



ASSEMBLY OF MANITOBA CHIEFS
Citizenship Report
July 14, 2025

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INTRODUCTION

The Assembly of Manitoba Chiefs (“**AMC**”) developed this Citizenship Report for submission to Crown-Indigenous Relations and Northern Affairs Canada (“**CIRNAC**”) to present preliminary implementation work on the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the “**UNDA**”)¹ Action Plan Measure 2.9, which states:

Consult First Nations and other impacted Indigenous groups to support the co-development of opt-in alternatives to *Indian Act* registration and membership (First Nations citizenship). This will include a broad spectrum of Indigenous demographic groups, such as women, girls and 2SLGBTQI+ people, Elders, Treaty groups, etc.²

The AMC is the political and technical coordinating organization for all 63 First Nations in Manitoba (the “**member First Nations**”), which in turn represent more than 172,000 First Nations citizens. The AMC represents a diversity of Anishinaabe, Nehetho/Ininew, Anishinew, Denesuline, and Dakota Oyate people, accounting for approximately 12% of the provincial population.

The AMC’s member First Nations exercise inherent and Treaty rights over their reserve land and traditional territories. Member First Nations include adherents to Treaties 1, 2, 3, 4, 5, 6 and 10, and the Dakota Nations that are party to a pre-Confederation Treaty with the Crown. The AMC’s mandate is set out in the *Constitution of the Assembly of Manitoba Chiefs*, which provides, among other things, that the AMC will:

- Promote, preserve and protect the Aboriginal and Treaty rights of First Nations people in Manitoba; and
- Affirm First Nations rights as peoples to exercise and practice self-determination and self-governance, including through protecting the integrity and authority of each First Nation’s customs, laws and practices.³

¹ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c. 14. [**UNDA**]

² Government of Canada, “Chapter 2: First Nations priorities”, *United Nations Declaration on the Rights of Indigenous Peoples Action Plan* (21 June 2023), online: <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/p3.html> at 2.9.

³ Assembly of Manitoba Chiefs, “Constitution of the Assembly of Manitoba Chiefs” (September 1994, as amended 30 April, 1 & 2 May, 2024), online: <https://manitobachiefs.com/wp-content/uploads/2024/05/24-04-28-AMC-Constitution-Amended-Final.pdf>.

AMC's Work on Citizenship

The AMC has long advocated for a new Crown approach that recognizes and provides for the exercise of First Nations jurisdiction to determine and define citizenship.⁴

In the 1990s, AMC advanced First Nations citizenship as a topic of negotiation in *The Dismantling of the Department of Indian Affairs and Northern Development, the Restoration of Jurisdictions to First Nations People in Manitoba and the Recognition of First Nations Governments in Manitoba* (the “**Framework Agreement Initiative**”).⁵ In 2007, the AMC passed resolution JAN-07.05 Framework Agreement Initiative, to discontinue the negotiations due to Canada’s lack of political will to advance a new approach to First Nations citizenship.⁶

In 2011, following regional forums, First Nations in Manitoba identified various recommendations on citizenship, which articulate positions such as First Nations inherent jurisdiction over citizenship and the need for First Nations in Manitoba to have resources to develop capacity to advance their own approach to citizenship.⁷ The AMC also established the Chiefs Committee on Citizenship in 2011. The purpose of the Chiefs Committee on Citizenship is to advance and oversee the AMC’s approach to First Nations citizenship. This includes advancing a regional approach to citizenship and supporting AMC member First Nations in developing their own citizenship frameworks.

In 2018, following a First Nations Citizenship Workshop, AMC produced a Final Report that sets out findings and recommendations (the “**2018 AMC Citizenship Report**”).⁸

The AMC established a Citizenship Working Group in 2024 to develop law and policy options, which has informed the development of this Citizenship Report. The Working Group’s objectives have been informed by the clear direction of First Nations in Manitoba that a new approach to First

⁴ Assembly of Manitoba Chiefs, Resolution AUG-23.01: *First Nations Citizenship*, Annual General Assembly (August 2023), online: <https://manitobachiefs.com/wp-content/uploads/2023/08/AMC-Certified-Resolutions-August-2023.pdf> [AMC, **Resolution AUG-23.01**].

⁵ Assembly of Manitoba Chiefs, *The dismantling of the Department of Indian Affairs and Northern Development, the restoration of jurisdictions to First Nations peoples in Manitoba and the recognition of First Nations governments in Manitoba: framework Agreement*, (Ottawa: Indian and Northern Affairs Canada, 1994).

⁶ Assembly of Manitoba Chiefs, *JAN-07.05 RE: Framework Agreement Initiative*, Certified Resolution (23 January 2007).

⁷ Assembly of Manitoba Chiefs, “Community Dialogue Forum on First Nations Citizenship” (Thompson, 26 September 2011) [AMC, **Community Dialogue Forum (Thompson)**] at 2.

⁸ Assembly of Manitoba Chiefs, “First Nations Citizenship Workshop Final Report” (March 2018), online: <https://manitobachiefs.com/wp-content/uploads/AMC-First-Nations-Citizenship-Workshop-Report-FINAL.pdf>. [2018 AMC Citizenship Report].

Nations citizenship is required that recognizes First Nations jurisdiction and self-government over citizenship.

AMC Resolutions

The Chiefs-in-Assembly provides the collective voice of member First Nations through resolutions. The Chiefs-in-Assembly have passed the following important resolutions over the years that have shaped the direction of First Nations citizenship advocacy and self-determination. The following resolutions have helped to affirm the inherent rights of First Nations people to determine their own citizenship processes and the continued push for reforms to the *Indian Act*:

- AMC Resolution OCT-11.06, *First Nations Citizenship and Bill C-3*: affirms that First Nations have never relinquished their jurisdiction over citizenship, despite the imposition of the *Indian Act*. It highlights the ongoing intrusions of Canada, particularly the discriminatory practices embedded in the status provisions of the *Indian Act*. It calls on Canada to remove provisions that limit individuals eligible for status on a discriminatory basis.⁹
- AMC Resolution OCT-11.07, *Manitoba First Nations Citizenship Legislation*: This resolution asserts that the *Indian Act* has been used to advance Canada's assimilation agenda, and First Nations in Manitoba have never consented to this imposition. It calls for the recognition of self-determination in line with the *United Nations Declaration on the Rights of Indigenous Peoples* (“**UNDRIP**”) and advocates for the creation of citizen recognition legislation for First Nations in Manitoba that respects First Nations rights to define and regulate their citizenship.¹⁰
- AMC Resolution AUG-23.01, *First Nations Citizenship*: This resolution directs AMC to continue working with the Chiefs Committee on Citizenship and Elders/Knowledge Keepers from AMC member First Nations to develop traditional dispute resolution mechanisms and template citizenship laws. It further calls for AMC to partner with Indigenous Services Canada (“**ISC**”) to work on measures outlined in the *UNDA* Action Plan related to citizenship.¹¹
- AMC Resolution FEB-24.10, *Implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act*: This resolution emphasizes the need to ensure that the *UNDA* Action Plan is fully implemented and that Canada's federal laws align with the

⁹ Assembly of Manitoba Chiefs, Resolution OCT-11.06: *First Nations Citizenship and Bill C-3*, Special Chiefs Assembly (October 2011), online: <https://manitobachiefs.com/wp-content/uploads/CIA-Resolution-October-2011-Special.pdf> [AMC, *Resolution OCT-11.06*].

¹⁰ Assembly of Manitoba Chiefs, Resolution OCT-11.07: *Manitoba First Nations Citizenship Recognition Legislation*, Special Chiefs Assembly (October 2011), online: <https://manitobachiefs.com/wp-content/uploads/CIA-Resolution-October-2011-Special.pdf> [AMC, *Resolution OCT-11.07*].

¹¹ AMC, *Resolution AUG-23.01*.

objectives of UNDRIP. AMC has committed to leading regional discussions on how the Action Plan can inform First Nations approaches to citizenship, with the goal of ensuring federal laws uphold the principles of Indigenous self-determination.¹²

In addition, the Assembly of First Nations has issued the following resolutions:

- AFN Resolution 30/2017, *Inherent Authority to Define Citizenship*: Recognizes the inherent authority of First Nations to define their own citizenship, regardless of Canada's imposition of the *Indian Act*.¹³
- AFN Resolution 68/2024, *Call for Prioritization of Collaboration on the Second-Generation Cut-Off Rule*: Calls for immediate action to end sex and gender-based discrimination in the *Indian Act* while supporting First Nations exercise of jurisdiction over citizenship.¹⁴

The intent of this Citizenship Report is to set out the Citizenship Working Group's recommended law and policy options to reform First Nations registration and Band membership that is currently governed by the *Indian Act*.

¹² Assembly of Manitoba Chiefs, Resolution FEB-24.10: *Implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act*, General Chiefs Assembly (February 2024), online: <https://manitobachiefs.com/wp-content/uploads/2024/03/AMC-Certified-Resolutions-February-2024.pdf>.

¹³ Assembly of First Nations, Resolution 30/2017: *Inherent Authority to Define Citizenship*, Annual General Assembly (26 July 2017), online: <https://afn.bynder.com/m/402b20c3bacf0225/original/30-2017-Inherent-Authority-to-Define-Citizenship.pdf>.

¹⁴ Assembly of First Nations, Resolution 68/2024, *Call for Prioritization of Collaboration on the Second-Generation Cut-Off Rule* (3 December 2024), online: <https://afn.bynder.com/m/3c8a25105069ecec0/original/December-2024-SCA-Resolutions-Package.pdf>.

PART 1: EXECUTIVE SUMMARY

First Nations in Manitoba have an inherent right to define their own citizenship; a right that predates all colonial legislation. The *Indian Act* has disrupted traditional systems by imposing externally defined criteria determining who qualifies as an “Indian”. The AMC advocates for the restoration of First Nations authority over citizenship matters. The *Indian Act* is an oppressive piece of legislation that should be replaced with modernized legislation recognizing the inherent jurisdiction of First Nations to govern their citizenship without qualification.

The *Indian Act* framework has been criticized for its discriminatory provisions and colonial underpinnings, which affect the identity and rights of First Nations citizens. The AMC proposes that First Nations develop citizenship frameworks that reflect their own concepts of citizenship. Various governance models, including authorities at the Nation level and Treaty organization level, are proposed to support the shift away from the *Indian Act*.

Developing citizenship frameworks and laws is a vital step towards reclaiming jurisdiction over identity and governance. Issues to address throughout this process include criteria for acquiring citizenship, cultural connections, and decision-making processes. Identity verification is a significant challenge, requiring respect for governance traditions while addressing concerns related to identity fraud.

The following summarizes the concepts discussed in each Part of this Citizenship Report, following this Executive Summary:

Part 2: Historical Background

The historical background of First Nations citizenship is rooted in the sovereignty and self-governance that First Nations exercised prior to European colonization. First Nations legal orders emphasized interconnectedness and mutual responsibilities, with citizenship defined through relational ties rather than externally imposed rules. The imposition of colonial systems, particularly the *Indian Act*, disrupted these traditional systems by imposing discriminatory policies that sought to control and redefine First Nations identity. These policies have profound impacts, contributing to social and economic marginalization, especially among women and non-status individuals. Despite these challenges, First Nations legal traditions have endured, and there is a growing movement towards reclaiming jurisdiction over citizenship by developing frameworks that reflect First Nations customs and legal orders.

Part 3: Modern Context of First Nations Citizenship

The AMC has consistently called for the end of discrimination in Indian registration and advocates for First Nations to act on their inherent jurisdiction without colonial interference. Tension

between individual and collective rights caused by colonial interference in First Nations identity can be remedied through a First Nations-controlled citizenship system. Part 3 discusses the impact of modern policy and legislative amendments, including the White Paper, the *Constitution Act, 1982*, and various amendments to the *Indian Act*, which have shaped the current system for recognizing First Nations rights in relation to citizenship.

Part 4: Overview of AMC Advocacy on Citizenship

The Chiefs Committee on Citizenship and the Citizenship Working Group are central to the AMC's efforts to advance First Nations jurisdiction over citizenship.

The Chiefs Committee on Citizenship provides leadership and strategic direction on citizenship matters, supporting the AMC's regional approach to citizenship. The Committee's work is guided by the principles of self-determination and the inherent rights of First Nations to govern their own citizenship matters.

The AMC established the Citizenship Working Group in 2024 to offer technical expertise and develop practical tools that support the implementation of First Nations-led citizenship frameworks. Working together, the Chiefs Committee on Citizenship and the Citizenship Working Group provide a coordinated approach to help ensure AMC member First Nations are equipped to reclaim control over citizenship in ways that reflect their laws, values, and rights under Treaty and international law.

Part 5: Reclaiming Our Identity

In January 2025, the AMC hosted the forum "Reclaiming Our Identity: Advancing First Nations Citizenship and Self-Determination". This pivotal forum brought together Chiefs, Elders/Knowledge Keepers, and Spiritual Leaders to discuss and strategize on reclaiming control over citizenship and advancing self-determination. The forum emphasized the importance of traditional governance, legal and political advocacy, and cultural and spiritual restoration. The forum concluded with a strong call to action for First Nations to reclaim control over their citizenship and governance, highlighting the need for continued advocacy.

Part 6: AMC-Proposed First Nations Citizenship Entities

The AMC proposes the development of First Nations-led citizenship entities to replace the current *Indian Act* framework. These entities would empower First Nations to reclaim control over citizenship, identity and governance, which are essential elements of self-determination. The proposed models include Nation-level authorities, Treaty organizations, First Nations organizations, and Tribal Councils, each offering unique strengths and challenges. The AMC

emphasizes the need for a flexible approach tailored to the specific needs and governance traditions of each First Nation.

Canada may play a supporting role in establishing these entities by working collaboratively with First Nations and providing financial and technical supports to First Nations as they build capacity and exercise their right to determine their own citizenship.

Part 7: AMC-Proposed Federal Recognition Vehicles

The AMC advocates for federal recognition legislation to support First Nations self-government over citizenship. This legislation should recognize First Nations jurisdiction without limitation and be co-developed with First Nations. The AMC emphasizes that First Nations do not require federal recognition to legitimize their laws, as First Nations sovereignty and rights predate colonial assertions of power. Federal recognition is proposed to facilitate the implementation of First Nations citizenship laws in the most efficient and straightforward manner.

Part 8: Funding and Fiscal Arrangements

The assertion of First Nations jurisdiction over citizenship requires significant financial and administrative support. Current fiscal frameworks are misaligned with First Nations governance models, resulting in funding shortfalls. The AMC calls for new funding arrangements that align with self-determined citizenship criteria and provide stable, predictable funding for the development and implementation of citizenship systems. This includes support for identification instruments, a legislated funding guarantee, and *per capita* fiscal arrangements tailored to First Nations needs.

Part 9: Moving Forward

Part 9 sets out the AMC's overarching goals and recommendations for recognizing First Nations jurisdiction over citizenship. The AMC's advocacy efforts are focused on restoring First Nations authority, developing citizenship frameworks, and establishing First Nations-led entities for citizenship and identity verification. The AMC also proposes federal recognition legislation and new funding relationships to support First Nations self-government over citizenship. The AMC's Citizenship Working Group will play a key role in supporting First Nations in Manitoba to draft laws and advocate for federal recognition of First Nations jurisdiction over citizenship.

PART 2: HISTORICAL BACKGROUND

Before the arrival of Europeans in North America, First Nations were organized as sovereign Nations, with their own cultures, economies, governments and laws. First Nations and their laws continued after contact. The inherent right of self-government over citizenship and other areas extends from the laws and practices that sovereign First Nations exercised prior to contact with Europeans. They are inherent because “they existed before European colonization and continued after the imposition of Euro-Canadian law.”¹⁵

First Nations legal orders emphasized interconnectedness, mutual responsibilities, and inclusive, civil models of belonging. Citizenship was defined through relational ties, not externally imposed rules, and carried with it obligations to maintain balance and harmony within communities and with the land.

Colonial imposition radically disrupted these systems. Beginning in the 19th century, federal legislation, particularly the *Indian Act*, sought to control and redefine First Nations identity. Through discriminatory policies, including enfranchisement and gendered rules that stripped women and children of their status, colonial laws aimed to limit the population defined as “Indian” and assimilate First Nations citizens into settler society.

The result was a fragmented system of Indian status that undermined First Nations governance and weakened collective identity. The impacts of these policies, particularly those relating to status, Band membership, and enfranchisement, have been profound, contributing to intergenerational social and economic marginalization, especially among women and non-status individuals.

Despite this, First Nations legal traditions have endured. As First Nations work to develop self-determined citizenship frameworks outside of the *Indian Act*, they draw from longstanding principles embedded in their laws and cultural practices, reaffirming the inherent right to define their own peoples and govern their own Nations. This Part explores the historical foundations of First Nations concepts of belonging, the impacts of colonial legislation, and the impacts of modern legislative initiatives.

¹⁵ Kent McNeil, “A Brief History of Our Right to Self-Governance, Pre Contact to Present”, Centre for First Nations Governance (n.d.), online: https://fngovernance.org/wp-content/uploads/2022/08/Right-to-Self-Governance-2022_v2.pdf [McNeil, *Brief History of Self Governance*] at 7.

First Nations Legal Orders

1. *First Nations Legal Orders*

Prior to European contact, First Nations were organized as sovereign Nations with their own cultures, economies, governments, and laws.¹⁶ First Nations exercised jurisdiction over their defined territories, including property rights, subject to responsibilities that the Creator placed on them to care for the land and share it with plants and animals.¹⁷ First Nations rights are inherent because they pre-date European colonization and are collective rights that derive from the occupation and use of land by First Nations citizens.¹⁸

Foundational to First Nations collective identities were kinship ties, community acceptance, and an integral connectedness to traditional territories. First Nations have always held their own concepts of nationhood and control over their collective identities, in which kinship played an important role. These concepts survived the imposition of colonization and the *Indian Act*.¹⁹

In what is now central and northern Manitoba, for example, Cree Nations are governed by *wahkohtowin*, the Cree concept of relatedness. *Wahkohtowin* directly translates to “being related to each other”, but in practice, it is a comprehensive legal framework. As scholar Matthew Wildcat explains, *wahkohtowin* “encompasses the act of being related, a worldview that everything is related, and a set of laws or obligations around how to conduct good relationships.”²⁰

Late Cree intellectual and legal scholar Harold Cardinal referred to *wahkohtowin* as “the laws governing all relations”. In other words, every person, animal and element of nature is kin, with mutual duties to maintain harmony. This principle includes the doctrine of *miyo-wicehtowin* (good relations), which explicitly directed Cree individuals and Nations to “conduct themselves...in a manner such that they create positive or good relations in all relationships...with other peoples”.²¹

The Seven Grandfather Teachings are a set of Anishinaabe guiding principles passed down from generation to generation to guide the Anishinaabe in living a good life in peace without conflict.

¹⁶ McNeil, *Brief History of Self-Governance*, 6; Tom McDonald, “*manâcihtâwin*” (23 July 2018), online: *Aseniwuche Winewak Nation* https://www.aseniwuche.ca/wp-content/uploads/2021/06/manacihtawin_bundle.pdf [McDonald, *manâcihtâwin*]; 2018 AMC Citizenship Workshop Report at 14.

¹⁷ McNeil, *Brief History of Self-Governance*, 6; McDonald, *manâcihtâwin*.

¹⁸ McNeil, *Brief History of Self-Governance* at 6.

¹⁹ 2018 AMC Citizenship Report at 14.

²⁰ Matthew Wildcat, “*Wahkohtowin in Action*” (2018) 27:1 Constitutional Forum 14 [Wildcat, *Wahkohtowin*].

²¹ Wildcat, *Wahkohtowin* at 14.

These teachings, Love, Respect, Bravery, Truth, Honesty, Humility, and Wisdom, are widely shared among Anishinaabe First Nations and serve as moral foundations for living harmoniously for all of creation. The story of the Seven Grandfather Teachings recounts how the Creator assigned the Seven Grandfathers to care for the Anishinaabe people.²²

Historically, First Nations citizenship laws were inclusive and based on a civic approach, aimed at community strength and healthy relations with others. Colonial systems imposed exclusionary, ethnic-based membership models that defined First Nations people as “members” rather than “citizens”, with the goal of limiting numbers to control resources and benefits like reserve residency.²³

As First Nations reassert jurisdiction over citizenship and develop new citizenship frameworks independent from the *Indian Act*, their longstanding legal orders offer a foundation for developing citizenship models that reflect First Nations values, responsibilities, and connections to land and community. With this context, the following explores how kinship and citizenship concepts have functioned and continue to inform First Nations governance today.

2. *Kinship and Citizenship Concepts*

Before colonization, kinship and clan structures were the organizing framework for social and political life of many First Nations citizens.²⁴ In Anishinaabe societies, for instance, decision making was rooted in clan (dodem) and kinship obligations.²⁵ Individuals were considered “citizens” by virtue of their family ties, with belonging determined by relational ties rather than externally imposed legal status.²⁶ These relational systems were interwoven with responsibilities,

²² Seven Generations Education Institute, “Seven Grandfather Teachings” (3 February 2021), online: <https://www.7generations.org/seven-grandfather-teachings/>.

²³ Val Napoleon, “Indigenous Citizenship and Civil Society: An Intervention” (2 April 2024), online: *Perspectives* <https://perspectivesjournal.ca/indigenous-citizenship-and-civil-society-an-intervention/>.

²⁴ National Centre for First Nations Governance, *Reclaiming Our Identity: Band Membership, Citizenship and the Inherent Right* at 2, online: https://fngovernance.org/wp-content/uploads/2020/06/Reclaiming_Our_Identity.pdf [NCFNG, *Reclaiming Our Identity*].

²⁵ See Anishinaabe Governance, “Traditional Governance” (n.d.), online: https://bmaakonigan.ca/website_681dad08/traditional-governance/ [Anishinaabe Governance, *Traditional Governance*]; Patricia D. McGuire, “Restorative Dispute Resolution in Anishinaabe Communities—Restoring Concepts of Relationships Based on Dodem” (2008), online: National Centre for First Nations Governance https://fngovernance.org/wp-content/uploads/2020/09/patricia_mcguire.pdf at 4.

²⁶ Anishinaabe Governance, *Traditional Governance*; Aaron Mills, “First Nations’ Citizenship and Kinship Compared: Belonging’s Stake in Legality” (2025) 72 *AM J Comp L* at 2-3, 12-13, online: <https://academic.oup.com/ajcl/advance-article-pdf/doi/10.1093/ajcl/avae032/63133447/avae032.pdf> [Mills, *Citizenship and Kinship*].

where each *dodem* (clan) carried distinct roles such as leadership, healing, mediation, education and protection.²⁷

Some contemporary analysts note that kinship itself operates as a distinct framework for political belonging and a foundation for legal identity in First Nations law.²⁸ This understanding is exemplified in Tanya Talaga's article, "The Power of Indigenous Kinship", which highlights how Anishinaabe and Cree Nations embed kinship into every stage of life, from birth ceremonies to rites of passage and emphasizes communal roles, land connection, and cultural continuity.²⁹ These practices illustrate that kinship is not merely about familial ties, but about sustaining collective identity and governance structures, reinforcing its role as a cornerstone of First Nations legal and political systems.

Kinship represents a complex system of relationships, roles, and responsibilities. As emphasized in the 2018 AMC Citizenship Report, kinship formed the basis of law and social organization in many First Nations legal systems. Citizenship was not defined by state-issued documentation or externally imposed criteria, but rather by one's place in a web of relationships, through birth, adoption, marriage, residence, service to community, and spiritual connection to the land.³⁰ Thus, First Nations citizenship meant fulfilling one's mutual obligations within the clan and community, which was seen as the foundation of one's identity and rights.

