SEVEN
“Undigested, Conflicting and Inharmonious”

ADMINISTERING FIRST NATIONS MARRIAGE AND DIVORCE
In 1915, Secretary Frederick H. Abbott of the US Board of Indian Commissioners published *The Administration of Indian Affairs in Canada*, and in it he praised the simplicity, clarity, and efficiency of Canada’s policies and procedures. In his section on “Indian Marriages and Divorces,” Abbott wrote with admiration, “The whole story of Indian marriages and divorces in Canada is told briefly,” and he proceeded to quote a circular of the Canadian Department of Indian Affairs. There were five main points established in the circular: 1) that marriage between Indians or between Indians and others in accordance with provincial or territorial laws was valid; 2) that “the validity of marriage between Indians in accordance with the customs of their tribes had been established by the courts,” and “the fact that one or both of the contracting parties may profess adherence to Christianity [did not] affect the matter”; 3) that Indian marriages, “if valid, cannot be dissolved according to the Indian customs,” as “the validity of Indian divorces has never been affirmed in Canada”; 4) that if an Indian married to one woman goes through a form of marriage with another woman, “which would make her his wife but for the fact that he was already married,” he was guilty of bigamy and could be successfully prosecuted under the Criminal Code, “even if there has been no valid marriage but the Indian intended by complying with the customs of
the band relating to marriage to make more than the first married his wife or wives, or if, even without such intention, he has complied in the case of two or more women with the requirements of the tribal customs”; 5) that neither a man or woman could legally contract a “fresh alliance,” even after an absence of seven years of a spouse, and even if “in good faith and on reasonable grounds” he or she believed the spouse to be deceased, if “both parties to the first marriage contract were alive at the time of the second purported marriage.”

It might well have occurred to a careful reader that the convoluted and tortuous wording of the departmental circular pointed to a more complex situation, and that the “whole story” of Indian marriages and divorces was not as simplistic and harmonious as Abbott wished to convey. If so, this careful reader would have been correct. Abbott wished to see clarity and simplicity in the Canadian system. He believed that there were serious and fundamental defects in the administration of Indian affairs in his own country, and that Canada’s policy was “immeasurably superior.” He particularly wanted to impress on his readers a sense of the clarity and conciseness of Canada’s laws, rules, and regulations relating to Indian administration, all of which he could have brought back to Washington with him, as he wrote, “in my coat pocket.” This was in marked contrast to what Abbott described as “the thousands of pages of laws and rules and regulations, many of them undigested, conflicting and inharmonious, which hamper efficiency in the Indian Service of our country.”

If he had dug deeper during his eight-week visit to Canada, Abbott would have discovered that “undigested, conflicting and inharmonious” aptly described Canada’s efforts to administer Indian marriages and divorces, as this was characterized by voluminous correspondence and consternation, doubt over what constituted a legitimate marriage, and a confusing welter of legal decisions and departmental rules and regulations. Abbott neglected to include the first sentence of the circular letter he admired, which read in part as follows: “There seems to be more or less confusion or uncertainty in the minds of officials and Agents of the

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Department with regard to the law as to the recognition of Indian marriages and Indian divorces.” While it was the case that government and legal officials recognized the validity of marriage according to Aboriginal laws, these marriages had to be permanent, exclusive, and voluntary, all of which reflected a profound misunderstanding of the complexity and flexibility of Aboriginal marriage law.

This policy resulted in significant upheaval and had some disastrous consequences. Indian agents and higher-up officials of the DIA found themselves embroiled in the most personal affairs of the families they administered. They dispensed advice on marriage, intervened to prevent couples from separating, brought back “runaway” wives, directed the annuities of husbands to deserted wives, broke up second marriages they regarded as illegitimate, and became embroiled in disputes with missionaries as to what were legitimate marriages. DIA officials, along with school principals, gave and denied permission for couples to marry, and they also indulged in “matchmaking.” Indian agents wielded considerable power as they determined, at least for the purposes of annuity payments, what did and did not constitute a family unit, which children were legitimate and which were not. (Annuity pay lists were organized around the male head of family whose name appeared, followed by the number of women, and children in “his” household.) They also determined whether a widow was of “good moral character,” or whether or not she was indeed a bona fide widow in cases of inheritance. Yet despite this concerted intervention, the agents of the DIA were limited in their ability to impose the monogamous model of marriage. Aboriginal laws persisted, people protested the intervention in their domestic affairs, and they continued to make their own choices for themselves and their children. Some women and men refused to stay in bad marriages; they separated, divorced, and remarried according to their own laws. Much went on without the knowledge of any agent, and agents often had to be content with accepting only the appearance of control. But the domestic landscape changed dramatically nonetheless, as “gender could not be remade without unravelling much wider aspects of social organization.” Former freedoms and flexible arrangements were constrained. Altogether the new network of laws and regulations functioned to destabilize
domestic affairs, and actually worked against the goal of instilling a sense of the sanctity of marriage. Those who were divorced according to Aboriginal law and had remarried were told that these were not valid legal unions, that they risked prosecution as bigamists, and that their children were illegitimate. People could then feel free to desert or abandon second marriages, and DIA officials encouraged them to do so. By the early twentieth century officials were also concerned that as the people they supervised came to understand the “nature of a legal contract, the disregard of which will subject them to legal penalties,” the less likely they were to enter into such legal contract. “The worst offenders in that direction,” it was contended, “were young men who perverted the knowledge acquired by them at some of the Industrial schools.”

While the overall policy directive was to recognize the Aboriginal marriage ceremony as legal and binding (when it was the first and only spouse for each except in the event of the death of a spouse), Indian agents worked alongside missionaries, school principals, and the NWMP to replace associated practices of matrimony and family life with the monogamous Christian model. By the late nineteenth century efforts were being made to arrange suitable marriages among the first graduates of industrial and residential schools. A DIA circular was issued in 1900 calling for the promotion of marriages among graduates, but school principals and DIA employees had collaborated on marriages well before that date. By the 1890s missionaries were instructed to consult with Indian agents before marrying couples. School principals similarly sought permission from the DIA for graduates to marry. In 1894 the principal of the Rupert’s Land Industrial School presented DIA Agency Inspector Ebenezer McColl with the “application” of a male student to marry a female student. Although the prospective groom had a house and farm on the St. Peter’s Reserve, the principal thought “she would do far better for herself in remaining where she is,” and that “I will be very sorry to lose her.” He recommended that she be allowed to visit with her parents first. McColl recommended that the matter be placed before the deputy superintendent general when he next visited Winnipeg, and it is unclear if permission to marry was ever given. That same year a young student from St. Joseph’s Industrial School at Dunbow, Alberta, wrote directly
the importance of being monogamous
to Deputy Superintendent Hayter Reed asking permission to leave the school, as “the girl I love is gone home and I feel very lonesome for her so I want to go out and work some place in order to make some money.”10 Much correspondence ensued; before sanctioning the marriages of pupils, the department would have to be assured that the young man was sufficiently advanced in the “customs of civilized life,” that he had a suitable dwelling, an allotment of land on the reserve, and all the necessary household equipment.11 The prospective bride had to have the skills to make a good housekeeper. In this case the principal of the school recommended that the young man work for two years on the school farm—his wages would be saved for him and he would not be permitted to spend any during those years. Reed agreed with this advice; the marriage would be sanctioned if a favourable report was received from the principal after two years. Reed also wrote a personal letter to the young man, saying that he was glad to receive his “manly and well written letter,” explaining how his future would unfold for the next two years, and how he could “succeed in making a happy home for the girl you love.”12

Agent Magnus Begg of the Siksika Reserve reported in 1894 that a “large girl” had left boarding school and wanted to get married, but that he “had her returned to the school.”13 New amendments to the Indian Act permitted agents to do this, often with the assistance of the NWMP. The new compulsory attendance regulations allowed DIA officials greater power in prohibiting some marriages while sanctioning others. The amendments permitted “the arrest and conveyance to school, and detention there, of truant children and of children who are prevented by their parents or guardians from attending.”14 The regulations, “which shall have the force of law,” also permitted “the committal by justices or Indian agents of children of Indian blood under the age of sixteen years to such industrial school or boarding school, there to be kept, cared for and educated for a period not extending beyond the time at which such children shall reach the age of eighteen years.”

< The wedding of Lizzie Acres and Joe Mountain Horse, ex-pupils of St. Paul’s Anglican Mission school on the Kainai Reserve. Marriages of ex-pupils of residential and industrial schools and weddings that conformed to Euro-Canadian customs were encouraged and promoted by the Department of Indian Affairs, school administrators and missionaries. (University of Calgary Archives. Diocese of Calgary's Report on Indian Missions for 1904)
In 1890 Father Joseph Hugonnard, principal of the Qu’Appelle Industrial School, was not acting in accordance with DIA instructions when he was chastised by Indian Commissioner Hayter Reed for allowing marriages between female pupils of the Qu’Appelle school and males not so-educated without “the sanction of the Department having been first obtained.” The marriages, according to Hugonnard, were arranged by the parents who had consulted their children. Reed expressed a “feeling of great regret” that Hugonnard had permitted these marriages, and he vehemently disagreed with Hugonnard’s view of the role of parents in arranging marriages. Hugonnard wrote to Reed, “the arrangements were made by the parents alone. I did not consider that I had any right to make them myself, nor could I take upon myself the responsibility of preventing them from carrying out the arrangements that they had already made. Their future happiness or unhappiness may depend upon it and if I had interfered, they would undoubtedly have blamed me for it afterwards and not without reason.” Hugonnard claimed he could not have waited for Reed’s permission: “[I]t was not in my power to stop them, even by refusing discharges to the four girls. The refusal would not have stopped them.” Reed fumed in reply: “The contention that the parents have sole right to decide such matters cannot for one moment be admitted.” Parents interfered in many directions to prevent actions that were for their own good. Reed contended that the great expense of educating pupils meant that the DIA had acquired “further right in regard to them, and these amounts would be ‘thrown away’ if they were to return to sink back to their old condition on the Reserve.”

