wiki/Gone_with_the_Wind_\(film\)](https://en.wikipedia.org/wiki/Gone_with_the_Wind_(film))>.

Angelique's marriage survival strategy Koncan is commenting on the fur trade *nomos* as being the foundation to the unequal marrying out laws that have been impacting Indigenous women. Marie-Angelique is being pressured to make choices that conform to *Indian Act* standards for Indigenous women that lower her position in relation to men and non-Indigenous people. Any feelings and opinions expressed by the women are definitely not meeting the equality standards from modern legal jurisprudence. *McIvor* stands for the right of Indigenous women not to lose Indian Status due to marriage even though the government was imposing a similar marrying out construct on her.

Koncan's literature coupled with *McIvor*'s success is part of paving the way for Indigenous women to be more comfortable voicing legal concerns based on having precedent to apply to their own unique situations. Applying Felt Theory, Koncan's play leads to the expression of Indigenous women's experiences and feelings about the *Indian Act*.³³⁵ Koncan's play builds dialogue in today's *nomos* that deals with what ought to be considered legal based on the need to overcome the oppression of Indigenous women during the fur trade. My Indigenous feminist lens requires that I note that Marie-Angelique ought not to have to choose to marry outside of her culture. Further, that if Marie-Angelique does marry out that she ought not to lose her Indian Status that connects her to her cultural belonging. In fact, *McIvor* stands for the right of both Eugenia and Marie-Angelique to maintain Indian Status regardless of marriage yet this is clearly not an option presented to the women in the play. Koncan's characters emphasize anecdotally what the case does not in the sense that Eugenia and Marie-Angelique do not have protection under the *Covenant* yet. Koncan dramatizes the Indigenous women's concerns about their lowered position in society through their gossip. The women have valid concerns about survival that are unique to Indigenous women such as

³³⁵ Million.

Marie-Angelique feeling pressure to marry like Scarlett O'Hara.³³⁶ By depicting the women of the fur trade in her play, Koncan publicizes the IFTM concerns that rarely make it into legal debates.

Koncan grapples with the concept of sex-based discrimination that is now considered illegal in a way that was unfathomable to the women of the fur trade. *McIvor* was rendered four years earlier than Koncan's play and yet the sentiment of 'feeling the need to still belong to Indigenous identity and maternal lineages' is prominent in the case. The play and case are public in a way that was not possible during the fur trade because the women would have been discouraged from publishing their thoughts as a public script or case precedent. Koncan's play points out that feelings about maintaining female identity were contrary to positive federal *norms* as they are not spoken among the men. Koncan's play sits within a modern context where *McIvor* allows for Indigenous feminists to be able to assert that Canadian law aligns with the *Covenant*. Therefore, the public expression of the desire for 'cultural and linguistic belonging' in article 27 is available to Indigenous women today although this expression was definitely restricted from Marie-Angelique and Eugenia.³³⁷ Koncan is showcasing that the "Indian Woman" and "Half Indian Woman" have not been able to express their true thoughts about their relationship to men as the law demanded that they rely on them to be considered more worthy people in society. *McIvor* focuses on changing the law whereas Koncan uses opposites, such as the lack of gender equality experienced by Marie-Angelique and Eugenia, to make it evident that Indigenous women of the fur trade are denied legal equality.

The conceptual *personae* moving through Koncan's female characters clearly indicates that their social dynamics are largely created by authoritative federal law. Canada discriminated against *McIvor* by creating and implementing a "sex-based hierarchy of the status registration regime" in the *Indian Act*.³³⁸ *McIvor* proved that this hierarchy was still harming Indigenous women's identities when

³³⁶ *Supra* note 334.

³³⁷ *McIvor* citing *Covenant*.

³³⁸ *McIvor* at para 3.2.

she took out her claim.³³⁹ It is the *Indian Act* hierarchy that is being mirrored by Koncan's narrative. Since Koncan's Indigenous women characters are forced into a marrying out dilemma they are moved into alignment with the *Indian Act* as a colonial assimilation tool via the hierarchy. The characters' *personae* specify that they are all being governed differently by the laws in the fur trade *nomos* based on their experiences and feelings about racial and gender discrepancies that compel their choices about marriage and childbearing. The various levels of racial identity are important markers of value. It becomes clear that if the women are not Cecelia then they must aspire to become something more like her because she is at the top of the hierarchy for women that the government has prescribed. This feat will ensure that Eugenia and Marie-Angelique will no longer be seen to be in a lower position if they assimilate, enfranchise, and marry out to replace their Indigenous blood quantum with white blood quantum. The consequence for not pursuing the erasure of the Indigenous maternal lineages could result in, as Marie-Angelique fears, starvation or, as Riel finds out, death if they are involved in rebellion against the British.³⁴⁰ There is a danger to the identification of Indian Status depicted that is true of history. It becomes clear that the Indigenous, or partially Indigenous, *personae* do not agree with the social hierarchy. However, a white mask, like Cecelia's, might become available to them if they marry out of their race. McIvor challenges this dilemma by virtue of challenging the sex-based discrimination hierarchy.

Indigenous personae flowing through Eugenia and Marie-Angelique's masks indicate that certain positive identities are available underneath their masked representations that ought not to be denoted with a lowered *Indian Act*-defined position. Unfortunately, the expression that surfaces from their Indigenous masked *personae* is repressed, subjugated, only available in a private sphere, and the legal options available to Indigenous women today are absent. Koncan's narrative tells us that

³³⁹ *Ibid.*

³⁴⁰ *Supra* notes 331-332. *Women Of The Fur Trade* at 79-81. Koncan refers to the women learning of Riel's execution as a rebel against the British colony.

Indigenous women during the fur trade lack both sex-based equality rights as well as the public expression of their ideas about their legal problems. The underlying premise behind the rules governing them was to prevent the Indigenous maternal ancestry from being passed on to future generations.³⁴¹ Marie-Angelique and Eugenia are expected to marry out or remain stigmatized as Indigenous women. The oppressive *Indian Act* laws that they are being subjected to are exactly the racial and gender dichotomies that *McIvor* overcomes to benefit all Indigenous women. The choice of marrying out that Marie-Angelique and Eugenia are presented with is no longer encouraged as a primary mode of survival.

The mirroring of the *Indian Act* hierarchy system in the play leads me to believe that Koncan would agree that the discrimination outlined by *McIvor* is an unequal legal construct that suppresses the voices of all Indigenous women represented by Marie-Angelique and Eugenia. Koncan's play stands for this notion because the *personae* moving through these masks both crave rebellion and yet also stay silent about a hidden repulsion for being subjected to marrying out laws. Koncan's characters speak about not being able to fully express/dramatize themselves except to utilize the discriminatory marrying out construct that has the opposite effect. On the last two pages of the play, the women wait within a metaphorical nap to get any sort of actual legal sex-based equality. Koncan writes that "*The women sleep for one hundred years, holding their dolls in their arms*".³⁴² Equality is a distant dream because inequality was embedded within unfair marriage dichotomies that took over a century to begin to resolve in the law. Marie-Angelique anticipates a brighter future is possible if the women carry the male dolls through the nap. She states that "I am the founder of Manitoba... [T]he time will come when the people of Canada will see and acknowledge it."³⁴³ Marie-Angelique knows that either way she is native to the land or she may literally become the new founders through

³⁴¹ See "*Indian Act* Discrimination, Assimilation & Enfranchisement Policies" section.

³⁴² *Women Of The Fur Trade* at 88.

³⁴³ *Ibid* at 87.

procreation. Koncan's Indigenous female characters are confident that one day they will genetically live on through white lineages, as the men's children, regardless of actual Indian Status recognition. The survival strategies that the women express drives home the harmful impact of the *Indian Act* because the solution of a long nap does not equate to modern standards of sex-based equality.

Right before the nap, in Act 11, Koncan writes that “*A full moon- a red moon- appears low in the sky. The women howl at it like dogs.*”³⁴⁴ The unusual action shows the women's internal feelings about how it is a struggle to voice female opinions in a male-dominated world. Koncan employs humour about how men traditionally bark at one another, like dogs, in politics and war; whereas, the women are normally depicted domestically at home drinking tea and gossiping. The women play out their desire to metaphorically become the dogs, representing the men from the portraits, through their strategies of marriage and childbearing. The women's roleplaying suggests that, during the fur trade, they must work *through* the men/dogs to be heard on political and ethical matters. Cecelia states, “We are just women. Politics is none of our business”. Cecelia's remark upsets Marie-Angelique who craves more say in the politics affecting her when she states that “It is our business. These are our lives”.³⁴⁵ The scene calls up the discrepancy between Indigenous women mattering only if they are attached to men (fur trade *nomos Indian Act*) versus what ought to be a recognition of their equal gender and racial worth as a starting point (post-*McIvor Indian Act*). The play demonstrates that the Indigenous women foresaw what Cover's theory accounts for in the sense of generating unofficial laws that can lead to normative legal change. Koncan's play voices Indigenous women's own vision of how their self-worth as wives and mothers ought to align with the ability to be equal to men when they voice their opinions by howling like the dogs/men. *McIvor*'s claim overlaps with Koncan's vision of Indigenous women's high self-worth being reflected in the law.