Traditional systems of affiliation were not displaced by colonial structures but continued to shape First Nations concepts of belonging alongside imposed systems. As Professor Aaron Mills notes, although kinship and citizenship are distinct concepts, they are political and legal equals in defining belonging, and this remains true today:

In many First Nations, the kinship system...remains operational and powerful—even if damaged, incomplete, and subordinate to the formal internal colonial government. Because of its informality, Indigenous people often talk about kinship as merely culture. Yet kinship as its own model of belonging to First Nation political community remains *actual*, even in the face of internal colonialism.³¹

²⁷ Anishinaabe Governance, *Traditional Governance*.

²⁸ Mills, *Citizenship and Kinship* at 1.

²⁹ Tanya Talaga, "The Power of Indigenous Kinship" (2018), online: *The Walrus* <https://thewalrus.ca/the-power-of-indigenous-kinship/>.

³⁰ 2018 AMC Citizenship Report at 14.

³¹ Mills, *Citizenship and Kinship* at 3 and 5.

These understandings were reaffirmed during the 2018 AMC Citizenship Report, which highlighted the perspectives of First Nations citizens and Leaders on the practical implications of *Indian Act*-based Band membership. Participants in the workshop for the 2018 AMC Citizenship Report highlighted the inherent right of First Nations to define their own citizenship outside the colonial legal framework.³²

The 2018 AMC Citizenship Report underscores a clear conclusion: while current mechanisms may offer a degree of autonomy, they are ultimately constrained by a colonial statute that continues to fragment First Nations identities. Participants called for increased financial and legal support to revitalize traditional systems of belonging.³³ This includes reclaiming cultural practices, languages, and First Nations-designed decision-making structures as the basis for defining citizenship.

Revitalizing First Nations citizenship outside the *Indian Act* offers an opportunity to reclaim law as relational: to define who belongs based on kinship, land, story, and shared responsibility. Pre-contact legal orders offer both the philosophical grounding and the practical tools to build inclusive, dynamic, and culturally-rooted systems of belonging that reflect each Nation's unique traditions and contemporary needs.

History of Federal Legislation Framework (Pre-1985)

The Final Report of the Missing and Murdered Indigenous Women and Girls Inquiry describes how colonialism is a process of building new reality “through the development of institutions and policies towards Indigenous Peoples by European imperial or settler governments.” This involves policies and legislation, as well as the creation of religious and secular justifications for enacting them. For First Nations, this meant the colonial government identifying who was and was not “Indian”. By categorizing First Nations citizens through legislation and other means, colonial forces could “begin to control them, as well as to dispossess them.”³⁴

The *Indian Act* was passed originally in 1876 under Parliament's constitutional responsibility for Indians and Indian lands. The Royal Commission on Aboriginal Peoples noted that the *Indian Act* “was marked by singular disparities in legal rights, with Indian people subject to penalties and prohibitions that would have been ruled illegal and unconstitutional if they had been applied to

³² 2018 AMC Citizenship Report at 8.

³³ 2018 AMC Citizenship Report at 4 and 7.

³⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol. 1a (Privy Council Office, 2019) at 231 [MMIWG Inquiry Volume 1].

anyone else in Canada³⁵ Since that time, the colonial government rules regarding Band membership and status have applied to First Nations and their citizens. The following timeline provides a brief overview of this imposition:

- 1763 In the *Royal Proclamation of 1763*, the Crown interposed itself between First Nations and settlers and imposed a system for surrender and protection of Indian lands.³⁶ The *Royal Proclamation* was a precursor to the Numbered Treaties and premised on the Nation-to-Nation relationship between the Crown and First Nations.
- 1850 *An Act for the better protection of the Lands and Property of the Indians in Lower Canada* was a stark departure from the Crown's Nation-to-Nation relationship with First Nations. It defined "Indian" for the purposes of residency on reserve land. Only a person of Indian blood or someone married to a person of Indian blood would be considered an Indian.³⁷
- 1851 The 1850 definition of "Indian" was narrowed to exclude from the definition all non-Indian men married to Indian women. This marks the first time where Indian status and residency rights were associated with the male line.³⁸
- 1857 The *Gradual Civilization Act* was passed, which was premised on eventually removing all legal distinctions between Indians and non-Indians through the process of enfranchisement. At this stage, enfranchisement was voluntary for men, but the man's wife and children would automatically be enfranchised with him. Only one individual voluntarily enfranchised under this *Act*.³⁹
- 1867 The Province of Canada united with Nova Scotia and New Brunswick to form the Dominion of Canada and section 91(24) of the *Constitution Act*,

³⁵ Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, vol 1: *Looking Forward Looking Back* (Ottawa: 1996) at 236 [RCAP Volume 1].

³⁶ RCAP Volume 1 at 240.

³⁷ RCAP Volume 1 at 248.

³⁸ RCAP Volume 1 at 248.

³⁹ RCAP Volume 1 at 249-250.

- 1867 gave legislative authority over Indians and lands reserved for Indians to Parliament.⁴⁰
- 1869 The *Gradual Enfranchisement Act* provided for the first time that an Indian woman who married a non-Indian man would lose Indian status and Band membership, as would any children of that marriage. Any Indian woman who married an Indian from another Band and any children from that marriage would become members of the husband's Band.⁴¹
- 1874 Legislation extended federal Indian laws to Manitoba.⁴²
- 1876 The first *Indian Act* was passed and was a consolidation of previous Indian legislation. As with earlier legislation, an "Indian" had to be someone of "Indian blood" or in the case of mixed marriages, a non-Indian woman married to an Indian man. Indian women who married non-Indian men were not recognized as Indian.⁴³
- The *Indian Act* also added compulsory enfranchisement provisions for those who obtained higher education, allowed unmarried women to voluntarily enfranchise, and allowed for the enfranchisement of entire Bands.⁴⁴
- 1880 An amendment to the *Indian Act* removed involuntary enfranchisement for university-educated Indians.⁴⁵
- 1884 An amendment to the *Indian Act* removed the ability for Bands to refuse consent for enfranchisement or refuse to allot the required land to an individual who applied for enfranchisement.⁴⁶
- 1887 The Superintendent General was given the power to determine who was or was not a member of a Band, with his decision on the matter appealable only to the Governor in Council. Those deemed ineligible for Band

⁴⁰ RCAP Volume 1 at 246.

⁴¹ RCAP Volume 1 at 254, 276.

⁴² RCAP Volume 1 at 254.

⁴³ RCAP Volume 1 at 255-256.

⁴⁴ RCAP Volume 1 at 264.

⁴⁵ RCAP Volume 1 at 264.

⁴⁶ RCAP Volume 1 at 264.

membership could now be removed more easily from a reserve by federal authorities.⁴⁷

1918 Amendments to the *Indian Act* made it possible for Indians living off-reserve to enfranchise. In the period prior to 1918, only 102 persons enfranchised, whereas between 1918 and 1920, a further 258 Indians enfranchised.⁴⁸

1920 Compulsory enfranchisement was added back into the *Indian Act*. A board of examiners could be appointed by the Superintendent General of Indian Affairs to report on the “fitness of any Indian or Indians to be enfranchised.” Following the board’s report, the Superintendent General could recommend to the Governor in Council that the individual be enfranchised.⁴⁹

The Superintendent General was also given the authority to decide whether an Indian woman who lost status upon marrying out would receive her annuity or a lump sum settlement.⁵⁰

1922 Compulsory enfranchisement provisions were repealed.⁵¹

1933 The compulsory enfranchisement provisions repealed in 1922 were reintroduced in slightly modified form and retained until amendments of 1951.⁵²

1951 Amendments to the *Indian Act* passed the power of the Superintendent General to determine who is a member of a Band to the Indian Registrar. The power to determine status remains with federal authorities.⁵³ The reference to “Indian blood” was replaced with the notion of registration and descent through the male line. Band lists were posted in conspicuous places in the Superintendent’s office that served the Band, and six months were

⁴⁷ RCAP, Volume 1 at 279.

⁴⁸ RCAP, Volume 1 at 264.

⁴⁹ RCAP, Volume 1 at 264.

⁵⁰ RCAP, Volume 1 at 280.

⁵¹ RCAP, Volume 1 at 264.

⁵² RCAP, Volume 1 at 264.

⁵³ RCAP, Volume 1 at 279.

given for additions, deletions and protests before the Band list was finalized. A general list of Indians without Band affiliation was kept in Ottawa.⁵⁴

Amendments also provided that women would not only lose status but be compulsorily enfranchised if they married non-Indian men, including Métis or Inuit men. This was included in the *Indian Act* until 1985.⁵⁵ Prior to the 1951 amendment, Indian women who lost status could still receive annuities and sometimes were able to continue to reside on reserve land. Children were not mentioned in these amendments, and for a few years children of mixed marriages were also enfranchised with their mothers.⁵⁶

Indian men could not be enfranchised involuntarily after 1951, except through a stringent judicial review process.⁵⁷

The “double mother” rule was also added, where a child lost Indian status at 21 if their mother and grandmother had obtained status only through marriage.⁵⁸

1956 Further *Indian Act* amendments restored Indian status to children of mixed-marriages. The same amendments authorized issuing orders that all or any of the children of an enfranchised woman also be enfranchised with her. In practice, the off-reserve children of an enfranchised woman were typically enfranchised, while on-reserve children were usually permitted to retain status. Enfranchisement provisions continued in this manner until 1985.⁵⁹

Impacts of Pre-1985 *Indian Act*

The following section sets out some of the impacts of pre-1985 *Indian Act* rules regarding Indian status.

⁵⁴ RCAP, Volume 1 at 286.

⁵⁵ RCAP, Volume 1 at 264-265.

⁵⁶ RCAP, Volume 1 at 277-278.

⁵⁷ RCAP, Volume 1 at 278.

⁵⁸ RCAP, Volume 1 at 287.

⁵⁹ RCAP, Volume 1 at 278-279.

1. Assimilationist Impacts

The federal government implemented a definition of “Indian” in the *Indian Act* to limit its financial obligations. During the 1946-48 parliamentary hearings on revising the *Indian Act*, Indian affairs officials provided a letter that clearly outlined Canada’s intent:

...by the alteration of the definition of Indian by the Statute of 1876 the Dominion very substantially reduced the number of people for whose welfare it was responsible and by that action passed the responsibility on to the provinces for thousands of people, who, but for the statute of 1876, would have been federal responsibility for all time.⁶⁰

Canada’s early assimilationist policies resulted in decreasing numbers of status Indians and decreasing entitlement to registration under the *Indian Act*. The Royal Commission on Aboriginal People noted:

- Within two generations (fifty years), roughly one in every four individuals will not qualify for Indian registration.
- The loss of entitlement to registration will occur more rapidly among First Nations with high rates of mixed Indian/Non-Indian parenting.⁶¹

The loss of Indian status equated to declining number of “Indians” under the *Indian Act*, and limitations for who could live on reserve.⁶² As one First Nations citizen in Manitoba commented, “It is the Government of Canada [*sic*] goal to eliminate the Indian. It may take awhile but it is the ultimate goal – to get rid of the Indian problem.”⁶³

2. Impacts on Women and Children

The impact of loss of status and later compulsory enfranchisement on Indian women who married non-Indian men was often devastating. In 1851, the definition of “Indian”, which was later incorporated into the *Indian Act*, became tied to the male line. The definition of “Indian” maintained that the status of an Indian woman depended on the status of her husband. If her husband was an Indian, she maintained Indian status. If her husband was enfranchised or a

⁶⁰ RCAP, Volume 1 at 280.

⁶¹ 2018 AMC Citizenship Report at 2.

⁶² 2018 AMC Citizenship Report at 2.

⁶³ AMC, Community Dialogue Forum (Thompson) at 7.

Canadian subject, she would become a Canadian subject. If, however, a non-Indian woman married a status Indian man, she would acquire Indian status.⁶⁴

Upon compulsory enfranchisement, women, and often their children, would lose Indian status, the right to live on reserve, the right to Treaty benefits, and the ability to inherit reserve land from family members.⁶⁵ Compulsory enfranchisement placed women and girls in dangerous situations by evicting them from their First Nation, and forcing them to commute or essentially sell off her rights if she married a man who did not hold status. Even where a woman married a First Nations man with status, if he was from another Band, she was automatically transferred, along with all of her children, to the husband's Band list.⁶⁶

The Missing and Murdered Indigenous Women and Girls Inquiry concluded that “there is a vast number of people in Canada (roughly one-third of First Nations) who are considered to be ‘non-Status’”. Some still have deep ties to their First Nations and First Nations-identity, while others “have been alienated from them through the deliberate actions of the state.” In some cases, status varies within the same family regardless of the family tree.⁶⁷ The impacts of early Indian status rules are still felt today, and have been compared to banishment:

It is not difficult to see a similarity between these experiences and those of Indigenous women today who are forced to leave their community with no money or resources. The economic and social marginalization that the National Inquiry heard clearly about as a root cause of violence in the lives of Indigenous women and girls today is the inevitable next step and reality of early colonial policies of control, such as the *Indian Act*, that set out to target Indigenous women by limiting their social and economic independence.⁶⁸

Children with unstated paternity are also negatively impacted by the status system, as they are less likely to be eligible for status or eligible to pass status on to their children.⁶⁹

3. Impacts of Band Lists System

In 1951, Band Lists were established under the *Indian Act*. Many people argue that they or their family members were kept off Band Lists, further reducing “Indian” populations. Some were away

⁶⁴ MMIWG Inquiry Volume 1 at 250.

⁶⁵ RCAP, Volume 1 at 265.

⁶⁶ MMIWG Inquiry Volume 1 at 251.

⁶⁷ MMIWG Inquiry Volume 1 at 250.

⁶⁸ MMIQG Inquiry, Volume 1 at 251.

⁶⁹ Assembly of Manitoba Chiefs, “Community Dialogue Forum on First Nations Citizenship” (Dauphin, 29-30 September 2011) at 7 [AMC, **Community Dialogue Forum (Dauphin)**].

from the reserve when Band Lists were posted, some were not able to read the Band List, some were opposed to registration, and some argue that the list was not conspicuously placed.⁷⁰

In community dialogue forums in 2011, the AMC received feedback that the Indian registry should date back to the Treaty era and stem from the original Treaty paylists. The changes in 1951, implementing the Band List system, were arbitrarily made without First Nations input.⁷¹

4. Impacts on First Nations Kinship and Unity

First Nations citizens in Manitoba have noted that “[t]he Government of Canada through the *Indian Act*, policies and residential schools were successful in many ways in destroying the concept of kinship, relationships and strong family ties.” The *Indian Act* was identified as “legislative genocide.”⁷²

Instead of the *Indian Act*, there is general agreement by First Nations in Manitoba that First Nations should decide who their citizens are through their own laws and customary practices.⁷³ Some have argued that section 6 of the *Indian Act* should eventually be removed and citizenship jurisdiction restored to First Nations.⁷⁴ There is also general agreement that First Nations should return to the Treaty list, and eliminate status cards in favour of Treaty cards.⁷⁵

⁷⁰ RCAP, Volume 1 at 287.

⁷¹ AMC Community Dialogue Forum (Thompson) at 6

⁷² Assembly of Manitoba Chiefs, “Community Dialogue Forum on First Nations Citizenship” (Opaskwayak Cree Nation, 27-28 September 2011) at 6 [**AMC, Community Dialogue Forum (Opaskwayak Cree Nation)**].

⁷³ AMC, Community Dialogue Forum (Opaskwayak Cree Nation) at 6.

⁷⁴ AMC, Community Dialogue Forum (Opaskwayak Cree Nation) at 7.

⁷⁵ AMC, Community Dialogue Forum (Dauphin) at 8.

PART 3: MODERN CONTEXT OF FIRST NATIONS CITIZENSHIP

It is the unwavering position of the AMC that First Nations in Manitoba have the inherent jurisdiction to deal with their own citizenship. Canada must deal with Manitoba First Nations on a Nation-to-Nation basis that reflects honour of the Crown and Treaty relationships to restore First Nations jurisdiction over citizenship. Upholding Treaties and negotiating modern Treaties are two ways First Nations can transition away from the *Indian Act* and toward their own self-determination as sovereign First Nations.

Treaties are agreements made between the Crown and First Nations that define the ongoing rights and obligations of each party. Most First Nations in Manitoba are party to historic Treaties made with the Crown between 1701 and 1923, primarily the Numbered Treaties. Both inherent rights and Treaty rights are recognized and affirmed by section 35 of the *Constitution Act* and protected by UNDRIP.⁷⁶

Canada's definition of "Indian" under the *Indian Act* has undermined First Nations inherent jurisdiction and Treaty rights, contributing to a significant loss of status entitlements for First Nations citizens. The AMC has consistently called on Canada to remove ongoing discrimination in Indian registration. At the same time, there is concern that increasingly providing status to individuals without cultural connections to First Nations will lead to cultural erosion. The only appropriate way to address these issues is through First Nations acting on their inherent jurisdiction to determine their own citizenship without colonial interference. Every First Nation in Manitoba and across Canada has their own unique experience, perspectives and interests that will not be adequately reflected through prescriptive legislation.

The disconnect between the piecemeal implementation of various *Indian Act* amendments and First Nations membership provisions can also be remedied through a First Nations-controlled Treaty membership system. To better convey the state of modern *Indian Act* status provisions and how those provisions interact with Band membership, the following summary of modern policy and legislative amendments is provided. Following that section, a synopsis of the tension between individual versus collective rights, as these impact First Nations citizenship, is set out.

⁷⁶ *Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c. 11. [Constitution Act, 1982]; United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st Sess, Supp No. 49, UN Doc A/RES/61/295 (2007). [UNDRIP]*

In Manitoba, the impact of colonial legislation regulating Indian status is severe. Somewhere between 15% to 45% of the population risks losing status in the immediate future.⁷⁷ This looming threat of continued erosion of First Nations citizenship under the current *Indian Act* system leaves little room for delay in transitioning to First Nations-led governance of citizenship matters.

As established previously in Part 2, losing status can have profound consequences, including undermining Treaty rights, loss of federal funding for on-reserve programs, and the risk of Treaty and reserve lands being reclassified as Crown land. Given these realities, First Nations in Manitoba urgently seek recognition of their inherent jurisdiction over citizenship and membership.

Modern Policy and Legislative Amendments

There are many modern developments that have shaped the current system of Indian legislation and Band membership:

1. *White Paper and Response*

In 1969, the federal government issued a policy statement known as the White Paper, proposing a major shift in its approach to Indian affairs. Among other things, it proposed that the *Indian Act* would be repealed, the Department of Indian Affairs would be abolished and general responsibility for First Nations would be transferred to the provinces. The purpose of the White Paper and its underlying policy was to assimilate First Nations into Canadian society.⁷⁸

The White Paper was strongly opposed by many First Nations who responded with their own document, “Citizens Plus”, also known as the Red Paper. First Nations demanded that their Treaty rights and inherent rights be respected. The White Paper was ultimately retracted.⁷⁹

2. *Constitution Act, 1982*

In the late 1970s, patriation of the Constitution and inclusion of the *Charter of Rights and Freedoms* (the “*Charter*”) dominated the political agenda. First Nations were concerned about how that process could impact inherent and Treaty rights. First Nations representatives traveled to London and began an unsuccessful attempt in English courts to block patriation. First Nations

⁷⁷ Collaborative Process on the Second Generation Cut-off and Section 10 Voting Thresholds: Community Specific Data Sheets, Government of Canada, Open Government Portal (11 January 2024), online: <https://open.canada.ca/data/en/dataset/39194018-abf3-45fd-9310-2acac0f64fa2>.

⁷⁸ McNeil, *Brief History of Self-Governance* at 18.

⁷⁹ McNeil, *Brief History of Self-Governance* at 18.

citizens protested across Canada for constitutional recognition of rights.⁸⁰ This led to the incorporation of section 35 in the *Constitution Act, 1982*, which states:

Recognition of existing aboriginal and treaty rights

35(1) The existing aboriginal and treaty rights of aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of aboriginal peoples of Canada

(2) In this Act, aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) *treaty rights* includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.⁸¹

3. *Bill C-31, Indian Act Amendments, 1985*

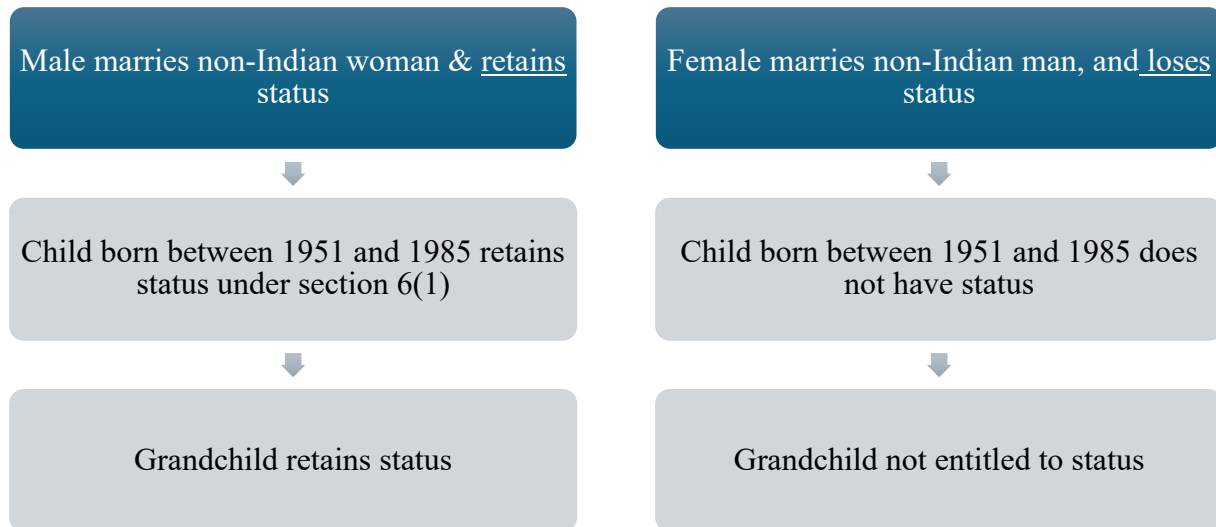
In 1985, in response to the *Charter*, as well as international pressure exerted by the *Lovelace* case, heard by the United Nations Human Rights Committee, the federal government enacted Bill C-31 to eliminate sex-based inequities in the *Indian Act*. Women who had previously lost their status through marriage to a non-Indian man, as well as their children, became eligible to apply for reinstatement. Non-Indian women could also no longer acquire status through marriage. Enfranchisement, the ability to have someone removed from the Indian Register if they were eligible, was eliminated. The Indian Registrar maintained the ability to remove individuals from the Indian Register who were not eligible to be registered. Individuals who had been previously enfranchised could also apply for reinstatement.⁸²

⁸⁰ McNeil, *Brief History of Self-Governance* at 19.

⁸¹ *Constitution Act, 1982*.