Sometimes concerted action was taken by Indian agents, the NWMP, missionaries, and school principals to break up what they saw as illegal marriages. In 1898 a widowed woman, formerly a pupil of the Qu’Appelle Industrial School, made it known that she intended to marry a man who had been previously married. Father Hugonnard, together with Indian Agent W.M. Graham, went to the reserve of the new prospective husband to take her away and return her to her own community. When they could not be located the police were called in to assist. The couple was eventually found and the woman was returned to her own reserve.
Within a few days of this event Father Hugonnard arranged that she be married to a widower of another reserve.

Following the 1900 Dia circular, concerted efforts were made to marry graduates of industrial and residential schools only to other graduates, and there was the expectation that these marriages would be “legal,” and not according to Aboriginal law. That year the agent for the Muscowpetung Reserve in Saskatchewan did not approve of the marriage partners of two young male graduates of the Regina Industrial School. He regarded the women as “very undesirable companions for young men who have received a good common education and a Christian training and of whom we have a right to expect better things.” He insisted instead that they marry “respectable” graduates of a school. The agent refused to recognize their marriages, and informed the men at the time of annuity payments that the women would not be recognized as their wives, nor would any children born to them be regarded as legitimate. He would pay their annuities separately “unless the parties become legally married.” This agent averred that while the government recognized marriages “in accordance with the hereditary customs of the tribe” in the case of “older Indians,” this recognition should not be extended to “the present rising generation who have had the benefit of education and Christian training and who had adopted in a measure the customs and manner of life of the whites, and are regarded as civilized.”

The reply from the Indian commissioner was carefully worded. While he approved of the action the agent proposed to take to “make the Indians conform to the law respecting marriages,” he detected a dangerous deviation from policy. “The Indian form of marriage is binding,” the Indian commissioner wrote. One of the men under scrutiny, he noted, was listed on the paysheets as a married man and was therefore ineligible to marry another.

A system of incentives was devised to promote marriages among graduates, with approved wives given domestic articles such as sewing machines or household furniture. Approved husbands were given assistance to purchase farm equipment. Lists were drawn up of who was worthy of such assistance and who was not. Agents were to report on
the length of time each graduate had been out of school, whether they were married or single, their occupation since leaving school, and where they resided. The pupils were described as “independent of assistance,” “worthy of assistance,” or “no good.” The progress of married recipients of assistance was carefully tracked. A worthy husband was described as industrious, and a worthy wife was “trustworthy and honest as well as being clean personally and a good housekeeper.” Circulars concerned with the future of the graduates, which confirmed the policy of encouraging the marriages of ex-pupils, were issued in 1909 and 1914. In 1914 agents and the principals of residential or boarding schools were instructed by Deputy Superintendent General Duncan Campbell Scott to give careful thought to the future of female pupils: “The special difficulties of their position should be recognized and they should be protected as far as possible from temptations to which they are often exposed.” As explained in a 1912 article on industrial schools, “unmarried girls, upon graduation, find it difficult to secure positions which harmonize with their ideals, and frequently discouragement leads to a serious falling away from the methods of living outlined at the school. To overcome this difficulty the school authorities have found it a great advantage to encourage their older students to marry when they leave the college.”

Mass weddings were held at the schools. On a summer day in 1909, Father Hugonnard married six couples from the Qu’Appelle Industrial School. H.V. Graham, the wife of an Indian agent in southern Saskatchewan, described the same-day wedding of five couples that took place at a Catholic school run by an order of nuns. Preparations had been made for months as they all made their own wedding dresses, and there were five wedding cakes to be made, as “Sister Bohen always insisted that each bride married at school should have a cake.” “I shall never forget that wedding,” she wrote. “The five brides in their white dresses, kneeling beside the sturdy young grooms, the altar in the school chapel was decorated with flowers, the impressive ceremony and the high voices of the children joining in the responses, the practical little sermon by the Priest, the Indian parents in their best beadwork and blankets, all formed a picture that will never be erased from my mind.” In a 1980s interview, Eleanor Brass, a Cree from File Hills, offered a more critical appraisal of
such ceremonies. Brass said the pupils “were matched and mated up and told who they would marry. These couples didn’t go together or know each other. They weren’t even in love with each other.”

Indian agents were instructed to cluster ex-pupils into “separate colonies or settlements removed to some extent from the older Indians.” The File Hills Colony in Saskatchewan, established in 1901, was a showcase settlement of such married industrial school graduates, isolated from the “older Indians.” Frederick Abbott, who admired the colony, described how each male colonist, once he had sufficient land under cultivation and a house built, “is prepared to get married, the match, in most cases, having already been arranged before the young people left school; and perhaps the young wife has been working with some white family during these first two years and earning enough to buy herself some dishes and furniture to begin housekeeping in a simple way. This sort of match-making is encouraged in all the Canadian boarding schools.”

The colony was also devised to display how gender roles in this Aboriginal community conformed to an idealized the Euro-Canadian model. Founder W.M. Graham boasted in 1912 about the housekeeping abilities of the women of the colony: “If one would visit this colony on a Monday, one would see clothes hanging out to dry at almost every house. If one should go on Saturday, one would find them scrubbing. The work of the home is carried on with some system, which of course is the result of the training they have received at school. Bread-baking, butter-making, care of fowls and gardening are kinds of work that are usually left to the housewife.” Eleanor Brass, one of the first children born in the colony, wrote in 1953 that “One outstanding rule that has been kept for years was a by-law made by the colonists themselves, ‘That no couples should live together unless lawfully married by the laws of the country or their respective churches.”

By the early 1920s, enthusiasm for the “match making” of pupils had waned, and it was no longer government policy. The chairman of the Presbytery of Winnipeg’s Committee on Indian Work recommended in 1922 that the department make it unlawful for a pupil or ex-pupil to marry without the permission of the Indian agent. The punishment, it was suggested, could be no annuities and no admission to the schools.
for the children born of non-sanctioned marriages. The answer from the Department of Justice was that there was much to object to in such a proposal. Would an ex-pupil, even if aged fifty, be considered unable to marry without permission? Only those couples with children would be penalized, and why should innocent children pay the penalty for their parents? In 1923 the principal at the St. Paul’s School on the Blood Reserve made a similar request, that “action be taken to provide that no Indian shall marry unless first consulting the Indian agent, who would then inquire into the legitimacy of the request, and authorize the recognized marriage service to be performed in any Church.”33 The curt answer from the DIA was that the request could not be complied with, as “there is nothing in the Indian Act whereby Indians could be compelled to consult an Indian Agent before getting married.”32

Aside from their matchmaking work, Indian agents had numerous other conundrums to deal with relating to marriage and divorce. The instructions they were issued to recognize the validity of Aboriginal marriages but not divorces, and to insist that marriage was indissoluble except through the death of a spouse or a “legal” divorce, resulted in a host of perplexing domestic issues for which they had no training or expertise. Agents at the local level were often sympathetic to requests for recognition of Aboriginal divorce and remarriage, and they were often ambivalent about the directives they were to enforce. Even missionaries at times felt there should be greater flexibility in allowing people separated for years and living together with new partners for years to remarry. But the new regime made it difficult, and at times impossible, for people to pursue their former range of options for new family formation in the event of desertion, separation, or divorce, or to resolve such problems as cruelty.

Vexing questions emerged when separated or deserted spouses wished to marry again as they had always done. In 1905, for example, the Indian agent at Moose Mountain (Saskatchewan) wrote to the Ottawa DIA office asking whether a woman, married according to Aboriginal law but deserted by her husband, could remarry. The agent carefully detailed that the woman’s behaviour was not the primary cause of the marriage breakdown. “In a case of this sort,” the agent asked, “would it be legal for the woman to marry again, and if not how long would it be before she could
do so provided her husband persists in deserting her and refuses to support her and her family.” The very swift reply to this inquiry, from Frank Pedley, deputy superintendent general of Indian affairs, was typical of the responses to all such inquiries. Pedley replied that because Indian divorce was not recognized as valid, this woman could not legally marry another man until the death of her husband unless she obtained a legal divorce. If she thought her husband was dead for seven years at the time of her second marriage, then she could not be prosecuted for bigamy, but if her husband was alive, and she knew him to be alive, then the second marriage would not be regarded as legal. Similar advice was given to all Canadians who were deserted or separated but Aboriginal law permitted much greater flexibility to divorce and to remarry. The best that could be done for an Aboriginal woman was to apply the husband’s annuity money to her and any children through Section 72 of the Indian Act.

Puzzling questions emerged in cases of inheritance when, under the Indian Act, an assessment of the “morality” of a widow, and thus her right to inherit, was at issue. As a non-Aboriginal critic of the DIA regime remarked in 1911, “morality (what sort of morality is not stated), is apparently far more essential for the Indians than it is for us, and especially is more essential to an Indian woman than it is to her white sister. For if a husband dies intestate and the widow is not a woman of ‘good moral character’ she loses her interest in the estate.” In 1904–1905 the distribution of the estate of an intestate Kainai man caused Indian Agent R.N. Wilson great consternation. As mentioned previously, a widow could not inherit the property of her deceased spouse under the Indian Act unless she “was a woman of good moral character,” and was living with her husband at the time of his death. Wilson had the “unshaken belief” that a woman named “DC” was the legal widow of the deceased, “HO,” having married him after the death of his first wife, but his departmental superiors in Ottawa disagreed, holding that the man had died “without leaving a widow or any issue.” The first (and in their view only) wife of HO was the legal wife. Also claiming that DC was not a legal wife was the deceased’s next-of-kin, including the mother of the deceased, a sister, and two half-brothers. According to Wilson, these family members

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had already taken forcible possession of the wagon and some other property of the estate a year earlier. Wilson was angered that the dia wished to turn DC “out of house and home and utterly dispossess her of what she has every reason to believe is her lawful property.” The rival claimants who wished to inherit from the estate of HO and dispossess DC appealed directly to Ottawa over Wilson’s head, sending affidavits that HO’s first wife was alive. They also claimed that DC was not a wife but a concubine, and that she was a woman of “notoriously loose and immoral character.” Based on this evidence, Deputy Superintendent General Frank Pedley consulted the Department of Justice about the case, and the ruling was that DC was never lawfully married to HO.

