



ATLANTIC POLICY CONGRESS  
OF FIRST NATIONS CHIEFS SECRETARIAT

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# **INDIAN REGISTRATION, BAND MEMBERSHIP AND CITIZENSHIP**

## **DISCUSSION PAPER**

Prepared for the Atlantic Policy Congress of First Nations Chiefs  
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## Background

In December 2010, when Bill C-3 (*Gender Equity in Indian Registration Act*) was introduced into Parliament, the Minister of Aboriginal Affairs and Northern Development Canada (AANDC) announced that Canada would engage in an “exploratory process” to examine issues related to Indian registration, membership and First Nation citizenship outside the scope of the legislation.

The purpose of the exploratory process is to identify, examine and discuss the broader issues associated with Indian registration, Band membership and First Nation citizenship that go beyond the *McIvor* decision and the parameters of Bill C-3.

The Atlantic Policy Congress of First Nations Chiefs Secretariat (APC) is a non-profit corporation which represents 38 Mi'kmaq, Maliseet, Passamaquoddy and Innu First Nations Chiefs and their communities in the Atlantic and eastern Quebec regions and parts of Maine, USA. Its mandate is to “*research, analyze and develop alternatives to federal policies affecting its member First Nations.*”

APC, in its analysis of Bill C-3, and through input obtained from its member First Nation Chiefs and community members, determined that the Bill did not go far enough to remove all the discrimination within the registration provisions of the *Indian Act*.

The APC has received financial support from AANDC to undertake a lead role and activities in the Atlantic region to begin to gather information and examine and discuss these broader issues with its First Nation members. First Nation Governments have always maintained that they have jurisdiction over the issue of citizenship and Canada must recognize this and end the distinction between *Indian Act* registration status and band membership.

## Introduction

***“Although the concept of Indian is a creation of the government, it has developed into a powerful source of cultural identity for the individual and the Indian community. Like citizenship, both parents and children have an interest in the transmission of this source of cultural identity to their children” (The Honourable Madame Justice Ross, *Mclvor v. The Registrar, Indian and Northern Affairs Canada, 2007 BCSC 827*)***

To be an Indian in Canada is not just a cultural identity but also a legal category. Canada, rather than Indian communities themselves, has through the *Indian Act* historically legislated who is an Indian.

Prior to contact First Nations had their own histories and methods of determining our identity. There were matriarchal, patriarchal, and clan and kinship systems. Before Europeans came to North America, First Nations were sovereign nations, that is, they were self-governing. Their oral history is supported by the work of anthropologists and historians, and illustrates that there was a complex system of governance. They also had our own laws and systems of justice. Their systems were characterized by oral teachings, collectivities and consensus.

First Nation peoples relied on a variety of distinctive and cultural ways to organize their political systems and institutions. Later, many of these institutions were ignored or legally suppressed while the federal government attempted to impose a uniform set of vastly different Euro-Canadian political ideals on First Nations societies, through various legislative acts.

Today, Indian status is determined by Aboriginal and Northern Affairs Canada (AANDC). There is a Registrar in Ottawa who determines who is and who is not an Indian, based on current policies and legislation. The Registrar, accordingly, adds or removes people off a list called the Indian Register. The issue is not who is actually an Indian, but who is entitled to be registered as an Indian according to the *Indian Act*. The Registrar also decides who is not entitled to be registered in the Indian Register based on evidence or policy.

## **Our History of Identity to the Present**

The *Indian Act* is federal legislation that governs the lives of all Canadian Indian People, from birth to death. Contained within it are provisions and regulations relating to all aspects of social and economic life, from Indian registration, to lands, revenues, education, health status, elections, and estates and wills.