⁸² Crown-Indigenous Relations and Northern Affairs Canada, “Background on Indian registration”, Government of Canada (28 November 2018), online: <https://www.rcaanc-cirnac.gc.ca/eng/1540405608208/1568898474141>. [CIRNAC, **Background on Indian registration**]

The following illustrates the discrepancy between men and women prior to Bill C-31:

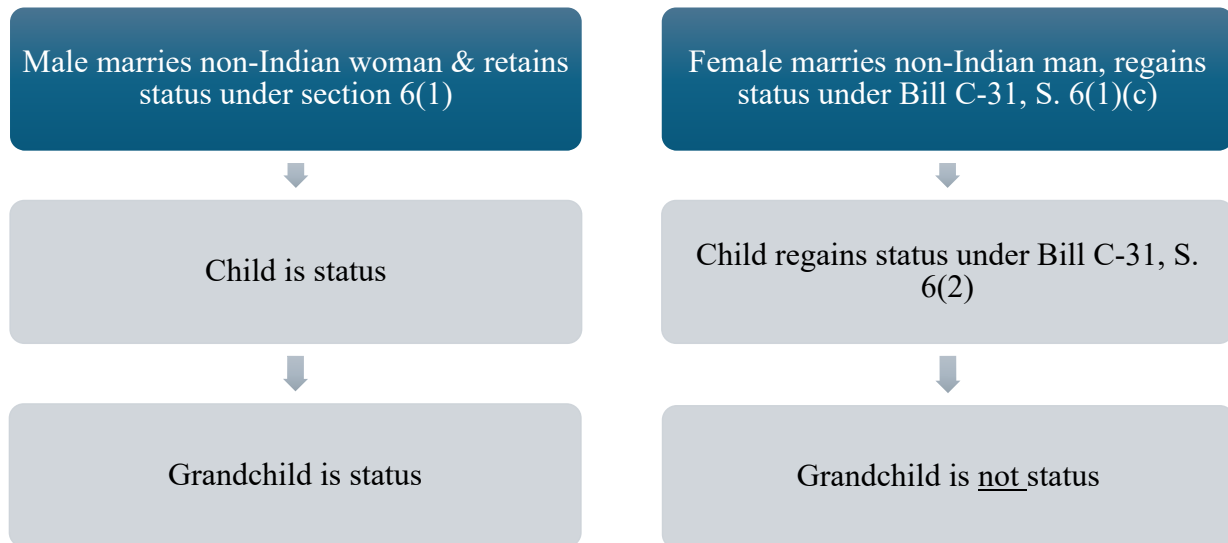


Bill C-31 was enacted in an attempt to address the discrimination between men and women in the *Indian Act*, however, sex-based discrimination persisted. The federal government retained control of Indian registration, establishing categories 6(1) and 6(2) status. These categories determine whether a person is eligible for registration as a status Indian and whether they can pass that status on to their children.

A person with section 6(1) status can pass that status to their children, whereas a person with section 6(2) status can only pass status to their children if the other parent also has Indian status. This led to the “second-generation cut-off rule”, where after two generations of parenting (one generation after the other) between a person who had a right to Indian registration and another person who did not have that right (a non-Indian), the third generation would not be entitled to register for Indian status.⁸³

⁸³ Assembly of First Nations, “What is Bill C-31 and Bill C-3”, *Legal Affairs and Justice* (n.d.), online: <https://afn.ca/wp-content/uploads/2020/01/16-19-02-06-AFN-Fact-Sheet-Bill-C-31-Bill-C-3-final-revised.pdf> [AFN, **What is Bill C-31 and Bill C-3**].

The second generation cut-off rule caused by the enactment of Bill C-31 is illustrated as follows:



From the perspective of First Nations in Manitoba, the “second-generation cut-off rule” equated to genocide and was considered a termination of Manitoba First Nations people.⁸⁴ It is in violation of Article 2 of the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide*, which defines genocide as acts committed with intent to destroy, in whole or part, a national, ethnic, racial or religious group.⁸⁵

Following the enactment of Bill C-31, over 122,000 individuals gained or regained Indian status.⁸⁶ This included women who previously lost status due to marrying non-status men, their descendants, and others affected by earlier discriminatory provisions.

Bill C-31 also created separate regimes for the control of Band membership under sections 10 and 11 of the *Indian Act*. Section 10 granted the opportunity for First Nations to take control of their Band membership by developing membership codes that had to be approved by the minister. First Nations that choose not to develop a membership code have their membership remain under the

⁸⁴ AMC, Community Dialogue Forum (Thompson) at 3.

⁸⁵ *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) at art 2.

⁸⁶ House of Commons, Standing Committee on Aboriginal Affairs and Northern Development, *Evidence*, 36th Parl, 2nd Sess, No 23 (3 May 2000), online: <https://www.ourcommons.ca/documentviewer/en/36-2/AAND/meeting-23/evidence>.

control of the Indian Registrar.⁸⁷ Many First Nations in Manitoba have chosen to control their own Band membership under section 10, including:

- Berens River First Nation
- Brokenhead Ojibway Nation
- Bloodvein First Nation
- Buffalo Point First Nation
- Chemawawin Cree Nation
- Crane River Band
- Indian Birch Band
- Gambler Indian Band
- Grand Rapids First Nation
- Hollow Water First Nation
- Little Black River First Nation
- Little Grand Rapids First Nation
- Mathias Colomb First Nation
- Nelson House Indian Band
- Norway House Indian Band
- Peguis First Nation
- Poplar River First Nation
- Sandy Bay Band
- Shoal River Band
- The Pas Indian Band⁸⁸

Following the enactment of Bill C-31, Sharon McIvor, a member of the Lower Nicola Indian Band in British Columbia challenged the *Indian Act*'s registration provisions after regaining her status under Bill C-31. Sharon McIvor was able to transmit status to her son Jacob. Jacob had status under section 6(2), but he was unable to transmit that entitlement to his children due to parenting with a non-Indian woman. In contrast, Jacob's cousins in the male line who are born to a man married to a non-Indian woman before 1985 could pass on their status regardless of the status of

⁸⁷ CIRNAC, Background on Indian Registration.

⁸⁸ "Membership Codes", *Exploring Section 10*, online: <https://exploringsection10.com/codes/>.

the other parent. The British Columbia Court of Appeal found that the provisions were discriminatory.⁸⁹

4. *Indian Act Amendments, 2011 (Bill C-3, Gender Equity in Indian Registration Act)*

In response to the *McIvor* decision and proposed Bill C-3, the AMC initiated community dialogue forums. In these forums, the AMC emphasized the inherent jurisdiction of First Nations to determine their own citizenship and membership codes. The AMC opposed efforts by the Crown to limit this authority.⁹⁰ The amendments under Bill C-3 were criticized for continuing to jeopardize Treaty rights and not fully addressing broader issues of Indian registration and Band membership.⁹¹

Bill C-3 came into force on January 31, 2011, and extended entitlement to Indian status to certain grandchildren of First Nations women who faced gender-based discrimination under the 1985 amendments. Bill C-3 amended the *Indian Act* to allow individuals entitled to register under section 6(2) to register under section 6(1)(c.1) provided they met specific conditions:

- Have a mother who had lost her right to registration because she married a non-Indian man before April 17, 1985.
- Have a father who does not have a right to be registered, or, if he is no longer alive, did not at the time of death have the right to Indian registration.
- Were born after the date of their mother's marriage that led to that mother losing her right to Indian status, and prior to April 17, 1985.
- Were a child on or after September 4, 1951, of a person who did not have the right to Indian registration on the day when that child was born or adopted.⁹²

Children of people registered under section 6(1)(c.1) were then allowed to register under section 6(2) of the *Indian Act*, if the following requirements were met:

- A grandmother who lost her entitlement because she married a non-Indian man.
- A parent entitled to be registered under section 6(2).

⁸⁹ Heather Conn, "McIvor Case" (11 May 2020), online: *The Canadian Encyclopedia* <https://www.thecanadianencyclopedia.ca/en/article/mcivor-case>.

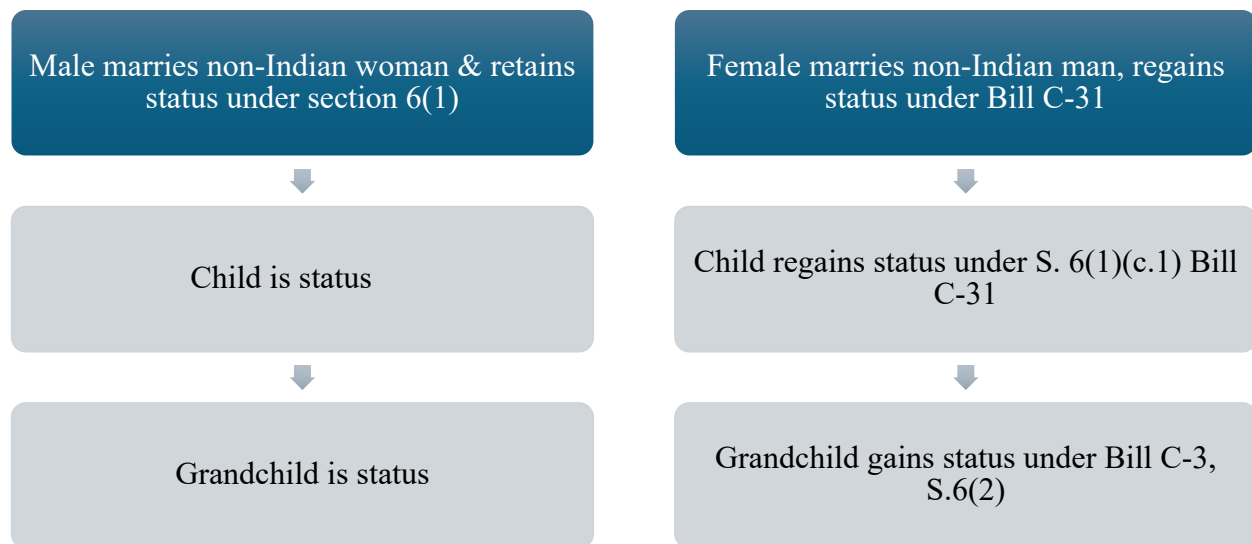
⁹⁰ see: AMC, Community Dialogue Forum (Thompson) at 1.

⁹¹ AMC, Community Dialogue Forum (Thompson) at 3.

⁹² AFN, What is Bill C-31 and Bill C-3.

- A birth date or a sibling who was born on or after September 4, 1951.⁹³

As a result, in the period from 2011 to 2017, Bill C-3 allowed more than 37,000 people to register as a status Indian. The following illustrates how Bill C-3 amendments work:



Following the enactment of Bill C-3, the *Descheneaux* decision found that gender discrimination was still present in the *Indian Act*. In *Descheneaux*, members of the Abénakis of Odanak First Nation challenged the *Indian Act*'s registration rules. The Court found that certain sections of the *Indian Act* continued to unjustifiably infringe upon equality rights by perpetuating differences in eligibility for Indian registration between Indian women and men and their respective descendants.⁹⁴

5. *Bill S-3 Indian Act Amendments*

Bill S-3 amended the *Indian Act* in 2017 to address gender discrimination, as follows:

- Cousins Issue: differential treatment of first cousins whose grandmother lost entitlement due to marrying a non-entitled man before April 17, 1985.

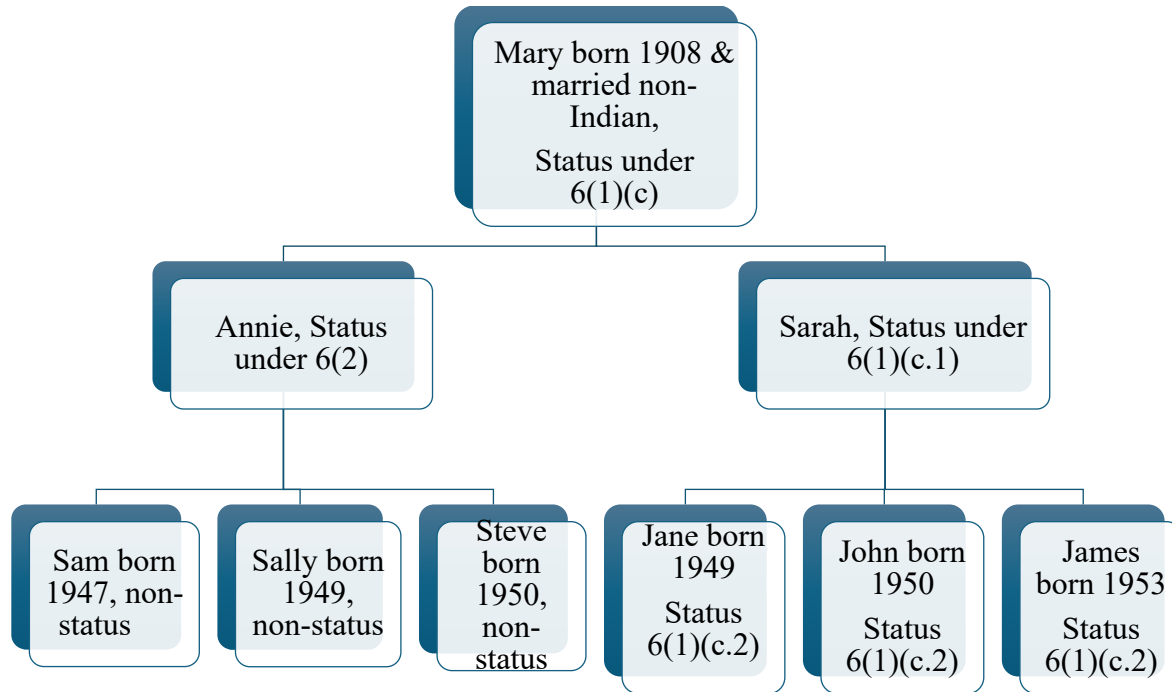
⁹³ AFN, What is Bill C-31 and Bill C-3.

⁹⁴ Native Women's Association of Canada, "Descheneaux Information Session, PTMA Toolkit" (17 February 2017), online: <https://www.faq-qnw.org/wp-content/uploads/2017/03/Descheneaux-Information-Toolkit-final-low-res.pdf>.

- Siblings Issue: Differential treatment of women born outside of marriage to fathers between September 4, 1951, and April 17, 1985.
- Omitted Minor Children Issue: Differential treatment of minor children born of entitled parents or an entitled mother between September 4, 1951, and April 17, 1985, who could lose entitlement if their mother subsequently married a non-entitled man.
- Unknown or Unstated Parentage Issue: Provision of flexibility for the Indian Registrar to consider various forms of evidence in determining entitlement in situations where a parent, grandparent, or other ancestor is unknown or unstated.
- Removal of the 1951 Cut-Off Date: Ensuring entitlement of all descendants of women who lost status or were removed from Band Lists for marrying a non-entitled man, going back to 1869.⁹⁵

⁹⁵ Government of Canada, “Bill S-3: Eliminating known sex-based inequities in registration” (13 September 2022), online: <https://sac-isc.gc.ca/eng/1467214955663/1572460311596>.

The provisions in Bill S-3 regarding the 1951 cut-off in the *Indian Act* were enacted by order of the Governor in Council on August 15, 2019.⁹⁶ Prior to enactment of the 1951 cut-off provisions in Bill S-3, the following scenario would occur:⁹⁷

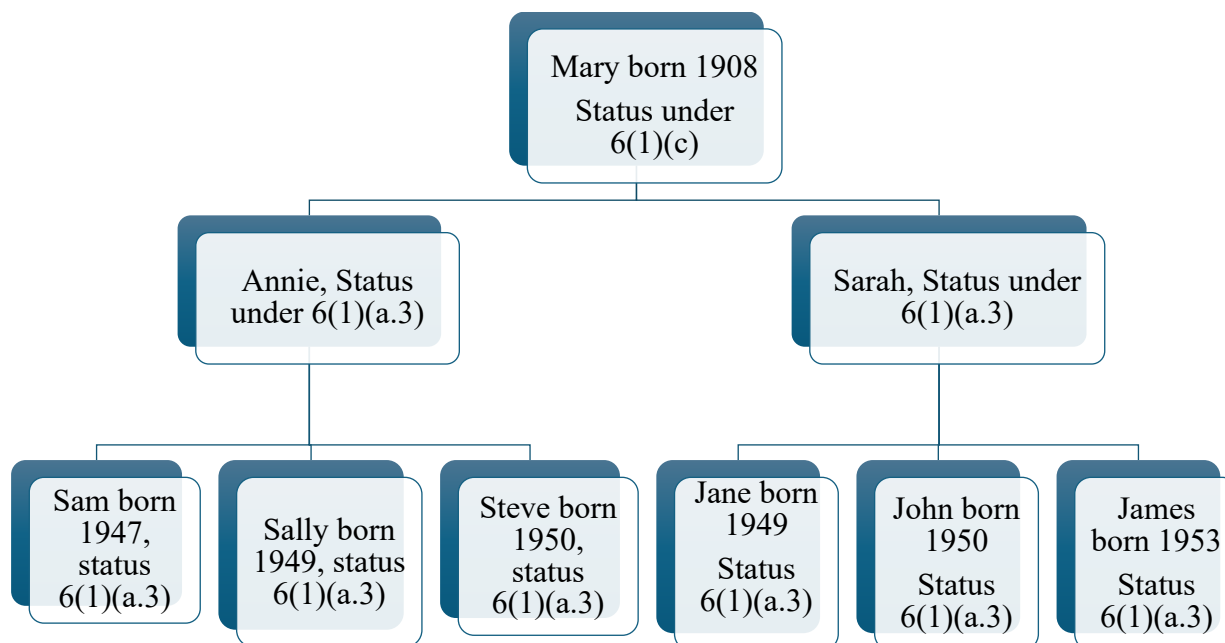


As shown above, Annie’s status under section 6(2) is due to the fact that she had no children born after 1951. Since Annie is registered under section 6(2) she cannot pass her entitlement along to her children. Sarah, on the other hand, had one son born after 1951 and is therefore entitled to registration under section 6(1)(c.1) and entitled to pass her registration along to her children (who under Bill C-3 were entitled to registration under 6(2), but are now entitled to registration after Bill S-3 was enacted under section 6(1)(c.2)).

⁹⁶ Indigenous Services Canada, “The Final Report to Parliament on the Review of S-3: December 2020” (24 December 2020), online: <https://www.sac-isc.gc.ca/eng/1608831631597/1608832913476>.

⁹⁷ Crown-Indigenous Relations and Northern Affairs Canada, “Removal of the 1951 cut-off”, Government of Canada (28 November 2018), online: <https://www.rcaanc-cirnac.gc.ca/eng/1540403451139/1568898699984>. [CIRNAC, 1951 Cut-Off Fact Sheet]

The following illustrates the effect of the 1951 Cut-off Provisions in Bill S-3:⁹⁸



The AMC was opposed to the limited consultation process in relation to Bill S-3. Complaints included the limited timeframe regarding consultation and budget restrictions for each First Nation. First Nations in Manitoba should be consulted with on issues of *Indian Act* amendments, and proposal-based systems for providing funding should be abolished. Proposal-based budgets disadvantage First Nations that do not have the capacity to complete the applications or resources to conduct consultation effectively. In addition, consultation should not be considered a one-off event but rather a process that requires heightened funding and capacity to ensure meaningful consultation is undertaken. Consultation should be undertaken in accordance with Articles 15(2) and 19 of UNDRIP, which requires states to consult on issues respecting prejudice and discrimination, as well as on legislative measures that may affect Indigenous peoples.⁹⁹

Nicholas v Canada (Attorney General) challenged the updated *Indian Act* based on continuing inequity related to provisions for some individuals who had been enfranchised in the past, as well as their ability to transmit status under the *Indian Act* to their direct descendants. The

⁹⁸ CIRNAC, 1951 Cut-Off Fact Sheet.

⁹⁹ UNDRIP at Article 15(2) and Article 19.

representatives for the plaintiffs in *Nicholas* agreed to put the litigation on hold while legislative amendments under Bill C-38 were pursued.¹⁰⁰

6. Former Bill C-38 (New Registration Entitlements), Current Bill S-2

Bill C-38 was introduced in the House of Commons on December 14, 2022, aiming to address residual inequities in *Indian Act* registration. The bill sought to rectify historical injustices, particularly those related to enfranchisement and to modernize certain outdated language within the *Indian Act*.¹⁰¹ Bill C-38 addressed the following issues:

- **Addressed Enfranchisement Inequities:** proposed amendments to ensure that individuals whose Indian status was reinstated after being enfranchised could transmit status to their direct descendants on the same basis as those who were never enfranchised. Currently, only women who were reinstated after being enfranchised for marrying non-status men can transmit status to direct descendants in this manner.
- **Enabled Voluntary Deregistration:** introduced provisions allowing individuals to apply for the removal of their names from the Indian Register, granting them greater autonomy over their identity and legal status.
- **Facilitated Natal Band Re-Affiliation:** sought to create a mechanism enabling women and their descendants, who were automatically transferred to their husband's Band upon marriage, to reaffiliate with their Band of birth.
- **Modernized Terminology:** aimed to remove outdated and offensive language from the *Indian Act*, such as replacing the term “mentally incompetent Indian” with “dependent person”.¹⁰²

Bill C-38 was at the second reading stage in the House of Commons, with debate occurring on March 22, 2024. The 44th Parliament was dissolved on January 6, 2025, before Bill C-38 could progress further. As a result, the bill died on the Order Paper and did not become law.¹⁰³ Bill S-2

¹⁰⁰ Marlisa Tiedemann, “Bill C:38, An Act to Amend the Indian Act (New Registration Entitlements)”, Library of Parliament, Parliamentary Information, Education and Research Services (29 March 2023) at 1 online: https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/LegislativeSummaries/PDF/44-1/PV_44-1-C38-E.pdf. [**LOP, Bill C-38**]

¹⁰¹ Indigenous Services Canada, “Tenth Annual (2024) Statutory Report Pursuant to Section 2 of the Indian Act Amendment and Replacement Act, Statutes of Canada, Chapter 38, 2013”, Government of Canada (26 February 2024), online: <https://sac-isc.gc.ca/eng/1708963519423/1708963819945>.

¹⁰² LOP, Bill C-38 at 1-2.

¹⁰³ LEGISInfo, “C-38, An Act to amend the Indian Act (New Registration Entitlements)”, Parliament of Canada (22 November 2021 to 6 January 2025), online: <http://www.parl.ca/legisinfo/en/bill/44-1c-38>.

was introduced in the Senate by the Minister of ISC on May 29, 2025, in replacement of former Bill C-38. Bill S-2 addresses the same issues that former Bill C-38 addressed.¹⁰⁴

7. Judicial Determinations in the Modern Period

First Nations inherent laws and customs receive recognition and application within Canadian law but the extent and manner of this recognition varies. While section 35 of the *Constitution Act, 1982* recognizes and affirms the Aboriginal and Treaty rights of First Nations, the explicit judicial recognition of an inherent right to self-government under section 35 has not formally occurred. The following summarizes judicial determinations in relation to First Nations laws, as well as the state of the law regarding judicial recognition of the right to self-government.

Judicial Consideration of First Nations Laws

Judicial recognition of First Nations laws has occurred since at least 1867, when the Quebec Superior Court acknowledged the validity of marriage between a Euro-Canadian man and a Cree woman in accordance with Cree law and determined that the marriage had legal effect in Quebec.¹⁰⁵ Since then, numerous courts have acknowledged and applied First Nations marriage and adoption laws. The Supreme Court of Canada has also acknowledged the existence of Indigenous law without applying them.¹⁰⁶

In contexts other than family law, Professor Kent McNeil concludes, courts have been divided on the application of Indigenous law. In some instances, courts have opined that for First Nations laws to be part of Canadian domestic law, they would need to be recognized by incorporation into Treaties, statutes or court declarations. In other instances, courts have concluded that First Nations legal traditions are among Canada's legal traditions and therefore form part of Canada's laws.¹⁰⁷ While First Nations inherent laws and customs are recognized in Canadian law, the extent of their application can be complex.¹⁰⁸

¹⁰⁴ Indigenous Services Canada, "The Honourable Mandy Gull-Masty applauds the introduction of a new bill to address the remaining inequities and band membership provisions of the Indian Act" (29 May 2025), online: Government of Canada <https://www.canada.ca/en/indigenous-services-canada/news/2025/05/the-honourable-mandy-gull-masty-applauds-the-introduction-of-a-new-bill-to-address-remaining-inequities-and-band-membership-provisions-of-the-india.html>.