³⁴⁴ *Ibid* at 81.

³⁴⁵ *Ibid* at 57.

Koncan's literary vision for Indigenous female equality also surfaces within McIvor's legal argument. Due to *McIvor*, the mainstream *nomos* shifts to include the Indigenous women's gender equality vision. In turn, the inclusion makes positive law more reflective of the desire to keep Indigenous status and to marry and procreate without losing identity. Post-*McIvor* law is an encouraging contrast to the suppression of Indigenous women's voices that is depicted in Koncan's play. Cover might call the more recent normative-law-creation-phenomenon miraculous because the law is otherwise violent in its imposition of power over those that it governs.³⁴⁶ The phenomenon results in Indigenous women being able to overcome torture inflicted by law's violent imposition of power over the subject. Indigenous women are starting to see their own value somewhat reflected in the law via statutory amendments. The alternative to using Indigenous women's visions to contrast the law's discrimination would be that Indigenous women would continue to be abiding by laws that harm them without any opportunity to protest the problem. The lack of public protest among Marie-Angelique and Eugenia is an eerie aspect of the play's plot because it indicates that their voices are discounted in relation to the laws that are solely used to govern their particular culture.

To challenge the *Indian Act*'s social hierarchy Koncan uses the MOD, rather than a legal claim, to present what the horrible position is that Indigenous women are historically placed in by the *Indian Act*. Indigenous women express how they are forced to treat their marriages as a simultaneous choice to assimilate and enfranchise themselves against their will. The depiction of Indigenous women being devalued in the fur trade, through masking, builds empathy for them knowing that today this inequality has been rendered unlawful. *McIvor* also takes on a plea to the emotional aspect of the registration provisions' effect on Indigenous women's cultural identity and mental health in her claim by stating that the hierarchy resulted in her family "suffer[ing] a form of

³⁴⁶ Cover, "Violence and the Word". He stands for legal interpretation being a credible way that judges make valid and enforceable decisions so that subjects do have to obey the law. Since Cover is a legal pluralist his theory encompasses the view that cultural narratives influence judge's decisions to better include cultural visions of what law ought to be to include otherwise disadvantaged populations that the law has ignored (such as women or racialized groups). I relate his theory to Indigenous women who are governed by the *Indian Act* and IFTM playwrights creating ILOs.

social and cultural exclusion”.³⁴⁷ McIvor elaborates on a “sense of loss” and a social stigma attached to being restricted from full status because women are assigned to a “sub-class” assumed to be “inferior to and ‘less Indian’ than their male counterparts. This extended to her children, to whom she was unable to transmit status, which made her feel inferior. She was unable to access the tangible benefits of status... available under the 1985 Act for her children when they were growing up.”³⁴⁸ The inferiority that McIvor describes is reflected by Koncan’s example of the solution of the nap that Indigenous women must take before any legal changes will uphold their gender equality.³⁴⁹ The nap surely is not a realistic cure for systemic discrimination. *McIvor* was a necessary struggle for Indigenous women to avoid the fates of Marie-Angelique and Eugenia who are never found to be equal to men in their lifetimes. The law is only now beginning to bridge Indigenous women’s cultural visions for equality with integration of the *Covenant* into Canadian rules thanks to *McIvor*.

In the play, a letter-writing campaign that is often used to advocate for civil and political rights is used for luring men into a potential marriage. Marie-Angelique reminds the others of her plan to live on through a marriage to a ‘partially’ Indigenous man: “I must use all of my skills and all of my gumption to survive!... it has always been a childhood dream to marry a Métis man and keep our culture alive.”³⁵⁰ The women flip the script on the men by taking on a more masculine and dominant manner of approaching the bachelors. As the women strategize about their survival, they objectify the men from their pictures on the wall noting how sexual and good-looking they are. Scott is described as “dreamy”, “youthful”, “silky, smooth, pale alabaster skin... a glazed ham, and luscious long legs...”³⁵¹ Koncan is demonstrating that Indigenous women have found a need to pursue the men who are being used to overpower their own identities. The humour that Koncan’s

³⁴⁷ *McIvor* at para 3.2.

³⁴⁸ *McIvor* at para 3.2-3.3.

³⁴⁹ *Supra* note 340.

³⁵⁰ *Supra* note 334.

³⁵¹ *Women Of The Fur Trade* at 9.

objectification of the men creates is bittersweet because it also points out that the women are actually clowning with the treatment that they have been subjected to from the men. Beneath her mask, however, Marie-Angelique is expressing that she does not actually want to assimilate through marriage because she is pursuing an Indigenous man. Thus, the MOD tells us that Marie-Angelique does not want to take part in the hierarchy that the law is prescribing. McIvor asserts Marie-Angelique's sentiment in the courts later.

To the women in the narrative, the men become dolls that are symbolic, miniature versions of the men in the portraits. The men are being carried by the women of the fur trade. The women literally hold the dolls in their arms as they wait for their futures despite not having a full set of rights as compared to the men. Koncan's humour around the inversion of the objectification of women, by turning it on the men, is a funny opposite that she creates supplemented by the doll metaphor. Koncan suggests that the women *become* the men in the portraits by literally carrying them as time passes. By childbearing, the women will live well beyond the fur trade regardless of whether the legal constructs imposed on them are fair to their race or gender.³⁵² The women envision that achieving equality requires forming sexual relationships with non-Indigenous men, or maternal relationships with half-Indigenous children that they bear. It is the employing of this strategy that will allow them to survive despite the requirement of this dynamic being based in assimilation and enfranchisement. Eugenia quotes Riel: "[d]eeds are not accomplished in a few days, or in a few hours./ A century is only a spoke in the wheel of everlasting time... In a little while it will be over. We may fail. But the rights/ for which we contend will not die."³⁵³ In the above metaphor, Koncan dramatizes the Indigenous masked *personae* and differentiates the Indigenous women carrying the male dolls from the men through their dialogue. The women demonstrate what they are doing with

³⁵² *Supra* note 342.

³⁵³ *Women Of The Fur Trade* at 87.

their perceived inferior status by using their marriage and childbearing strategies to survive. *McIvor* does not deal with the strategic aspect of survival strategies in response to the *Indian Act* pointedly. *McIvor*'s focus is less subjective, non-literary, and is more narrow-bent on changing the rules.

Koncan is writing in a context where the IFTM and the legal system have developed since the fur trade and her point that Indigenous women deserve equality is clearly made. By building in Indigenous women's cultural views, Koncan's narrative notes that the undesirable lower status of Indigenous women is unfairly created by law. Koncan emphasizes that Indigenous women are made to feel that their position is worthless; hence, what they are overcoming is inferiority imposed by the law. Marie-Angelique states "I don't want to be forgotten. I still want to do something important".³⁵⁴ The vision of Indigenous women's equality, rather than inferiority, was adopted within the law after *McIvor* asserted it in the courts. *McIvor* blames Canada for her inferior position that comes with her unwanted loss of Indian Status. Marie-Angelique similarly states that "Canada is intent on destroying our way of life".³⁵⁵ In retrospect, Koncan depicts how inequality prevailed from the origins of the fur trade *nomos*. Since legal claims are no longer restricted by the *Indian Act* rights do not have to be metaphorical. Koncan stresses that the devaluing of Indigenous women compared to men is unlawful. Her vision aligns with *McIvor*'s legal outcome. Legal rights for Indigenous women are becoming real by applying pressure on the colonial *nomos* to align with Indigenous women's cultural *norms* and ILOs that are more visible due to Koncan's use of the MOD.

*Grosz-Inspired FTB Interpretation*³⁵⁶

I now turn to an application of my Grosz-inspired questions from Table 1 to the play. I am revealing what Koncan's Indigenous feminist commentary is that relates to FTB and how the commentary compares to *McIvor*.

³⁵⁴ *Ibid* at 85.

³⁵⁵ *Ibid* at 22.

³⁵⁶ Grosz. See "Adapting Feminist Theory Of The Body (FTB) Into My Method" section on how my research incorporates Grosz's FTB.