Over the last century and a half the government has developed identities known as “Indian” in a chronological order and for various reasons these are;

### **Indian**

- 1850 Any person deemed to be Indian by birth or blood, any person reputed to belong to a particular band or body of Indians and any person who married an Indian or was adopted by Indians
- 1876 Any male person of Indian blood reputed to belong to a particular band; any child of such person; any woman who is or was lawfully married to such person
- 1951 A person who is registered or entitled to be registered in the Indian Register. The establishment of the Indian register as a means of conferring Indian status resulted in a complex set of eligibility rules. Generally Indians who had been members of a band were entitled to registration. The emphasis on male lineage was maintained and many persons lost status because of the discrimination aimed at Indian women and illegitimate children.
- 1985 A person who is registered or entitled to be registered in the Indian register based on the revised Indian Act rules.<sup>1</sup>

Historically the regulations in the *Indian Act* which granted or denied Indian status were not favorable towards Indian women. Those Indian women who married a non-Indian would lose their Indian status and the right to pass it on to

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<sup>1</sup> Indian and Northern Affairs, Legislation Manual, Glossary

their children. Indian women lobbied for changes to this inequity but it was not until 1985 that changes were made.

### **Bill C-31: An Act to Amend the *Indian Act***

In 1985, the *Indian Act* was amended. *Bill C-31: An Act to Amend the Indian Act* was passed as an attempt to bring the *Indian Act* into conformity with the Equality Rights section of the *Canadian Charter of Rights and Freedoms* (1982) which stated;

***15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.***

The federal government knew that it would face a number of law suits because of the discrimination it had historically aimed at Indian women. Therefore, they enacted changes which were intended to eliminate the discrimination of Indian women.

Bill C-31 was legislation aimed at removing more than a hundred years of sexual discrimination from the *Indian Act*. The intent was to eliminate all sexually discriminatory provisions within the Act and to recognize the right of Indian bands to control band membership.

Prior to the Bill's passage you were either a status Indian or you were non-status. If you had Indian status you also had band membership and you could pass your band membership and Indian status to your children. Once Bill C-31 was passed the way you gain Indian status changed. Indian status was now divided into two sections section 6(1) and Section 6(2) each with differing rights regarding the passing of Indian status to the next generation.

The changes created by Bill C-31 created two categories of status Indians. This is because under Bill C-31 there were now two sections for registration of

Indians. These were sections 6(1) and 6(2) of the revised *Indian Act*. If you were registered under section 6(1) you were considered to have two registered Indian parents and could pass your Indian status to your children. If you were registered under section 6(2) you are considered to have only one registered Indian parent and you have to marry another registered Indian (either 6(1) or 6(2)) to pass your status to your children.

Many of the children who were registered for the first time after Bill C-31 was enacted, were registered under section 6(2). And since Bill C-31, many children have been born in First Nation communities that have been registered under section 6(2) or perhaps have no Indian status because they are children of those registered under section 6(2).

***New Rules in 1985 for establishing Indian status (NI = Non Indian)***

Parents Registration:	6(1) + 6(1)	6(1) + 6(2)	6(1) + NI	6(2) + NI
Child's Registration:	6(1)	6(1)	6(2)	Non-Status

\*\*\*\*\* These rules apply to any child born after 1985.

**Implications of Section 6(2)**

The implication of section 6(2) to the First Nations population in Canada is tremendous. People who are registered under section 6(2) have fewer rights than those registered under section 6(1). All persons registered, today, under section 6(2) cannot pass their status on, unless their mate is a registered Indian. This provision applies whether or not a child's parents are married. In fact, if a single mother wishes to register her child she must list the father's name on the birth certificate to prove that he is an Indian otherwise the child is automatically registered under section 6(2). Many mothers do not wish the father's name on the birth certificate so it often results in a number of cases known as "unstated

paternity” where the father’s name isn’t listed and the child either is denied registration or incorrectly registered under section 6(2).

The largest impact of section 6(2) is found in that fact that the out-parenting rate in some communities is very high and, as a result, many children are now being registered under section 6(2) or not registered at all. This in turn will lead to a decrease in the Indian status population. This has many implications, in particular the status of the land. Where will the land go if there are no more status Indians since, section 91 (24) of the *Constitution of Canada, 1867* gives the federal government jurisdiction over “Indians and Lands Reserved for Indians?”

Many people believed that Indian registration would provide them with a cultural identity. However, this would be an unreasonable expectation since *Indian Act* registration categories were never based on cultural criteria. Many scholars and researchers have stated that these categories were based on restricting the Indian population because of financial obligations

There was another inequity within Bill C-31 which involved the transmission of Indian status. Because of the pre-1985 methods of inheriting status Indian men were able to pass their status on one generation further than Indian women. Two examples are listed below.