¹⁰⁵ McNeil, *Brief History of Self-Governance* at 38, referring to: *Connolly v Woolrich* (1867), 17 RJRQ 75.

¹⁰⁶ McNeil, *Brief History of Self-Governance* at 38.

¹⁰⁷ McNeil, *A Brief History of Self-Governance* at 38-39.

¹⁰⁸ see for example: *Bellegarde v Eashappie*, 2024 FC 699 at para 77.

Judicial Consideration of Right of Self Government

R v Pamajewon is the leading case regarding the inherent right to self-government.¹⁰⁹ A general right to self-government has never been established by the Canadian court system. In *R v Pamajewon*, the Supreme Court of Canada stated that section 35(1) could include a right to self-government, but that the “integral to a distinctive culture test” from the decision of *R v Van der Peet* applied. The Court took a narrow view of the right to self-government, determining that it could not be a general right but had to be related directly to the activity in question. In that instance, the accused could not prove that high-stakes gambling was integral to the Anishinaabe culture at the time of contact with Europeans and was thus unable to establish a right to self-government in relation to gambling.¹¹⁰

The Supreme Court of Canada considered the issue again in 1997 in *Delgamuukw v British*. In that instance the Gitksan and We’tsuwet’en Nations claimed a right of self-government over their territories, among other things. As the claim had been framed in general terms instead of the specific approach delineated in *R v Pamajewon*, the Supreme Court of Canada declined to provide guidance on the issue.¹¹¹

Most recently, the Supreme Court of Canada considered the right of self-government in the context of the *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, and ultimately declined to recognize an independent right of self-government. One of the purposes of *An Act respecting First Nations, Inuit and Métis children, youth and families* (the “**First Nations CFS Act**”) is to affirm “the inherent right of self-government, which includes jurisdiction in relation to child and family services.” In particular, section 18 states:

18(1) The inherent right of self-government recognized and affirmed by section 35 of the *Constitution Act, 1982* includes jurisdiction in relation to child and family services, including legislative authority in relation to those services and authority to administer and enforce laws made under that legislative authority.¹¹²

The Supreme Court of Canada found that nothing prevents Parliament from affirming that Indigenous peoples have jurisdiction to make laws in relation to child and family services.

¹⁰⁹ *R v Pamajewon*, [1996] 2 SCR 821 (SCC) [*Pamajewon*].

¹¹⁰ McNeil, *Brief History of Self-Governance* at 36.

¹¹¹ McNeil, *Brief History of Self-Government* at 36-37.

¹¹² *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24 at ss. 7 and 18 [*First Nations CFS Act*].

Parliament cannot, however, amend the Constitution of Canada by enacting an ordinary statute.¹¹³ Through section 18(1), Parliament “undertakes to act as though Indigenous peoples enjoy an inherent right of self-government over child and family services.” It will remain open to all actors in the system, including the province to challenge Parliament’s understanding of the scope of the rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, and the courts will have the final say in such an instance.¹¹⁴

One effect of the federal government’s recognition of the right of self-government in the *First Nations CFS Act* is, that it “can now no longer assert, in any proceedings or discussions, that there is no Indigenous right of self-government in relation to child and family services.” Parliament has established a constraint through a statutory affirmation that is binding on the Crown.¹¹⁵ Therefore, while the Court did not recognize a right to self-government, it established that the federal government has the jurisdiction to affirm what it considers to be the constitutional requirements for reconciliation. In this instance, the federal government:

...has set out, in an ordinary statute, its understanding of the scope of a constitutional provision, and it has done so while ensuring that the Crown is bound to act on the basis of this same understanding, that is, in accordance with the legislative affirmation that the inherent right to self-government has constitutional status and with the idea that, from a jurisdictional standpoint, this right includes the jurisdiction of Indigenous governing bodies in relation to child and family services. The honour of the Crown is thus engaged.¹¹⁶

Therefore, as long as the affirmation of the right to self-government is part of the law in force, the federal government must take a broad approach to the interpretation of this right and must act diligently to implement it. The affirmation is characterized as a promise of rights recognition, and it is assumed that the Crown always intends to fulfil its promises. In this case, the promise is to act as though Indigenous peoples’ right to self-government over child and family services is recognized “while awaiting a formal court ruling on the question.”¹¹⁷

¹¹³ *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 9. [*Reference re First Nations CFS Act*]

¹¹⁴ *Reference re First Nations CFS Act* at para 60.

¹¹⁵ *Reference re First Nations CFS Act* at para 62.

¹¹⁶ *Reference re First Nations CFS Act* at para 64.

¹¹⁷ *Reference re First Nations CFS Act* at para 66.

UNDRIP and UNDA

In 2016, Canada adopted UNDRIP without qualification and promised to implement it in accordance with Canada's Constitution. In 2021, Parliament enacted *UNDA*, legislation in which it undertook to make Canadian law consistent with UNDRIP.¹¹⁸

McNeil notes that there are many unresolved questions about the extent to which Canadian law is consistent with UNDRIP.¹¹⁹ One example of this is that under current Canadian law, governments can justifiably infringe on First Nations inherent and Treaty rights affirmed by the *Constitution Act, 1982*. Section 46(2) of UNDRIP states that the rights set out are subject to the limitations determined by law that are “non-discriminatory and strictly necessary solely for the purpose of due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.” It is not yet known whether Canadian courts will uphold the justifiable infringement test under this provision.¹²⁰

Individual versus Collective Rights

The historical and ongoing discrimination set out in the *Indian Act* regarding status and registration can cause tension with First Nations membership laws under section 10 of the *Indian Act*. Section 10 of the *Indian Act* was added in 1985 and allows First Nations to assume control over Band Lists, instead of having the federal government, through the Indian Registrar, manage them. First Nations can opt-in to manage their own membership rules by submitting a formal notice and a membership code to the Minister. The membership code must not cause any person previously entitled to Band membership prior to enactment of the code to lose that membership.¹²¹

Following the implementation of section 10, significant funding challenges emerged. The federal government typically allocates funds to First Nations through a formula based on the number of registered Indian status members, excluding non-status Indians from funding considerations. While amendments to the *Indian Act* in 1985 provided First Nations with authority over their Band Lists and membership rules, the financial model effectively penalizes First Nations that include non-status individuals on their Band List.¹²² In addition, those First Nations whose Band Lists are still controlled by the Indian Registrar have seen exponential population increases due to the

¹¹⁸ *UNDA*.

¹¹⁹ McNeil, *A Brief History of Self-Governance* at 40.

¹²⁰ McNeil, *A Brief History of Self-Governance* at 41, referring to *UNDRIP* at Article 46(2).

¹²¹ *Indian Act*, RSC 1985, c. I-5 at s. 10 [*Indian Act*].

¹²² RCAP, Volume 1 at 279.

continuous status amendments under the *Indian Act*,¹²³ without any corresponding increase in funding, land base or infrastructure.

Canadian Human Rights Act and Charter

The tension between individual and collective rights is further exacerbated by the colonial imposition of the *Canadian Human Rights Act* on First Nations membership codes since 2008, and the imposition of the *Charter* since its enactment. Section 1.2 of the *Canadian Human Rights Act* directs that when a human rights complaint is brought against a First Nations government, the Act must be interpreted with due regard to the First Nation's legal traditions, balancing individual rights against collective rights, consistent with gender equality.¹²⁴

The *Charter* applies specifically to actions taken by a Band Council under the authority of the *Indian Act*, including membership codes.¹²⁵ Where a claimed *Charter* right irreconcilably conflicts with an inherent or Treaty right, such that recognizing the *Charter* right would undermine the inherent or Treaty right, then section 25 of the *Charter* will apply to allow for the abrogation or derogation of the *Charter* right.¹²⁶

The tension between individual and collective rights, particularly as it relates to membership codes and Indian status, is a direct result of discriminatory Crown intervention and assimilationist policies and legislation. The federal government must continue to bear liability resulting from the consequences of its assimilationist agenda. First Nations inherent jurisdiction over citizenship must be recognized without qualification, and the Indian status system should be abolished in favour of a First Nations-led Treaty status system that preserves the benefits of Indian status without the harms. First Nations citizenship laws and a First Nations-led Treaty status system should not be subject to colonial impositions, including the *Charter* and the *Canadian Human Rights Act*.

First Nations in Manitoba are committed to respecting the key articles of UNDRIP, which respect both individual and collective rights. Article 2 of UNDRIP affirms that Indigenous peoples are free and equal to all other peoples and have the right to be free from any kind of discrimination, in

¹²³ see Indigenous Services Canada, “Annual Report on Registration under the Indian Act, First Nations Membership and Status Cards – 2023”, Government of Canada (14 February 2025), online: <https://sac-isc.gc.ca/eng/1732305226173/1732305268129> [ISC, Annual Report – 2023]

¹²⁴ *Canadian Human Rights Act*, RSC 1985, c H-6 at s. 1.2.

¹²⁵ *Grismer v Squamish First Nation*, 2006 FC

¹²⁶ *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at paras 161, 164.

the exercise of their rights, in particular discrimination based on their Indigenous origin or identity.¹²⁷

Where disputes about individual rights arise in the context of First Nations citizenship laws, these tensions must be resolved through First Nations-led dispute resolution systems. Any liability for established discrimination rooted in Canada's assimilationist and genocidal policies remains the responsibility of the Crown. The Crown cannot evade accountability by offloading this burden onto First Nations through the devolution of the *Indian Act*.

¹²⁷ *UNDRIP* at Article 2.

PART 4: OVERVIEW OF AMC ADVOCACY ON CITIZENSHIP

The AMC has a longstanding history of advocating for First Nations inherent jurisdiction over citizenship. As early as 1971, *Wahbung: Our Tomorrows* asserted that First Nations, not the federal government, should determine membership and citizenship.¹²⁸ Despite inaction from Canada, the AMC has consistently advanced this position through both political advocacy and structured initiatives.

In 2011, the AMC Executive Council of Chiefs (“ECC”) formally established the Chiefs Committee on Citizenship (“CCOC”) as a Chiefs Committee pursuant to Article 18(8) of the AMC Constitution.¹²⁹ This decision arose from the AMC Special Chiefs Assembly and the Regional Leadership Forum on First Nations Citizenship, which resulted in Resolutions OCT-11.06 and OCT-11.07.¹³⁰ These Resolutions called on Canada to end discriminatory Indian registration processes, recognize First Nations jurisdiction over citizenship, and provide adequate funding to support First Nations own citizenship processes.

The CCOC serves as a leadership body that oversees and guides the AMC’s regional approach to First Nations citizenship. Its mandate includes advancing a regional approach to citizenship. This approach will support AMC member First Nations in developing their own citizenship frameworks that are adequately resourced, consistent with Treaty obligations, and informed by legal and international standards. The CCOC plays a key role in shaping political strategy and coordinating regional efforts to assert First Nations control over citizenship.

The current members of the CCOC are:

- Chief Maureen Brown (Chair), Opaskwayak Cree Nation.
- Chief Gordon Bluesky, Brokenhead Ojibway Nation.
- Chief Murray Clearsky, Waywayseecappo First Nation.
- Chief Heidi Cook, Misipawistik Cree Nation.
- Chief Lisa Young, Bloodvein River First Nation.
- Chief Angela Levasseur, Nisichawayasihk Cree Nation.

¹²⁸ Manitoba Indian Brotherhood Inc., *Wahbung: Our Tomorrows by the Indian Tribes of Manitoba* (October 1971) at 19 [MIB, *Wahbung*]

¹²⁹ See Assembly of Manitoba Chiefs, “First Nations Citizenship – History of AMC’s Advocacy on Citizenship” (n.d.) online: <https://manitobachiefs.com/advocacy/citizenship/>. [AMC, **History of Work**]

¹³⁰ AMC, *Resolution Oct-11.06*; AMC, *Resolution OCT-11.07*.

In 2024, as part of its ongoing work to address proposed reforms to the *Indian Act*, the AMC Secretariat, under the guidance of the CCOC, established the Citizenship Working Group (“CWG”). While the CCOC provides leadership and political direction, the CWG was created to offer technical expertise and develop practical tools for First Nations citizenship reform. The overarching objective of the CWG is to empower First Nations to define and govern their own citizenship outside of the *Indian Act*.¹³¹ In doing so, the CWG contributes to the broader goals of First Nations sovereignty and self-determination.

The members of the CWG are:

- Beverley Paul, Lake Manitoba First Nation.
- Dolly Peters, Fox Lake Cree Nation.
- Jennifer Bloomfield, War Lake First Nation.
- Kylene Sumner, Pinaymootang First Nation.
- Leah McPherson, Peguis First Nation.
- Lisa Cameron, Swan Lake First Nation.
- Lorne Cochrane, Fisher River Cree Nation.
- Suzanne McKay, Berens River First Nation.

Together, the CCOC and CWG reflect the AMC’s approach to citizenship: political leadership combined with technical and First Nations-led expertise. This structure ensures that First Nations in Manitoba are supported in reclaiming jurisdiction over citizenship in ways that are practical and aligned with their rights under Treaty and international law.

CCOC and CWG Initiatives

Since their establishment, the CCOC and the CWG have played complementary roles in advancing the AMC’s longstanding commitment to First Nations jurisdiction over citizenship.

The CCOC has led political and strategic oversight of the AMC’s approach to First Nations citizenship. The CCOC has focused its work on pursuing recognition of First Nations jurisdiction and securing the necessary support for AMC member First Nations to develop their own citizenship laws.

In 2018, the CCOC approved the hosting of a regional workshop on First Nations citizenship, designed to inform the co-design of a collaborative consultation process as a means to implement

¹³¹ AMC, History of Work.

Manitoba First Nations own citizenship laws. The CCOC used this opportunity to implement the direction set out in Resolution OCT-11.07, specifically around the development of a “First Nations Citizenship Recognition Act.”¹³²

In 2023, Resolution AUG-23.01 directed the AMC Secretariat to work with the CCOC, collaboratively with Elders and Knowledge Keepers from AMC member First Nations, to identify traditional dispute resolution mechanisms for cases involving unauthorized claims to First Nations identity and create template citizenship laws.¹³³

The CWG has taken on the technical and policy aspects of advancing First Nations citizenship. This work complements the political advocacy of the CCOC and supports individual First Nations in reclaiming full control over citizenship outside of the *Indian Act*.

Together, the CCOC and CWG are advancing a vision of First Nations citizenship that affirms identity, upholds Nationhood, and resists-imposed definitions of belonging under colonial laws. Their coordinated efforts form the cornerstone of the AMC’s strategic approach to self-determination and sovereignty.

¹³² 2018 AMC Citizenship Report at 4.

¹³³ AMC, *Resolution AUG-23.01*.

PART 5: RECLAIMING OUR IDENTITY: AMC CITIZENSHIP AND SELF-DETERMINATION FORUM

AMC hosted the *Reclaiming Our Identity: Advancing First Nations Citizenship and Self-Determination Forum* from January 14-15, 2025, at the RBC Convention Centre in Winnipeg. This Forum facilitated Chiefs, Elders, and Spiritual Leaders in advancing a regional approach defining citizenship independently of the *Indian Act* and supporting AMC member First Nations in developing citizenship laws in accordance with traditional governance structures and languages. The following summarizes key matters that arose during this Forum.

Day 1 Summary

Session 1: AMC Citizenship 101

AMC Citizenship Policy Analyst Taylor Arnt and AMC Wills and Estates Policy Analyst Jayme Menzies provided an overview of AMC's work on Citizenship, covering:

- History of the *Indian Act* and its registration provisions.
- UNDRIP.
- Second-generation cut-off rule and its impact on identity.
- AMC's engagement in policy development and advocacy regarding First Nations citizenship.

Session 2: Restoring Traditional Governance Structures

Keynote Address by Chief Angela Levasseur (Nisichawayasihk Cree Nation)

- Citizenship as Belonging: Rooted in kinship, governance, and collective responsibility.
- Emotional and psychological impacts of the Indian status system.
- Need for First Nations to reclaim control over citizenship codes.
- How traditional kinship terms reflect governance in action.
- Personal impacts of the *Indian Act*.

Session 3: Reclaiming Citizenship – A Legal Framework Beyond the *Indian Act*

Speaker: Treaty Commissioner Loretta Ross

- Existence of First Nations legal traditions independent of Canadian law.
- Shift required from Western legal frameworks to First Nations legal systems.
- Having the power, ability, and authority of choosing who you are as Nationhood.

- Indian status may be declining, but First Nations identity remains.
- Treaty agreements affirm First Nations inherent rights, but Canadian laws have manipulated these agreements.
- First Nations must reclaim their governance, language, and legal traditions.

Breakout Room Discussions: Key Themes

- Issues with Membership Lists: Restricted access prevents members from confirming status.
- Customary Adoption: Not recognized by ISC.
- Mother's Rights: All children should receive citizenship regardless of the father's status.
- Decolonization of Identity: Moving from "status" to "citizen."
- *Indian Act* Repeal: Many participants advocated for abolishing rather than amending it.
- Negotiating Resource Control: First Nations must assert their rights over natural resources.
- Funding Tied to Population: Declining status numbers reduce funding.
- Barriers to Birth Registration: Need for funding to obtain birth certificates.
- Some First Nations' citizenship codes have been ignored by the government.
- Intermarriage: Intermarriage and status rules impact cultural survival.
- Authority: First Nations should have exclusive authority over their citizenship; First Nations must govern their own citizenship lists.
- Disconnection: Loss of status leads to disconnection; many feel alienated from their communities.
- Learning from International Models: Learning from Aotearoa New Zealand's Maori whakapapa ancestral tracing as a potential model.
- Judicial Intervention: A legal challenge to the *Indian Act*'s racist framework was suggested.

Day 1 Key Takeaways:

1. First Nations must reclaim control over citizenship and move away from the *Indian Act* framework.
2. Traditional governance structures should be the foundation of citizenship laws.
3. Legal and political advocacy is required to challenge Canadian-imposed definitions of identity.
4. Self-determination is essential for sustaining First Nations culture, governance, and identity.

Day 2 Summary

Session 1: Building a New Political Vision – First Nations Sovereignty and Collective Citizenship

Keynote Speaker: Ovide Mercredi

- The *Indian Act* is a colonial tool of oppression, controlling identity, land, and mobility.
- First Nations must define their own laws using traditional names (Anishinaabe, Ininiwuk, Dene, Assiniboine), rejecting the term “Indian.”
- First Nations worldviews differ from Western law, emphasizing kinship, relationships with land, and spirit.
- Each First Nation should develop its own citizenship laws within a year and assert these laws as binding under Treaty.
- A First Nations Tribunal is needed to enforce Treaty rights and hold British courts accountable.
- Political mobilization is necessary—First Nations must organize, raise funds, and challenge Canada’s failure to honour the Historical Treaties.

Session 2: Connecting to Citizenship Through Culture, Language, and Spirit

Speaker: Elder William Lathlin

- Citizenship in Western society is about control, but for First Nations, it’s about relationships.
- Colonialism severed community-based responsibility, replacing kinship with policing, welfare, and bureaucracy.
- Indigenous spirituality is key to reclaiming identity—First Nations’ relationships with the sun, land, and ancestors must be restored.
- First Nations do not need Canadian citizenship—they are already citizens of their own Nations.
- Education systems must be reformed to include spiritual and cultural identity.

Session 3: Second-Generation Cut-Off and Funding Proposal

Speaker: Erin Egachie, AMC Innovation and Fund Specialist

- 28% of Manitoba First Nations’ future generations may lose Indian status unless they partner with another status individual.
- ISC’s Collaborative Process Funding: Up to \$20,000 per First Nation is available to develop solutions.

- Urgency for Self-Determination: Without immediate action, many First Nations members will be excluded from federal recognition.

Breakout Room Discussions: Key Themes

- More outreach is needed to help young fathers register their children.
- Unity is essential to prevent loss of status and municipal-style governance.
- More training and job opportunities are needed to strengthen First Nations economies.
- First Nations should adopt members through consensus.
- The Métis Nation self-determines citizenship without 6(1) or 6(2) categories and can be looked to as a potential example.
- Opting out of specific provisions could be a first step toward self-determined citizenship.
- Treaty rights should not be tied to federal funding.
- There is an urgent need to document oral history before Elders pass on.
- Many young people lack access to language, traditions, and teachings due to colonial impacts.
- First Nations must shift away from Western frameworks and return to land-based teachings.
- First Nations organizations (AMC, SCO, MKO, etc.) must work together on citizenship policies.
- First Nations people must reclaim pride in their identity.
- Jordan's Principle has played a key role in preserving culture for younger generations.
- First Nations citizenship should focus on relationships, responsibilities, and ceremony, not Western legal concepts.
- Gatherings should incorporate Indigenous languages to strengthen fluency.
- Decolonizing Identity: The *Indian Act* is a tool of oppression—First Nations must define identity on their own terms.
- Fluency in Indigenous languages is critical to rebuilding identity.
- First Nations have a duty to help youth reconnect with identity and traditions.
- Population undercounting through inaccurate census processes have affected funding and rights.
- Some participants suggested suing Canada for the harms caused by the *Indian Act*.

Key Takeaways from Day 2:

1. First Nations must define citizenship outside of the *Indian Act*—this means creating independent laws and rejecting imposed categories.
2. Legal and political mobilization is needed to assert sovereignty, including challenging the British Crown on Treaty obligations.
3. Cultural and spiritual restoration is central to identity—citizenship must be based on kinship, relationships, and traditional governance.
4. Immediate action is required to prevent future generations from losing status and federal recognition.

PART 6: AMC-PROPOSED FIRST NATIONS CITIZENSHIP ENTITIES

The following examines how new frameworks can empower First Nations to reclaim control over citizenship, identity, and governance, which are essential elements of self-determination. This Part explores proposed models for First Nations-governed citizenship entities, including their structures, functions, and anticipated benefits. It discusses the development of citizenship laws and identity verification processes, addresses jurisdictional challenges, and underscores the necessity of culturally appropriate dispute resolution mechanisms.

Implications of the Modern Regime and Proposed Citizenship Entities

The *Indian Act*'s citizenship framework has long been criticized for its discriminatory provisions, colonial underpinnings, and detrimental effects on the self-determination and identity of First Nations citizens. Despite numerous amendments, the core mechanisms by which the federal government defines and controls “Indian status” and “band membership” remain rooted in externally imposed definitions that disregard the diversity of First Nations legal traditions and cultural norms.¹³⁴

The AMC proposes that First Nations develop their own citizenship frameworks that reflect First Nations concepts of citizenship.¹³⁵ Various governance models are proposed to support this shift, including Nation-level authorities, Treaty organizations, First Nations organizations, and Tribal Councils. As discussed below, each model offers unique strengths and challenges, and First Nations may benefit from a flexible approach tailored to their specific needs, capacity, and governance traditions.