Koncan's use of her play is FTB-friendly because she reveals the cultural *norms* that reflect ILOs that are more respectful of Indigenous women than the *Indian Act* is. The answers to the FTB questions reveal how Koncan articulates Indigenous feminist cultural *norms* into her narrative in a way that allows me to contextualize *McIvor's* legal struggle within the IFTM. FTB requires that I examine how Indigenous women are utilizing their unique feminine *force* to move their internal/invisible thoughts into physical/external expression to challenge male-based ideas that dominate the *nomos*. Koncan utilizes her characters masked *personae* to represent and express the ideas of the early female victims of the marrying out rules. They are waiting for redemption of their hidden feelings about the value of their identity that is surfacing in our modern times.

Koncan parallels Indigenous feminists' survival strategies in the fur trade *nomos* with their legal strategies in today's Canadian *nomos*. Indigenous women are unable to speak about the glaring lack of options available to them without colouring outside of the lines in terms of maintaining the sex-based social hierarchy that the *Indian Act* imposes on them. *McIvor's* legal advocacy was barred from the characters depicted in Koncan's play because they note that they must wait for this sort of ability. Marie-Angelique and Eugenia are only able to express their concerns with the marrying out construct to their Caucasian feminist ally, Cecelia, in private. However, they are not supported by Cecelia who feels that the Indigenous women should abide by the *Indian Act* when she states that

We're all just people. Who cares about where we come from or what colour our skin is? I don't see myself as white, just like I don't see you as brownish or you as fairly pale but with a summer tan. Besides, your father is white... So, this is part of your culture, too. You benefit from the same things I benefit from. You purposely choose to separate yourself and draw attention to yourself, but you could choose otherwise. You could choose safety; you could be like me. Stay quiet, stay out of the way, and this will all just blow over. You can get married, and have children...³⁵⁷

Cecelia encourages the perpetuation of *Indian Act* sex-based hierarchy that does not suit Marie-Angelique and Eugenia's Indigenous value system. The women's resorting to marrying out is a way

³⁵⁷ *Women Of The Fur Trade* at 58-59.

for Indigenous women to pretend not to be the victims of the *Indian Act* rules. The women are clearly not provided the courtesy of being given a more empowering public opportunity to voice their concerns about losing Indian Status. Koncan's play points out that it took over a century for Indigenous women to see legal options as a safe avenue to voice their opinions.

Koncan's narrative places value on what Indigenous women find ethical and political by showcasing what their feelings are in relation to their fictional journeys with grappling with the *Indian Act*'s social hierarchy. The women are depicted ripping the male doll heads off indicating their violent resentment of men.³⁵⁸ The women's violent response to the marrying out construct indicates that Indigenous women cannot articulate how angry they feel about being silenced on their struggles with being seen as legally inferior to men. Koncan suggests that it was otherwise inappropriate to express outrageous concerns when being victimizing by law. During the fur trade the law would not have entertained a claim regarding Indigenous gender discrimination.³⁵⁹ Even in *McIvor*, the odds were already stacked against her equality in terms of the lack of favourable jurisprudence on gender equality (only a few cases since the fur trade). It is difficult to imagine that there would not be some lack of trust among the Indigenous women who, until recently, could not see themselves reflected in the Indian Status laws that were lessening their claims to Indigenous identity. The historical devaluing of Indigenous women leads Koncan to reveal taboo feelings (anger, inferiority, resentment) in her narrative about being discriminated against. Koncan alludes to a time before the IFTM was available to support her Indigenous feminist commentary.³⁶⁰

Koncan comments on how the Indigenous women's voices and bodies are political in the sense that they must use them to take sides with their marriages and childbearing to either support a rebellion against the colony or to assimilate. The women's internalized thoughts are affected by their

³⁵⁸ *Ibid* at 61.

³⁵⁹ *Supra* notes 17-18.

³⁶⁰ *Women Of The Fur Trade*. See book cover back "This lively historical satire of survival and cultural inheritance shifts perspectives from the male gaze onto women's power in the past and present through the lens of the rapidly changing world of the Canadian fur trade." Million.

experiences of what is demanded of their bodies tied to the sex-based social hierarchy. Indigenous women are depicted needing marriage and childbearing to be considered of higher value in the colonial *nomos*. Koncan's characters mirror power divides created by the *Indian Act* that are anti-feminist. A white, pregnant woman, Cecelia represents the primary model of what women of the fur trade strive to be as she is the same white race as her husband and child. The partially white character, Marie-Angelique, is in the next best position. Her potential marriage to a white man and procreation of white children prevents Métis rebellion. The lowest position is represented by Eugenia who does not subscribe to marriage as it interferes with her identity and independence as a fur trapper. Koncan alludes to Indigenous women trading in more than furs to survive because the law also requires a trading in of Indigenous female bodies and identity. Eugenia states "Weird. Where I come from, women were always responsible for trading. You can't trust men with important jobs. Best just send them off to like fishing or a war, somewhere they won't be in the way, and bring them back when you need them..."³⁶¹ Eugenia trades hats made from animal fur and Koncan is comparing this activity with marriage becoming a deal to survive racist and sexist practices. Women's identities were being traded like animal pelts as valuable objects rather than as invaluable Indigenous female human lives.

Koncan's play critiques the notion that the fur trade *nomos* is dominated with male-centred thought by alluding to the marrying out laws that are bias towards the female sex. *McIvor* pinpoints what sex-based discrimination is; whereas, Koncan focuses on outlining how Indigenous female thoughts and actions are shaped in response to how they are treated by normative law that they did not write. The dichotomy the women find themselves in, of deciding on letting go of their own race to survive in a marriage, is generative of negative treatment based on race and gender in the *nomos*. This treatment directly correlates with the enactment of registration provisions and how it made

³⁶¹ *Ibid* at 20.

women feel undervalued within the identity politics that went into their journeys toward becoming wives and mothers. The play emphasizes that the marrying out decision causes women to harbour resentment against men although the play is “answerable” to feminists. There is a strong sentiment that Indigenous women do value themselves and it is the laws that lessen their value unfairly. Marie-Angelique states that “I will do whatever it takes to protect my people” while pursuing a Métis marriage over a white marriage.³⁶² The latter sentiment emphasizes that the denoting of Indian Status was based on an abuse of power contrary to Indigenous women’s *Covenant* rights.

Koncan’s narrative reveals how the *Indian Act* hierarchy is an anti-feminist attempt to make Indigenous women powerless without men. Marie-Angelique equates marriage to a man with protection as a woman.³⁶³ The purpose of Koncan’s mirroring of the colonial social hierarchy *norms* is to provoke what Indigenous feminism is and what the law ought to be based on the struggle with the female ‘helplessness’ associated with the marrying out laws. Despite the subjugation clearly being experienced by the women in regards to men, and Indigenous women in regards to the white race, all of the Indigenous women in the play foresee a future that is bright based on the survival strategies that they have developed. Eugenia finds that sustenance through the fur trade itself is important. Marie-Angelique finds using her body to live on through a potential marriage and children is the best course of action.

Marie-Angelique and Cecelia are depicted as both needing to marry men. However, Koncan reconceptualizes what Indigenous female thought is by pointing out that there is a contrast between the motivations for why these two characters marry. Marie-Angelique is encouraged to marry to hide that she is considered in a lower position as an Indigenous woman. Cecelia’s motivation as a white woman is to be protected by a husband without the racial component. Koncan literally writes down

³⁶² *Ibid* at 22.

³⁶³ *Supra* note 332.

female experiences that conflict with *norms* of the white male drafters of the *Indian Act*. Marie-Angelique and Eugenia struggle with wrapping their minds around the *Indian Act norms* because their Indigenous feminist cultural *norms* are not valued by the law. The women have different reasons for pursuing marriage and childbearing than the *Indian Act's* foundations of assimilation and enfranchisement. Marie-Angelique is pursuing Riel as the alternative to a white marriage because it would allow her to side with rebellion and to keep her identity. Riel's death precludes that possibility and she must, like Cecelia, find a 'safer'/white, option to marry or else marry an Indigenous man. However, in all these circumstances Marie-Angelique's personal value is being placed on a ladder for her to climb based on the Indigenous race being inferior to the white race and women being lesser to men. Marie-Angelique is aware of these dichotomies beginning to form and it becomes clear that her survival is at stake as an Indigenous woman regardless of whether her internal or external thoughts are contrary to the positive law that is against her. *McIvor* argues that this recycled historical feeling of being inferior to men is why the law needs to change. *McIvor's* success means that she does not have to maintain an archaic fate where she is powerless without men.