Wilson had evidence that HO married DC after the death of his first wife. He was also angry that DC had no opportunity to hear the evidence upon which it was proposed to turn her out of her house and no opportunity to disprove the charges; he wanted to secure her the right to produce sworn testimony in support of her claim that she was the legal wife. He wanted copies of the affidavits that were sent to Ottawa relative to the case to facilitate his rebuttal. Wilson requested that he be sent the department’s definition of a “legal Indian marriage,” as “it is necessary that when in future I speak of an Indian’s wife I should be in a position to do so advisedly.” This case, Wilson contended, was of vast importance as a precedent. “One of the principal chiefs remarked some days ago,” Wilson wrote to Ottawa, “if [DC] was not the wife of [HO] then most of us Blood Indians are single men.”

Ultimately it was decided, however, that the Crown would acquire the estate. In trying to discredit the rival family claimants to the estate of HO, Wilson informed Ottawa that the alleged half-brothers were not legally brothers of the deceased, and that there was also a problem with the claim of HO’s sister. “Their common father,” Wilson wrote, “was a polygamist whose plural wife or concubine [was]...the mother of the two last named, who thus are apparently in the eyes of the law illegitimate, which suggests the query, who besides the mother are the next of kin to an illegitimate child?” Pedley once again sought the advice of the Justice Department on the issue. E.L. Newcombe replied in March of 1905, “Assuming the facts to be as you state them, [HO] was
an illegitimate son. That being so, and he having left no lawful issue of his body, and having died intestate, the Crown succeeds to his property, and may, I think, with the consent of the band, if it is thought proper to obtain it, make such distribution thereof as in its opinion the justice of the case requires.\(^{245}\) The estate amounted to very little. When the Fort Macleod lawyers (“Weed and Campbell”) who had helped the next-of-kin to discredit the claim of DC attempted to collect from the estate in January of 1905, Wilson replied that the distribution of the property had yet to be decided, and that the deceased had incurred a large balance of debt on the books in his office. Wilson further wrote that to this “may be added whatever is due to [DC] for her care of the cattle during the last year,” and that “no matter how ends the squabble over this dead Indian’s affairs a settlement of your account by this office is necessarily a somewhat remote possibility."\(^{42}\)

Indian agents, sometimes in consultation with other officials, had to decide which marriages were valid for the purposes of treaty annuity payments, and they decided which women were no longer considered “Indians” because they had married out. In the case of an Aboriginal woman marrying a white man, a non-treaty “Indian,” or a Métis, marriage according to Aboriginal law was generally regarded as valid for the purposes of applying the Indian Act, and the wife ceased “to be an Indian in any respect within the meaning of this Act.”\(^{43}\) As mentioned earlier in this book, questions about what kind of marriage had taken place were not usually asked. The issue emerged for example in 1889 when a Rev. W. Nicolls wrote to the assistant Indian commissioner in Regina about a man named Graham who married a Lakota woman “according to Indian custom (as far as I can learn from other Indians).”\(^{44}\) (The Lakota were not treaty people in Canada but they still had Indian status.) His wife was ill with tuberculosis and her husband sought government assistance for her. The answer was that he could not expect any aid from the government for his wife.\(^{45}\) She was no longer an “Indian,” and was therefore no longer a ward of the government. Agents drew up lists of the women married to non-treaty or “half breed” men and who were thus “allowed out of treaty.”\(^{46}\) They reported the cases to the Indian commissioner in Regina. In 1893, for example, Agent R.S. McKenzie of the

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Duck Lake Agency recommended that Isabella Pruden, the daughter of Robert Bear of John Smith’s band, be permitted to withdraw from treaty, writing that “this woman is married to an English Halfbreed and derives no other assistance from the Department than her annuity, and as her husband is in a position to support her, I would recommend that her discharge be granted.” The women had to sign documents declaring that they desired to withdraw from treaty. The fifty-dollar commutation of annuity route must have been an attractive enticement to poor people. (The most expensive item in a 1912 Woodward’s Catalogue was “The Colonist,” a steel range with a high warming closet at $32.00. Women’s shoes were $2.75. An oak extension table was $9.00.)

The presence of missionaries on reserves complicated the marriage terrain. Missionaries of all denominations were at odds with the policy of the government to recognize the validity of Aboriginal marriage. As one of the earliest Catholic missionaries wrote to his bishop in 1822 from Pembina (North Dakota), “If these Indian marriages are valid and therefore indissoluble, the missionary will always be faced by almost insurmountable difficulties in converting the Indians to Christianity.”

Their project of introducing Christian marriage was often directly at odds with the agenda of government administrators, and missionaries frequently clashed with Indian agents, disagreeing about what did or did not constitute a legitimate marriage, and about who made respectable partners in marriage. The Roman Catholics were the least co-operative with the dia in their policy of recognizing the validity of Aboriginal marriage as they carried out the principal of the supremacy of Canon Law over any other law, including government legislation, as a tenet of their faith. Catholic missionaries were often accused of endorsing bigamous marriages, as in many cases they did not recognize the marriage ceremonies of other denominations.

Yet sometimes dia officials insisted that a church marriage was valid when religious authorities disagreed. Father Hugonnard married a young Assiniboine couple of the Moose Mountain Agency in a 1902 Roman Catholic ceremony, despite the fact, Hugonnard later claimed, that during the ceremony the bride did not give her consent to the marriage. She would not give her verbal consent and her father had to take her hand.
and put it in the hand of the groom. Nevertheless, Father Hugonnard declared the marriage valid as the groom allegedly said at the time, according to Hugonnard, that “she would consent alright after having stayed sometime in the house.” Two years later, however, Hugonnard decided that there was no marriage, and that the husband was free to remarry. His reasoning was that there was no marriage because the bride had not given sufficient consent, had only gave her hand at the command of her parents, and she had persistently refused to cohabit with her husband. According to Hugonnard, “I therefore state that for want of her consent then and afterwards there was no marriage and Emile is free to marry again at least as far as ecclesiastical [sic] marriage is concerned.” He wrote to the husband and said that there was no religious marriage and that he did not think the “legal marriage” existed without the religious marriage, and although this letter was produced to the Dia officials, they disagreed, insisting that this was a legal marriage that could not be annulled or dissolved. The Indian agent reported that as the couple had cohabited together for about two months after their marriage, “and to my knowledge occupied the same room and bed, I think that the marriage should be looked upon as binding, and if Emile is permitted to marry again I do not think that his example would be conducive to morality on their reserve.”

Assistant Indian Commissioner J.A.J. McKenna ruled early in 1905 that this was a legal marriage.

Agents and missionaries disagreed over who constituted suitable spouses. Indian Agent W.E. Jones at Coté, Assiniboia, was opposed to the 1894 marriage of fifteen-year-old girl to a “half breed...a useless & unhealthy man & totally unfit to support a wife.” Jones explained his objections to the resident Anglican missionary, telling him “not to marry this Indian girl to a non treaty man, as she was a ward of the Government, her family were not looking after her & I felt I was responsible as to her welfare.” But according to Jones the missionary “treated the matter with contempt & married them.” Jones asked that missionaries be informed that “no marriage should be performed in which Indians are concerned without first informing the Agent.” This was done, as the Anglican Bishop of Qu’Appelle was told of the actions of his missionary, and informed that “such marriages...are most unsuitable as they are the means of
keeping worthless men hanging about the Reserves and the Department in the interests of its wards is doing all it can to prevent their taking place and it would be glad to have your co-operation in this work.”

The bishop replied that his informants told him that the young man was hard working, and that “from all accounts marriage was the best thing that could happen to the girl, as it would appear that her brother was trying to sell her to a Pagan Indian.”

In 1907, Indian Agent M. Millar of the Crooked Lake Agency insisted that the first marriage of a man according to Aboriginal law was valid while his second marriage with another woman, performed by a Presbyterian missionary named Hugh McKay, was not valid. The man involved in both of these marriages was a Roman Catholic of long standing. He was also a prominent person who aspired to the office of chief. After his first marriage, performed according to Aboriginal law in 1906, the couple was placed on the dia books as married, and the husband was consequently paid the wife’s share of money that was distributed to the band in 1907 as a result of a land surrender. Shortly after this, however, he “cast the woman off,” according to the agent’s description. The man then wished to marry another woman, to the great disapproval of the agent and the local priest, who tried to persuade him to marry his first wife in a Catholic ceremony. The man asked instead that the priest marry him to the other woman, but the priest refused as he wished to abide by the directives of the agent. The couple then appealed to the Presbyterian missionary who performed the ceremony. Rev. McKay was convinced that the first wife was not a wife at all but rather a housekeeper. Agent Millar was livid at the turn of events and blamed McKay for not making substantial inquiries into the case before performing the ceremony. The woman was not a housekeeper, he retorted, “She had been pregnant, and claims to have lost her child prematurely by overwork attending to this man’s cattle in the winter.” Millar insisted that the second marriage should be considered invalid, or treated as bigamous. He wrote, “The marriage if allowed to stand is going to have a very serious influence among the Indians. As I understand it, marriage according to the Indian custom is held to be valid in law, in which case this Indian is a bigamist, and in the interest of Indian morals, with regard to marriage, should be prosecuted and the
Agent Millar argued that if the second Presbyterian marriage was recognized by the department, it “will have a very injurious influence over the Christian morals of the Indians.” In this case Assistant Indian Commissioner J. McKenna requested that the Indian agent provide him with “information as to the nature of what he describes as the Indian custom of marriage and the extent to which it prevails in his Agency.” Citing the Sheran and Bethell cases, McKenna wrote that there was “danger in extending the doctrine of marriage by Indian custom among civilised bands.” The Department asserted that the second Presbyterian marriage had to be recognized as the valid marriage.