Current Framework

1. Indian Act Registrar

Under the current legal framework, the *Indian Act* Registrar is responsible for determining whether individuals are entitled to registration as “status Indians” under the *Indian Act*. This process, which is central to accessing rights and programs tied to Indian status, is often lengthy and complicated, with applications taking between six months to two years to complete.¹³⁶

¹³⁴ See NCFNG, *Reclaiming Our Identity* at 236.

¹³⁵ AMC, 2018 Citizenship Report at 14-15.

¹³⁶ See Indigenous Services Canada, “Register under the Indian Act” (21 March 2025) online: Government of Canada <https://www.sac-isc.gc.ca/eng/1100100032472/1572459733507>.

Individuals may apply for registration through mail or in person at ISC, CIRNAC, or designated First Nations offices. These services are supported by regional Registrars and Indian Registration Administrators, who are First Nations employees tasked with assisting applicants, maintaining registration records, and providing information about registration procedures. Funding to support these administrative functions is allocated to First Nations based on their on- and off-reserve population and the volume of registration transactions processed annually.¹³⁷

Upon receiving an application, the Registrar:

- Assesses whether the applicant meets the criteria for registration under the *Indian Act*;
- Determines the subsection under which the applicant qualified for registration (s. 6(1) or s. 6(2));
- Adds the individual's name to the Indian Register; and
- If applicable, includes the individual on a Band List maintained by ISC.¹³⁸

The *Indian Act* allows individuals to challenge or “protest” a Registrar's decision under certain circumstances, including:

- When a person's name has been added to or omitted from the Indian Register or a Band List maintained by ISC; and
- When a person believes they were registered under the wrong category (for example, under s. 6(2) instead of s. 6(1)).¹³⁹

Protests must be submitted to the Registrar within three years of the decision. Depending on the nature of the decision, a protest may be initiated by the affected person or their authorized representative, the Band Council, or any member of the Band. The protest must include reasons for the challenge, such as an alleged misinterpretation of the *Indian Act* or overlooked evidence.¹⁴⁰

2. Band Membership

The *Indian Act* introduced the concept of an “Indian Band” as a federally defined governing unit, replacing traditional forms of First Nations governance with a municipal-style system designed to

¹³⁷ Indigenous Services Canada, “Trusted sources for registration and secure status card applications” (24 January 2025), online: *Government of Canada* <https://www.sac-isc.gc.ca/eng/1672857022307/1698255176737>.

¹³⁸ ISC, Annual Report – 2023.

¹³⁹ Indigenous Services Canada, “If you disagree with the Registrar's decision” (18 August 2023), online: <https://www.sac-isc.gc.ca/eng/1462808710500/1572460546047> [**ISC, Protesting Registrar's Decision**].

¹⁴⁰ ISC, Protesting Registrar's Decision.

facilitate assimilation. The *Indian Act* definition of “band” reflects a top-down approach imposed by colonial authorities, rather than one rooted in First Nations legal traditions or kinship structures.¹⁴¹

First Nations in Manitoba recognize that the concept of Band membership has been federally imposed and have described Band membership as “a broken system of status that sets up First Nations to fail”.¹⁴² At the workshop informing the 2018 AMC Citizenship Report, First Nations described the implications of the current regime as follows:

- Assimilates us.
- Affects our grandchildren, self-identity and access to healthcare and other entitlements, and that of generations to come.
- Affects how yourself and others view you.
- Creates divisions within families and communities and has been seen to turn our people against one another.
- Limits individual and collective rights.
- Discriminates against women.
- Affects traditional lands.
- Creates barriers to healthcare, including for newborns.
- Affects funding availability and opportunities.
- Limits ability of First Nations Band Membership staff to handle membership needs.
- Constant amendments create confusion.¹⁴³

Recognizing the harms of the current regime, First Nations in Manitoba have asserted the need to move beyond the *Indian Act* and reclaim their inherent right to determine citizenship based on traditional laws, values, and kinship systems. Participants in the workshop informing the 2018 AMC Citizenship Report called for a Nations-based approach to citizenship, grounded in the laws of the Creator, the wisdom of Elders and Knowledge Keepers, and forward-looking governance principles such as seven generations ahead planning.¹⁴⁴

¹⁴¹ *Indian Act* at s. 2.

¹⁴² AMC, 2018 Citizenship Report.

¹⁴³ AMC, 2018 Citizenship Report.

¹⁴⁴ AMC, 2018 Citizenship Report at 6.

The above underscores the importance of developing Nation-based citizenship entities as part of the broader transition away from the *Indian Act* framework.

Alternatives to Indian Status Cards

The status card system, including the new Secure Certificate of Indian Status system, serves to further the objectives of Indian registration under the *Indian Act*. There currently exists no widespread publicly declared registration system that promotes First Nations citizenship based on Treaty principles.

The creation of identification instruments is essential to First Nations citizenship. These instruments, which include citizenship cards, digital credentials, or mobile IDs, must be secure and legally recognized. The Federation of Sovereign Indigenous Nation's proposal to issue its own Treaty-based cards that highlight Treaty rights is one prominent example.¹⁴⁵ Treaty 5 First Nations have already initiated a project to issue Treaty 5 Citizenship and Treaty Cards as an alternative to Indian status cards. This initiative aims to enhance the sovereignty of First Nations and empower citizens by providing identification that reflects their inherent rights and nationhood.¹⁴⁶

The movement towards Treaty cards by First Nations reflects a broader effort to assert their sovereignty and self-determination by creating systems and documentation that align with their cultural and political identities independent of federal frameworks.

Proposed Citizenship Decision-Making Entities

The following proposed models for First Nations-led citizenship governance are a necessary and transformative step towards reclaiming First Nations inherent jurisdiction. As discussed above, the *Indian Act* imposes narrow and externally defined criteria for status and Band membership, interfering with the right of First Nations to determine their own citizens. The AMC has suggested that this system be replaced with a First Nations citizenship framework that departs from the concepts developed under the *Indian Act*, such as status or Band membership, and reflects First Nations concepts of membership and citizenship.¹⁴⁷

¹⁴⁵ Kerry Benjoe, "Treaty cards may get a makeover in Saskatchewan" (15 June 2016).

¹⁴⁶ Opaskwayak Cree Nation, "Treaty Five Citizenship & Treaty Cards Here Now" Facebook, 12 December 2024, online: <https://www.facebook.com/groups/opaskwayakcreenation/posts/10160185899976612/>; Cumberland House Cree Nation, "Cumberland House Cree Nation Treaty 5 Government Cards will be issued... 21 December 2024, online: <https://www.facebook.com/photo.php?fbid=896338639276920&id=100067023776810&set=a.435545928689529>.

¹⁴⁷ AMC, 2018 Citizenship Report at 28.

The AMC has emphasized the need to develop First Nations-led entities responsible for managing First Nations citizenship and identity verification. These entities would replace the current Registrar under the *Indian Act* and provide First Nations with control over their own systems of registration.

The information that the AMC has gathered through its citizenship workshops may help inform what First Nations would need to assume full responsibility over citizenship decision-making and registration functions. The 2018 AMC Citizenship Report emphasizes that each First Nation must be supported to design and implement its own citizenship system according to its own laws, traditions and governance structures.¹⁴⁸ As further detailed below, some First Nations may choose to exercise some functions through or in conjunction with Treaty organizations, First Nations organizations or Tribal Councils.

The transition to new systems of governance, must be First Nations-led and directed. The requirements for establishing these systems will vary, but may include:

- Resources to support independent decision-making bodies and registration processes, including secure record keeping, trained personnel, and access to genealogy databases.
- Capacity-building support for smaller or remote First Nations to develop the technical, legal, and/or financial capacity to build and maintain their own independent systems.
- Protocols for collaboration with other First Nations, and the federal and provincial governments to ensure interoperability with other systems.

The following provides an overview of four distinct governance levels as potential structures for decision-making related to citizenship frameworks.¹⁴⁹ Each level offers unique benefits and poses different challenges, and the appropriate model may vary based on a First Nation's size, capacity, governance traditions, and regional affiliations. These models are not mutually exclusive—a flexible or hybrid approach may provide the most effective outcomes. At this early stage these are identified options only. Engagement with First Nations in Manitoba is required to determine interest in each model and move forward on a solution.

1. First Nation Level

Under this model, each individual First Nation would establish its own citizenship authority responsible for determining citizenship criteria, maintaining registries, managing applications,

¹⁴⁸ AMC, 2018 Citizenship Report at 6-7.

¹⁴⁹ AMC, History of Work.

resolving disputes, and issuing documentation. These functions would be carried out according to each Nation's laws, customs, and governance traditions.

This approach most closely aligns with the inherent right to self-government and the principle of self-determination. This would allow First Nations to fully reflect their cultural values, traditional governance systems, and community-specific priorities in the design and operation of their citizenship systems. It may also strengthen local control and accountability.

The challenges of this model include the administrative and legal capacity required to manage the process effectively. Smaller or less-resourced First Nations may face difficulties in sustaining independent citizenship systems. There may also be a lack of coordinated dispute resolution or appeals infrastructure across First Nations, and significant variation in processes and standards could lead to inconsistencies.

Efforts to address the capacity required to design, implement, and maintain entities at the First Nation level may include:

- Provision of dedicated funding to support First Nations in accessing legal services and training.
- Establishment of a regional advisory body of First Nations legal and implementation experts to assist First Nations as needed.
- Federal recognition of First Nations citizenship laws as legally binding, with enforceable status equal to federal determinations.

2. Treaty Organization Level

This model proposes that Treaty organizations, which represent groups of First Nations that are signatories to the same Treaty, could coordinate citizenship decision-making among their member Nations. These bodies would facilitate collaboration while ensuring that each First Nation retains its jurisdiction and autonomy.

The key benefit of this approach is the ability to coordinate decision-making among First Nations that share a common legal and historical context. It can also promote consistency in citizenship systems across Treaty groups and enable resource sharing that improves administrative efficiency and capacity.

Participation in this model would require clear mandates and voluntary consent from all member Nations. Treaty organizations may not adequately represent the interests or governance traditions of every member Nation. Additionally, some First Nations, such as the Dakota Nations in Manitoba, are not signatories to the numbered Treaties and may not be included in Treaty

organization structures. There is also a risk that shared governance at the Treaty level could dilute the autonomy of individual First Nations if not carefully designed.

3. First Nation Organization Level

At this level, First Nations Provincial or Territorial organizations, such as the AMC, Manitoba Keewatinowi Okimakanak, or Southern Chiefs' Organization, could take on a role in supporting or coordinating citizenship processes. These organizations could provide assistance in areas such as policy development, legislative review, appeals processes, and advocacy.

For example, the AMC plays a central role in coordinating First Nations-led citizenship processes in Manitoba. The AMC provides leadership and governance oversight through the CCOC, which provides strategic direction and ensures that citizenship work aligns with First Nations priorities, while the CWG is responsible for developing practical tools and facilitating governance of citizenship outside of the *Indian Act*.¹⁵⁰

A model developed at this level would offer the benefit of centralized support and regional coordination. These organizations could promote standardization where appropriate, assist with legal and technical resources, and advocate for the collective interests of First Nations at the provincial and national levels. They could also serve as hubs for capacity-building, training, and the development of shared tools or frameworks.

The AMC can support member First Nations in developing and implementing their citizenship systems. The AMC's existing citizenship coordination mandate could be enhanced to take on additional roles, however this would require a clear mandate from AMC member First Nations. For example, if First Nations develop their own citizenship decision-making bodies, the AMC can provide a knowledge hub or data centre to ensure First Nations are not working in isolation.

The AMC can continue to provide ongoing direction and technical support through the CCOC and CWG, administrative training through workshops, and legal and policy resources such as template laws. The AMC may also act as a liaison with the federal and provincial governments to secure recognition, reduce administrative barriers, and help ensure that First Nations citizenship entities are supported through a broader legislative and policy framework.

It is important to note that First Nations organizations are advocacy and support organizations, not governance bodies, and they do not hold jurisdiction to make citizenship decisions on behalf of individual First Nations. To be effective in this role, First Nations organizations would need to operate with clear accountability to their member Nations and ensure that their involvement

¹⁵⁰ See AMC, History of Work.

supports, rather than replaces, First Nations authority. Additionally, the centralized nature of these bodies could introduce bureaucratic inefficiencies or reduce responsiveness to local priorities.

4. Tribal Council Level

At this level, Tribal Councils could expand their existing administrative and governance roles to include responsibilities related to citizenship. Tribal Councils currently represent groups of geographically or culturally connected First Nations and may already collaborate on matters such as health, education, and infrastructure. This shared governance model could be adapted to support citizenship administration, appeals, record-keeping, and coordination among member Nations.

The benefit of the Tribal Council-level model is that it would allow for shared resources, which can improve efficiency and reduce operational costs. Many Tribal Councils have longstanding relationships with their member Nations and a track record of collaboration. This level of governance may provide a practical platform for regional consistency in processes while still enabling each First Nation to determine its own citizenship criteria.

The Tribal Council model also presents challenges. Not all First Nations belong to a Tribal Council, which may limit inclusiveness. There is also a risk of confusion or overreach if the division of authority between Tribal Councils and First Nations is not clearly defined. For this model to succeed, Tribal Councils would require new mandates, adequate resources, and governance structures that reinforce the sovereignty of each member Nation.

Each of these governance levels would offer a pathway for First Nations to reclaim control over citizenship, in a manner consistent with their inherent rights and self-determination. While no single model will be suitable for all First Nations, a flexible and layered approach, which supports First Nations autonomy while providing regional coordination where needed, may offer the most balanced and sustainable solution.

Canada's Role

First Nations have the right to determine their own citizenship systems independently of the *Indian Act*.¹⁵¹ Canada's role is to facilitate and resource these self-determined processes, without controlling or constraining them. Canada should take a collaborative, non-intrusive approach that affirms and upholds First Nations inherent jurisdiction. Such support must be provided through adequate financial and technical resources, without imposing federal definitions or standards on First Nations methodologies.

¹⁵¹ See AMC, 2018 Citizenship Workshop Report at 2.

Elder William Lathlin noted in the 2025 Reclaiming our Identity Forum, citizenship in western society is about control. For First Nations, citizenship is about relationships. Canada must take care not to impose its definitions of citizenship on First Nations, otherwise it risks continuing the colonial legacy of oppression.

Citizenship Laws and Verification Processes

The development of citizenship laws by First Nations is a vital step towards reclaiming jurisdiction over identity and governance from colonial frameworks such as the *Indian Act*. The shift towards First Nations-designed citizenship systems is grounded in the principles of UNDRIP—particularly the right of First Nations to determine their own membership and identity.¹⁵²

As this work progresses, several complex and interrelated issues must be addressed. These include determining criteria for acquiring citizenship, incorporating cultural and community connections, and establishing decision-making processes. Each of these issues requires careful consideration to ensure that new laws reflect the values of the First Nation.

Identity verification remains a significant challenge. Questions around authenticity and belonging must be handled in ways that respect First Nations traditions and autonomy, while also addressing concerns about fraud and external recognition. As First Nations advance this work, it is essential that their laws are shaped through engagement with First Nations citizens.

1. *Developing Citizenship Laws*

The AMC has taken a leading role in supporting First Nations in reclaiming jurisdiction over citizenship. The purpose of the 2018 AMC Citizenship Report was to identify necessary supports for First Nations to determine their own citizenship outside of the *Indian Act* and identify a regional First Nations in Manitoba approach to the First Nations-Crown collaborative process on Indian registration, Band membership, and First Nations Citizenship.¹⁵³

As part of its citizenship advocacy, the AMC Chiefs-in-Assembly has directed the AMC Secretariat to develop template citizenship laws for AMC member First Nations.¹⁵⁴ Elements that the AMC has identified as foundational to consider when developing citizenship laws include traditional societal structures such as the clan system, First Nations inherent forward-thinking ways

¹⁵² UNDRIP at Article 33.

¹⁵³ AMC, 2018 Citizenship Report at 2.

¹⁵⁴ AMC, *Resolution AUG-23.01*.

such as seven generations ahead planning, and the perspectives of Elders, Knowledge Keepers and First Nations leadership.¹⁵⁵

In addition to these core principles, when developing a citizenship law, First Nations must consider several key practical issues, including:

- **Acquiring Citizenship:** One major decision is how individuals will obtain citizenship. While the *Indian Act* grants citizenship by descent, Nations must decide if one or both parents must be citizens, and whether factors like blood quantum should apply.
- **Cultural Connection:** Indian status has historically ignored cultural ties, often relying on rigid rules of descent. First Nations may wish to include cultural belonging as a factor in their own citizenship laws.
- **Dual Citizenship:** The *Indian Act* prohibits individuals from being on more than one Band List, even if they have ties to multiple Nations. First Nations must determine whether to allow dual citizenship in their laws.
- **Decision-Making Authority:** The process for granting citizenship must include clear procedures and designate who has the authority to make final decisions.
- **Human Rights Considerations:** First Nations will need to determine the appropriate balance between individual and collective rights in their citizenship laws, with due regard to the Nation's legal traditions.
- **Challenges to Decisions:** First Nations can address challenges to citizenship decisions by developing clear, fair, and transparent citizenship laws and dispute resolution procedures, as discussed further in the dispute resolution mechanisms sections of this Part.
- **Amendments:** Citizenship laws should include a clear process for amendments, balancing accessibility with safeguards against manipulation by a small group.

As further set out in Part 2, tension between individual and collective rights, particularly as it relates to membership codes and Indian status, is a direct result of discriminatory Crown policies and legislation. This legacy must not be continued in a new system for recognition of First Nations citizenship laws. The federal Crown must bear all liability stemming from its past actions. In addition, First Nations citizenship laws should not be subject to colonially imposed human rights regimes. Instead, where disputes arise due to tensions between individual and collective rights, they should be resolved through First Nations' dispute resolution mechanisms. Additionally, where disputes arise due to Crown underfunding, those disputes must continue against the Crown.

¹⁵⁵ AMC, 2018 Citizenship Report at 6.

2. *Examples of Citizenship Laws Outside of the Indian Act*

The following provides examples of how some Indigenous Nations in Canada have created citizenship recognition mechanisms outside of the *Indian Act*, as well as how Indigenous Nations in other countries have responded to colonial impositions of citizenship rules.

Each of the following examples offers a different pathway to asserting jurisdiction over citizenship. By learning from both domestic and international models, First Nations in Manitoba, supported by the AMC, can develop and implement First Nations-led systems that restore identity, rebuild ties between individuals, and reinforce sovereignty. In the workplan and proposal submitted in conjunction with this paper, the AMC has established a process where First Nations can consider these, and other options, to assert self-government over citizenship, and identify more conclusively what may work for them.

As a starting point, in the 2025 Reclaiming Our Identity Forum, participants showed interest in learning from or adapting the Māori whakapapa records and the community records system for verifying identity, and the Métis Nation's self-determination of citizenship outside of sections 6(1) and 6(2) of the *Indian Act*.

Sioux Valley Dakota Nation

Sioux Valley Dakota Nation is the largest Dakota Nation in Canada with a membership of approximately 2,500. It is not a signatory to a Numbered Treaty or affiliated with a Tribal Council, instead Sioux Valley Dakota Nation operates as a distinct First Nation with its own governance structure managed through a Band Council. Sioux Valley Dakota Nation is the only self-governing Dakota Nation in Canada formally recognized by both the federal and provincial governments, and the only self-governing First Nation in the prairie provinces. This status was achieved through the creation of the *Constitution of the People*, developed collaboratively over 21 years with input from Elders, citizens, and leadership.¹⁵⁶

Once a majority of eligible voters from Sioux Valley Dakota Nation voted in favour of accepting the self-governance agreement, and it was signed by representatives from Sioux Valley Dakota Nation, Canada and Manitoba, legislation was passed by both the province and Canadian Parliament.¹⁵⁷

¹⁵⁶ See Sioux Valley Dakota Nation, "A Self-Governing Dakota Nation" (n.d.), online: <https://svdngovernance.com/a-self-governing-dakota-nation-new/>.

¹⁵⁷ *Sioux Valley Dakota Nation Governance Act*, SC 2014, c. 1; *The Sioux Valley Dakota Nation Governance Act*, SM 2014, c. 14.

Notably, the Sioux Valley Dakota Nation Self-Government Agreement is not a land claim agreement or Treaty; rather Sioux Valley Dakota Nation laws apply on its reserve lands and operate in harmony with federal and provincial laws within the Canadian Constitutional framework.

Métis Nation

The Métis Nation are a people with Indigenous and French heritage whose ancestry originated in mixed Indigenous-European communities in the Red River Settlement.¹⁵⁸ Canada recognizes the Métis as Indigenous peoples recognized in UNDRIP and whose rights are affirmed by section 35 of the *Constitution Act, 1982*.¹⁵⁹

The Manitoba Métis Self-Government Recognition and Implementation Agreement (the “**Métis Agreement**”) is an example of citizenship rules that are not confined by the *Indian Act*. There is no section 6(1)/6(2) or similar distinction limiting citizenship recognition. According to the Métis Agreement, a Métis person is someone who:

1. Self-identifies as Métis;
2. Is of historic Métis Nation Ancestry;
3. Is distinct from other Aboriginal Peoples; and
4. Is accepted by the Métis Nation.¹⁶⁰

There are three steps to apply for Métis citizenship:

1. Self-identifying as Métis;
2. Submitting a copy of a Métis genealogy, or a family member’s Métis genealogy, and required supporting evidentiary documents; and

¹⁵⁸ “Metis” *The Canadian Encyclopedia*, online: <https://www.thecanadianencyclopedia.ca/en/article/metis>.

¹⁵⁹ “UNDRIP” *Metis National Council*, online: <https://www.metisnation.ca/what-we-do/justice/undrip#:~:text=Canada%20endorsed%20UNDRIP%20until%202010,of%20Indigenous%20Peoples%20Act%2C%202021>; “United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan” Government of Canada, online: <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/p1.html> [**UNDA Action Plan**]

¹⁶⁰ Manitoba Metis Federation Inc., “Manitoba Metis Self-Government Recognition and Implementation Agreement” Manitoba Metis Federation Inc., (6 July 2021) at s 2(a), online: https://www.mmf.mb.ca/wcm-docs/docs/news/manitoba_metis_selfgovernment_recognition_and_implementation_agreement.pdf. [**Manitoba Metis, Self Government Agreement**]

3. Having Manitoba Metis Federation issue a citizenship card.¹⁶¹

Additionally, Métis citizens can apply for a Metis Harvester card, which grants Métis Harvesters permission to harvest throughout the Métis Recognized Harvesting Area on:

- All unoccupied provincial Crown Lands in Manitoba.
- Occupied provincial Crown lands, including provincial parks, wherever First Nations Members are allowed to harvest.
- Any privately owned lands in Manitoba on which that Métis Harvester has been given permission by the owner or occupant.
- Indian Reserve lands with permission of a Band Council.¹⁶²

The Manitoba Métis Federation has jurisdiction in relation to Manitoba Métis citizenship, including citizenship criteria, registration, and any appeals or reviews of decisions about the determination of Manitoba Métis citizenship.¹⁶³ The St. Boniface Historical Society is the recognized Genealogical Institution that can prove an individual's Métis ancestry.¹⁶⁴ Canada has agreed not to challenge or support any challenges to Manitoba Métis laws asserting citizenship jurisdiction.¹⁶⁵

Pimicikamak Cree Nation

Pimicikamak Cree Nation provides an example of a First Nation that has adopted its own citizenship laws, independent of federal negotiation frameworks. They have invoked international law to assert their right to self-determination and developed a unique government, which incorporates aspects of Canadian law while adapting customary Cree law.¹⁶⁶ Their actions demonstrate the viability of First Nations legislating their citizenship autonomously, in a manner that reflects their Nationhood and identity.