The experiences of Eugenia and Marie-Angelique are allusions to how Indigenous women's legitimate feelings in response to inequality became unfairly criminalized as rebellious sentiments against the power dynamic created by the *Indian Act* hierarchy. The past and the future come together in Koncan's feminist playwrighting to tell us that Indigenous women are in conflict with the law despite any obedience or conformity that has developed. Obedience is actually manifesting as being reflective of *Indian Act* oppression against Indigenous women. Similarly to *Lovelace*, it is difficult to reconcile an argument that the Crown valued Indigenous women's voices when their ability to seek a legal remedy for sex-based discrimination was being restricted.³⁶⁴ The assimilation and enfranchisement that resulted from observance with laws was something that Indigenous

³⁶⁴ *Supra* notes 17-18.

women could not challenge but still had to use to survive. Both the play and the case indicate that Indigenous women's opinions were often silenced to serve the colonial order. It is apparent that in the fur trade Indigenous women never get to publicly relieve themselves of any opinions about the *Indian Act* without looking like a rebel. The need for the women's tea party without any men present is reflective of their feminist outlet for speaking about their position in society and their relationship to men more secretly. Koncan reminds us that speaking up in the public sphere was a political act that was being suppressed during the fur trade in a way that we find difficult to imagine today. The concerns about keeping Indigenous maternal identity only began to be addressed through statutory amendment over one thousand years after-the-fact in *McIvor*.

Koncan's play includes an understanding of Indigenous communities and she is committed to looking at conflict resolution in terms of both racial and gender divides acting as obstacles to voicing Indigenous women's feminist ideas *i.e.* Indigenous/White, Male/Female, Indigenous Female/White Female and Indigenous Female/White Male dichotomies. The female characters are resolving racial conflict amongst each other within a domestic setting and finding ways to come together through gossip centered around the pursuit of men.³⁶⁵ However, there is an internal desire in the Indigenous female characters to defy the new impositions of the colonial fur trade laws that are developing. The Indigenous women discuss choosing to be fur traders or wives depending on how available they are willing to make themselves to building non-Indigenous families as the main solution to bridging the dichotomies. This is largely because war and treaty-making is not considered women's business in the play. Koncan's playwriting approach challenges *norms* within the real racial and gender divisions that are similar to the dichotomies noted above. Koncan emphasizes that the choices that are being made about marrying out are at varying levels *i.e.* being full white, mixed white and Indigenous and maintaining Indigeneity and these are constructs reflecting real *Indian Act*

³⁶⁵ Program at 4. *Women Of The Fur Trade* at 73 and 83-84.

options that Indigenous women are faced with. However, *McIvor*'s doctrinal approach to the same legal problem in the courts emphasizes that Indigenous women ought not to be put in this position at all because it does not align with Canadian laws integrating the *Covenant* rules domestically.

Koncan's literature emphasizes that Indigenous women have struggled with determining that they in fact do have gender equality today. More importantly, comparing the case to the play indicates that Indigenous women struggle with not being able to bridge the above dichotomies without using the *Indian Act* hierarchy that was imposed to destroy their matriarchal identities.

The desire of *McIvor* to maintain her Indigenous mask despite the law's prescription to discard it makes more sense after reading Koncan's play. The *Indian Act* hierarchy system is not just an imposition of inferiority it is also a false construct that has been debunked by *McIvor*. The colonial-patriarchal-versus-Indigenous-matriarchal divide is ever present. Gendered power dynamics play out in the meanings, perceptions, and practices of law as it affects Indigenous women deciding to marry the men in the portraits on the walls. The inner conflict that develops among the women around why they need to pursue marriages is about more than just romance. Indigenous women's decision to marry is also based on whether they are able to support themselves as Indigenous women. Any Indigenous feminist force has to rise above the government's prescription for the cultural group to assimilate. Therefore, the decision to marry out is also about leaving maternal knowledge behind in favour of another race that is simultaneously using law to oppress Indigenous women. Eugenia writes to her mother that "I am losing our language and can only communicate in English now."³⁶⁶ The play helps the reader to empathize with the Indigenous women because it is not as easy to advocate for themselves as simply speaking up about discrimination. The law was completely against Indigenous women continuing to represent or express themselves through their own Indigenous masks and *personae*. The "Pregnant White Woman" mask hovers nearby Marie-

³⁶⁶ *Women Of The Fur Trade* at 78.

Angelique and Eugenia throughout the entire play. Cecelia's mask is a constant reminder that the Indigenous masked *personae* is not as valuable because the government prefers their masquerading in marital identity instead. Koncan's play comments on the impracticality of this option for Indigenous women who are differentiating themselves from Cecelia by noting Indigenous ancestry. McIvor similarly advocates for the ability to wear her Indigenous mask.

The play values Indigenous feminism despite the confusion created by the devaluing of Indigenous women's status. The women overcome the obstacle of racism and band together while the men are fighting in the Métis rebellion. Marie-Angelique states "we all deserve to live peacefully on this land... there is work to be done. We must find our own way out... no man will save us."³⁶⁷ However, Marie-Angelique begins to devalue her maternal lineage indicating a possible internalizing of the colonial oppression. Within Canada, women's marital identity is given more importance than matriarchal identity and belonging to an Indigenous group. The pursuit of marriage for survival becomes so compelling that Marie-Angelique's mother's handmade necklace becomes something that can be sold for survival. The women discuss the heirloom that represents Marie-Angelique's mother's connection to her daughter: "EUGENIA: [The necklace is] too valuable... MARIE-ANGELIQUE: ... So take it. It's valuable. And it doesn't mean anything to me anymore. For soon I shall be on my way to becoming Mrs. Louis Riell"³⁶⁸ The mother's value is overridden by Marie-Angelique's marriageability as she is trading her heirloom to meet her future husband. In the end, part of her journey becomes letter-writing to her long-lost mother and a revaluing takes place once the marriage-plan fails.³⁶⁹ Koncan showcases the confusion that Indigenous women go through because the *Indian Act* targets their self-esteem in a coercive manner. McIvor makes a similar point by indicating that Indian Status is a dignity-conferring benefit affecting cultural identity.³⁷⁰ McIvor does

³⁶⁷ *Ibid* at 73. The women agree to be friends rather than enemies because women need to save themselves.

³⁶⁸ *Ibid* at 27.

³⁶⁹ *Ibid* at 78-79.

³⁷⁰ *McIvor* at para 2.4.

not want marrying out rules to affect her Indian Status because the loss of her identity is inequitable and unpleasurable.

Koncan is also commenting on the need for legal pluralism in conversations about marrying out. Koncan depicts how Canada left Indigenous women out of opportunities to create *Indian Act* laws and this is part of why the statute does not reflect inclusion of their own feminist cultural *norms*. In reality, Indigenous women's vision of having a heightened status was finally recognized by differentiating marrying out rules with *Covenant* equality rules in *McIvor*. Koncan is addressing the above discrepancy by indicating the difference between the women's conversations promoting conflict resolution and the men's conversations promoting war and racism. By the climax of the play, the men read the women's letters and Riel responds to them before he dies. The racial divide is depicted both among the women, who overcome it, as well as among the men, who never overcome being 'at war'. Marie-Angelique's vision of marrying Riel is part of the cultural vision to rebel against the powers that are valuing the white race over the Indigenous race. The women write to their mothers stating that "[Riel] is fighting for us. So that mothers will never again have to give up their children. So that we may all grow up on healthy land with healthy spirits."³⁷¹ However, Koncan is making it clear that the women did not create the conflict that the men are depicting. The feminism that they employ at their tea party is not reflected in the men's circle. The women's letters are bringing Scott and Riel together to discuss love interests yet their opposing sides in the Métis rebellion causes them to fight. Riel argues that "We're not friends... we're just people who hang out sometimes."³⁷² Riel writes to the women expressing more affection, as a prophet might, and thanks them for their fan mail. He assures the women that he will continue to fight for them as their leader.³⁷³ The men are the writers of the law and Koncan's play, thus, indicates that the men are

³⁷¹ *Women Of The Fur Trade* at 79.

³⁷² *Ibid* at 53.

³⁷³ *Ibid* at 76-77.

perpetuating the conflict that the Indigenous women are subject to. Koncan indicates that Indigenous feminism promotes peace rather than war. In the courts, McIvor's success indicates that Indigenous women are capable of creating more peaceful relations among Indigenous people rather than harbouring resentment and rebellion. However, this reality was not yet possible for Marie-Angelique and Eugenia.