A protracted case of marital discord on the Assiniboine Reserve in 1903 illustrated the disharmony that could prevail among missionaries and government officials, and it also highlighted the degree of involvement that missionaries and even the highest Department bureaucrats had in the domestic affairs of reserve residents. Indian Commissioner David Laird, formerly a Prince Edward Island newspaper publisher, politician, and lieutenant governor of the North-West Territories, dispensed advice on marriage from his Winnipeg office to people he had likely never met. This particular case also serves as an example of the disputes over marriages that marked relationships between missionaries and Indian agents, and the diverse strategies departmental officials would employ to try to effect reconciliation. A sort of “family court” or mediation session was held by the agent on this reserve, to the towering displeasure of his bureaucratic superiors. But this session was mainly at the request of the estranged wife, and the case now provides us with evidence of the diverse strategies employed by the people whose married lives were the object of so much scrutiny. In this case, which included the estranged wife seeking the protection and support of the resident missionary and his wife, the wife also requested a hearing into the disputes at the heart of the marriage breakdown. Both husband and wife wrote letters to the Indian commissioner setting forth their side of the story.

“NJ” was a student at the Regina Industrial School in 1902 when she was given an honourable discharge in order to get married, at which time she received the gifts given to all ex-pupils in order to assist them in establishing a home. She was married in July of 1902 to “JJ,” the son of...
of a former chief who had not attended industrial school. E. McKenzie, the Presbyterian missionary on the reserve, performed the ceremony. All went well initially and they soon had a daughter, but shortly after her birth the marriage broke down. In a letter to Indian Commissioner Laird, NJ stated that her husband struck her, threatened worse violence, and had sent her away, accusing her of being unfaithful. She alleged that her husband made her leave her baby with his aunt so she could work with him making hay, harvesting, and cutting logs and willow poles. NJ believed her husband was being pressured by a Catholic friend, who wanted him to convert and to marry a Catholic woman instead. NJ wanted custody of her daughter, support, and “a fair trial with us all face to face,” and she appealed to Laird for his “help in seeing justice done between us.” Her husband had initially retained custody of the child, who was cared for by his mother, with the approval of Indian Agent Thomas Aspdin, but NJ explained to Laird that, accompanied by the missionary’s wife, she went to her husband’s mother’s home and took back her child. NJ took refuge first with the agent and his Lakota wife after parting from her husband, and then with the McKenzies.

On receiving this letter, Laird instructed Agent Aspdin to do all he could to effect a reconciliation, to tell JJ to “take back his wife, and treat her properly.” He also advised NJ to give up her child to the custody of the grandmother. The husband then wrote a letter of his own to Laird, claiming that his marriage was “planned and executed by third parties,” and “it was without courtship or any preliminary knowledge of each others [sic] character.” He wrote that he had been “induced to this hasty marriage” by Mr. and Mrs. McKenzie, “in defiance of the Agent’s urgent wish to become engaged first and build a house and get a few things together before I got married.” The missionary couple, however, advised him to “make haste and that I would gain nothing by taking the advice of the Agent.” JJ claimed that his wife was of a jealous nature, which developed into a “mania,” culminating with her public accusations of his unfaithfulness. He accused her of being the unfaithful one, and noted her indifference to household work.

Missionary McKenzie sided with NJ, believing her side of the story, and accused Agent Aspdin of trying to discredit the wife and make her
admit to adultery that had never happened. McKenzie criticized the agent’s “kind of court in the agency office calling [NJ] as a witness, but virtually with the object of discrediting [NJ’s] veracity.” He further accused Aspdin of trying to make NJ sign a document without reading it, one that “seemed to be a deed of separation which she was to sign in complete ignorance.” Agent Aspdin, McKenzie wrote, accused him of “not co-operating with him for peace, but co-operation evidently would be a losing game for [NJ].” He and his wife “found her a young woman who has wonderfully preserved her chastity, truthfulness, and modesty.”

Agent Aspdin was more sympathetic to JJ, although he admitted there were faults on both sides. In a lengthy letter detailing his understanding of the issues, he assigned most of the blame to NJ, who he believed was not as tidy and industrious as she ought to be, was not to be believed, and was morally compromised. He wrote that JJ “admits the beating but not to the extent or severity as his wife alleges and [he] claims extreme provocation on account of her jealous nature.” With regard to the outdoor work she performed, Aspdin claimed that this was not regarded as women’s work in “settled parts, but in a new country like this it is not uncommon to see women doing this work particularly among those starting on small means,” and in his view this did not constitute cruelty. The McKenzies, Aspdin wrote, were taking her side entirely because they had not heard the husband’s side, and he wrote that NJ “may be vain enough to think that with Mr. and Mrs. McKenzie on her side she can humiliate her husband and make him take her back on her own terms.” Aspdin thought the missionary was the cause of NJ refusing to reconcile and he accused him and his wife of “stirring up strife but it has had no effect as I find they are naturally contentious. Moreover it is more often badly informed they are on all matters which they handle. They have not had an Interpreter for nearly two years.” Curiously, the almost exact wording made its way into an 8 January 1904 letter addressed to Laird from Chief Carry the Kettle and Headman Crooked Arm, asking for the missionary to be replaced because he had no interpreter, was causing trouble, and worked against the Indian agent.
Matters became even more complicated and the situation inflated when another woman on the reserve, “CW,” claimed that stories were being told about her by a man named RA that connected CW to estranged husband JJ, and that these stories were being told to NJ. Aspdin dealt with this by charging RA under the vagrancy section of the Criminal Code, giving him a “talking to,” and then dismissing the case. Aspdin hoped this would serve “a good lesson by letting those who are inclined to make mischief to beware of themselves.” The McKenzies, however, accused CW of perjury and asked Aspdin to take their affidavits on the issue, which he refused to do. The missionary couple then went to the home of the chief. According to Aspdin, it was there where CW was “stopping and seem[ed] to have had a scene.” The McKenzies, Aspdin contended, with no understanding of the language, believed NJ, who, he wrote, “is regarded as rather a Moral ‘oblique’ as far as veracity is concerned.” CW, however, was in Aspdin’s view, “altogether a different girl” as she was also a graduate of the Regina Industrial School, and had been assistant matron at the Alberni (Presbyterian) School for two years. Indian Commissioner Laird was angry at Aspdin’s tactics in dealing with the entire matter. He did not see why NJ should be criticized for staying with the McKenzies, as “she must stop somewhere.” He also admonished Aspdin for charging RA with vagrancy: “If he is an Indian belonging to the reserve,” asked Laird, “how could he be a vagrant?” Laird questioned Aspdin’s authority to hold such a trial: “The authority for which you yourself were not clear about...[which]...seems to have caused more strife than it allayed.” Laird concluded, “If a reconciliation is to be accomplished the fewer of such trials the better. It is not by offending the missionaries and their guest [NJ], or her husband, that you can succeed in making peace.”

Despite his admonishment of Agent Aspdin, Indian Commissioner Laird agreed with him that the marital discord was mainly due to NJ, and he advised her to return to her husband. “You may be to blame for talking too much against your husband,” he wrote to her. “You are married for better or for worse, and it is your duty to promise to be reasonable. Reconciliation is almost the only hope I see for you...I advise
you make it up with your husband and go back and live with him.” But she must have disregarded this advice. Some months later she had given away or sold the things given to her at her wedding. Agent Aspdin believed there was no chance of the couple reconciling.

When there were two or more denominations present in a community there could be many complications. In seeking converts, missionaries cast doubts about the validity of the marriage ceremonies of their rivals. Rev. I. J. Taylor, an Anglican missionary on the Onion Lake Reserve, had to contend with what was described in his journal as the “Romanists,” who were “actively vilifying” the Anglican marriage service through “false and malicious inventions.” According to Taylor they were questioning the sanctity of the Anglican marriage ceremony and his own power and authority as a minister. Taylor wrote that the priests made untiring efforts to draw the Anglican converts away and used every opportunity to criticize Protestant marriage. A young man who had converted to the Anglican Church wanted to get married and he worked hard to bring several women over to his church, but without success. He then became engaged to a Roman Catholic woman and worked to persuade her to change faiths but “both her mother and herself had made a vow never to join our Communion or be married in our Church.” Taylor also tried without success to convert the woman, and finally offered to marry the couple anyway. She refused and the couple was married in the Catholic Church, although Taylor instructed the young man not to convert. But in performing the marriage ceremony the priest withheld the blessing of the church because the man was a “heretic.” Taylor described this as a “master stroke” of policy on the part of the priest, for in the weeks that followed the young woman constantly felt that something was wrong as the marriage had not received the blessing. The result was that within two months the young man was baptized and secured into the Catholic Church. Precisely the same thing had happened to another young Anglican and graduate of an industrial school. Taylor was particularly frustrated because he found that “in all matters of religion the men are led by the women, though in all other matters the women are little better than slaves.” The missionary also admonished couples who
were “together only in Indian Marriage Fashion, informing one man so-married that ‘this is indeed accepted at the Agency, but...it will not be satisfactory until they are married in the church.”’

There were occasions and situations when departmental rules and policies were relaxed. In 1906, for example, a Manitoba woman who had three children with a previously married man (whose first wife was still alive) was ordered to end the relationship and return to her community, the Jack Head Reserve. Although the inspector of the Indian agencies for Lake Manitoba, S.R. Marlatt, acknowledged that it would be a “great hardship” to send the woman back to her reserve with three small children to support on her own, “allowing them to remain together would be encouraging vice.” The father of the three children wrote to the inspector to say that he was “very sorry that in my ignorance I have broken the law of the land in taking another wife, while the wife who I am lawfully married to is still living...[but] if I should take back the woman I have now and give her up, how are the children which I have with her now, to live. Have I to support them? If so in which way. I would be very glad to support them only I couldn’t take and keep them now as they are too young yet to be taken from their mother...I hope you will do your best for me in this matter as if I get into trouble and am sent to jail who is to support my children.” He claimed to have lived apart from his “lawful wife” for eight years, and he further stated, “With regard to my lawful wife’s children I would say that they have no claim on me as I am not the father of them.” Chief Samuel Marsden of the Lake St. Martin Reserve where the couple resided wrote to Marlatt as well, saying that “I am at a loss what to do with regard to [the situation] as they have three little children and if he takes the woman back to Jack Head Reserve where she belongs and gives her up she will not be able to support her children. If they had no children I would send her right back to where she belongs, but as it is I don’t know what to do.” The decision of Indian Commissioner Laird in this case was that while “we do not approve of his living with this woman, and cannot recognize her as his lawful wife, or his children as legitimate,” action to separate the couple and break up the family would not be taken. In this case it
likely helped that the man’s first wife was cast in the correspondence as “immoral and unfaithful to him.”

