

Indian Governments of Saskatchewan



Federation of Saskatchewan Indian Nations

FIRST NATION CITIZENSHIP

TREATY GOVERNANCE OFFICE



HISTORY

- Prior to European contact, the formation of Canada, and the creation of the Indian Act, First Nations were organized according to their own political and legal values and systems.
- The impact of the **Indian Act** and the **Canadian Citizenship Act** has created a number of issues and questions particularly for Treaty First Nations, such as:
 - How to reconcile the reality of First Nations citizenship
 - Nation-to-nation relationships with Canada, and
 - Treaty relationships to the Crown and Canadian citizenship.

INAC'S ROLE

- The Indian Register is the official record identifying all Status Indians in Canada.
- The Indian Register contains the names of all Status Indians. Indian and Northern Affairs Canada (INAC) is responsible for maintaining the Register (see the following section called "The Indian Registrar").
- INAC maintains the control of the Indian Register
- INAC will not review or comment on a proposed or amended code.
- Indian Act determines who receives Treaty annuities.

LEGAL TERMINOLOGY

- Many of the legal concepts use in the Indian Act are highly problematic from a First Nations viewpoint.
- Since 1867, Federal legislation has defined individual entitlement to registration as an “Indian” and has imposed the notion of the Indian band tied to particular piece of reserve.
- Concepts of “Indian”, “band”, “band council”, and “band membership” originate from the Indian Act.

MEMBERSHIP

- Membership
 - In General
 - Membership refers to the belonging to a collective.
 - In the Indian Act
 - Membership is associated with membership to a particular band
 - 1876 Indian Act enacted and set out rules for membership.
 - While the majority of Registered Indians are members of a First Nation, it is important to note that not all Registered Indians are members of a First Nation. If your First Nation is one of the 250 First Nations that controls its own membership, you will have to apply directly to your First Nation for membership.
 - This situation was created by the 1985 Indian Act amendment, Bill C-31.

CITIZENSHIP

- Citizenship
 - In general
 - Citizenship is " a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed." (156 citizens plus)
 - Citizenship is associated with social, economic, and political participation in the life of a community. Citizenship can also imply a certain level of conduct and behavior by the citizen.
 - In Canada
 - There is no reference to citizenship in the Indian Act.
 - All people born in Canada inherit Canadian citizenship.
 - The Canadian Citizenship Act 1947 introduced the concept of citizenship to the Canadian political economy.

COMMUNITY APPROACH

- Communities have always had their own approach to membership and citizenship.
- With the Indian Act, the Federal government created a legalistic interpretation of membership.
- Over time, First Nation communities have reasserted their authority to define membership based on customary law and tradition
- In Saskatchewan, 28 First Nation communities of 74 have custom membership codes.

FSIN APPROACH

- FSIN has a long history dealing with citizenship and membership issues.
- Since 1981, FSIN has passed resolutions dealing with citizenship and membership issues.
- In August of 2009 the Legislative Assembly directed the Chief of FSIN and Executive to develop a draft citizenship legislative framework.

CITIZENSHIP FRAMEWORK

- There are several important steps that should be followed when a community decides to develop citizenship codes.
 1. Draft a Citizenship Code.
 - a) Communities can independently develop their own citizenship codes. FSIN had developed a template for community use. Examples of citizenship acts include *Canada Citizenship Act*, *Nisga'a Citizenship Act*, *Key First Nation Citizenship Act*, and *Tsawwassen First Nation Final Agreement Act*.
 2. Notify the public of changes to local citizenship
 3. Engage community members in the drafting of the citizenship code.
 4. Finalize citizenship code.

CITIZENSHIP FRAMEWORK

5. Formally vote to pass the citizenship code
6. Once the code is passed, the community may want to draft the following documents:
 - a) Applications for citizenship
 - b) Renunciation of citizenship
 - c) Revocation of citizenship
 - d) An Oath of Citizenship
 - e) A Membership List
 - f) A Certificate of Citizenship

AREAS OF CONTENTION

- Federal Government controls registry and definition of Indians.
- Many First Nation communities are recognizing that language of Indian Act and government does not represent or accurately express First Nation interpretation of identity, citizenship and membership.
- Custom codes are not 'customary law'. These codes are still subject to legislation such as s.11 Indian Act.
- Lack of resources has already proved a barrier to many First Nations wanting to assume control over membership and development of codes.
- First Nations do not possess the authority to confer "Status" in the Indian Act

CHALLENGES

- Renewing First Nation membership/citizenship codes will require that First Nations set up administrative bodies to determine and manage membership lists.
- What rights are, and should be, attached to membership and how are these rights affected by residence on or off reserve?
- Will there be a relationship of band membership to Indian status?
- And assisting communities to develop appeal Mechanisms

CONSIDERATIONS - 1

- What other policies will need to be in place to support FN membership codes?
- What role will federal government have in a completely First Nation process?
- How best to return power over first nation citizenship/membership
- What are some of the possible criteria for determining who is a member? How important is each of these criteria?