Category 1: A woman, previously disentitled to status because she married a non-Indian, would, after Bill C-31, be entitled to status under section 6(1)(c). A child of this woman - 2 - would then be entitled to status under section 6(2). However, if that child had a child (grandchild of the above woman) with a non-Indian, that grandchild would not be entitled to status. ***This means that only two generations are given status by Bill C-31 the woman and her child.***

Category 2: A man, previously entitled to status, would, after Bill C-31,

have his status confirmed under section 6(1)(a) as would his non-Indian wife (if married prior to Bill C-31). A child of this man and his wife with status would then be entitled to status under section 6(1)(a) (if born before Bill C-31) or section 6(1)(f) (if born after Bill C-31). If that child had a child (grandchild of the above man) with a non-Indian, that grandchild would be entitled to status under section 6(2). ***This means that three generations would be given status: the man, his child and his grandchild.*** (National Centre for First Nations Governance Summary Report on Bill C-3, 2009)

### **Bill C-3: Gender Equity in Indian Registration Act**

Sharon McIvor legally challenged certain gender inequities within the *Indian Act* as they related to women who lost status as a result of marriage to a non-Indian. In April 2009, the Court of Appeal for British Columbia ruled in the case of *McIvor v. Canada*, that the *Indian Act* discriminates between men and women with respect to registration as an Indian. In its ruling, the Court gave Parliament one year, until April 6, 2010, to amend the provisions of the *Indian Act* that were found to be unconstitutional. In order to comply with the Court of Appeal's decision, in March 2010 the Government of Canada introduced legislative amendments to certain registration provisions of the *Indian Act* through Bill C-3 *Gender Equity in Indian Registration Act*.

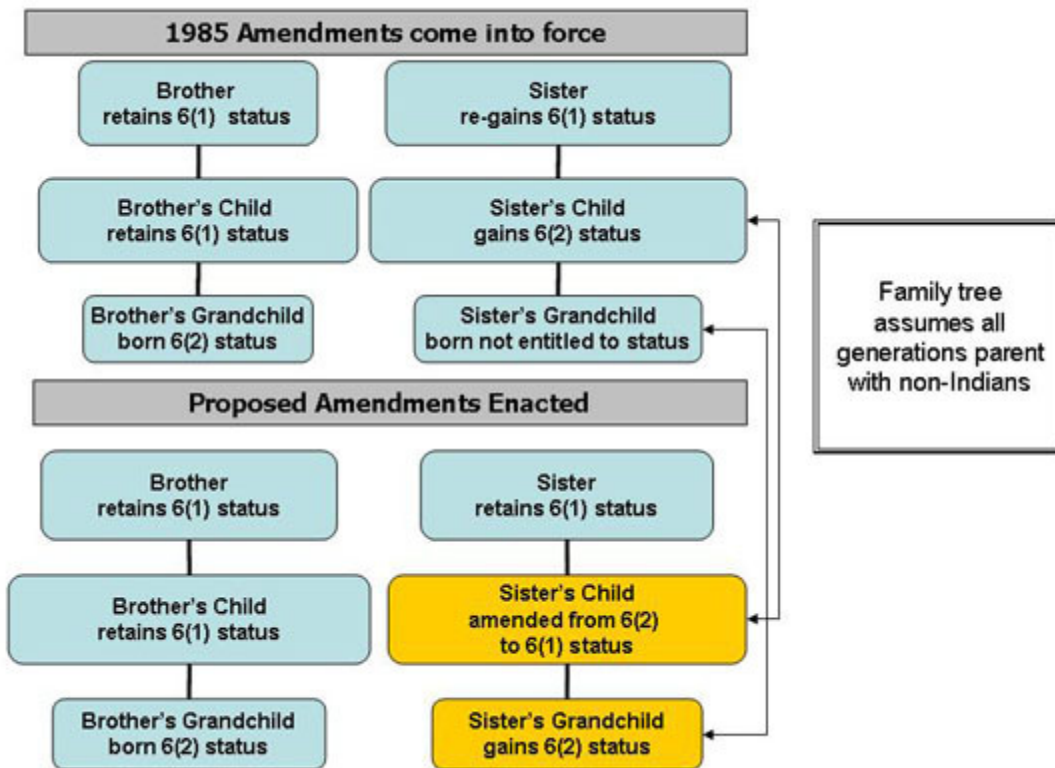
Even with these changes many First Nation organizations and individuals, including Ms. McIvor herself, challenged that Bill C-3 did not go far enough to address all gender discrimination within the *Indian Act*. Canada's position was that the Bill addressed the specific decision of the British Columbia Court of Appeal.