Some DIA authorities, missionaries, and members of the NWMP wondered if a means of separation or divorce could be devised, aside from the “legal” route widely acknowledged to be an impossibility. It was recognized by many of those who worked directly in these communities that the policy of not permitting or recognizing Aboriginal divorce was undermining the department’s own goal of establishing stable families. Under the pre-reserve regime there was no “immorality” attached to such marriages. Under the new regime couples regarded themselves as legally married but they were stigmatised as “immoral,” and their children were viewed as illegitimate.

Authorities recognized that the appeal-to-Parliament divorce route was out of the question. The expense was one issue that ensured that “legal” divorce was out of reach, but there were others. As discussed earlier in this book, and as raised by a Vancouver lawyer in 1912, the courts would likely not entertain an application for a divorce from someone married according to Aboriginal law, “in view of the fact that it was possible to get a divorce by Indian custom without coming into the courts of the province.” But there were other issues. The first step in a divorce was to prove a valid marriage, and it was “usual to produce and file with the Committee a certificate of marriage, signed by the officiating Minister or to produce and prove an examined copy of the entry in the marriage register, or to file a certificate signed by the Registrar-General, where the marriage was performed in any of the provinces of Canada having such an officer.” Those married according to Aboriginal law might not have made it beyond the first step of a divorce proceeding, as it would have been difficult to prove a valid marriage. For couples in the Aboriginal community who were married by clergy, divorce through application to Parliament was the only means of divorce, and it is possible that this too discouraged people from “legal” marriages.

As “legal” divorce was almost impossible, Indian agents and other community workers cast about for other solutions. A frustrated agent on the Morley Reserve wrote in 1903 that while he could get some unhappy
couples to reconcile, there were others he could not do anything about. Many wished to remarry, and he wondered if a form of legal separation and/or divorce might be possible. He felt that “the band would be a great deal better for it morally.” Laird’s reply indicated that he was aware that marriage according to Aboriginal law might not, if ever tested, be subject to the same law and process that governed divorce for others in Canada. He wrote, “When legally married by a missionary there is no way that they can obtain a divorce except by applying to the Parliament of Canada, which is very expensive and costs more than an Indian can afford.” He also gave the standard reply that anyone who is married and marries another could be prosecuted for bigamy, and be sent for seven years to a penitentiary.

A similar response was given to P.C.H. Primrose, the superintendent of the police in the Macleod district who wanted to assist a young Piikani man whose wife had left him for another man. He blamed his wife’s mother for the situation. If the young man’s statement was correct, Primrose wrote, he could proceed against his wife for bigamy, “but we have not taken notice in the past of Indian men having a number of wives, and I do not think it would be the proper way to settle this case to proceed against the woman, when the men are allowed to do the very same thing.” According to Primrose the young man had given a gift of thirteen horses to the bride’s family and he wondered whether in this and other instances the parents could be “forced to return the purchase price of the wife.” He thought it would satisfy the man to have his horses returned, and this would also end parental interference in marriages of their children. Laird replied that while it would be right for the man to get his horses back he did not know of any legal process that could effect this. “At any rate,” he observed, “it would not dissolve the marriage, which is for life horses or no horses, unless there is a regular divorce.” Laird further advised that the wife could be prosecuted for bigamy only if she “had been married in full legal form” to the man she now lived with, “but the immorality of merely living with another man without any form of marriage is difficult to reach by law in the case of either Indians or white men.” Primrose sharply disagreed with Laird’s view and wrote to the commissioner of the NWMP complaining that Laird “says this
marriage is for life, when, seeing by actual experience marriage according to Indian rites is dissolved every easily and sometimes very quickly."

In 1910 the General Conference of the Methodist Church of Canada came to the conclusion that the solution to the problem of “Indian marriage” was to permit a form of annulment of these marriages. In a letter to Minister of the Interior Frank Oliver, prominent moral reformer and Methodist leader Rev. Samuel D. Chown set out the resolutions of the General Conference. It was assumed that many marriages “amongst our Indian population” were entered into without the full consent of the contracting parties, that subsequent separations and illicit sexual alliances produced children who needed parental care, and that the parents felt “the evil of their state of life and are oppressed in their conscience and desire relief from a contract immaturely and irresponsibly entered into.” The recommendation was that the government appoint a small commission to look into the matter and provide “relief of persons suffering from such immoral conditions and to safeguard the welfare of the children.” Chown further explained to Oliver, “To annul marriages which are not honoured in later life, and which have been contracted under the conditions set forth in this resolution, would be the easiest way to arrive at a solution of the question.” The answer from Duncan Campbell Scott was that special legislation would be needed to permit Indian divorce, that if divorce was allowed many children would be left in an “unenviable position,” and that the dia hesitated to introduce “special legislation regulating Indian marriage customs from the fear that any law upon the Statute Book would be almost impossible of enforcement.” Scott quoted from the 1887 order-in-council including that the “true remedy of this lax state of things must come from the gradual civilization of the Indians.”

A Methodist missionary at Wabamun, Alberta, also felt that divorces should be permitted in order to sanction second marriages. In 1912 he wrote a letter to his superiors in the church and these concerns were then forwarded to dia Secretary J.M. McLean in Ottawa. The missionary described a complicated situation that prevented him from performing marriages for two couples, who he felt ought to be permitted to marry:
[MC] married [MH] some ten years ago. They could not agree and soon separated. He has been living with [MB] all these years and they live agreeably and wished me to marry them, which I could not do. His wife has been living with another man and has quite a family of children. Last winter he died and she came back to Paul’s Reserve to live where she first lived, but she has no home and no way of making a living so she took up with [AP], and they have been living together for six or eight months in his father’s house much against the will of the old man and also of the other Indians. What can be done? The woman must have a living, and to live thus is very bad. Could there not be a divorce on some ground and then the two couples be married? We are trying to do away with all this looseness and have succeeded in many cases already. If the Government would help us in this case, I would be much obliged.

In forwarding this letter to the DIA, the general secretary of the Methodist Church wrote that he did not agree with the missionary that access to divorce was the answer; rather, he suggested that adultery be made a crime. The answer from J. D. McLean, assistant deputy as well as secretary of the DIA, was that his department had no power to secure divorces, that there was no divorce court in Alberta, and that the only way a divorce could be secured was “a method out of reach of Indians by its expense and cumbersome procedure.” McLean added that even if they compelled all Indians to marry under Canadian laws, it would not address the cases the missionary described, and that “we can scarcely hope to make adultery a crime for Indians alone.” As will be discussed below, the DIA drafted a proposal in 1908 to permit a special form of divorce, although this never materialized.

Efforts of the DIA and missionaries to enforce the monogamy policy were far from successful in many cases. The power of Indian agents was limited and contested—their authority tenuous. As one frustrated agent complained in 1900, “They do not seem to be learning that their free and easy custom of marrying is improper.” Agents preferred not to give orders, as one agent wrote, “that may not be enforced.” They frequently reported that they did not always succeed in breaking up “matches”
that they did not approve of, and efforts to reconcile estranged couples rarely worked. Methods of enforcing monogamy such as withholding and redirecting annuities had little effect. People continued to marry, divorce, and remarry according to Aboriginal law, insisting on their right to do so. Agreeing to a church ceremony did not always mean that they had “discarded” belief in their own marriage law, or that they had rejected the web of kinship obligations and responsibilities that were involved. As George Faithful wrote for the entry on his family in a history of Frog Lake and district, “The white people seemed to think that Philomena and I weren’t married and that our children were illegitimate, but we were married in the way of Indian custom. The woman keeps the name of her father or mother. To please our church and the Government of Canada we were married two years ago by a United Church minister who came to visit us from Saskatoon.”

People also manipulated the new regime of Indian agents, missionaries, schools, and police to their own advantage if they could, and many examples of this have already been given, including the claimants in the estate of a Kainai named “HO,” and the case of the young Piikani man who complained about his wife to Superintendent Primrose and wanted his horses returned. Parents also asked for police intervention in marital disputes involving their children. In 1891, while on patrol near Battleford, Inspector J. Howe of the NWP was approached by a couple from the Moosomin Reserve who laid a complaint against a man “for taking their daughter a girl of about seventeen years of age and living with her contrary to their wishes, he being a married man.” Howe had the man arrested, but the parents of the girl did not want the man punished, and he was discharged with a caution, promising to give the girl up to her parents.

Another strategy that was adopted, and one which yielded the exact opposite effect to the one desired by officials and missionaries, was to marry young people at an increasingly younger age to keep them out of industrial and residential schools. If a student married, he or she was no longer eligible to be a pupil. Through this tactic people evaded the control of agents and school principals to decide whom their children should marry, but it was also part of a larger protest over the incarceration of their children. Esther Goldfrank’s 1930s informants gave
examples of children who were married “so they wouldn’t have to go to the Indian School.”92 The marriages were not to be consummated until the girl was older. In the case of one ten-year-old girl, the “marriage was arranged so that the girl wouldn’t have to go to school.”93 Everyone was surprised that she had a baby before she was eleven, as they thought the husband “should have waited until she grew up.”