Women's roles in conflict resolution are emphasized by Koncan and this is part of how she comments on Indigenous women's voices being political. Koncan's literary world contains a comparison of the male role being treaty-making as compared to the women's role as domestic peace-making. The ability to marry and procreate is depicted as a coerced manner that allows the women to live peacefully with the white race; whereas, the men are depicted as going to war to fight for territory. The women are not given a substantial choice in the matter as the decisions to remain in conflict with the colony are male decisions although they affect the outcome of women's choices about their bodies. The women's lowered position compels a choice to take a side in the racial conflict as a white/Indigenous man's wife. Marie-Angelique lives vicariously through Riel's rebellion by stating that his efforts will help her and future generations because "Our land will be kept healthy and safe. The water will always be fresh, and the trees will grow tall and strong... in th[e] new world all the men will want to trade with you, and you will be rich."³⁷⁴ The language envisioned by Marie-Angelique's dream of marrying Riel mirrors treaty-making language. Koncan reveals a cultural *norm* that the women's voices are political forces as their "I do" affects relationships between the races that either promote or defy the colonial order.³⁷⁵

³⁷⁴ *Ibid* at 42.

³⁷⁵ Canada's National History Society, *Treaties And The Treaty Relationship* (Winnipeg, MB: Canada's History Society, 2018) at 13, online: <<https://www.canadahistory.ca/CNHS/media/CNHS/cnhs-media/PDFs%20and%20Powerpoints/EN/CHDig2018Treaties.pdf>>. For example, the phrasing "as long as 'the sun shines, the grass grows, and rivers flow'" indicating how long the agreements ought to last. The numbered treaties were formed between Indigenous people and the Crown from 1871 to 1764.

As the play progresses, the question arises of whether the women are pursuing war or love? It seems that, mattering, is an issue of gender because women assert that the treaty-makers, as men, have greater value. Marie-Angelique states that “he’s a man... He matters.”³⁷⁶ This implies that the women have had to be in relationship to men to survive despite the fact that the men are living on through the women’s ability to procreate. The women’s bodies are capable of carrying life (unlike men). Koncan’s characters campaign for themselves to be in relationship to men. The women are peace-making with their flattery of men and their bold availability to become their wives within their letters. Marie-Angelique states that “I’m saving myself for Louis Riel”.³⁷⁷ She focuses on marriage in the domestic sphere rather than the equality, civil and political rights in the public sphere that seem unavailable to her during the fur trade. Koncan’s narrative depicts how, due to the *Indian Act*, Indigenous women became a vessel for life to benefit men but not to voice their own opinions.

Analysis Of Cultural Commentary Read Against *McIvor*

Koncan’s play suggests that Indigenous women’s feminism became a discrete activity for Indigenous women to gossip about at socials during the fur trade. Koncan puts a loudspeaker to Indigenous women’s concept of their equality in her narrative that is more explicit. Koncan depicts Indigenous women from the fur trade who represent the early examples of how responding to the marrying out construct promoted a public silence in relation to inequality against Indigenous women that is still being overcome. Women like Koncan and *McIvor* are responding in *nomos* and narrative in ways that were unthought-of to Indigenous women as they first encountered the *Indian Act*. The interpretation in the rest of this chapter will focus on analyzing two blindspots in the case that the play addresses: 1. The *Indian Act* does not explicitly acknowledge that Indigenous women deserve

³⁷⁶ *Women Of The Fur Trade* at 26.

³⁷⁷ *Ibid* at 25-26.

the sex-based equality that *McIvor* fought for; and, 2. The *Indian Act*'s sex-based social hierarchy system devalued Indigenous women's ability to procreate along with their cultural identity.

1. The Indian Act Does Not Explicitly Acknowledge That Indigenous Women Deserve The Sex-Based Equality That McIvor Fought For

Eugenia's character demonstrates what an early challenge to the marrying out laws is. Her opposing survival strategy surfaces within the play with her traditional Indigenous practice of observing animals for teachings about life. Eugenia compares Indigenous women's experiences with pursuing husbands for survival to that of a muskrat because "[e]ven the muskrats are confused and don't know where to go... All things have a purpose... They keep us warm, and fed. Cycles. Their lives end, but their purpose continues on long after they've been forgotten."³⁷⁸ Eugenia describes the fear of 'losing herself' that is also described by Marie-Angelique and *McIvor* in relation to losing Indian Status with marriage.³⁷⁹ Since Eugenia makes a living off of trading animal pelts she feels that Indigenous women survive as the muskrat does. The animal provides her sustenance, wealth and is also a lesson on the adaptation of Indigenous women whose trading in of Indigenous race became a necessity. The marriages were based on law that upheld the notion that husbands are more privileged than wives. Eugenia does not enjoy the inferior status that her "Indian Woman" mask represents based on legal terms. Eugenia notes that "[i]n my opinion, there's almost nothing a man can do that a woman can't do".³⁸⁰ In the above statement, Koncan explicitly acknowledges the cultural *norm* that Indigenous women are equal to men in a way that the *Indian Act* does not.

The omission of legal options to fight for equality in the play is a glaring opposite to the case. Indigenous women today are more readily able to utilize legal remedies rather than being forced to marry out of their racial grouping. Koncan's play showcases the lack of equality that the

³⁷⁸ *Ibid* at 74 and 85.

³⁷⁹ *Supra* note 354.

³⁸⁰ *Women Of The Fur Trade* at 20.

Indian Act afforded to Indigenous women during the fur trade based on the fact that they had no legal recourse for marrying out. Little options were available to Indigenous women who wanted to keep their identities after marrying out until the UNHRC began to intervene. Marie-Angelique and Eugenia are barred from advocating for themselves in the courts like *McIvor*. Therefore, although Koncan's play represents the vision that Indigenous women's sex-based equality ought to be the legal *norm*, her play also showcases the historical reasons why acknowledgment of gender equality is necessary to prevent prolonged exposure to inequity.

In *McIvor*, the case facts tell her story of being subjected to assimilation and enfranchisement due to the marrying out rules much like Marie-Angelique and Eugenia were when the *Indian Act* was first enacted. The government restricted the use of *McIvor*'s Indigenous matriarchy to register her and her offspring's Indian Status. *McIvor* applied to utilize the laws post-*Lovelace* to register for Indian Status for herself and her children on September 23, 1985. She was denied Indian Status based on her non-Indian paternal lineage. The rejection of *McIvor*'s status was based on her mother, Susan, and her grandmother, Mary Tom, both being ineligible to pass on Indian Status due to marrying out.³⁸¹ Her grandparents' marriage began the cycle of the *Indian Act*'s application of restrictions that disrupted her maternal familial identity. She was specifically being prevented from having section 6(1) full Indian Status, rather than section 6(2) partial status. Prior to the 1985 Bill C-31 *Indian Act* amendments the government considered *McIvor* to have no status eligibility at all.³⁸² *McIvor* was originally denied Indian Status in completely the same manner that the women of the fur trade were. *McIvor* was afforded no Indian Status at all based on the first marriage out of the race within her maternal line of ancestry even with the 1985 amendments in place. *McIvor* fought against this severe restriction on behalf of all Indigenous women. However, women of the fur trade

³⁸¹ *McIvor* at para 2.3.

³⁸² *Ibid* at para 2.5-2.7.

never benefit from the same legal option that McIvor had with international legal avenues. The *Indian Act* does not reference this historical struggle that has been so crucial to its reform.

McIvor was ineligible for Indian Status at birth based on her maternal lineage and also because, on more neutral terms, it was not normal within the colonial order for the female sex to be afforded equality in the *Indian Act* yet.³⁸³ McIvor notes the various intangible benefits were withheld from her family along with her entitlement to Indian Status such as “legitimacy and social standing”, “cultural identity...[,] the ability to transmit status, and a sense of identity and belonging. [McIvor] define[s] Indian status as a dignity-conferring benefit”.³⁸⁴ McIvor complained of lifelong experiences and anticipated future restrictions related to *Indian Act* registration rules. Specifically, McIvor and her son, Jacob Grismer, claimed a violation of article 3 of the *Covenant*, among other articles, based on the grounds of sex because of an unequal application of article 27’s right to belong within their ethnic and linguistic group.³⁸⁵ *McIvor* states that “capacity to transmit cultural identity is a key component of cultural identity itself”.³⁸⁶ McIvor was well-aware that the UNHRC had already ordered Canada to correct sex-based discrimination in *Lovelace* when she stated that Canada

attempts to avoid responsibility for the impact of its legislated sex discrimination within Indigenous communities. Given the role that Canada has played in superimposing a patriarchal definition of Indian on First Nations communities, and the fact that Canada’s status registration scheme continues to prefer male Indians and their descendants, the alleged sex discrimination is ongoing.³⁸⁷

Koncan does not go into as much detail about the Indian Status registration provisions as *McIvor*’s case. However, *McIvor* details what is being taken away from Marie-Angelique and Eugenia if they marry out. In McIvor’s case her family belongs to the Lower Nicola Indian Band. However, to the government, it was possible to remove her belonging to this Band by overriding her family’s

³⁸³ *Ibid* at para 2.4.

³⁸⁴ *Ibid* at para 2.2 and 5.18.