Aboriginal Affairs and Northern Development Canada (AANDC) has on their website a series of simple questions which provide a guide for individuals to

determine if they may be eligible for registration in accordance with the *Gender Equity in Indian Registration Act*:

- 1) Did your mother lose status for marrying a non-Indian man?
- 2) Is your father a non-Indian?
- 3) Were you born after your mom lost status but before 1985 (unless your parents married each other before 1985)?
- 4) Did you have a child with a non-Indian on or after September 4, 1951?

The chart below illustrates the effect of the *Indian Act* on male and females who marry non-Indians and the effect of the proposed amendments:



The effect of *Gender Equity in Indian Registration Act* ensures that eligible grand-children of women who lost status as a result of marrying non-Indian men will become entitled to registration (Indian status). As a result of this legislation it is estimated that 45,000 persons now living will become newly entitled to

registration. The Bill received Royal Assent on January 31, 2011 and eligible persons may now apply for registration.

During the Government's process and discussions with First Nations, the First Nations identified a number of issues on Indian registration, Band membership and First Nations citizenship that went beyond the scope of the decision and the legislative amendments recently passed under Bill C-3. They called for a process that would allow them to address these issues.

The exploratory process is an Aboriginal-led initiative that is meant to examine and discuss the broader issues relating to Indian registration, Band membership and citizenship that go beyond the scope of the Bill C-3 amendments.

### **Band Membership vs Citizenship**

Bill C-31 introduced several new powers for bands. Included in these are the powers to regulate which band members and other individuals who may live on a reserve, the provision of benefits to non-member spouses and children of band members living on reserve and the protection of dependent children's right to reside with their parents or guardians on reserve.

As previously stated, prior to 1985, band membership and registration were synonymous. If you were added to the Indian Register, you were automatically added to your band's membership. The 1985 amendments to the *Indian Act* recognized the rights of bands to determine their own membership. As a result, persons may possess Indian status, but not be members of a band.

Section 10 (Annex A) enables First Nations to develop and enforce their own membership or citizenship codes, according to the procedures set out in the *Indian Act*. Bands must follow two principles: the membership code must be ratified by the majority of electors and their code cannot deprive persons already on their Band membership list as of the day they assumed control (acquired rights).

Once the band controls its membership list, AANDC will add entitled persons to the Indian Register in affiliation with that band, however, directs the client to apply directly to the Band for membership. ***The key issue at hand however, is that AANDC still maintains control over who is entitled to registration as an Indian. Registration as an Indian is still the trigger to numerous rights and benefits for First Nations people.***

In developing these codes under Section 10, many First Nations took section 11(2) (annex b) of the *Indian Act* which allowed them to deny section 6(2)'s from membership and adopted it as their membership code. First Nations had until June 1987, to create the codes that would restrict 6(2)'s from membership. As of December 2003, 232 First Nations had developed and were using rules for band membership. A review by Stewart Clatworthy of these codes found four general types of membership rules;

Limited One Parent Rule: Eligibility for membership requires that a person also have at least one parent who is a band member and is also a registered Indian

Unlimited One Parent Rule: Eligibility for membership requires that a person have at least one parent who is a member regardless if the parent is a registered Indian

Two Parent Rule: Eligibility for membership requires that both parents are band members; and

Blood Quantum Rules: A person's eligibility for membership is determined by the amount of "Indian" blood that person has.<sup>2</sup>

Clatworthy's study (2004) points out that out marriage rates in Indian communities are high. Between 1985 and 1999 the out-marriage rates were

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<sup>2</sup> Stewart Clatworthy, Power Point Presentation, March 2006

36% on-reserve and 75% off-reserve.<sup>3</sup> As a result membership rules will have varying effects on a First Nations population. His assumption was that if the out-marriage rate stayed constant the following demographic projections could be made;