Agents had a number of tactics that they adopted to attempt to enforce the monogamy policy. One was to redirect annuities to a deserted spouse under the authority of the Indian Act. Another was to punish mothers thought to be living “immorally” by threatening to remove their children and place them in residential schools, or send them to live with relatives or the fathers. As mentioned above, after 1894 officials could force children to attend the schools. In 1897 the Crooked Lake agent asked permission to take a child from a mother classified as “immoral” and place that child in whatever school the father chose.94 A Moose Mountain woman deserted by her first husband intended to remarry in 1906, but was discouraged from doing so through the threat that her children would be taken from her (with the father’s agreement) and placed with a grandmother.95 In 1904 the Indian agent at Morley reported to the Indian commissioner that a young widow and mother of two boys had formed a new family with a previously married man. He had tried to induce the man to return to his first wife and family, but to no avail. “To punish the mother I wish to take her children away,” wrote the agent. “These Indians are opposed to sending their children away and I wish to hold this over them so that in similar cases in the future the children may be taken away and sent to Red Deer school.”96

Indian agents supported husbands and wives perceived to be justifiably aggrieved, but were quick to judge others, particularly women, as “immoral,” if they had left unhappy marriages and formed new relationships. Agents and farm instructors took steps to separate couples that they believed did not have permission to be together, and in other cases they gave permission for such unions. In 1906 farm instructor Thomas Cory wrote for instructions from Indian Commissioner Laird in the case of a woman who had formed a new marriage and had a child with the man. “They were together last winter,” he wrote, “but were separated
by the Agent and they went together again last night but I parted them this morning and took the woman home.” He promised to “keep them apart until I hear your decision.” Cory described the woman as “notoriously immoral,” and her first husband as “a very decent fellow and a good worker.” Confusion abounded in this case, as earlier that year Laird had advised that the woman could not be acknowledged as the legal wife of her second husband, but the farm instructor and others in her own community claimed that another DIA official, William M. Graham, had given them permission to marry.

Agents often helped each other out in enforcing monogamy. In the event of a person involved in a second marriage attempting to relocate to the reserve of a new spouse, agents were instructed to treat them as they would any other trespasser, and to deny them permission to reside on the reserve, a power granted agents under the Indian Act. Agents on reservations across the border in the United States were also called upon to co-operate in projects of reconciliation. In 1904 the agent on the Kainai Reserve wrote to the agent at Browning on the Blackfeet Reservation to say that a woman from his reserve had run away from her husband and was living there, and asked “if you will kindly have the young woman sent home...as I wish to reconcile the couple.” In 1910 the superintendent at the Fort Belknap Agency (Montana) informed the agent on the Piapot Reserve (Saskatchewan) that a Cree woman from Piapot was visiting Fort Belknap and wanted to marry an Assiniboine man of that agency. “If you have no objection to the marriage and the woman has no other husband,” he wrote, “permit will be given them from this office.”

Aboriginal recipients of all of this attention to their marital and domestic affairs were aware of the confusions and uncertainties on the whole marriage question, of the inability of the authorities to entirely enforce their will, and of the advantages to be gained by exploiting denominational rivalries. As is particularly clear from the protests against efforts to abolish polygamy, people defied and protested interference in their domestic affairs. It is also clear that threats to prosecute for bigamy were hollow. As many of the examples already discussed have demonstrated, a major tactic of DIA officials was to threaten prosecution...
for bigamy, to warn that it was a serious crime, and that a convicted bigamist could be sentenced to seven years in the penitentiary. But officials were always hesitant to proceed because of concerns that such prosecutions might fail. As stressed earlier, the DIA would lose authority and their level of control if such a case was lost after persistent threats of prosecution, and authorities feared that such a loss could be interpreted as giving sanction to serial matrimony (plurogamy). To commit bigamy, as explained by a Department of Justice clerk in 1914, “one has to go through a form of marriage recognized as a valid form by the law of the place where it is gone through.” The law clerk feared that “marriage according to Indian fashion would not be sufficient to constitute the offence.”103 The first marriage had to be proved to have been a valid one, although for the second, or bigamous marriage it was bigamous “for any person, being married, to go through a form of marriage with any other person.”104 Fears of failure to convict were justified in 1906 when an attempt to prosecute an Aboriginal man from British Columbia on a charge of bigamy was unsuccessful.

The case of *Rex v. Kekanus* was heard before Justice Hunter in the BC Supreme Court in May of 1906.105 The accused, from Alert Bay, had acquired a second wife through Aboriginal law. The testimony from the trial reveals the profound difficulties involved in conveying the intricacies of Aboriginal laws of marriage and divorce through an interpreter to an unsympathetic court that could not understand the flexibility of Aboriginal marriage law. For example, there was lengthy questioning of a witness (Thomas Newell, an Aboriginal man from Fort Rupert) on marriage customs that concerned the gifts that were given to the wife’s family and how and when they were returned when a marriage was dissolved. This was all discussed through an interpreter who was himself placed from time to time in the witness box and questioned by the Court. While the return of the property/gifts signified the end of a marriage, this did not necessarily have to occur for a marriage to end and another marriage entered into and recognized by the community. Here is an example of one such exchange in which the witness responded to a question concerning whether the return of property was necessary to signify a divorce:
A: Although the property may not be returned and she can get married and he can take another wife.

Court: I didn’t get that, and I don’t think the jury did either. Just repeat that.

A: Before the property is returned to the husband of the woman, she can leave him if she chooses that is, if she don’t like her husband, and he also can take another woman for his wife.

Court: Well, before the property goes back to the husband can the woman legally marry again, at least, marry according to the custom—she may live with another man, but is she regarded as married to him?

A: Yes, she can take another husband, and they don’t see anything wrong in it.

Q [H.A. Maclean for the Crown]: And her children will be looked on as legitimate?

A: There is no ill-name given to the children; the children will be quite legitimate.

Mr. McHarg [for the Defendant]: Well there is a great deal of that kind of thing done, isn’t there, interchanging?

A: Yes, sir.

Q: It doesn’t work any hardship on the women does it, because I understand there are more men up there than there are women?

A: What do you mean by “hardship”?

Q: Well the woman can always get another husband, can’t she?

A: Yes she can take another husband as I said before.

Q: But don’t you understand what I mean by hardship?—Suppose a woman is put away—what are her chances of getting another husband?

A: Yes, she has every chance.106

Other exchanges reflected the deep gulf of understanding because of the Court’s insistence that marriage was monogamous and for life. The judge asked Newell: “Q: But as a rule when an Indian man marries an Indian woman doesn’t he live with that woman for life? A: There is no such understanding—no such words pass as they shall live together as
long as they live. Q: Yes, I know there are no words to that effect, but isn’t that what usually happens? A: Yes—some of them.” The witness was questioned about the number of people who married more than once, and the evidence given was imprecise but suggested that there were quite a few. The flexible attitude toward custody of children also perplexed the court, and the following exchange convinced the judge to not proceed further with the case:

Q: When the wife has young children and the husband leaves her, who supports these young children, the first husband, or the new husband?
A: The next husband.
Q: He takes the children over with the wife?
A: Yes.
Q: And the first husband has nothing more to do with them, is that it?
A: Well he looks after the children as well.
Q: Well who do they live with—him or her?
A: In most cases they generally go with the mother.
Q: On the principle that a foal follows the mare, I suppose. Then there is no ceremony among the Indians by which a man and a woman agree to remain together for life?
A: No, there is no such understanding made.
Q: And the man and woman can’t bind themselves to live together for life by any ceremony?
A: No.
Q: So that it is only a ceremony—the meaning of the ceremony is that both parties shall live together as long as they like?
A: Yes
Q: And not longer—and that either can quit?
A: Yes, either party can marry again though they may have lived 30 or 40 years together.
Q: And it doesn’t make any difference about whether the property is paid back or not?
A: Yes
Court: Well what is the use of going further Mr. Maclean, in this case?

It was Crown Prosecutor H.A. Maclean, Deputy Attorney General for the province of British Columbia, who had to convince the judge and jury that Aboriginal marriage was valid in order to convict for bigamy, and that “English law with regard to marriage, has no application at all.” The Criminal Code could apply only if Aboriginal marriage was recognized as valid. Maclean argued, “the matter is not as plain as it might be,” and tried to draw attention to an English case, (not named but likely Connolly) and Regina v. Nan-e-quis-a-ka, “where all the law on this subject is very carefully considered.” But Justice Hunter did not wish to carefully consider the case law and replied, “No I don’t know anything about any English case, but it is common sense—it is no marriage ceremony within the meaning of—the essence of the marriage ceremony is that the parties shall be intending to take each other for life.” When Maclean replied, “That is the English law, my Lord,” Justice Hunter said, “This is a mere agreement to cohabit.” The judge called back the witness Thomas Newell after Maclean submitted that “these Indians from time immemorial, have been living under their own customs with regard to marriage, but it is a species of marriage—it is different from our ideas, no doubt about that.” The exchange that concluded this case began with Justice Hunter’s question:

Court (with interpreter): What is the Indian word for marry?

A: No such word, only wife—taking a wife.

Q: Well what word do they use?

A: Well they use a certain word which I don’t know its equivalent in English—I don’t think—well there may be, but I don’t know it, we have the word (carthaca?) which has nothing to do with marrying.

Q: Well what does that word mean?

A: It simply means as far as I understand the word, it is the parties going into the house—I take it this way, that is the husband go
in to the father of the woman’s house, we have no such word as marriage in our language.

Following this exchange, which weakened his case and confirmed Justice Hunter’s opinion, Maclean concluded by stating that English law had no application, and that “the circumstances of those Indians are so peculiar that they are governed by their own local customs with regard to marriage up to a certain point, and not by the English law.” Justice Hunter, however, decided that this was not marriage at all; it was mere cohabitation. He disagreed sharply with the Crown prosecutor saying: “I don’t see how you can call the ceremony a marriage when it is admitted on the face of the proceedings that it wasn’t the intention of the parties to live together for life, and never is the intention—I don’t see how you can call that a marriage, it is a mere agreement to cohabit.”

Justice Hunter further stated that if he were to convict for bigamy, (and thereby invalidate the second marriage), the effect would be “that more than one-half the children in this man’s tribe are illegitimate. I am not going to hold that, for the purpose of putting this man behind the bars for a so-called bigamy prosecution.” The judge concluded that “the evidence clearly shows that there is no intention on the part of the Indians when they go through this ceremony to take each other for life, and that, in my opinion, is the essence of a marriage, or such marriage as is contemplated by a prosecution for bigamy.” The case did not go to the jury; the prisoner was found “Not Guilty” and discharged.