³⁸⁵ *Ibid* at para 3.8-3.9 and 5.33-5.35.

³⁸⁶ *Ibid* at para 3.8 and 5.28.

³⁸⁷ *Ibid* at 5.34.

matriarchy. At first, McIvor was simply challenging the government's administrative decision to deny Indian Status on February 28, 1989 and yet the Registrar upheld the restriction.³⁸⁸ The same year, McIvor filed for a statutory appeal with her son unsuccessfully. They also filed a constitutional challenge claiming that the Indian Status registration provisions are contrary to the *Charter*.³⁸⁹ The court found a *Charter* violation due to sex-based discrimination "and marital status, between matrilineal and patrilineal descendants born prior to... 1985, and against Indian women who had married non-Indian men."³⁹⁰ Although the British Columbia Court of Appeal found "preferential treatment accorded by the 1985 Act to a small subset of descendants of male Indians", and Canada's SCC appeal was denied, McIvor and her son claimed they still were not afforded any domestic legal remedy. The government's remaining refusal to allow for full eligibility prevented McIvor and her son from registering for Indian Status.³⁹¹ McIvor's biological brother was not restricted from section 6(1) eligibility emphasizing the inequality that McIvor claimed.³⁹² McIvor was experiencing the same legal construct that the women of the fur trade experienced with seemingly more legal redress that did not help her maintain her identity legally.

Sex-based discrimination is now being deleted from the *Indian Act* although it is a systemic problem. It is not explicitly clear within the statute that its foundational provisions have devalued Indigenous women's positions in the *nomos* since the fur trade. Koncan's commentary suggests that the legislature could further correct the problem with more pointed reference to eliminating sex-based discrimination that was used as an assimilation tool for over a century. The *Indian Act* does not contain a preamble that might reference an intent to repair the historical relationship of Indigenous women with Canada. In recent statutes' preambles, such as *Bill C-92, An Act respecting First Nations*,

³⁸⁸ *Ibid* at para 2.8.

³⁸⁹ *Ibid* citing the *Charter* at para 2.9.

³⁹⁰ *Ibid* at para 2.11.

³⁹¹ *Ibid* at para 2.12-2.13.

³⁹² *Ibid* at para 2.7.

Inuit and Métis children, youth and families, the legislature has placed more importance on restoring this relationship by outlining that Indigenous women and girls should be reunited with their families and communities. Its preamble states that “Whereas Parliament recognizes the disruption that Indigenous women and girls have experienced in their lives in relation to the child and family services systems and the importance of supporting Indigenous women and girls in overcoming their historical disadvantage”.³⁹³ Koncan’s play points out that the Indigenous women group has been put at a severe disadvantage by the marrying out provisions. *McIvor*’s historical win coincides with the IFTM developing wherein Koncan speaks to the cultural *norms* that are responding to discriminatory rules. The legal and IFTM developments are reflective of a feminist force emerging from within the Indigenous women’s cultural grouping to advocate for themselves about their cultural *norms*. Koncan indicates that the struggle for equality is mountainous because the cultural *norms* arising from the behaviour of Indigenous women in her play do not readily align with the foundations of the *Indian Act* that lower their position in society. Koncan points out that any cultural vision about equality is initially unable to bridge itself with the law because a) Indigenous women would only advocate for themselves in private, and b) the law refuses to include Indigenous women as deserving of equality in the same way as men and non-Indigenous people. Any feminist ideas, that Cover would call visions in narratives for gender equality from the Indigenous women’s culture, are initially blocked in the Canadian *nomos* for so long that it becomes normal to expect that there will be no legal remedy.

My research reiterates Cover’s approach that includes the visions, that are cultural *norms*/unofficial laws from Koncan’s play, because they influence mainstream law creation by coming into conversation with the official laws. *McIvor* refuses to accept the government’s position that gender inequality is the right answer. *McIvor* took her concerns out of the private women’s tea

³⁹³, S.C. 2019, c. 24. The preamble also states: “Whereas Parliament recognizes the legacy of residential schools and the harm, including intergenerational trauma, caused to Indigenous peoples by colonial policies and practices” and “Whereas Parliament recognizes the importance of reuniting Indigenous children with their families and communities from whom they were separated in the context of the provision of child and family services.”

party and into the courts. Koncan similarly writes about cultural *norms* of Indigenous women in a way where her ideas are available for *public* discourse about jurisprudence. By comparing the case and the play it becomes clear that Marie-Angelique and Eugenia's dream of being free to live in their Indigenous mask and *persona* and this requires the ability to participate in feminist advocacy. Koncan and *McIvor* both demand that the law acknowledge that Indigenous women are deserving of equality.

The need for literature to help boost Indigenous feminist opportunities for legal pluralism is apparent in the narrative. Koncan showcases the Indigenous women's normative behaviour/language/codes that communicate that being considered lower in status than everyone else did not sit well with Indigenous female *personae*. The play depicts the origins of the Indigenous women's struggle with *even thinking* that they will be heard about sex-based discrimination if they do speak up publicly. Eugenia does not feel comfortable with the fate prescribed for her in the *Indian Act* through its marrying out construct and defies it with her traditional lifestyle. However, Eugenia also does not fathom challenge to the *Indian Act* in any formal manner because she does not confront the marrying out construct directly or publicly. On the other hand, Marie-Angelique wants to marry but dreads the requirement of marrying outside of her culture. Koncan's characters play out the internal turmoil behind the choice that the *Indian Act* has put to women whereby they are hiding their Indigenous *personae* to be considered more valuable. Thus, Koncan's play opens the door for discussion about the need for acknowledgment about the origins of the *Indian Act* being written to be at first completely against Indigenous women and then neutral about their equality in its modern amendments. An explicit acknowledgement that Indigenous women are deserving of sex-based equality is not present in the 2024 version of the *Indian Act*.

Koncan's imaginative Indigenous feminist perspective is cultural knowledge that adds appropriate legal meaning to what the suppression of Indigenous women's voices means and why the *Indian Act* ought to prevent this suppression. The *Indian Act* seems to be quite neutral on gender-

based equality as it lacks any reference (even in preamble) to this guarantee for women within the application of the statute. Koncan's characters' dialogue readily notes how the marrying out practice devalues Indigenous women's self-advocacy in a way that the *Indian Act* does not contemplate. To Eugenia, risking starvation and sustaining herself in the wild seems like a better option than marriage because she cannot speak out for herself without looking like a dangerous rebel. The pressure the women have to assimilate is showcased by Marie-Angelique who trades her mother's necklace in for a fur hat from Eugenia and remarks "Take it. If you don't sell these hats your family will starve".³⁹⁴ Marie-Angelique believes that she will get married and feels sorry for Eugenia who is unable to leave her Indigenous traditions behind her. Koncan alludes to the restriction of the remedy of reinstating Indian Status that was directly prevented by the law from Indigenous women until *McIvor*.³⁹⁵ Koncan's characters are playing out the realization that many Indigenous women actually went through wherein fighting through sex-based discrimination meant suppressing their opinions and feelings. There was no opportunity for Indigenous women's advocacy through any legal avenues and surely not speaking masked *as* themselves in the way that Marie-Angelique and Eugenia do. The law was demanding that Indigenous women shelter themselves within marriages instead. This masking phenomenon was still imposed on *McIvor* in the Canadian courts. *McIvor* was expected to present herself as an Indigenous *persona* hiding behind her husband's or father's white masks to express herself in the courts. Indigenous women have been forced to leave their racial ties behind them to become part of the colony and to express themselves accordingly and this practice is abusive. Post-*McIvor*, Indigenous feminists, like Koncan, are expressing that the option of marrying out does not work for Indigenous women who prefer to keep their matriarchal identities. The *Indian Act's* former support of sex-based inequality is weak next to the women's strong protest that the play reveals.

³⁹⁴ *Women Of The Fur Trade* at 27.

³⁹⁵ *Supra* note 17.

Koncan's play forensically illuminates the fact that the voices of the Indigenous women of the fur trade are disrespected by today's legal standards. Their cultural *norm* of being valued as Indigenous women is never voiced by them in the courts. Thus, the women of the fur trade are prevented from doing what Cover calls applying tension to the law that requires their visions of equality to actually come into conversation with the law. Koncan's characters' nap for survival does not address the Indigenous feminist idea of holding Canada to the sex-based equality standard that McIvor was fighting for with the *Covenant*. The solution for Marie-Angelique and Eugenia is never to speak as themselves and this is part of the *Indian Act* marrying out construct requiring that they speak through men. The opinions about the survival strategies that Marie-Angelique and Eugenia voice at their tea party never make it into formal or public settings where they might make legal change like *McIvor*. However, the literature opens the door to the above feminist conversation. Thus, Koncan's narrative is an important part of connecting Indigenous feminist cultural *norms* with discussions about the law in a legal pluralist fashion. Koncan publicly demonstrates the difference between the *Indian Act's* suppression of Indigenous women's voices during the fur trade as compared to McIvor's struggle with changing the law. The play's depiction of the oppression of the women next to *McIvor* indicates that the *Indian Act* was not feminist-friendly in its origins and this suggests that there ought to be a stronger articulation of the effort to overcome sex-based discrimination in the statute itself.