- In communities with similar rules for membership and registration, about one in eight descendants will lack criteria for registration either in one generation, growing to about one in four in two generations, or one in three in the third generation.
- In communities with one-parent membership rules, in one generation about one in eight individuals is expected to lack Indian registration but retain membership, a proportion growing to one in four in two generations, and about one in three in the third generation.
- In communities with two-parent membership rules, in one generation more than half of the community will lack membership and 70% within two generations, even though most of these will retain Indian status registration. In three generations a mere 19% of the population will have both membership and status.
- In communities with 50% blood quantum rules, about one-third of the descendants made ineligible for membership each year will nonetheless have Indian registration.
- In the handful of communities with 25% blood quantum rules, finally, most descendants will retain membership over subsequent generations, but a steadily growing proportion of these will not have Indian registration.
- Most dramatically, the rates of out-marriage parenting can be expected to lead to an “extinguishment” of the Registered Indian population, and “reserves without Indians” in around 6 generations.<sup>4</sup>

To sum, Indian status and band membership which were once the same were now separated and on reserves there are several “categories” of Indian people.

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<sup>3</sup> Stewart Clatworthy, presentation to TANAGA Roundtable, Citizen and Membership Issues, 2004

<sup>4</sup> Stewart Clatworthy, presentation to TANAGA Roundtable, Citizen and Membership Issues, 2004

Some with status and band membership, some with band membership only, and some people who have neither and are children who live with their parents. There is also another category of people who by virtue of the Indian Act live on reserve, but are registered under Section 6(2) and their community does not accept Section 6(2)'s for band membership. Because they have a code that was developed in 1987 and they have not revisited the code.

Membership in a First Nation can mean many things on an emotional level. To many, membership in a First Nation is like citizenship in a country; i.e. their band. Many First Nation leaders and members understand this but because many do not understand the special nature of First Nations membership issues, problems of membership and Indian registration are often not taken seriously.

The misunderstanding of the nature of First Nations membership as it exists under the Indian Act is also why many people apply for membership as they erroneously believe that there are monetary benefits associated with band membership which of course is not always true. People do not think of the responsibilities they owe to the First Nation community in exchange for the benefits of membership.

The Royal Commission on Indian Peoples recognized that First Nations must create their government institutions as Nations and begin a Nation building process. In particular they indicated that:

- For Indian individuals, association with their various peoples as a collective is central to individual and community identity.
- Indian culture and values are distinct and often sharply at variance with the dominant culture.
- Those values and that sense of collective identity are vital to restoring health and effectiveness to individuals and communities.
- After almost a century and a half of treating Indian people as wards of state, mainstream institutions must make way for them to design their own solutions and institutions.

## **Citizenship**

How can the dichotomies that permeate First Nations everyday life as First Nations people and citizens be synthesized. There is a legislated identity and There is the illusion that through membership codes First Nations are defining their people when in fact all that is being done with the majority of the codes is restricting people based on the artificial categories contained within the Indian Act. One way that this might be done is to begin discussions of a First Nations community Constitution which is accepted by the communities and Nations.

On all levels of government the basic law which establishes the form of government, grants powers to the leaders and limits these powers, is called the Constitution. A government's Constitution is the blueprint for the organization, structure and operation. It establishes shapes and controls government.

The First Nations Constitution can serve many purposes. The survival of the First Nation largely depends on the First Nation's ability to meet the needs of its citizens and to represent the First Nation as a whole to the outside world. A group of people cannot act with the authority and character of one, unified group without organization or form of government. The Constitution expresses the First Nations will to act as one through a particular form of government. The constitution establishes and provides a means to ensure that the government responds to the people. If the Constitution does not comply with First Nations citizens wishes, it must contain the procedure for orderly and legally changing or amending the document. Many, if not all Constitutions, should define the territory in which the First Nation's law governs.

The Constitution empowers the First Nation governing body to perform specific functions for the First Nation. These powers limit the government's authority because public officials can do nothing in the name of the First Nation that is not specifically or generally stated in the Constitution. A First Nation government may decide if it would like to act officially in some way that would benefit First

Nation people. However, if the Constitution does not grant the power to act this way the act cannot be done. The government cannot threaten the First Nations freedom and survival even though the act appears to be for the First Nations welfare by ignoring the Constitution.