The case caused a surge of anxiety among DIA administrators. The decision undermined their policy of recognizing the validity of Aboriginal marriage law and meant that people could not be required, cajoled, or expected to regard even their first marriages as valid and binding, as Aboriginal marriage was, according to Justice Hunter, not marriage at all but a “mere agreement to co-habit.” The decision potentially added hundreds, even thousands, of children and adults declared “illegitimate” to the pay lists. If Aboriginal marriages were invalid, would this mean that all children of all marriages according to Aboriginal law were “illegitimate”? Administrators greatly feared the consequences if word got out that all their threats about prosecution and possible incarceration
were hollow. As the prosecutor in the Kekanus case wrote to one BC Indian agent who wondered about the implications of the decision, “Under the circumstances it would be idle to send for trial any more of such cases.” The agent from Alert Bay wrote with alarm that the decision would cause great trouble; he had heard rumours that in the fall a great number of men intended to leave their wives. A month later the same agent reported that a number of young men had complained to him that their wives had left them for fresh husbands who were older and wealthier. In appealing for guidance this agent wrote, “a great deal of my future usefulness and influence depend on what is done in this matter.”

Department officials decided to first of all ignore the decision, to hope that word of the decision would not circulate outside of BC communities and to proceed as usual while casting about for alternate strategies. Very hastily the first version of the circular admired in 1915 by Frederick Abbott was distributed to all Indian superintendents, agents, and farm instructors in the Dominion. Threats of potential prosecution for bigamy continued on prairie reserves. But there was a clear awareness that many aspects of the policy outlined in that circular were in doubt. In the case of the man, mentioned earlier, who first married according to Aboriginal law and who was then wed a second time by a Presbyterian missionary, the Indian agent was advised by Commissioner Laird that it would be in vain to prosecute for bigamy in the light of the recent BC decision. As the BC superintendent of Indian affairs wrote, the Kekanus decision “renders it impossible for the Agent to put such laws as are in force respecting bigamy, &c., into operation.”

Other strategies were suggested, including a clause in the Indian Act giving agents the power to deal with and punish cases of bigamy, or a clause in the Indian Act legalising marriages according to Aboriginal law. It was also proposed (once again) to make it compulsory that people be “legally” married, although they could be allowed in addition to be married according to their own laws. Another idea was to have compulsory registration at each Indian agency of all marriages. One of the reasons for the decision in the Kekanus case was that there was no marriage if there was no record of a marriage.
By October 1907, assistant Indian Commissioner J.A. McKenna was taking the position that the BC decision was welcome, that it concurred with his view as to what was essential to an Indian marriage. Agents, he argued, “Should have instructions that will enable them to differentiate between a valid Indian contract of marriage and mere concubinage.” He proposed that it be imposed as a rule “in cases in which Indian men and women live together in alleged marriage according to Indian custom” to insist that the marriage be performed according to “recognized rights” [sic], and that a formal statement be obtained “from the man that he had taken the woman as his wife, and from the woman that she had taken the man as her husband...in connubial union till death did them part.”

This, he argued, would constitute grounds for proceeding with bigamy charges in the event of either party breaking the union and entering into another marriage contract. The Kekanus case was also used by the dia to insist that “Christianized” people—those, for example, educated at the industrial and boarding schools—could not contract marriages “by pagan rites.”

This initiative was accompanied by an effort to have the Aboriginal ceremony of marriage described and defined, so that all could know what was essential to making a union valid, and so that agents could differentiate between a valid marriage and “mere concubinage.” McKenna chastised Indian agents for being too lax in this regard and demanded to know: “Is any rite or ceremony performed, or anything done to indicate that the parties entering into these so called marriages regard themselves as entering into a union of one man and one woman for life, to the exclusion of all others?”

Agent Millar from the Crooked Lake Agency of Plains Cree and Saulteaux people attempted to explain:

I beg to say that the Pagan Indian custom of marriage referred to at present time is that a man desiring a certain girl in marriage asks the parent or guardian for her, and if he is accepted it is customary, although not always followed, for the man to make a present to the one giving consent. Parties entering into marriage according to this custom are regarded as entering into a union of one man and one woman for life to the exclusion of all others. This is in the...
Indian mind, notwithstanding, how far the union may be disregarded afterwards.\textsuperscript{123}

It is unlikely that this description satisfied McKenna, as Millar indicated that the protocol might not always be followed, and that while the union was regarded as “for life” at the time of marriage, this might be later disregarded. What the assistant Indian commissioner demanded, and could not obtain, was a description of marriage that matched his own definition of marriage as a monogamous, lifelong, and indissoluble union. No other definition constituted marriage in his view. He was never to receive this description from any of the agents, however, and officials of the DIA were affirmed in their belief that they had to adopt the broadest possible view of what constituted a marriage ceremony and a valid marriage in order to insist that people live up to their mutual obligations. If they cast doubt on the validity of any form of marriage there would be, in their view, a “loophole” that would permit evasion of these obligations.

This casting about for new strategies culminated in a 1908 memorandum drafted in the DIA, outlining proposals for the consideration of the Department of Justice.\textsuperscript{124} The memo sought to address the main obstacle in the way of suppressing and punishing such problems as wife desertion, which was “the difficulty experienced in establishing the existence of marriage between the parties within the meaning of the law.” Special legislation was recommended that would permit prosecution for bigamy if any conjugal contract or alliance whatsoever had been entered into, “No matter what the nature of conditions of such contract may be or whether expressed, implied or understood, or whether containing provisions for the termination thereof by mutual consent or at the will of either of the contracting or contracted parties, or whether all or any conditions have been fulfilled or completed in whole or in part.” It was also proposed to permit a special form of divorce. In the presence of an Indian agent or Justice of the Peace, and in the presence of each other, a couple could give consent in writing to the “termination of such conjugal contract or alliance.” A fine of fifty dollars or three months hard labour was recommended for any man or woman who deserted a spouse and contracted another conjugal contract unless the marriage had been

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In the manner proposed. A husband (not a wife) could make a special appeal if he could prove immoral conduct on the part of his wife. It was further recommended that legislation be enacted to severely punish anyone who would induce, threaten, or bribe any Indian woman or girl to terminate any conjugal contract. The father of an illegitimate child could be ordered to pay monthly support, and he could have his property seized to satisfy such an order. It was further recommended in the 1908 memo that districts be established within which Indian people would be required to register all “marriages or marital contracts by any Indian rite, ceremony, custom or usage whatsoever.”

These recommendations were never enacted, demonstrating again the tenuous and limited degree of control the DIA had over their “wards.” The response of the deputy minister of justice in May of 1908 was that he found it impossible to satisfactorily deal with these issues of “marriages and quasi marriages and sexual offences among the Indians” with the information furnished him. The proposals “present very serious questions of policy and law which will call for careful consideration.” He also found some of the “remedies” proposed in the memo to be “inadmissible.” All required more deliberate consideration than was possible for him to devote at that time. The only action taken that year (1908) was yet another circular letter urging agents to prevent all separations, to warn that there would be punishment of all transgressors. J.D. McLean wrote in August of 1908 that the department “was greatly disappointed despite the expenditure of much thought and labour” that the recommendations in the 1908 memorandum did not materialize, but he “did not despair of ultimately devising some legislative measures to meet the complications of the situation.” “The whole subject,” he noted, “is fraught with difficulties of which not the least is the danger of driving the Indians to avoid such contracts as they may now be willing to enter into, and which are doubtless better than none.”

The DIA soldiered forward with their policy on marriage and divorce and with their threats to prosecute for bigamy, as if the Kekanus case had never happened. Requests for permission to remarry following separation or divorce were met with the same replies as in the past. There were numerous such requests and replies. In 1908 an Aboriginal
catechist at Norway House (Manitoba) wrote to Indian Commissioner David Laird to ask if a woman, separated from her husband for twelve years, and who received no support from her husband, could remarry. She was living with another man “as man and wife,” and her first husband was living with someone else. Laird’s answer was that she could not remarry, as “to do so would be bigamy.”131 In 1909, R.N. Wilson, the Indian agent on the Kainai Reserve, consulted his Ottawa superiors about a young man of twenty-five whose wife had left him, refusing to return.132 The man sought permission to remarry, which the agent thought only made sense, as it was unrealistic to expect him to remain single for the rest of his life. Wilson remarked that nineteen horses were “paid” at the time of the marriage. He wrote that there were many such divorced couples on the reserve wishing to remarry. In these cases Wilson first tried “reconciliation by talking to the young couple and their relations here in the office. Only occasionally are such efforts successful.” He had “sent for her and in his presence tried to persuade her to return but she expressed great unwillingness to do so, stating that she was afraid of him, hated him and would not live with him under any circumstances. The girl was undoubtedly in earnest as she implored me to let her stay with her mother and not compel her to return.” Wilson then spoke to the woman’s brother, hoping he could get his sister to return to her husband, “But he stated that while he would gladly see her return he would not force her to do so on account of her abhorrence [of her husband].” The husband had informed Wilson that if her relations kept his wife away, and if the department was powerless to help him have her returned, then he would ask permission to marry again. The reply from Deputy Superintendent Frank Pedley was that the law took a “liberal” view “as to what constitutes a binding marriage among Indians,” with the desire to “guard the sacred and permanent nature of the nuptial contract,” and refused to recognize their divorces for the same reason.133 The best hope would be to punish bigamists, “for probably if Indians find that after separation they can not without danger of punishment contract fresh alliances, they will hesitate about leaving each other.” Pedley did not advise how bigamists were to be punished. Once again the view was expressed that “only time and advance in the spirit and

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practice of Christian civilization will affect the necessary reform with regard to these.” Pedley wrote that the department could not compel the wife to return to her husband, nor could it permit the husband to marry anyone else.