¹⁶¹ Manitoba Metis Federation Inc, “Citizenship/Harvester Identification Card Application Information”, online: https://www.mmf.mb.ca/wcm-docs/docs/departments-citizenship/citizenship_harvester_application.pdf.

¹⁶² Manitoba Metis Federation Inc, *Metis Laws of the Harvest*, rev 3rd ed at ii online: https://www.mmf.mb.ca/wcm-docs/docs/departments-citizenship/metis-laws-of-the-harvest_final.pdf.

¹⁶³ Manitoba Metis Self Government Agreement at s. 17.

¹⁶⁴ “Genealogy FAQ” *Centre du patrimoine*, online: <https://shsb.mb.ca/frequently-asked-questions/?lang=en>.

¹⁶⁵ Manitoba Metis Self Government Agreement at s 16(b), online: <https://www.rcaanc-cirnac.gc.ca/eng/1641476532215/1641476589226>.

¹⁶⁶ Galit A. Sarfaty, “International Norm Diffusion in the Pimicikamak Cree Nation: A Model of Legal Mediation” (2007) 48:2 Harv Intl LJ 443; AMC, 2018 Citizenship Report at 15.

American Native Tribes

First Nations in Manitoba may look to international examples of Indigenous citizenship governance when considering how to take jurisdiction over citizenship. In the United States, American Native Tribes have a similar history of assimilationist policies imposed by the federal government.

Prior to European contact Indigenous Nations similarly determined identity through kinship, culture and community ties. Membership in a tribe was based on lineage, adoption, marriage and political alliances rather than strict racial categories.¹⁶⁷ In the 1800s, the United States government imposed racial classifications on Indigenous peoples, introducing blood quantum as a legal measure of identity.¹⁶⁸

In 1887, the *Dawes Act* was introduced to divide tribal lands into allotments, assimilate Native Americans, and diminish tribal sovereignty. It classified individuals as “full-blood” or “mixed-blood”, affecting land ownership and legal status.¹⁶⁹ Many Native people were then left off the rolls, leading to disputes over identity that continue today.¹⁷⁰ The *Dawes Act* reduced Native-held land from 138 million acres in 1887 to 48 million acres in 1934.¹⁷¹ Blood quantum measures were used to limit tribal membership and reduce the number of federally recognized Native Americans over generations.¹⁷²

In 1934, the American government ended the allotment policy and returned some land to tribes. It also allowed tribes to establish businesses and communal land management.¹⁷³ Under that new system, tribes were able to draft constitutions and create their own legal systems. Many were

¹⁶⁷ Eva Marie Garroute, *Real Indians: Identity and the Survival of Native America* (Berkeley: University of California Press, 2003) at 14-15.

¹⁶⁸ “Blood Quantum and the White Gatekeeping of Native American Identity,” *California Law Review* (March 2025), online: <https://www.californialawreview.org/online/blood-quantum-and-the-white-gatekeeping-of-native-american-identity>.

¹⁶⁹ “Dawes Act (1887),” *National Archives*, online: <https://www.archives.gov/milestone-documents/dawes-act>.

¹⁷⁰ “Blood Politics, Ethnic Identity, and Racial Misclassification among American Indians and Alaska Natives,” *National Center for Biotechnology Information*, online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3941118/>.

¹⁷¹ “History,” Indian Land Tenure Foundation, online: <https://iltf.org/land-issues/history/>.

¹⁷² “Blood Quantum and Sovereignty: A Guide,” *Native Governance Center*, online: <https://nativegov.org/resources/blood-quantum-and-sovereignty-a-guide/>.

¹⁷³ “What was FDR’s Indian New Deal’?” History.com, online: <https://www.history.com/news/indian-reorganization-act-1934-new-deal-effects>.

encouraged to create constitutions that included blood quantum requirements, which are still in place today.¹⁷⁴

Enrollment criteria now differ among American Indigenous tribes. For example, the Navajo Nation requires at least ¼ Navajo blood, which preserves political and financial resources but can lead to “statistical extinction” as intermarriage reduces the number of individuals meeting the threshold over generations.¹⁷⁵ This differs from lineal descent Nations, such as the Cherokee Nation, which allows anyone who can prove ancestry from a listed tribal member to enroll. This system is more inclusive but depends heavily on historical records.¹⁷⁶

Tribes, like the Navajo, who rely on blood quantum as a requirement for enrollment face shrinking populations, similar to the second-generation cutoff experienced by First Nations. Tribes that have dropped blood quantum in favour of lineage have had better success maintaining cultural continuity.¹⁷⁷

Like First Nations in Canada, some American Native citizens are excluded from enrollment, while outsiders falsely claim Native American identity for social, political, and financial benefits. Thousands of Native people are legally “invisible” to the US government with no access to federal programs, health care or housing.¹⁷⁸

Australia

There are over 250 distinct Aboriginal and Torres Strait Islander language groups across Australia. These groups are often identified as clans, nations or communities, each with their own laws, customs, and territorial boundaries.¹⁷⁹ From the 1830s through the 1950s, Australian legislation employed “blood-quantum” classifications to define Indigenous identity. These distinctions were

¹⁷⁴ “Blood Quantum and the Ever-Tightening Chokehold on Tribal Citizenship”, *California Law Review* (April 2025), online: <https://www.californialawreview.org/print/blood-quantum-and-the-ever-tightening-chokehold-on-tribal-citizenship-the-reproductive-justice-implications-of-blood-quantum-requirements>.

¹⁷⁵ “So What Exactly is ‘Blood Quantum’?” NPR, online: <https://www.npr.org/sections/codeswitch/2018/02/09/583987261/so-what-exactly-is-blood-quantum>.

¹⁷⁶ “Tribal Registration – Cherokee Nation,” *Cherokee Nation*, online: <https://www.cherokee.org/all-services/tribal-registration/>.

¹⁷⁷ See for example: *Red Lake Nation: Population Projections, Corrected*, Wilder Research (May 2024), online: https://www.wilder.org/sites/default/files/imports/RedLake_PopulationProjections_5-24.pdf.

¹⁷⁸ See: US Commission on Civil Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, online: <https://www2.law.umaryland.edu/marshall/usccr/documents/quietcrisis.pdf>; “The Pretendian Among Us,” *Our Lives Wisconsin* (15 March 2023), online: <https://ourliveswisconsin.com/article/the-pretendian-among-us/>.

¹⁷⁹ Australian Institute of Aboriginal and Torres Strait Islander Studies, *Languages Alive*, online: <https://aiatsis.gov.au/explore/languages-alive>.

often subjective and served as tools for implementing policies of assimilation and control over Indigenous populations.¹⁸⁰

On May 27, 1967, Australians voted to change their Constitution so that like all other Australians, Aboriginal and Torres Strait Islanders peoples would be counted as part of the population and the Commonwealth would be able to make laws for them.¹⁸¹

Australia has legislated a three-part definition of Indigenous identity, which is that a person must:

1. Be of Aboriginal or Torres Strait Islander descent (biological ancestry).
2. Identify as an Aboriginal or Torres Strait Islander person (self-identification).
3. Be accepted as such by the community in which they live or have lived (community recognition).¹⁸²

This three-part system is used to verify access to Indigenous-specific services and benefits, Native title and land rights, and political representation and governance. Unfortunately, many Aboriginal and Torres Strait Islander people struggle to obtain official documentation proving ancestry. First Nations may experience similar burdens (such as those separated from their communities through residential schools or the ‘sixties scoop’) that need to be accounted for when developing citizenship systems.

Aotearoa (New Zealand)

In Aotearoa (New Zealand), there is one Indigenous Nation: Māori. Before European contact, Māori identity was primarily based on whakapapa (genealogy) and iwi (tribal) affiliation. Māori society was organized around extended family units (whānau), sub-tribes (hapū), and tribes (iwi), each with their own customs, dialects, and leadership structures. Connection to whenua (land) was a key part of identity, which was demonstrated through whakapapa.¹⁸³

¹⁸⁰ “Blood-Quantum Era (1830s to 1950s)”, *Statistical Journal of the IAOS*, online: <https://content.iospress.com/articles/statistical-journal-of-the-iaos/sji180491>.

¹⁸¹ Australian Institute of Aboriginal and Torres Strait Islander Studies, *The 1967 Referendum*, online: <https://aiatsis.gov.au/explore/1967-referendum>.

¹⁸² *Australian Law Reform Commission, Legal Definitions of Aboriginality*, online: <https://www.alrc.gov.au/publication/essentially-yours-the-protection-of-human-genetic-information-in-australia-alrc-report-96/36-kinship-and-identity/legal-definitions-of-aboriginality/>.

¹⁸³ *Māori*, Te Ara: The Encyclopedia of New Zealand, online: <https://teara.govt.nz/en/maori>; *Whakapapa – Genealogy*, Te Ara: The Encyclopedia of New Zealand, online: <https://teara.govt.nz/en/whakapapa-genealogy>.

Europeans arrived in the late 18th and early 19th centuries. Through war, confiscations, and legal manipulation, Māori lost most of their land by the late 19th century.¹⁸⁴ During this time, Māori were often categorized based on blood quantum, a colonial concept that classified individuals as "half-caste" or "quarter-caste," which influenced land rights and voting eligibility.

The *Maori Affairs Act* (1953) defined "Māori" as someone with half or more Māori blood;¹⁸⁵ in 1973, the definition was changed to identify Māori as "a person of the Māori race of New Zealand and includes any descendant of such a person." This definition is found in the *Māori Land Act* and numerous other statutes. It is the legal standard for land and tribal matters, and no blood quantum is required.¹⁸⁶

Today, Māori identity is verified primarily through whakapapa records and community recognition, which includes ancestry, cultural belonging, and relationships with iwi, hapū, and whenua (land).¹⁸⁷ Many iwi have formal registration processes, requiring:

1. A whakapapa form listing ancestors up to a known iwi or hapū.
2. Confirmation from Elders (kaumātua) who verify descent through oral traditions.
3. Supporting documents like birth certificates or family trees (if available).¹⁸⁸

While New Zealand allows self-identification in national statistics,¹⁸⁹ iwi (tribes) control their own membership through documented whakapapa (ancestry). The prioritization of whakapapa over blood quantum, ensures continuity of identity without exclusionary thresholds. A similar approach could support broader inclusion for AMC member First Nations.

Colonization, migration, and the effects of the Tāngata Whenua urban drift, have made verification for some Māori difficult, particularly those who have lost their land, language, and family

¹⁸⁴ Tupu.nz, *History of Māori Land*, online: <https://tupu.nz/resources/history-of-maori-land>.

¹⁸⁵ *Māori Affairs Act*, 1953 (NZ), s. (repealed).

¹⁸⁶ *Māori Affairs Amendment Act* 1974 (NZ), s 2; see also: *Māori Land Act* 1993 (NZ), s 4.

¹⁸⁷ Ministry of Health (NZ), *Māori Descent and Iwi Affiliation Data Protocols* (2021) online: <https://www.health.govt.nz/publication/maori-descent-and-iwi-affiliation-data-protocols>.

¹⁸⁸ See for example: *Whakapapa Registration Form*, Te Rūnanga o Ngāi Tahu (2022), online: <https://orakaaparimarunaka.co.nz/wp-content/uploads/2022/03/TRONT-WhakapapaRegistrationForm.pdf>; *Iwi Registrations*, Ngāti Toa Rangatira, online: <https://www.toarangatira.iwi.nz/iwi-registrations>; and *FAQs about the Ngāti Porou Register*, Te Rūnanganui o Ngāti Porou, online: <https://www.ngatiporou.com/nati-life/faqs-about-the-ngati-porou-register>.

¹⁸⁹ Statistics New Zealand, *Māori Descent and Iwi Identification in the Census* (2023), online: <https://www.stats.govt.nz/methods/maori-descent-and-iwi-identification-in-the-census>.

records.¹⁹⁰ Some First Nations people may struggle to obtain official documentation to prove ancestry if a similar system was developed for First Nations in Manitoba.

3. *Identity Verification*

First Nations perspectives of First Nations citizenship and identity may encompass multiple layers of identity, including individual relationships to family; ethnicity and culture; and polities within geographic areas.¹⁹¹ Identity verification processes incorporated into First Nations citizenship systems beyond the First Nations-level must be informed by engagement with First Nations.

At the direction of the Chiefs in Assembly, the AMC has advocated for First Nations, not colonial governments, to determine First Nations citizenship.¹⁹² This position is consistent with Article 33 of UNDRIP, which states:

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of Indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions and in accordance with their own procedures.¹⁹³

First Nations will need to consider how they will address issues of identity verification and identity fraud, either through their citizenship laws or other mechanisms. This issue will most likely arise when individuals make identity claims to external bodies, such as academic institutions.

Jurisdictional Challenges

As discussed above, First Nations in Canada have always held the inherent right to determine their own citizenship based on their laws, traditions, and cultural practices. However, the *Indian Act* continues to impose significant barriers to the exercise of this jurisdiction. This is particularly true for “unrecognized” First Nations and cross-border Nations.

The *Indian Act* continues to obstruct the path to self-determination by limiting who can be recognized as a First Nation and enforcing rules that may not adequately reflect First Nations ways

¹⁹⁰ Correna M. Matika et al., "Māori and Pasifika Language, Identity, and Wellbeing in Aotearoa New Zealand" (2021) 16:1 *Kōtuitui: New Zealand Journal of Social Sciences Online* online: <https://doi.org/10.1080/1177083X.2021.1900298>.

¹⁹¹ Jean Teillet, *Indigenous Identity Fraud: A Report for the University of Saskatchewan* (17 October 2022) at 45.

¹⁹² MIB, *Wahbung* at 19.

¹⁹³ *UNDRIP* at Article 33.

of belonging. Addressing these challenges and removing restrictive provisions would empower both “unrecognized” First Nations and cross-border Nations to reclaim control over citizenship in a manner consistent with their legal traditions, cultural identities, and inherent rights.

1. “Unrecognized” First Nations

An “unrecognized” First Nation (“UFN”) is a First Nation that is not formally recognized as a Band under the *Indian Act*. The *Indian Act* defines a “band” as:

[...] a body of Indians

- (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,
- (b) for whose use and benefit in common, moneys are held by Her Majesty, or
- (c) declared by the Governor in Council to be a band for the purposes of this Act.¹⁹⁴

UFNs face several obstacles when it comes to developing and enforcing citizenship laws, among other matters. A lack of federal recognition can lead to UFNs suffering from legal invisibility, making it difficult for them to access federal programs, healthcare or housing that is provided to recognized First Nations.¹⁹⁵ Without these benefits it can be difficult for UFNs to obtain the necessary legal and financial resources to develop and enforce citizenship laws.¹⁹⁶ This limitation prevents them from formally codifying their citizenship laws and managing citizenship independently.¹⁹⁷ UFNs have a limited ability to maintain a legal framework for citizenship that is recognized by external authorities.¹⁹⁸

Currently, a UFN can seek recognition under the *Indian Act* via section 17(1)(b), which provides the Minister with the authority to establish new Bands and their associated Band Lists, if requested to do so by persons proposing to form the new Bands.¹⁹⁹ Being granted Band status under the *Indian Act* provides a First Nation with several benefits and entitlements, including the ability to make by-laws and obtain land rights, moneys and independence from federal oversight in matters

¹⁹⁴ *Indian Act* at s. 2.

¹⁹⁵ See: NCFNG, *Reclaiming Our Identity* at 2-3, 18; Indigenous Services Canada, “Social Programs” (9 February 2024), online: Government of Canada <https://www.sac-isc.gc.ca/eng/1100100035072/1521125345192>.

¹⁹⁶ See AMC, 2018 Citizenship Report at 5-6.

¹⁹⁷ NCFNG, *Reclaiming Our Identity* at 10-11.

¹⁹⁸ See 2018 AMC Citizenship Report at 14.

¹⁹⁹ *Indian Act* at s. 17.

of governance.²⁰⁰ It also automatically subjects the First Nation to the membership sections of the *Indian Act*,²⁰¹ which may not reflect the First Nation's customs and laws.

New citizenship systems should incorporate a First Nations-led approach that explicitly recognizes and includes UFNs, allowing them to assert and formalize their citizenship criteria based on their own customs, laws, and governance traditions without requiring recognition under the *Indian Act*. This approach would help overcome the current legal and structural barriers that UFNs face and facilitate broader recognition of citizenship frameworks for UFNs. This system should ensure that UFNs still receive the same benefits that *Indian Act* status recognition provide.

2. *Cross-Border First Nations Citizenship*

For First Nations with territories or citizens on both sides of the Canada-U.S. border, citizenship recognition can be complex. Some First Nations, such as the Mohawk, Blackfoot, and Ojibway, have historical ties that span both countries. Other First Nations, such as the Nlaka'pamux, Sto:lo, and Sylix, whose territories were divided by the Canada-U.S. border, continue to live on both sides without legal recognition of their First Nations status in Canada.²⁰² This is especially oppressive for First Nations like the Akwesasne First Nation, whose citizens engage with the border on a near-daily basis.²⁰³

The Mohawks of Akwesasne considers themselves to be a single Nation, regardless of what side of the border an individual is born or lives on.²⁰⁴ Similarly, the Nlaka'pamux First Nation views citizenship as something not defined by the border, but instead based on culture and way of living.²⁰⁵ The Sylix First Nation explicitly states that they are “a trans-boundary tribe separated at

²⁰⁰ *Indian Act* at s. 20, 53, 61, 81 & 88.

²⁰¹ *Indian Act* at s. 8-10.

²⁰² Ardith Walkem, *Wrapping Our Ways Around Them – Aboriginal Communities and the CFCSA Guidebook* (Lytton BC: ShchEma-mee.tkt Project, Nlaka'pamux Nation Tribal Council, 2015) at 61.

²⁰³ Crown-Indigenous Relations and Northern Affairs Canada, “Report on First Nation border crossing issues” (31 August 2017), online: Government of Canada <https://www.rcaanc-cirnac.gc.ca/eng/1506622719017/1609249944512>; Lilian Eva Dyck and Dennis Glen Patterson, “Border Crossing Issues and the Jay Treaty” (June 2016), online: *Standing Senate Committee on Aboriginal Peoples* https://sencanada.ca/content/sen/committee/421/APPA/Reports/APPA-JayTreatyReport_e.pdf at 10 [**Dyck and Patterson, Jay Treaty**].

²⁰⁴ Dyck and Patterson, *Jay Treaty* at 9.

²⁰⁵ Nlaka'pamux Nation Tribal Council, “Who We Are Nlaka'pamux Identity” (n.d.), online: <https://nntc.ca/>.

the 49th parallel”.²⁰⁶ Further, they state that the Colville Confederated Tribes (in Northern Washington State) are part of the Sylix Nation.²⁰⁷

In 2016, the Standing Senate Committee on Aboriginal Peoples examined the challenges First Nations citizens face when crossing the Canada-US border, concluding that the formalities involved in crossing the border have made it difficult for First Nations peoples on either side of the border to maintain ties. The Committee Report highlights the 1794 Jay Treaty, which includes provisions that allow First Nations individuals to freely cross the border. While the United States recognizes this right, Canada does not. Canadian courts have ruled that the Jay Treaty is not in force in Canada and does not confer benefits on any First Nations person within Canada. The Committee emphasized the importance of finding solutions to address the complexity of border crossings for First Nations individuals.²⁰⁸

The challenges faced by UFNs and First Nations with citizens, histories, and territories spanning both sides of the Canada-U.S. border are numerous, and the *Indian Act* needlessly exacerbates these difficulties. By imposing arbitrary limitations on Band recognition and Indian status, the *Indian Act* obstructs First Nations' ability to determine their own citizenship. Long before federal oversight or the *Indian Act*, First Nations exercised self-governance over citizenship matters. Removing restrictive provisions of the *Indian Act* would empower UFNs and cross-border First Nations to establish their own citizenship laws, strengthening their autonomy and allowing them to govern without unnecessary federal intervention.

In addition, Canada should formally recognize the rights outlined in the Jay Treaty to promote freer movement across the border for cultural, familial and economic reasons.

Dispute Resolution Mechanisms

While the *Indian Act* permits First Nations to assume control over Band membership by establishing written rules,²⁰⁹ this narrow mechanism does not adequately account for the broader complexities of citizenship, identity, and cultural belonging. To navigate these complex matters, First Nations dispute resolution processes, grounded in traditional knowledge and respect, are essential.

²⁰⁶ Sylix Okanagan Nation Alliance, “Sylix Okanagan Nation” (n.d.), online: <https://sylix.org/about-us/sylix-nation/> [Sylix Okanagan Nation].

²⁰⁷ Sylix Okanagan Nation.

²⁰⁸ Dyck and Patterson, Jay Treaty at 8-12.

²⁰⁹ *Indian Act* at s. 10.

Disputes around citizenship may include disagreements about eligibility criteria, recognition of customary or kinship-based relationships, disenrollment, or procedural fairness in citizenship decisions. Addressing these conflicts through culturally appropriate and effective dispute resolution mechanisms is essential to ensuring the legitimacy, transparency, and sustainability of First Nations citizenship systems.

1. Traditional Approaches

Historically, judicial mechanisms of dispute resolution have failed to reflect First Nations worldviews and often compounded harm. These systems typically prioritize rigid evidentiary standards and adversarial procedures that are inconsistent with First Nations laws and social structures.²¹⁰ In contrast, First Nations-led dispute resolution mechanisms rooted in First Nations legal traditions can incorporate Nation-based, consensus driven, and restorative approaches.²¹¹

Traditional First Nations approaches to resolving conflict often emphasize restoration, harmony, and consensus, rather than adversarial or punitive outcomes.²¹² These approaches reflect the values of the First Nations and seek to maintain or rebuild relationships rather than sever them. Dispute resolution methods such as community mediation circles, Elders' advisory panels, and storytelling are examples of how First Nations traditions can guide fair and culturally resonant outcomes.

The Indigenous Legal Lodge model, which may include representatives from the disputing parties' Nations, neutral facilitators, and First Nations and non-First Nations legal experts, is a framework that respects both traditional and contemporary legal contexts.²¹³ A similar model has been implemented by the Anishinabek Nation, which has developed national and regional dispute resolution processes informed by traditional knowledge and community input.²¹⁴ The Treaty Four Institute created an Administrative Tribunal to adjudicate First Nation legal disputes based on rules of Natural Justice, and incorporates both traditional values and contemporary dispute resolution

²¹⁰ See Emmy Beaton and Sarah Froese, "FNLC Shared Territories and Overlaps Forum Discussion Paper: Western and Indigenous Dispute Resolution Mechanisms" (nd), online: https://www.bcafn.ca/sites/default/files/docs/events/Dispute%20Resolutions_FINAL.pdf [FNLC **Dispute Resolution**] at 2-3;

²¹¹ See FNLC Dispute Resolution at 4.

²¹² FNLC Dispute Resolution at 4.

²¹³ FNLC Dispute Resolution at 4-5.

²¹⁴ Canadian Human Rights Commission, "A Toolkit for Developing Community-based Dispute Resolution Processes in First Nations Communities" (2024), online: <https://nwac.ca/assets-knowledge-centre/CHRA-A-Toolkit-for-Developing-Community-Based-Dispute-Resolution-Processes-in-First-Nations-Communities.pdf> at 40-41 [CHRC **Dispute Resolution Toolkit**].

approaches.²¹⁵ These initiatives highlight the diversity and adaptability of First Nations dispute resolution mechanisms and the importance of First Nations-led processes.