The First Nations Constitution states in the citizenship provision those who will make up the First Nation and to whom the government will respond. The citizenship provision establishes all the requirements a person must meet to have the rights and responsibilities of citizenship. Since First Nations uniqueness is maintained by its citizens, establishing these requirements in the Constitution secures the First Nations special identity. If future citizens want to restrict or loosen the requirements for citizenship they must do so only by amending the Constitution. If the leaders abuse their power, the Constitution provides a means for their orderly removal, recall or replacement in the next election. These procedures to elect, remove, recall and replace Council members ensure that the leadership meets the citizen's needs and earns their respect and trust.

A First Nations Constitution must also provide due process and equal protection to its citizens. Due process can best be determined by a set of rules which limits the methods governments can use to enforce and apply laws. Due process enables everyone in the community to know the rules of the game. They will know what to expect when the government enacts or applies a law. The equal protection requirement ensures that governments play fair in determining how laws affect individuals.

First Nations can reconstitute themselves as Nations and create institutions with the breadth and capacity to undertake self-government. It only requires a willingness and faith to begin the process. It will take time to overcome years of *Indian Act* brainwashing but without trying it will never happen. As the RCAP report stated *“effective governance will require structures that are consistent with a peoples culture and heritage and at the same time encompass sufficient numbers of people to exercise the full authority of effective governance.”*

Developing and knowing who your citizens are and who will be governed must be the first step to rebuilding the Nations that we once were.

### **What Defines Citizenship**

A First Nation is a political entity and is organized as a government. However, governments make laws. Most First Nation laws derive their authority from the *Indian Act* and not from the First Nation and therefore sometimes lack legitimacy in the eyes of the general population and First Nations people in general.

People who belong to a political entity are called “citizens” for example; a person is a citizen of Canada, the province in which he/she lives and a citizen of their community, town or city. Therefore, a First Nation member can be called a citizen because he/she belongs to that political entity called the First Nation.

A citizen is one who owes allegiance or loyalty to a government, has the right to the protection of that government and has responsibilities to that government for the benefits the individual receives. There is a give and take relationship. The citizen or First Nation member gives allegiance, loyalty, obedience and support through voting and active participation. The citizen or First Nation member takes protection, benefits, stability and general overall good welfare from its government.

Some people might ask what protection and benefits does and individual receive from its First Nation? They feel that the federal government operates and funds most of the programs on reserve so just what does my First Nation do for me?

It is true that other governments fund and operate many programs on most reserves but with minor exceptions most of the benefits and protections that the First Nation government does not provide, are provided by other governments to First Nation members because they are members of a political entity.

First Nation governments have battled long and hard to preserve First Nations existence so that those that ask the questions above can go on being First Nation members, receiving these protections and benefits through their First Nation.

So as in any government, a member owes faithfulness, obedience to law, and the participation in community affairs to their governments in exchange for the benefits and protections that came through them because they belonged to that political entity; called the First Nation.

The rights of Canadian citizens are protected by the Federal Government. Some of the rights of Canadian citizenship are to organize peacefully, to petition the government to correct injustices, to vote if qualified, to travel freely etc. In return for the protection of these rights citizens have responsibilities to their government. Their basic responsibility is to participate in government. Active, responsible citizens study issues and candidates before they vote. They try to obey the laws of their society so that order is maintained. When a law seems unfair they work in the proper legal ways to change it. All governments need to know who their citizens are in order to protect their rights and privileges. Determining who qualifies as a citizen and keeping accurate records of births, deaths, marriages, addresses and other essential information goes on in nations, provinces, states and cities all over the world.

Governments must also identify and keep lists of those who can rightfully participate in government. It is especially critical for First Nation governments to know who their citizens are so they can represent all citizens fairly. Today, First Nations jurisdiction over determination of identity must be contingent on another government's legislation and determination.

Most important to First Nations people is the social and personal benefits of having First Nations citizenship. These benefits come from belonging to a community of people who share a history, cultural traditions and who plan for the

future together. A First Nation citizen's basic responsibility to participate in government is critical to the effectiveness of the First Nation's political and economic structures.