CONSIDERATIONS - 2

- What interests are served by the existing Indian entitlement and band member provisions
- How do individual rights factor into entitlement determination processes
- What changes to dispute resolution process should be made?
- Who should decide on membership applications and manage the membership list?
- What would the decision making structure and process look like?

CONSIDERATIONS - 3

- Should there be rules and procedures for removing a member from a First Nation and remove his or her entitlements? Under what circumstances, if any, should a person be removed? What should the process for removal be?
- Should there be a body to appeal to if there is a dispute over a membership decision? What should that body look like?
- Should the Canadian charter of Rights and Freedoms apply to first Nations

CONSIDERATIONS - 4

- What is the relationship of non-first nations people on first nation lands to the community?
- There is little information or suggestions to opening up the first nation citizenship to a process similar to Canada's Immigration policy. That is allowing people to become citizens that are not of First Nation descent.

LONG TERM STRATEGY

1. Activate the Chief's Task Force on Citizenship
2. Review previous work done on Citizenship
3. Consensus building through community engagement
4. Create citizenship guidelines to support development of Community based Citizenship Acts
5. Final report for response from communities and INAC
6. scope out the development of a Saskatchewan First Nations Treaty-based Citizenship Framework
7. phase out the *Indian Act* registration provisions and replace them with a First Nations Citizenship Act that meets the interests of the First Nations to control their own citizenship as an inherent right to self-determination.

PAST CITIZENSHIP RESOLUTIONS

1. #094A dated Nov.26/81 Citizenship – Indian Governments commence to exercise their right to determine citizenship, as granted by Creator;
2. #042 dated Oct.20/83 Citizenship – Priority work on developing policies on FN's citizenship for consideration by Chiefs;
3. #094B dated May16/84 Citizenship – drafting standards, including allegiance pledge;
4. #145 dated Oct.25/84 Citizenship – support Lac La Hache band continue to exercise right to control and determine own citizens;
5. #192 dated Oct.16/85 Bill C-31 – support for First Nations to deal with amendments, including creation of task force to deal with issues;
6. #210 dated Feb.13/86 Task Force on Citizenship – Terms of Reference to include development of model Band Constitutions (self-governance requirement);
7. #278 dated Jan.28/87 Membership – directing INAC to provide implementation monies, provide extension and impact studies;
8. #298 dated may13/87 Bill C-31 – development of common political position paper;
9. #353 dated Jan.28/88 Membership – Executive Council secure resources to establish and formalize inherent rights and Indian Nations determine own membership by adopting their own membership/citizenship codes;
10. #450 dated Jan.31/90 Indian Self-gov't/Citizenship – Executive Council research, reassess and redesign FSIN position on citizenship issues;
11. #571 dated Aug.26/92 Treaty Cards for All First Nations – Executive to initiate, in cooperation with AFN, development of Treaty Cards for all members for Treaty First Nations;
12. #625 dated Aug.18/93 Second Generation Devolution Strategy – table proposal to IGC and Executive Council;
13. #858 dated Feb.27/97 Impact of Bill C-31 – FSIN develop strategy to remedy this breach of Treaty (TLE not being reworked despite increase in First Nations populations);
14. #1149 dated Feb.26/02 Membership/Citizenship – Chiefs-in Assembly support Treaty Governance Membership Working Committee in assisting First Nations with membership/citizenship issues and to request for funding from DIAND to do this work;
15. #1483 dated Feb.27/07 First Nations Citizenship/Status and s.6 Indian Act – Chiefs-in-Assembly mandate the Chief of the FSIN to take lead on citizenship file, direct Chiefs of FSIN to advance file at AFN and direct Chief of FSIN to seek resources to support technical and legal work required;
16. #1644 dated Jun.4/09 First Nations Citizenship Act – direct Executive Members of the FSIN to examine the impacts of the McIvor decision on First Nations rights across all mandate areas of the FSIN and direct the Chief of FSIN and Executive to develop a draft citizenship legislative framework to present to Special Session of the Legislative Assembly in July 2009.