2. Creating Dispute Resolution Mechanisms

First Nations must establish their own processes for developing dispute resolution mechanisms based on their own customs and needs. The BC Assembly of First Nations has published useful considerations for guiding the design of dispute resolution processes. These include important questions, such as who will fund the process, who will be involved, and how will final determinations be made? One of the key considerations will be how the First Nations dispute-resolution system will interact with other jurisdictions. If the outcome must be accepted by municipal, provincial or federal governments, or the broader Canadian community at large, how will this work?²¹⁶

Additionally, to be effective, dispute resolution mechanisms must be transparent and fair, and respectful of both individual and collective rights. Transparency means that rules and processes are clear, publicly available, and consistently applied. Individuals should know how disputes will be handled, who makes decisions, and what standards are used. Transparent systems help prevent misunderstandings and build trust among First Nations citizens.²¹⁷

Procedural fairness requires that decision-makers are unbiased, parties are properly informed, and all individuals have an opportunity to be heard. Fair processes are likely to increase acceptance of outcomes, even when the parties disagree with the final decision.²¹⁸ Dispute resolution systems should be flexible to meet the diverse needs of the First Nation, while maintaining consistent standards.

The balancing of individual and collective rights requires First Nations to protect their collective identity and governance structures while also respecting the rights of individual citizens. This balance can be difficult to achieve, but it will help ensure legitimacy and long-term success.

²¹⁵ CHRC Dispute Resolution Toolkit at 64-65.

²¹⁶ FNLC Dispute Resolution at 5-6.

²¹⁷ See International Labour Organization, “Transparency to Enable Better Dispute Resolution Systems (7 May 2017), online: <https://www.ilo.org/publications/transparency-enable-better-dispute-resolution-systems>.

²¹⁸ See DND/CAF Ombudsman, “Principles of Procedural Fairness” (5 July 2024), online: Government of Canada <https://www.canada.ca/en/ombudsman-national-defence-forces/education-information/civilian-employees/procedural-fairness.html>; British Columbia Ombudsperson, “Fairness in Practice Guide: A Guide to Administrative Fairness in the Public Sector (n.d.), online: <https://bcombudsperson.ca/assets/media/OMB-FairnessInPractice-ForWEB-Feb18-5.pdf>.

International standards, such as UNDRIP, affirm both individual and collective rights.²¹⁹ First Nations must consider how to protect the rights of individuals without undermining collective wellbeing.

By implementing dispute resolution mechanisms that incorporate the above elements, First Nations can resolve citizenship disputes in a way that reflects their own laws, strengthens internal governance, and reinforces cultural identity. These mechanisms not only promote fairness and accountability but also serve as an expression of First Nations laws in action. Ultimately, dispute resolution is not simply a procedural requirement; it is a foundational element of restoring First Nations jurisdiction and creating responsive and resilient First Nations citizenship systems.

When developing dispute resolution mechanisms, First Nations may also wish to consider whether their preferred mechanisms are:

- First Nation-led and Nation-specific, with the individual First Nation maintaining authority to establish its own procedures, such as councils of Elders, appeal panels, etc;
- Supported at the regional or Treaty level, through structures such as Tribal Councils or Treaty organizations, where First Nations choose to collaborate on shared or hybrid systems; and/or
- Supported by the AMC or another First Nations organization, which additionally may provide some or all of the following:
 - Development of template procedures, guiding principles, and training materials,
 - Provision of legal and cultural expertise to help design mechanisms grounded in First Nations,
 - Coordination of regional forums to share best practices and case studies, and
 - Assistance in establishing local or regional rosters of Elders/Knowledge Keepers or citizenship experts who can support dispute resolution processes.

²¹⁹ UNDRIP at Articles 1 and 33.

PART 7: AMC-PROPOSED FEDERAL RECOGNITION VEHICLES

Section 35 of the *Constitution Act, 1982*, recognizes and affirms the “existing aboriginal and treaty rights of the aboriginal peoples of Canada”. The aboriginal peoples of Canada include the Indian, Inuit and Métis peoples of Canada.²²⁰ The scope of rights protected under section 35 is not settled in law and is often a source of dispute between First Nations and the Crown. While the current federal government recognizes that Indigenous peoples have an inherent right of self-government over citizenship guaranteed in section 35 of the *Constitution Act, 1982*,²²¹ this right has never been recognized by the Canadian courts.

The *UNDA* Action Plan Measure 2.9 commits Canada to “[c]onsult First Nations and other impacted groups to support the co-development of opt-in alternatives to *Indian Act* registration and membership (First Nation citizenship)”.²²² For it to be effective, there must be a federal recognition vehicle in place to ensure Canada’s fulsome recognition of First Nations inherent jurisdiction over citizenship, First Nations citizenship laws, and different First Nations-directed and Treaty-centred citizenship models.

Despite the recognition of the effectiveness of a federal recognition mechanism, the AMC is firm in its position that First Nations governments are not required to gain federal government recognition of the right to self-government over citizenship laws to exercise inherent jurisdiction. First Nations do not require Canada’s assistance to legitimize their laws. First Nations sovereignty and rights are from the Creator and other sources that far pre-date colonial assertions of power. Lack of recognition could, however, be an impediment to the implementation of First Nations citizenship laws, for example, through lack of funding or resources.

Moving Toward a Co-Existence Framework

On the territory that is now called Canada, a multi-juridical system consisting of three legal orders came into existence when settlers first arrived on First Nations land and entered into a Nation-to-Nation relationship. First Nations, provincial and federal legal orders comprise this system. Each legal order influences the other and none are fully autonomous.²²³

²²⁰ *Constitution Act, 1982* at s 35.

²²¹ Crown-Indigenous Relations and Northern Affairs Canada, “Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government” (15 September 2010), online: <https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136>.

²²² *UNDA* Action Plan at 52.

²²³ John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 113 [Borrows, *Canada’s Indigenous Constitution*].

For most of the country's history, colonial laws have been a dominant force, restricting the development and growth of First Nations laws.²²⁴ The subjugation of First Nations laws has been combined with discriminatory and racist beliefs about First Nations pre-contact societies to undermine the perceived legitimacy of First Nations legal orders.²²⁵ Many Canadian citizens are only now beginning to recognize that complex legal systems existed long before the arrival of settlers.

Anishinaabe legal scholar Dr. John Borrows posits that, despite this heavy and inappropriate overshadowing of colonial law, First Nations laws can maintain their power.²²⁶ From Dr. Borrows' perspective, dialogue between legal orders can be beneficial, as greater reciprocity has facilitated access to a richer body of laws to answer legal questions. The integrity of First Nations legal systems is not solely dependent upon isolation, internal logic, or doctrinal purity. Integrity also depends upon the system's recognition, both internally and externally.²²⁷

The successful coexistence of Canada's laws and First Nations citizenship laws does not require isolation but can be achieved through a principled approach to managing interactions that respects the sovereignty of each party. Any proposed federal law that may impact a First Nations rights to self-government or legal order must be developed, not only in consultation, but in cooperation with First Nations. Such laws must not interfere with or restrict First Nations self-government rights.

Canada and First Nations should work together in law drafting, capacity building, and implementation monitoring. At all stages, the right to self-determination and self-government must be observed and recognized by Canada. Developing and agreeing to the process of co-develop is an important First step to then co-developing a federal recognition framework.

²²⁴ Borrows, *Canada's Indigenous Constitution* at 114.

²²⁵ Muhammad Asadullah, Charmine Cortez, Geena Holding, Hanza Said, Jenna Smith, Kayla Schick, Kudzai Mudyara, Megan Korchak, Nicola Kimber, Noor Shawush, and Stephanie Dawndyck, *Decolonization and Justice: An Introductory Overview* (Regina, 2022) at 5-6.

²²⁶ Borrows, *Canada's Indigenous Constitution* at 114.

²²⁷ Borrows, *Canada's Indigenous Constitution* at 7, 10-11.

Federal Recognition Framework

Although the federal government claims to acknowledge First Nations rights to self-government as affirmed in section 35 of the *Constitution Act, 1982*,²²⁸ Canadian courts have yet to recognize this right. In the absence of legally binding protections, colonial institutions may take advantage of this gap in the law to undermine or ignore First Nations citizenship laws and governance systems.

The AMC advocates for federal legislation that will recognize First Nations self-government and sovereignty in relation to citizenship in a broad and overarching manner, without imposing constraints on First Nations. This legislation must be optional for First Nations. There must still be an avenue for First Nations to enter into self-government agreements or Treaties with the Crown that could recognize citizenship self-government.

The following sets out the three identified options for federal recognition, with emphasis placed on the AMC's preferred mechanism – Federal recognition legislation. Other identified mechanisms are recognition through agreement or Treaty, and recognition through the courts.

1. *Federal Recognition Legislation*

Federal legislation, such as a *First Nations Citizenship Recognition Act*, could act as a federal recognition vehicle obligating colonial governments to respect First Nations jurisdiction over citizenship.²²⁹ This legislation could also ensure that provincial laws are displaced in favour of First Nations laws. While the need for Canadian law to empower First Nations laws is contrary to First Nations worldviews and conceptualizations of sovereignty, such legislation can provide certainty that enables First Nations to take concrete steps towards re-asserting jurisdiction over citizenship while minimizing colonial intrusions.

The AMC's advocated approach is reflective of Professor Naomi Metallic's proposed "legislative reconciliation" method, where "the legislative branches of governments in Canada pass legislation to facilitate the exercise of Indigenous peoples' inherent rights." The federal government should pass legislation to implement inherent and Treaty rights "recognized and affirmed" by section 35 of the *Constitution Act, 1982*.²³⁰ The following criteria are key to a legislative approach:

²²⁸ Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, "Self-government" (2024), online: <https://www.rcaanc-cirnac.gc.ca/eng/1100100032275/1529354547314> [CIRNAC, Self-Government].

²²⁹ AMC, Community Dialogue Forum (Opaskwayak Cree Nation) at 8.

²³⁰ Naomi Metallic, "Aboriginal Rights, Legislative Reconciliation and Constitutionalism" (2022-23) 27:1 *Rev Const Stud* 1, [Metallic, Legislative Reconciliation] at 2-3 and 5.

- The underlying premise must be that the legislation is “not required to give effect to the inherent rights since these rights already exist”;
- The purpose of the legislation is to clarify that the rights are recognized under Canadian law, and to specify what rights are recognized and how, and where and when they can be exercised;
- Set out a framework to facilitate the exercise of inherent rights, including to specify the obligations of Canada and third parties in relation to those rights, including funding responsibilities, processes for negotiations and resolving disagreements, reporting and other accountability measures, and coordinating overlapping jurisdiction; and
- In terms of accountability, First Nations governments must only be accountable to their citizens in accordance with their own legal orders.²³¹

This mechanism is supported by Article 38 of UNDRIP, which states that “States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of [UNDRIP]”.²³²

The primary benefit of federal legislation as a recognition mechanism is that it is a simpler method for a sovereign First Nation to choose whether the default colonial law applies (the *Indian Act*) or if it wishes to chart a new path towards implementing its own citizenship rules. Legislation can also allow for capacity-building measures to support First Nations to assume more control over citizenship governance. If done appropriately, federal legislation is also an easier mechanism for respecting the diversity of First Nations in Manitoba and Canada.

2. Agreement / Treaty

A First Nation may seek to gain recognition of a right to self-government in relation to citizenship through an agreement with the federal government. This could take the form of a Treaty or self-government agreement. Agreements with the government are typically accompanied by implementation legislation.²³³ First Nations may also work together to enter into agreements with the Crown on a regional basis or through First Nations organizations such as the AMC.

The issue of First Nations self-government grew from discussions on Aboriginal rights in the aftermath of the 1969 White Paper on federal Indian policy (though First Nations have practiced their own forms of government for thousands of years). In the 1970s, First Nations organizations

²³¹ Metallic, *Legislative Reconciliation* at 12-13.

²³² *UNDRIP* at Article 38; Metallic, *Legislative Reconciliation* at 6.

²³³ For example: the *Nisga'a Final Agreement Act*, SC 2000, c 7.

began to pressure the federal government for rights recognition, including the right of self-government.²³⁴

In 1982, a Special Committee of the House of Commons on Indian Self-government was appointed. The following year the Committee recommended that the federal government recognize First Nations as a distinct order of government within the Canadian federation and pursue processes leading to First Nations self-government. The federal government announced the Community-Based Self-Government Policy in 1985. Its objective was to create a new relationship outside of the *Indian Act* through negotiating self-government arrangements with First Nations.²³⁵

Self-government agreements set out arrangements for Indigenous groups to govern their internal affairs and assume greater responsibility and control over the decision-making that affects their Nations. Self-government agreements address the structure and accountability of First Nations governments, their lawmaking powers, financial arrangements and their responsibilities for providing programs and services to their members.²³⁶

There are 25 self-government agreements across Canada involving 43 Indigenous communities, as well as 50 self-government negotiation tables across the country and 2 education agreements involving 35 Indigenous communities.²³⁷ Each First Nations self-government agreement in Canada is made in accordance with the following foundational principles:

- No self-government agreement is possible without approval through a Nation vote.
- Self-government is negotiated within the Canadian constitutional framework and federal legislation is passed before the negotiated agreement takes effect.
- Under self-government, First Nations laws operate in harmony with federal and provincial laws. First Nations laws protecting culture and language generally take priority if there is a conflict among laws.

²³⁴ Canada, Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy, 1969* (Ottawa: Queen's Printer, 1969), online: https://oneca.com/1969_White_Paper.pdf; University of British Columbia, *The White Paper 1969*, Indigenous Foundations, online: https://indigenousfoundations.arts.ubc.ca/the_white_paper_1969/.

²³⁵ Canada, Parliament, House of Commons, *Report of the Special Committee on Indian Self-Government* (Ottawa: Queen's Printer, 1983) (Chair: Keith Penner), online: <https://caid.ca/PennerRep1983.pdf>; Crown-Indigenous Relations and Northern Affairs Canada, *General Briefing Note on Canada's Self-Government and Comprehensive Land Claims Policies and the Status of Negotiations* (2014), online: <https://www.rcaanc-cirnac.gc.ca/eng/1373385502190/1542727338550>.

²³⁶ CIRNAC, Self-Government.

²³⁷ CIRNAC, Self-Government.

- The *Charter*, the *Canadian Human Rights Act* and other general laws such as the *Criminal Code* continue to apply.
- Community members and non-member residents on Indigenous lands will have input into decisions that directly affect them.

The following are examples of the citizenship aspects of two self-government agreements:

- *Nisga'a Final Agreement*: The Nation has its own enrolment register, independent of the *Indian Act*. An individual is entitled to become a Nisga'a participant if they satisfy the eligibility criteria of the Eligibility Chapter of the Nisga'a Final Agreement. An Enrollment Committee meets every two months to review applications.²³⁸
- *Haida Nation Citizenship Act*: All Haida citizens are eligible to register under *Xaayda 'Waadluxan K'wii Haida Citizenship Act*. Haida citizens are defined in the Constitution of the Haida Nation and are listed on the K₂waalas kayd gud gii kaasdll. Honorary designations may be conferred to a person who is not of Haida ancestry but does not grant Haida citizenship, or Haida hereditary or Aboriginal rights. Adoption of persons not of Haida ancestry by Haida families also does not confer Haida hereditary or Aboriginal rights, or rights to citizenship. Haida citizens who also belong to another Nation may keep their citizenship to that Nation without affecting their Haida citizenship. To verify citizenship throughout the registration process, the *Xaayda 'Waadluxan K'wii Haida Citizenship Act* uses clan trees that have been produced by each clan of the Nation. The Haida Nation is currently working to build a database of citizens by registering all Haida from around the world.²³⁹

While the AMC advocates for federal recognition legislation, it also recognizes that all First Nations may not opt-in to that framework. Each First Nation in Manitoba must retain its right to negotiate directly with Canada concerning citizenship jurisdiction, and develop agreements that recognize and affirm the First Nation's authority to define and manage citizenship according to its own laws, customs and traditions.

Agreements could take the form of self-government agreements or other recognition agreements. There is no prescription for what these may look like, it is up to First Nations and Canada to negotiate such agreements on a Nation-to-Nation basis if, for some reason, a federal recognition mechanism is not suitable for a First Nations' inherent laws and citizenship mechanisms. This

²³⁸ British Columbia, *Nisga'a Final Agreement Act*, SBC 1999, c 2, Chapter 20: Eligibility and Enrolment, online: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/99002_23.

²³⁹ Council of the Haida Nation, *Xaayda 'Waadluxan K'wii Haida Citizenship Act* (2017), online: <https://www.haidanation.ca/wp-content/uploads/2020/03/Haida-Citizenship-Act-2017-adopted.pdf>.

option recognizes that First Nations have the inherent right to self-government that may be exercised outside of federal recognition legislation.

In addition to Nation-specific pathways, First Nations may choose to work together to pursue regional citizenship frameworks. For example, groups of First Nations in Manitoba may agree on shared principles or criteria for citizenship and jointly negotiate a regional recognition and funding agreement with Canada outside of federal recognition legislation.

3. Litigation – Judicial Recognition

No First Nation has successfully established an inherent right to self-government before the Canadian courts. The Supreme Court of Canada has established that for a First Nation to prove a right to self-government, it should not seek a broad right of self-government but rather a specific right. Establishing that right under section 35 of the *Constitution Act, 1982*, requires the First Nation to prove that the specific right to self-government is integral to the First Nation's distinctive culture at the time of contact with Europeans and that, without this right, their society would be significantly different.²⁴⁰

The AMC maintains that it is open for First Nations in Manitoba to pursue judicial recognition of First Nations inherent and constitutionally protected rights to self-government over citizenship. The time, expense, and evidentiary difficulties of this avenue are unnecessary where the principles of UNDRIP are respected and implemented in Canadian law. As such, where the federal government seeks to proceed on the basis of a co-existence framework, litigation should be an unnecessary mechanism for federal recognition of First Nations citizenship jurisdiction.

Considerations for Development of Federal Recognition Legislation

The destructive force of Canada's colonizing agenda against First Nations legal orders cannot be overstated. The imposition of Canada's Band membership and status laws above First Nations own citizenship governance systems has robbed First Nations citizens of their identities and created unfair patterns of gendered discrimination and oppression. As such, Canada's reconciliation efforts must repair the damage to First Nations laws and sovereignty, and the legacy of harm that the displacement of First Nations laws has created.

Federal recognition legislation must empower First Nations to choose whether to implement their own citizenship law or maintain the *Indian Act status quo*. In addition, Canada must recognize First Nations development processes for citizenship laws. This recognition is crucial to successful

²⁴⁰ *R v Pamajewon*.

implementation of First Nations citizenship laws and models to establish legitimacy at the earliest possible stage, facilitate reconciliation, and contribute to effective planning measures.

The starting point for any federal recognition mechanism is the spirit and intent of the Treaties. First Nations entered into Treaties with the Crown as Nations. In addition to citizenship, First Nations languages, history, culture, governance systems and territories are all tied to Nationhood. All these things are connected. First Nations full jurisdiction over citizenship must be respected without interference from colonial governments. This means that in addition to full sovereign authority over citizenship, funding must not attach to arbitrary limits like which individuals have “status”.

At a minimum, federal recognition legislation must:

- Recognize First Nations inherent jurisdiction over citizenship and citizenship laws without limitation.
- Respect the Treaty and Nation-to-Nation relationship.
- Be First Nation-led and include space for the development of First Nations-led entities to replace the *Indian Act* Registrar and status system.
- Fulfill the Crown’s fiduciary obligations and live up to the honour of the Crown.
- Be consistent with the notion of reconciliation and the duty to consult.
- Follow the principle of free, prior and informed consent.
- Provide for clear and unambiguous funding models and capital transfer amounts to support citizenship transition.

Federal recognition of First Nations self-government rights over citizenship laws also interacts with UNDRIP and its implementation in Canadian domestic law. Article 33 of UNDRIP provides that Indigenous peoples have the right to determine their own membership in accordance with their customs and traditions. Indigenous peoples also have the right to determine the structures and to select the membership of their institutions in accordance with their own customs.²⁴¹ In order to align with Article 33 of UNDRIP, federal recognition legislation should not be limited or otherwise constrained by colonial authorities.

²⁴¹ UNDRIP at Article 33.

Avoiding the Harmful Status-Quo

It is integral that Federal recognition legislation avoids the harmful *status quo*. Currently, there are a number of federal regimes that allow First Nations to choose different governance frameworks, including:

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- First Nations Fiscal Management Act;²⁴²
- First Nations Oil and Gas Moneys Management Act;²⁴³
- First Nations Commercial and Industrial Development Act;²⁴⁴ and
- First Nations Elections Act.²⁴⁵

This legislation operates by allowing First Nations to “opt-out” of the *Indian Act* by “opting-in” to the other legislation. It provides First Nations with greater flexibility in some areas of governance but falls short of being grounded in the inherent right of self-government. Ultimately, Canada retains final authority, and First Nations are accountable to Canada in relation to this legislation.

The *Framework Agreement on First Nation Land Management Act*²⁴⁶ provides a similar prescriptive basis for recognizing First Nations jurisdiction. While this regime can displace the *Indian Act*, Canada still retains federal oversight over lands jurisdiction. The agreement still represents an incremental or delegated approach to self-government rather than full recognition of inherent rights.

The Band membership provisions of the *Indian Act* operate within a similar opt-in framework. Section 10 of the *Indian Act* provides a limited means by which First Nations can assert jurisdiction. It requires that in enacting its own membership rules, a Band must include any person who had a right to be entered on a Band List under the *Indian Act* rules at the time the Band’s rules are established.²⁴⁷

²⁴² *First Nations Fiscal Management Act*, SC 2005, c. 9.

²⁴³ *First Nations Oil and Gas and Moneys Management Act*, SC 2005, c. 48.

²⁴⁴ *First Nations Commercial and Industrial Development Act*, SC 2005, c. 53.

²⁴⁵ *First Nations Election Act*, SC 2014, c. 5.

²⁴⁶ *Framework Agreement on First Nation Land Management Act*, SC 2022, c. 19.

²⁴⁷ *Indian Act* at s. 10.

Membership codes or rules passed under section 10 of the *Indian Act* still interact with and are subject to other federal laws, for example:

- *Access to Information Act*: Any Canadian citizen, permanent resident, individual or corporation present in Canada has the right to access federally controlled information and records, including membership laws passed under section 10, as long as they are not of a personal nature;²⁴⁸
- *Federal Courts Act*: Decisions made under membership laws, including decisions made in accordance with internal appeals mechanisms, are reviewable by the Federal Court. Band Councils are considered administrative decision makers whose decisions are subject to judicial review under the *Federal Courts Act*.²⁴⁹
- *Canadian Human Rights Act*: Since 2008, Band membership codes have been subject to the *Canadian Human Rights Act*. Individuals can file complaints with the Canadian Human Rights Commission if they believe they have been discriminated against under their Band's membership rules.²⁵⁰

Imposition of this legislation is an infringement on First Nations rights to self-government and is unacceptable for First Nations in Manitoba. Federal recognition mechanisms must not unilaterally impose colonial laws on First Nations without free, prior and informed consent.

Section 10 Membership Codes in Manitoba

The AMC advocates for an approach away from section 10 membership codes in Manitoba. However, there are some aspects of section 10 membership codes that First Nations may wish to identify and use to develop citizenship laws outside of the *Indian Act*.