Next to the reality of *McIvor*, Koncan's play demonstrates that it does matter when Indigenous women advocate about sex-based inequality. It is the Indigenous women's own advocacy that is correlating with reversing the sex-based inequality originating from the fur trade. The play and legal history is indicating that Indigenous women, like Marie-Angelique, Eugenia and McIvor value themselves more than the government does and this is precisely why they should advocate for

themselves. Most importantly, Koncan's narrative counters the *Indian Act's* lack of reference in its registration provisions to the gender equality guaranteed by the *Charter*.

Rereading the case next to the play indicates that there needed to be an explicit legal order in place to merge Indigenous women's cultural *norm* for maintaining Indigenous matriarchal identity after marriage with the *Indian Act* laws. However, the *Indian Act* still does not prominently promote that Indigenous women are deserving of equality in its provisions although this might prevent the perpetuation of systemic harms stemming from the former marrying out rules. The UNHRC held that Canada is obligated to provide McIvor and her son with an "effective remedy" which "requires it to make full reparation to individuals whose *Covenant* rights have been violated."³⁹⁶ The UNHRC cited *General comment No. 23 (1994)* in its interpretation of article 27 stating that the right to ethnic and linguistic belonging for Indigenous groups is distinct and is in addition to cultural rights conferred to other persons.³⁹⁷ The UNHRC clarified that the reparation holding requires Canada to prevent sex-based discrimination by amending section 6(1) to ensure

interpret[ion] to allow registration by all persons including [McIvor and Grismer] who previously were not entitled to be registered... solely as a result of preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985 and to patrilineal descendants over matrilineal descendants, born prior to... 1985; and (b) to take steps to address residual discrimination based on sex in the [*Indian Act*]. Additionally... to take steps to avoid similar violations in the future.³⁹⁸

Given the history of Canada's resistance to deleting sex-based discrimination from the *Indian Act*, Koncan's play suggests that the amendments are too discrete because they call up the examples from the narrative of Marie-Angelique and Eugenia silencing themselves about *Indian Act* abuses believing that the law is not on their side. Ironically, one of Canada's arguments to the UNHRC was that its legislative aim was based on objective and reasonable grounds to prevent adverse effects on the acquired rights of others. The UNHRC ultimately decided that Canada had not demonstrated to

³⁹⁶ *McIvor* at para 9.

³⁹⁷ *General comment No. 23 (1994)* cited in *McIvor* at para 7.10.

³⁹⁸ *McIvor* at para 9.

the international court “how recognizing equal status” for *McIvor* would constitute an adverse affect on anyone else and that Canada had “failed to demonstrate that the stated aim is based on objective and reasonable grounds.”³⁹⁹ The specific discrimination affecting *McIvor* and the women of the fur trade was effectually prohibiting the enjoyment of *Covenant* rights. These rights are meant to be implemented both “in law, but also to discrimination in fact, whether practised by public authorities, by the community, or by private persons or bodies.” The UNHRC condoned that “temporary specific measures” should be used if necessary to “diminish or eliminate conditions that cause or help to perpetuate discrimination.”⁴⁰⁰ In *McIvor*, Canada had not remedied the differential treatment of Indigenous women in the law and the UNHRC held Canada to its obligation as a state party to the *Covenant*. Article 2(3)(a) obligates Canada to make its proposed amendments to effectively remedy the registration provisions by removing sex-based discrimination language to comply with international legal standards. To be more effective, the play and the case suggest that the amendments might also include a preamble citing the importance of restoring Indigenous women’s connection to their cultural identities and communities.

Indigenous women were not set up to be treated equal to men in the fur trade *nomos*. Koncan uses the literary tool of metaphor to demonstrate this same point that *McIvor* also suggests within her legal claim. Koncan demonstrates how Marie-Angelique and Eugenia feel (fearful, resentful, inferior, confused) about their position due to law. These feelings illustrate Koncan’s point-of-view about what the effect of the law is on the women. Indigenous women are striving for safety, joy and equality rather than the unfairness that the *Indian Act* originally evokes in the *nomos*. Koncan is depicting that the survival strategies that have developed as a result of the *Indian Act*’s sex-based social hierarchy are actually ineffective for Indigenous women. While debating their worth

³⁹⁹ *McIvor* at para 7.11.

⁴⁰⁰ *Ibid* at para 7.11.

against marriage Eugenia asks “why marriage?” because she would rather be “free”. Cecelia then reinforces the colonial idea that husbands give their wives value and that is why they must submit to men.⁴⁰¹ The Indigenous women of the fur trade demonstrate an internalized response to male-dominated *Indian Act* law because their opinions contrast what the law is telling them to do but their opinions are not heard by the men. The women are the victims and Koncan displays how disheartening it is for Indigenous women to be restricted from Indian Status based on sex. The fur trade strategies do not result in the women getting the Indian Status that they desire. It was not the long nap, the marriage nor the childbearing that resulted in Indigenous women being reinstated with Indian Status. It was the articulating of Indigenous feminist thoughts within a legal claim that ultimately challenged the law successfully in *McIvor*. Koncan’s cultural commentary shows that publicizing Indigenous women’s legal concerns is part of the necessity to begin to reshape cultural *norms* in the *nomos* by reflecting more positive roles in society within the literature (differentiating the lowered role from the *Indian Act*). The literature counteracts the *Indian Act*’s lack of reference to the need for reshaping *norms* within the colonial *nomos* to be more inclusive of Indigenous women by avoiding the perpetuating of any systemic harms rooted in unlawful sex-based discrimination, assimilation and enfranchisement policies. Koncan’s play infers that the text of the *Indian Act* is not sufficiently considering how valuable Indigenous women’s voices are in conversations about reforming the statute.

2. *The Indian Act’s Sex-Based Social Hierarchy System Devalued Indigenous Women’s Ability To Procreate Along With Their Cultural Identity*

Indigenous women are valued in Koncan’s play because they are capable of giving life to future generations. Indigenous women value their ability to procreate in a way that the *Indian Act* cannot articulate. Koncan’s play points out that the journey for legal equality coincides with a history

⁴⁰¹ *Supra* note 322.

of Indigenous women carrying their children into a future with a strong vision that they would eventually be included because they have physically brought life into the world. Indigenous women's strategy of marriage and procreation, although for different reasons than the government, like the fictional ability to time-travel, enables the literal survival of their genetic lineages into the future where the law is more reflective of equality for women. Koncan equates the Indigenous women of the fur trade to the future artists who can bring them back to life to advocate for others about the struggles they have been through for equality. Marie-Angelique quotes Riel by stating that "My people will sleep for one hundred years, but when they awake, it will be the artists who give them their spirit back."⁴⁰² Koncan is emphasizing that the Indigenous women still exist because they carry their non-Indigenous husbands and children into the future genetically regardless of whether or not their ancestry is recognized by the *Indian Act*.

Read next to the play, the case obscures how effective the *Indian Act's* coercive marrying out scheme was at silencing Indigenous women in the public sphere. The law and literature both indicate that there are significant barriers to Indigenous women's ability to materialize both internal feminist thoughts as well as to physically materialize themselves through procreation. The cultural value of their voices and their place in society as mothers and wives is not being comprehensively acknowledged by the *Indian Act*. Both *McIvor* and the Indigenous women in the fur trade *nomos* are forced to operate in a false identity to demand any recourse at all. The Indigenous women's concerns about their position in the *nomos* never leaves their tea party in the play. In contrast, *McIvor* demands the valuing of her identity to be written within the government rules. *McIvor* was overcoming the devaluing of her race and gender to advocate for all Indigenous women's ability to reclaim Indian Status. However, she was not allowed take off her white mask to argue her claim. *McIvor's* lack of Indian Status meant she was forced to operate as an Indigenous *persona* in a white

⁴⁰² *Women Of The Fur Trade* at 7.

mask which is also an unfair construct to demand in the law. Thus, McIvor was essentially put in the position of arriving at the courts, like *Lovelace*, to demand that her Indigenous *persona* and mask were allowed to act in unison. Her claim encompasses what Eugenia and Marie-Angelique instinctively feel adverse to and that is leaving their Indigenous culture behind if they choose to use the marrying out laws. The play indicates the ability to voice legal concerns was impossible for Marie-Angelique or Eugenia who were in the middle of being subjected to the controlling sex-based hierarchy scheme as it was being constructed. The Indigenous feminist choice to stand up for herself by speaking about her inner needs and desires in relation to marrying out was not a successful legal consideration before *Lovelace* and then *McIvor*. Koncan's play promotes the ability of women to belong in the future; which actually is Canada's current *nomos*.