In the past, First Nation citizenship structures were based on kinship. Authorities and leaderships were passed down through ruling families, clans etc. and agreed to by groups of families or clans. Traditional governance varied from simple social groups to complex constitutional governance. Among the more loosely organized tribe's family relationships, common language and custom decided the right to membership or citizenship. Among the First Nations who had formal constitutions, citizenship requirements were part of the constitution.

The social realities of contemporary life make it impossible for determining citizenship in the old ways. People have married and moved off reserve, many have lost contact with their First Nation. They have married into other ethnic groups and other First Nation communities. Children were adopted out or scooped only to return years later looking for their family and identity. By defining its own citizenship membership requirements in a constitution, the First Nation can preserve its identity for the future.

### **Moving Forward in the Reclamation of Identity**

As First Nations people there is an inherent right to self-government. "Inherent" means that the right comes with the very existence of the people and communities. The basis of the inherent right to self-government is the very existence of the First Nations communities and the fact that historically, First Nations communities governed themselves. The right to self-government has never been given up by First Nations peoples and is a right which still exists today. However this right has not been exercised to the fullest extent.

The Inherent Right to Self Government has been upheld and is recognized in law through recent Supreme Court cases such as; *Delgamuukw vs. British*

*Columbia, Haida vs. Weyerhaeuser; Taku River Tlingit vs British Columbia and the Mikisew Cree vs. Sheila Copps Minister of Heritage and Thebaca Road Society.*

Self-government is a way to regain control over the management of our communities and to preserve our cultural identities. Self-government is often referred to as an "inherent" right, a pre-existing right rooted in our long occupation and governing of the land before European settlement.

Many First Nations people speak of sovereignty and self-government as responsibilities given to them by the Creator and of a spiritual connection to the land.

First Nation members often say "we have an inherent right to self-government and self-determination" or we have "First Nations sovereignty". By these statements they are indicating that they are a political entity with the right to make laws and to compel obedience to our laws.

First Nations peoples have also used the right of self-determination in international law to support their claims. Much attention has focused, in recent years, on the developing body of international law on human rights, on the right to self-determination as it applies to Indigenous peoples around the world. First Nations organizations have argued that the inherent right of self-government is an aspect of the right of self-determination recognized in the *United Nations Charter* and in the *Draft Declaration of the Rights of Indigenous Peoples*. In June 2007, an overwhelming majority of member states of the United Nations Human Rights Council voted to adopt the *UN Declaration on the Rights of Indigenous Peoples*. Canada was one of only two States to vote against the Declaration. This they said was due to the fact that the Declaration might have a possible incompatibility with domestic policies relating to Indigenous Peoples in Canada. In fact, Canada was recognizing that the Draft Declaration would conflict with the rules contained within the *Indian Act* particularly the Indian status categories.

Articles 7 and 8 of Declaration which provides support for self-government and citizenship state:

### Article 7

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of population transfer who has the aim or effect of violating or undermining any of their rights;
- (d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;
- (e) Any form of propaganda directed against them.

### Article 8

“Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such”.<sup>5</sup>

If in fact indigenous Nations have the right to self identify by virtue of the inherent right, then discussions must begin among Nations. Determining who the people of the Nation are has to be the first step in these discussions.

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<sup>5</sup> Draft Declaration on the Rights of Indigenous Peoples, United Nations, 1994

## Annex A

**10.** (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

### *Membership rules*

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

### *Exception relating to consent*

(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.

### *Acquired rights*

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

### *Idem*

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

### *Notice to the Minister*

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

*Notice to band and copy of Band List*

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

- (a) give notice to the band that it has control of its own membership; and
- (b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

*Effective date of band's membership rules*

(8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

*Band to maintain Band List*

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

*Deletions and additions*

(10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

## Annex B

Section 11 .1 reads:

Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if:

- (a) the name of that person was entered in the Band List for that band, or that person was entitled to have it entered in the Band List for that band, immediately prior to April 17, 1985;
  - (b) that person is entitled to be registered under paragraph 6(1) (b) as a member of that band;
  - (c) that person is entitled to be registered under paragraph 6(1) (c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or
  - (d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.<sup>6</sup> (**Exclusion of 6(2)**).
- (2) Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band
- (a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or
  - (b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

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<sup>6</sup> Indian Act 1985