That same year Moose Mountain Indian Agent Thomas Cory wrote to ask whether a young woman in his agency was at liberty to marry again. A man from Turtle Mountain, North Dakota, had been married to her briefly a year earlier, but he had returned across the border, and the horse given to her family at the time of the marriage had been returned. The man had since remarried. The answer was that she was legally married and therefore was not at liberty to marry again. This agent raised a point that perplexed many, especially new recruits to the DIA bureaucracy—just what constituted a valid marriage according to Aboriginal law? How was marriage to be defined, through what ceremony was it solemnized, and how was marriage distinct from a casual agreement to live together for a time? Cory wanted a definite answer on what constituted a “legal” marriage. He did not get an answer. Ottawa bureaucrats grappled with this question for years, but were perennially unable to come up with a definition of Indian marriage that would distinguish a casual arrangement from a marriage.

Meanwhile pressure mounted from moral reform and church organizations to address the issue of “Indian marriage,” but in the face of this the DIA maintained the policy determined in the 1887 order-in-council in the light of the unsuccessful 1908 effort to take a new approach. Of particular concern in 1909–1910 were lurid stories from the west coast that girls were being bartered for blankets. In 1909 the Women’s Auxiliary to the Missionary Society of the Church of England wrote to the DIA to express concern about the marriage customs of the people of Vancouver Island. The National Council of Women similarly wrote to the minister of Indian affairs lamenting the “grave immorality which exists among the Indians on the west coast of British Columbia owing to the marriage customs of those people.” The Women’s Baptist Home Missionary Society and the Canada Congregational Women’s Board of Missions also made requests for action on the issue of Indian marriage. Similar answers were given to each organization. The Anglican Women’s Auxiliary was
informed that compulsory legislation might “drive the Indians to cohabitate without any form of marriage at all.”¹³⁷ In a 1910 letter to the National Council of Women the deputy superintendent-general of the DIA wrote that “existing marriage customs are recognized by law with a view to maintaining as far as possible due regard to the sanctity of the nuptial contract, and...they are probably much more binding on their consciences than any more civilized methods whether Christian or civil.”¹³⁸

The Moral and Social Reform Council of Canada (MSRCC) also had “Indian marriage” on its agenda. This organization, founded in 1909, was committed to promoting the “pure” life, and to stamping out “vice.”¹³⁹ One of the founders, Presbyterian purity activist Rev. John G. Shearer, toured Western Canada for a month in 1910 and wrote sensationalistic articles upon his return to Toronto. There were racial aspects to the moral panic that Shearer created. He claimed that Chinese or Japanese proprietors owned most of the establishments in the red light districts.¹⁴⁰ He also wrote that for the purposes of prostitution “the Indians bring their women to the towns and settlements along the coast everywhere.”¹⁴¹ In September of 1910 the MSRCC submitted a number of recommendations to the DIA.¹⁴² One was that “the law relating to immoral relations between (1) Indian and Indian, and—(2) Indian and White, be more carefully defined within the Indian Act itself so that seduction, adultery and violations of the marriage vow may be severely punished, and if possible prevented.” Another recommendation under the heading “Indian Marriage” was presented by a MSRCC delegation in person at the DIA offices in Ottawa on 6 October 1910.¹⁴³ They asked that “the defining of Indian marriage; the providing of machinery for recording of Indian marriages; dealing with the temporary marriage of white men with Indian women, be submitted to the Department of Indian Affairs, with request that the Department secure from the Department of Justice a report upon these suggestions, and upon the general subject of Indian Marriage and Divorce; And that the Department of Indian Affairs be asked to appoint a small Commission for the purpose of fully investigating Indian Marriage conditions.”

No such commission was appointed, but Minister of the Interior Frank Oliver replied to Rev. Canon Tucker, who headed up the delegation, that
he had looked into the matter very carefully and found that the subject of Indian marriages had received a “very large measure of consideration” by his own department, the Department of Justice, and the Governor in Council. Oliver described the origins of the 1887 report to council, and enclosed a copy. He also enclosed the draft amendments of 1908 and the letter from the Department of Justice in reply that pointed out the difficulty of adequately amending the law on the question of Indian marriage. He did not think anything could be gained by resubmitting the question to the Department of Justice. Oliver concluded by once again quoting at length from the 1887 report to council as “stating the present attitude of the Government on this question”:

In the meantime, the laws which establish liability on the part of the Indian or White man for the support of such offspring as he may have by and [sic] Indian woman and for the support of the woman with whom he contracts a marriage according to the Indian custom, will be enforced as far as practicable, and such legislation will be recommended from time to time as may tend to improve the social and moral condition of the Indians and to check as far as it is practicable to do so, the tendency among the Whites in proximity to the Indians to avail themselves of the lax notions of the latter with regard to the relations between the sexes.\(^\text{144}\)

In assessing where the issue stood in 1912, one DIA official wrote that “tribal customs had persisted longer than anticipated,” and that “the marriage laws of the land cannot yet be forced upon all Indians.”\(^\text{145}\) Marriages according to “tribal customs” were not in themselves objectionable, the assistant deputy and secretary of the DIA noted; rather, it was the separation and desertion of husbands and wives that was becoming all too common. The department had not recognized second marriages and was of the opinion that they could be found to be bigamous if a “tribal custom or ceremony” was observed in the second union, but “the trouble is that in most cases there is no kind of second marriage—only a going and living together immorally. This kind of offence the criminal law of Canada does not reach unless there is some sort of prostitution
connected therewith.” In this correspondence he was advising an agent not to recognize as valid a second marriage “according to whiteman’s law” when there had been a first marriage according to Aboriginal law, as “it would be considered as setting official seal to the fact that no Indian marriage was legal.”

The DIA stuck to the “party line” as detailed in the circular letter, that the Connolly case had decided marriage according to Aboriginal law was valid. In 1916 a BC inspector of Indian agencies unearthed the case of Bethell v. Hildyard, and asked whether the case superseded Connolly v. Woolrich, and wondered further if agents “might be instructed to inform all their Indians that marriages according to tribal custom would have no standing in the courts after a date to be set by the Department.” Someone scrawled in the margin “Why? B vs H was decided on Eng law: C vs W was decided on Quebec civil law.” No answer to the letter survives, if an answer was ever given.

The 1914 case of a Kainai man, “TMF,” demonstrated once again how the policy outlined in the circular letter could not be enforced, and how powerless officials were to pursue criminal proceedings in order to punish bigamy and enforce monogamy. It was alleged that TMF had been married once “by the church” and three times in “Indian fashion” during the previous three years. He lived a short time with each woman and “then sent her home.” The Indian agent had the last deserted wife swear an information under the Criminal Code that she required necessities, but the agent was advised by the provincial Attorney General, as well as the Crown prosecutor that “they were inclined to think a prosecution would fail on the ground that an Indian being a ward of the Government is technically not in a condition of necessity.” The law clerk in the Department of Justice did not think this point was well taken, but advised, “a prosecution would certainly fail because she is not a wife.” In his memorandum for the deputy minister of justice, the law clerk reviewed the case law, as well as the previous department rulings on Indian marriage, and concluded that TMF could not be convicted of bigamy, that “marriage according to Indian fashion would not be sufficient to constitute the offence.” The North-West Territories Marriage Act of 1888, and the marriage acts in force in the provinces of Alberta
and Saskatchewan, had to be complied with, in his view, in order to constitute bigamy. This advice clearly contradicted and challenged the policy pursued by the dia of insisting that the Connolly case recognized Aboriginal marriages as valid. In his draft memorandum, the law clerk explained his reasoning at greater length. He thought that the marriage laws applied to marriage among the Indians, as they were British subjects. The only exceptions, he noted, were in reference to Doukhobors and Quakers (as discussed earlier in this book). In the convoluted language of the legal world he wrote, “If a marriage between subjects other than Indians is not valid unless it complies with these Acts it is not easy to see why a distinction in this respect should be made in respect to the Indians who are British subjects and who live in a country where law, civil and criminal, as well as the facilities for complying with the requirements of those Acts exist.” The law clerk cited a Manitoba case in which it was “recognized that Indians are British subjects and entitled to all the rights and privileges of such.” The law clerk’s only suggestions were that TMF could be punished under the Criminal Code if the women were underage, or under section 98 of the Indian Act concerning “the repression of intemperance and profligacy,” or his annuities could be discontinued. Based on this advice the dia was informed that “no effective action can be taken to adequately punish him for his conduct.” The deputy minister of justice was “inclined to think that his marriages according to tribal customs did not constitute bigamy as defined by sections 307 and 240 of the Code.”

Efforts to impose the monogamous model of marriage on the First Nations of Western Canada were more deliberate, concerted, and invasive than the examples of non-Aboriginal Canadians and “new” Canadians given earlier in this book. Situated on reserves and isolated from the rest of the population, the First Nations were subject to the administration of a bureaucracy dedicated to the implementation and refinement of policies and laws designed to shape and reconstitute their societies to make them conform and assimilate to idealized white ways. The concerted assault, relative isolation, and the presence of a bureaucracy dedicated to refashioning gender roles, should have ensured the success of these efforts, compared to those directed toward the diverse and scattered
population of Canadians and “new” Canadians, but it was quite the reverse. The imposition of the monogamous Christian model met with less success than it had with the non-Aboriginal settlers in Western Canada. Reserve communities were powerfully and profoundly influenced by these measures but the state was not able to impose complete control. Resistance to efforts to restructure the foundation of domestic life compelled authorities to recognize the validity of Aboriginal marriage law. The persistence of Aboriginal marriage ensured that prosecutions for bigamy and related transgressions would not be successful within the Canadian legal system. Ultimately, the state had the capacity to disrupt, but not utterly transform, Aboriginal marriage and domestic life; their technologies of control were limited. As historian Antoinette Burton has stressed, the state and other associated instruments of social, political and cultural power have a “limited capacity...to fully contain or successfully control the domain of sexuality.” Modern colonial regimes are “always in process, subject to disruption and contest and never fully or finally accomplished, to such an extent that they must be conceived of as ‘unfinished business.’”

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