Conclusions

Koncan's play indicates that Indigenous women's voices are political forces that have been suppressed by the *Indian Act*. Indigenous women's decisions about marriage and childbearing have had to take into consideration whether or not marrying out will result in a loss of Indian Status entitlements. Koncan's narrative alludes to a harmful sex-based social hierarchy construct whereby law has prescribed that Indigenous women must aspire to become part of their husband's race and to forget their own racial ties. Part of the impact of the *Indian Act* is that the Indigenous race, and Indigenous matriarchy, was being devalued to promote colonial laws. These laws were enacted in a way that prioritized the participation of Indigenous women in the removal of their own Indigenous race from the *nomos*. Koncan's female characters differentiate themselves from the white characters by having contrary reactions to the power dynamics underpinning the *Indian Act*. By virtue of the hurt feelings that are depicted in private, such as anger and resentment towards the male dolls, Koncan notes that the devaluing of Indigenous women is rooted in the fur trade *nomos* where the women were unable to express their feelings publicly or in the legal system.

McIvor was helpful to Indigenous women who would like to register for Indian Status to avoid experiencing the adverse emotions that Marie-Angelique and Eugenia have in the play when faced with the decision to marry out. The laws that were enacted in the fur trade stayed with Indigenous women for well over a century despite the more recent *McIvor* precedent and the *Charter*. *McIvor* set a legal standard for valuing Indigenous women's ability to belong to their Indigenous communities, to be registered with Indian Status regardless of the race of their husbands, to receive benefits associated with Indian Status, and to pass on maternal lineage to their (grand)children. However, *McIvor* does not point out that there is still no explicit reference in the *Indian Act* to Indigenous women being deserving of gender equality despite years of legislative amendments.

Koncan uses a strong metaphor of Indigenous women holding the future in their arms by holding onto the male dolls. The image promotes the idea that Indigenous women's ability to marry and procreate matters for everyone's survival because carrying life is a virtue unique to the female gender. The metaphor indicates that their voices are being suppressed along with any choices related to marriage and childbearing. However, Indigenous women of the fur trade only dream of being seen to be equal to men indicating that it has taken far too long to arrive at any reconciling of the racial and gender conflicts associated with the *Indian Act*. The legislative amendments that *McIvor* sparked the Canadian government to make are just the tip of the iceberg in terms of reversing the damage that has been caused by the effective silencing of Indigenous women about discrimination. The *Indian Act's* sex-based social hierarchy system devalued both Indigenous women's ability to procreate and their cultural identity by making these two things invisible after marrying out. Canada was preventing Indigenous women from exposing evidence against the marrying out provisions by creating a *nomos* in which their narratives were unwelcome. Koncan stresses that the origins of these harmful assimilation and enfranchisement measures are rooted in the fur trade *nomos*. *McIvor* was

still subjected to these harmful measures as her advocacy was substantively hampered by being illegal based on her masking until the UNHRC intervened.

My analysis of both the case law and literature makes it clear that voicing IFTM concerns is an important part of imaginatively reshaping what law is and ought to be. The above finding supports Cover's theory on normative law creation. Including Indigenous women through legal pluralist law reform requires a voicing, or reproduction, of what their experiences and claims are in narrative (including how they describe their own Indian Status and identity). Putting Koncan's narrative into conversation with the law indicates that the equality that the women of the fur trade dream of is possible in today's *nomos* that includes the legal changes post-*McIvor*. Indigenous women need to be able to enjoy their equality rights *as they need them* and the play points out that the government restricted this enjoyment.

Canada's violation of the *Covenant* speaks to the need for IFTM narratives to readily contradict these violations to resist Canada's empire of force. The UNHRC's finding that *Covenant* violations should be *prevented* is key to building equality for Indigenous women. The success of Koncan's play and *McIvor*'s advocacy leads me to believe that the articulation of Indigenous women's voices has been *crucial* to the reshaping of gender-based *norms* in the current *nomos* that are then reflected in the law. If Indigenous women are restricted in any way from publicly speaking their mind about sex-based discrimination then our *nomos* runs the risk of systemically perpetuating the former *status quo* of silencing Indigenous women through the *Indian Act*. Silencing Indigenous women has not allowed for the legal pluralist advocacy that my method indicates is possible by contrasting the visions of equality in Koncan's narrative with the contrasting *Indian Act* rules.

My research brings Koncan's play into conversation with *McIvor* and generates legal pluralist discourse that is more inclusive of Indigenous women through law and literature scholarship. Koncan and *McIvor* are equally capable of bringing attention to their similar points-of-view on sex-

based discrimination themes. My analysis indicates that the marrying out construct negatively impacts the voices of Indigenous women because it minimized Indigenous women's value and silenced their opinions on the matter. By making Indigenous masked *personae* invisible after marrying out the legislature prevents Indigenous women from speaking as themselves in the courts without losing an equal personhood to other Canadians. Despite the violations of the *Covenant*, Indigenous women are articulating their views within narrative. My analysis suggests that the *Indian Act* discrimination was ineffective in the long run. As Indigenous women are able to represent and express their visions about inequality in the IFTM the laws are beginning to sway in their favour through *jurisgenesis*.

CONCLUSION

My thesis demonstrates how Indigenous women's voices have been silenced by sex-based discrimination stemming from the *Indian Act* since the fur trade. However, Indigenous women have also been raising their voices within the IFTM literature in the past several decades. Their narratives promote positive Indigenous feminist roles in society that greatly contrast the undesirable lowered position in the *nomos* enabled by law. The IFTM plays bring to light how Indigenous women reclaim the matriarchy that was taken away by Indian Status loss by openly identifying with their Indigenous identities. They are unmasking from the white identities prescribed by marrying out laws in order to do so. The plays expose how Indigenous women feel about inequality instead of promoting a former fear-based silent *status quo* that existed before the IFTM. *Lovelace* and *McIvor* resulted in *Indian Act* reform. The plays further reveal that corrective amendments and official laws continue to omit cultural knowledge and meaning about gender equality that is generated by Indigenous feminists.

The ability to challenge laws that target Indigenous women unequally has been legally barred in the past and that is why speaking up about law is such a terrifying feat. Internal ideas, that were hidden from discussions about laws governing Indigenous women, are now being bravely made public by the narratives. The plays depict the idea that there is a healing and strength-building effect of talking about *Indian Act* abuses. Unfortunately, Indigenous women's cultural *norms* from their group are still miniscule within the amended *Indian Act* e.g. reclaiming Indigenous matriarchy through cultural belonging. The plays showcase how practicing Indigenous matriarchal cultural belonging requires the overcoming of a common fear among Indigenous women of exercising their cultural identity. For example, gathering on reserve to lead cultural ceremonies that were once violently restricted from women along with Indian Status. The personal impact of the *Indian Act* includes a banning of Indigenous women from the protective intergenerational relationships that are tied to maternal ancestry. This dynamic depicted in the plays spells out the grim history of the *Indian Act*

marrying out laws that the cases do not detail. I posit that that the IFTM's exposure of the *Indian Act's* harmful suppression of Indigenous women's voices opens up more concrete opportunities for their cultural visions to be included in future legal pluralistic law reform.

The IFTM commentary points out that the *Indian Act* fails to explicitly acknowledge that Indigenous women deserve gender equality. The sex-based hierarchy created by the *Indian Act* is a barrier to Indigenous women expressing and representing themselves in the *nomos*. By contrast, the unofficial laws of the cultural group spell out the special place that Indigenous women occupy within their communities. Simply deleting references to sex-based inequality in the statute is not a comprehensive solution. The cultural visions of Indigenous women counter this material statute that they are at odds with. Indigenous women have been led to the survival strategies of marriage and childbearing disguised as assimilation and enfranchisement. Their truthful Indigenous masked *personae* went unrecognized by the law without international intervention. The alternative of speaking up would be to live, invisibly, behind false identities that are based on the government's failure to recognize Indigenous women's equal personhood and that is both an illegal and an unhealthy dynamic. The law unfairly demanded that Indigenous wives and mothers discount their peace-making role. Indigenous women have used their own female bodies as a vessel for passing on their ancestry genetically and contributed to Canada's population growth. Indigenous women may have hidden to survive but their cultural identity is also valuable and it is now legally visible in the *nomos*.

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