Some examples to note from section 10 Band membership codes, include:

- Buffalo Point First Nation: Considerations in membership applications include the extent to which an individual is willing to commit their personal and economic resources to the advancement of the Buffalo Point community, as well as whether the previous conduct and lifestyle of that person would likely be compatible with the culture, society and community of Buffalo Point.²⁵¹

²⁴⁸ *Access to Information Act*, RSC, 1985, c A-1; *Twinn v Canada (Minister of Indian Affairs & Northern Development)*, [1987] 3 FC 368; *Horseman v Canada (Minister of Indian Affairs & Northern Development)*, [1987] 3 FC D.1.

²⁴⁹ *Norris v Matsqui First Nation*, 2012 FC 1469 at para 50.

²⁵⁰ *An Act to amend the Canadian Human Rights Act*, SC 2008, c. 30 at s. 1.

²⁵¹ *Buffalo Point First Nation Membership Code* at ss6(c).

- Chemawawin Cree Nation: A child is entitled to be registered on the Citizenship List if they are the natural child of a citizen of the First Nation, unless that child has no Indian blood. A child that is lawfully adopted by a citizen may be registered on the Citizenship List, and adoption by Indian custom shall be deemed to be lawful adoption. Any other person who has a substantial connection with the First Nation through Tribal Affiliation (through adoption, kinship or marriage) or ancestry may apply for citizenship in the First Nation. The Chief and Council may decide to recognize any person who is not a citizen and has made an outstanding contribution as an Honorary Citizen.²⁵²
- Norway House Indian Band: Any person who is not a descendant of a member of the Norway House Indian Band but who is married to a member of the Norway House Indian Band can be a Band member as long as their marriage to a member of the Norway House Indian Band exists, if they can prove that they are not a member of any other recognized Indian Band or community and are of a good moral character.²⁵³

Improving on the First Nations CFS Act

A more acceptable federal legislative recognition mechanism is the *First Nations CFS Act*. Under the *First Nations CFS Act*, the federal government affirms the inherent right of First Nations jurisdiction over First Nations child and family services and provides a pathway for First Nations to re-assert jurisdiction over that right.²⁵⁴

Through the *First Nations CFS Act*, First Nations laws can obtain the force of federal law. As a result, in the event of a conflict or inconsistency between First Nations laws and colonial laws, First Nations laws will prevail. The paramountcy of First Nations laws is still limited, however, by the application of the *Canadian Human Rights Act*, the *Charter of Rights and Freedoms*, and the national standards set out in the *First Nations CFS Act*.²⁵⁵

The Supreme Court of Canada established that the federal government “can now no longer assert, in any proceedings or discussion, that there is no Indigenous right of self-government in relation to child and family services”.²⁵⁶ It is not open to the Crown to unilaterally amend the Constitution. As such, the federal government can still unilaterally amend or repeal legislation in a way that reduces the recognition of First Nations rights formerly recognized.

²⁵² *Chemawawin Cree Nation Citizenship Code* at s4(2), 4(3), s5, s13.

²⁵³ *Membership Code and Rules of Norway House Indian Band* at 7.

²⁵⁴ *First Nations CFS Act*.

²⁵⁵ *First Nations CFS Act* at s. 19, 22.

²⁵⁶ *Reference re First Nations CFS Act* para 61.

In a press release about the Supreme Court of Canada's decision, the AMC stated that it was "an important step to address the over-representation of First Nations children in the child welfare system in Manitoba" but acknowledged the Court's failure "to clearly recognize that First Nations have their own laws and legal systems that are distinct from Canadian laws." The AMC's objective is to advocate for the recognition of First Nations self-government rights by the courts, but in the interim to "assert our sovereignty using our own mechanisms as well as those available to us in the colonial legal framework."²⁵⁷

An approach that relies on colonial validation to give force to First Nations laws is inherently flawed. First Nations do not derive their authority from Canada, and their law-making power is not contingent on Canada's endorsement. By relying on colonial law in this way, First Nations inherent authority is at risk of being distorted and undermined.

Federal legislation easily risks becoming devolution legislation where the source of rights is not inherent but devolved from the federal government. Naomi Metallic summarizes, "the typical view is that the scope of, and any limits placed on, delegated jurisdiction is at the whim of the devolving government, without any recourse by Indigenous groups." In contrast, Metallic states that limitations placed on inherent jurisdiction, as a protected constitutional right, would have to be justified by the government or found unconstitutional.²⁵⁸

While the *First Nations CFS Act* is a step in the right direction, it does not meet the components for full self-government, particularly because the *First Nations CFS Act*:

- Requires First Nations to make reasonable efforts to enter into a coordination agreement with colonial governments, which is an additional and unnecessary imposition by federal legislation.
- Lacks any guarantee for stable, predictable and long-term funding for First Nations to implement their jurisdiction.
- Imposes colonial law (federal national minimum standards) above First Nations laws, even where the requirements for coordination agreements are entered into.
- Imposes colonial conflict resolution rules where First Nations laws may overlap, rather than requiring First Nations to resolve conflicts pursuant to their own customs and laws.

²⁵⁷ The Assembly of Manitoba Chiefs, "The Assembly of Manitoba Chiefs Applauds the Supreme Court of Canada's Decision Regarding An Act Respecting First Nations, Inuit and Métis Children, Youth and Families" (9 February 2024), online: https://manitobachiefs.com/press_releases/the-amc-applauds-the-supreme-court-of-canadas-decision/.

²⁵⁸ Naomi Metallic, *Legislative Reconciliation*, 8-9.

- Recognizes First Nations laws as having the force of federal law, because this should be restated as “also having the force of federal law” to better recognize that the First Nations laws stem from inherent rights and not the federal government.²⁵⁹
- Applies the *Charter* and the *Canadian Human Rights Act* to a First Nation exercising its jurisdiction under the *First Nations CFS Act*.
- Maintains jurisdiction of the provincial courts unless that authority is displaced by a First Nations law meeting the requirements of the *First Nations CFS Act*.²⁶⁰

In addition to remedying the above list of issues with the *First Nations CFS Act*, mechanisms should be considered to guard against the federal government’s ability to unilaterally amend federal recognition legislation in a way that could minimize the inherent rights of First Nations self-government over citizenship.

One such mechanism that can enhance and protect a legislated First Nations right to self-government over citizenship is a referendum requirement. An example of this can be found in the provincial legislation regulating the operation of Manitoba Hydro. Section 15.1 of *The Manitoba Hydro Act* requires that any amendment to authorize or effect privatization of Manitoba Hydro must first be put to voters in a referendum and approved by a majority of the votes cast.²⁶¹ This concept could be adapted for federal recognition legislation, requiring, for example, a majority of First Nations governments or citizens to vote in favour of any amendments to the legislation before an amendment or repeal can be considered by Parliament. An even stronger requirement could set out a minimum voting attendance threshold. Exact provisions must be determined in consultation with First Nations.

While certain procedures can be added to legislation to enhance First Nations rights, without constitutional amendment or judicial recognition to ensure specific rights are upheld, these procedures will not be absolute. The Supreme Court of Canada has affirmed that parliamentary sovereignty means that Parliament has the exclusive authority to enact, amend and repeal laws as it sees fit, subject to the limits imposed by the Canadian Constitution. Parliament cannot restrict

²⁵⁹ See: Nisichawayasihk Cree Nation, “Submission of the Nisichawayasihk Cree Nation on Bill C-92” (31 May 2019) at 8, online (pdf): *Senate of Canada* https://sencanada.ca/content/sen/committee/421/APPA/Briefs/Brief_NisichawayasihkCreeNation_e.pdf.

²⁶⁰ *First Nations CFS Act*.

²⁶¹ *The Manitoba Hydro Act*, CCSM, c. H190, s. 15.1.

itself against future legislative action by ordinary legislation.²⁶² While a referendum cannot be determinative, it may indicate a preferred procedural requirement for making amendments.

Co-Development and Planning

Federal recognition legislation must be co-developed with First Nations in order to obtain their free, prior and informed consent to the process. Article 19 of UNDRIP requires the federal government to consult and cooperate in good faith with First Nations through their own representative institutions to obtain their free, prior and informed consent before adopting or implementing legislative or administrative measures that affect them.²⁶³

First Nations in Manitoba have inherent jurisdiction to deal with their own citizenship. Canada must, on that basis, deal with First Nations in Manitoba on a Nation-to-Nation basis that respects honour of the Crown and Treaty relationships.

The AMC's role in co-development of federal recognition legislation would be distinct from, but complementary to, the role of First Nations. As the AMC does not hold jurisdiction to make citizenship decisions on behalf of First Nations, it cannot and should not replace the role of First Nations in the co-development process. Each First Nation has inherent jurisdiction over its citizenship and must be recognized as self-determining.

Throughout the co-development process, the AMC can serve as a regional political and advocacy body to help coordinate a unified voice among First Nations in Manitoba on broad policy matters. Following the co-development process, the AMC can continue to play a coordinating role in supporting implementation.

Following the co-development process, Canada can assist with implementation of First Nations citizenship laws by raising awareness of forthcoming changes to *Indian Act* status and membership provisions. Canada can also assist with funding for capacity building and citizen engagement efforts. Engagement efforts can assist to attract expertise and resources and create networks that can be operationalized for the benefit of First Nations citizenship laws and models.

²⁶² *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para 31; *R v Chouhan*, 2021 SCC 26 at para 142.

²⁶³ *UNDRIP* at Article 9.

PART 8: FUNDING AND FISCAL ARRANGEMENTS

The assertion of First Nations jurisdiction over citizenship marks a critical step in advancing self-determination and Nationhood. However, this exercise carries significant financial and administrative implications. This Part analyzes the financial requirements for implementing First Nations citizenship systems, proposed funding models, fiscal arrangements, and partnership opportunities necessary to support the implementation of First Nations jurisdiction over citizenship.

Misaligned Fiscal Frameworks

First Nations efforts to establish self-determined citizenship systems are significantly hindered by structural underfunding and fiscal frameworks that are misaligned with First Nations governance models. Decades of underfunding and fiscal relationships focused on ensuring compliance with program delivery and reporting requirements rather than empowering First Nations to design services based on the priorities of their citizens have been barriers for First Nations.²⁶⁴ The following identifies three primary issues where fiscal frameworks are currently misaligned.

1. Indian Act Issues and Failure to Adjust Formulas

Federal funding mechanisms predominantly rely on the *Indian Act*'s definition of "status Indians,"²⁶⁵ which fails to encompass the broader and more inclusive criteria many First Nations employ to define their citizenship. This discrepancy results in funding shortfalls, particularly when First Nations recognize non-status individuals as members, compelling First Nations to make difficult decisions regarding service provision.²⁶⁶ These funding misalignments force First Nations to choose between honouring their inclusive definitions of citizenship and securing necessary funding tied to federal definitions.²⁶⁷ To address this, a radical revision of the fiscal relationship between First Nations and Canada must occur, ensuring that funding mechanisms align with the self-determined citizenship criteria of First Nations.²⁶⁸

²⁶⁴ Assembly of First Nations, "Economic Issues Update" (July 2022), online: <https://afn.bynder.com/m/230899ed256727b1/original/2022-Issue-Update-Fiscal-Relations.pdf>.

²⁶⁵ Assembly of First Nations, *Transition to First Nations Control of Citizenship* (March 2020) 24, online: <https://www.afn.ca/wp-content/uploads/2020/11/20-03-31-Discussion-Paper-Transition-to-First-Nations-Control-of-Citizenship-final.pdf>. [AFN Citizenship Paper]

²⁶⁶ AFN Citizenship Paper at 24.

²⁶⁷ AFN Citizenship Paper at 25.

²⁶⁸ AFN Citizenship Paper at 25.

The 2018 AMC Citizenship Report confirmed that the federal government has historically failed to adjust funding in response to population increases following legislative amendments such as Bill C-31, contributing to severe service delivery pressures in critical areas such as housing.²⁶⁹ Participants affirmed that the current system not only imposes discriminatory definitions through the *Indian Act* but also fails to provide adequate resources to First Nations seeking to assert their inherent jurisdiction over citizenship. This underfunding is compounded by administrative burdens, such as high volumes of Band transfers and challenges in tracking transient populations, which further strain limited housing and program resources and directly impact First Nations abilities to manage their own affairs.²⁷⁰ These fiscal gaps contribute to governance instability and can even result in third-party management arrangements being imposed on First Nations.²⁷¹

In *Teslin Tlingit Council v Canada (Attorney General)*, the Teslin Tlingit Council challenged the federal funding formula on the grounds that it prevented the Nation from providing public services to its citizens at a level comparable to those available elsewhere in the Yukon. While this decision was grounded in a self-government agreement, the Court's instructions to Canada to negotiate a new funding arrangement with the Nation based on the total citizenship of the Nation, rather than only those individuals with status under the *Indian Act*, is instructive of the funding required for a new citizenship model.²⁷²

The decision in *Teslin Tlingit* underscores the urgent need to reform federal fiscal policy for First Nations in Manitoba to support the full implementation of First Nations jurisdiction over citizenship. Canada has now developed a Collaborative Self-Government Fiscal Policy, which takes into account more than simply *Indian Act* status for self-governing First Nations or First Nations operating under modern Treaties.²⁷³ This Policy has not been extended to most First Nations in Manitoba. Funding principles and funding agreements must be developed collaboratively with First Nations in Manitoba, concurrently with co-development of federal recognition legislation.

²⁶⁹ AMC, 2018 Citizenship Report at 5.

²⁷⁰ AMC, 2018 Citizenship Report at 5.

²⁷¹ AMC, 2018 Citizenship Report at 5-6.

²⁷² *Teslin Tlingit Council v Canada (Attorney General)*, 2019 YKSC 3 at para 66.

²⁷³ Crown Indigenous Relations and Northern Affairs Canada, "Canada's Collaborative Self-Government Fiscal Policy for Self-Governing Indigenous Governments", Government of Canada online: <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2019/08/canadas-collaborative-self-government-fiscal-policy-for-self-governing-indigenous-governments.html>.

2. *Financial Administration Pressures*

The financial pressures induced by the current colonial system are borne by Band Membership Clerks and Indian Registry Administrators, who are often part-time employees assuming multiple roles within their First Nation.²⁷⁴ This administrative fragility highlights the need for core funding to ensure stable staffing, legislative capacity, and updated training programs. Financial support for First Nations-led education and communication activities is necessary, especially to reach remote and isolated First Nations.²⁷⁵ Implementing First Nations jurisdiction over citizenship will require a comprehensive funding plan, including support for traditional governance models, administrative infrastructure, and legal reform elements that are not presently reflected in Canada's fiscal relationship with First Nations.²⁷⁶

3. *Start-up Costs and Capacity Development*

Developing citizenship systems involves high startup and operational costs. These include community engagement, legal drafting, legislative implementation, Informational Technology systems for citizen registries and secure identification tools. Any transfer of control over citizenship must be accompanied by appropriate resources and support, including funding, land, administration, authority and capacity building. The transfer must acknowledge Canada's ongoing fiduciary duties to First Nations, as well as its obligations under the *Indian Act* and Treaties.

Delaying fiscal arrangements until a First Nation achieves administrative capacity overlooks the reality that such capacity is most effectively built through experience. Without access to sufficient and empowering funding, First Nations risk remaining in a cycle of dependency that prevents meaningful progress towards self-governance.

Establishing First Nations citizenship entities, as discussed in Part 6, may help address this issue. When Treaty organizations, Tribal Councils, or representative organizations like the AMC take on core development work for citizenship systems, start-up costs can be reduced through shared infrastructure. Examples of components that could be shared between First Nations include:

- Template laws and procedures;
- Training programs and materials;
- Legal and policy toolkits; and

²⁷⁴ AMC, 2018 Citizenship Report at 7.

²⁷⁵ AMC, 2018 Citizenship Report at 7.

²⁷⁶ AMC, 2018 Citizenship Report at 7-8.

- Centralized dispute resolution frameworks.

Sharing these resources would reduce the need for each First Nation to independently invest in technical expertise, legal drafting, or policy development, allowing more funds to go towards implementation at the Nation level. As with all aspects of citizenship systems, resource sharing must be directly mandated by First Nations in Manitoba.

New Funding Arrangements

New funding arrangements are required to remedy the misalignments with current fiscal frameworks and meet the needs of First Nations as they seek to assert self-government and inherent rights over citizenship. There are two issues that funding arrangements will need to address. The first issue is funding for the citizenship system itself. The second issue is funding to ensure that First Nations are able to meet the general governance needs for their self-defined citizenship.

1. *Funding Support for Identification Instruments*

Federal funding to support the creation of First Nations-led identification instruments, such as Treaty citizenship cards must be structured as infrastructure investments and not programmatic contributions. This distinction ensures these initiatives are viewed as permanent fixtures in First Nations governance, which are deserving of stable and indexed support like other public identity systems.

2. *A Legislated Funding Guarantee*

As the Yellowhead Institute has argued in the context of First Nations child welfare legislation, federal statutes can incorporate funding guarantees without committing the government to a fixed dollar amount.²⁷⁷ A notable precedent is the *Canada Health Act*,²⁷⁸ which governs federal health transfers to provinces and territories. It includes language such as “a full cash contribution is payable by Canada to each province for each fiscal year”, allowing for federal fiscal flexibility while simultaneously entrenching a legal obligation to fund essential services.²⁷⁹ Similar statutory language could—and arguably should—be used in federal instruments relating to First Nations

²⁷⁷ Yellowhead Institute, “An Act respecting First Nations, Inuit, and Metis Children, Youth and Families: Does Bill C-92 Make the Grade?” (12 March 2019) at 9, online (pdf): Yellowhead Institute <https://yellowheadinstitute.org/wp-content/uploads/2019/03/does-bill-c-92-make-the-grade-full-report.pdf> [**Yellowhead Institute, Bill C-92**].

²⁷⁸ *Canada Health Act*, RSC 1985, c C-6 at s.4-5.

²⁷⁹ Yellowhead Institute, Bill C-92.

citizenship to ensure the transfer of jurisdiction is meaningfully supported with the financial resources needed for success.

Including language such as “full cash contribution” or “guaranteed funding to support the implementation of citizenship laws” would not only provide assurance to First Nations but would also offer a justiciable mechanism for holding the federal government accountable. This is consistent with UNDRIP, which explicitly affirms that Indigenous peoples, in exercising their right to self-determination, have the right to “ways and means for financing their autonomous functions.”²⁸⁰ Without secure and predictable funding for the development of citizenship laws, registries, ID instruments, and governance systems, the transfer of jurisdiction over citizenship remains merely symbolic rather than substantive.

3. *Per Capita Fiscal Arrangements*

Changes to citizenship self-government will impact all areas of First Nations governance. If First Nations are able to identify and determine citizenship outside of the *Indian Act*, they must also be able to provide for the general governance and well-being of those citizens.

Federal funding constraints for First Nations in Canada have long been a barrier to equitable service delivery and self-determination. Historically, funding has been tied to rigid funding formulas, based largely on the *Indian Act* and status-based criteria that fail to reflect the true population, geographic challenges and needs of First Nations. Top-down financial controls, limited flexibility and delayed disbursement hinder First Nations ability to fund long-term governance and exercise jurisdiction. If First Nations are able to assert jurisdiction over citizenship, general funding mechanisms must be adapted to ensure First Nations are able to meet the needs of their citizenship population, regardless of where those citizens reside.

A core funding premise must be that First Nations govern their citizens regardless of where they live, affirming the inherent right to define citizenship according to their own laws and traditions. This citizenship applies equally to citizens living on-reserve, off-reserve, within Manitoba, in other provinces, or even in other countries. While geographic location may influence how some services are accessed, it should not determine whether a citizen is entitled to those services. Funding and programs should be designed and delivered in a way that ensures all First Nations citizens, regardless of where they reside, have equitable access to supports, opportunities, and participation in Nation life. This reflects the principle that citizenship carries both rights and responsibilities that extend beyond reserve boundaries and across all jurisdictions. The AMC firmly advocates that

²⁸⁰ UNDRIP at Article 4.

all funding, programs and services must be accessible to First Nations citizens, in accordance with the governance and authority of their respective First Nations.

At the federal level, the Government of Canada provides an Equalization Program to address fiscal disparities among provinces. The allocation of equalization payments is based on a measure of fiscal capacity, which represents the revenues a province could raise if it were to tax at the national average rate. Equalization payments are calculated on a *per capita* basis and then adjusted for provincial population.²⁸¹

Similar principles could be adapted when designing fiscal arrangements to support the implementation of self-determined citizenship systems. For instance, *per capita* fiscal arrangements (“PCFA”) tailored to First Nations could incorporate needs-based adjustments that reflect geographical isolation, infrastructure deficits, and broader socio-economic disparities, including unemployment and educational gaps.

Efforts to reshape funding relationships with First Nations have already begun under the New Fiscal Relationship (“NFR”) framework developed jointly by the Assembly of First Nations and the Government of Canada. NFR grants aim to transition away from rigid, program-specific funding models towards long-term, flexible funding. These grants, structured over periods of up to 10 years and indexed for inflation and population growth, are intended to provide predictability, autonomy, and space for innovation in service delivery.²⁸² The Collaborative Self-Government Fiscal Policy, as described earlier, is another example of a new approach to funding.

Funding for citizenship systems must be capable of being flexibly allocated across areas most critical to the development and implementation of citizenship systems, such as governance infrastructure, legal drafting, registries, data management, education and communications.

However, any PCFA model must be sensitive to the unique realities of First Nations citizenship. The very definition of who is recognized as a citizen will influence how services are delivered, how funding is distributed, and how governance systems operate. Funding models must not only be equitable and adaptable but also uphold the principles of self-determination by respecting each Nation’s right to define its own citizens. The underlying premise of all funding decisions must be collaborative development with First Nations to ensure that funding meets the unique realities of First Nations in Manitoba.

²⁸¹ Government of Canada, “Federal transfers to provinces and territories” (23 December 2024), online: <https://www.canada.ca/en/department-finance/programs/federal-transfers.html>.

²⁸² Government of Canada, “Grand to Support the New Fiscal Relationship for First Nations: Terms and Conditions” (17 October 2024), online: <https://www.sac-isc.gc.ca/eng/1531405502692/1531405527957>.

Fiscal Reform for Citizenship Systems

The financial implications of building citizenship systems go beyond implementation. They require a rethinking of the fiscal relationship between Canada and First Nations and the abandonment of colonial structures of funding that reduce First Nations service recipients. Such a system must distinguish between First Nations-based citizenship and individual status under federal law. In the 2024-25 Alternative Federal Budget for First Nations in Manitoba, the AMC has explicitly called for an annual investment of \$9.5 million over five years to support First Nations jurisdiction over citizenship in the region.²⁸³ This figure represents a crucial starting point in meeting the financial obligations associated with transitioning from *Indian Act*-imposed definitions of membership to a self-determined citizenship system.

Citizenship systems are not administrative add-ons; they are core governance infrastructure. Without the ability to define their citizens, First Nations cannot fully exercise authority over housing, education, political representation or social programming. This makes funding for citizenship systems as essential as funding for elections, councils, or legal frameworks.

The AMC emphasizes that mutual accountability, not compliance, should guide fiscal relations.²⁸⁴ Fiscal transfers should reflect this centrality and be treated on par with those to provinces and territories for governance activities.²⁸⁵ Investments in citizenship must be shielded from discretionary budget cycles and placed within co-developed legislative frameworks recognizing First Nations as equal fiscal partners. Only then will Canada's obligations under section 35 of the *Constitution Act, 1982* and UNDRIP be meaningfully fulfilled.

²⁸³ Assembly of Manitoba Chiefs, "2024-25 Manitoba First Nations Alternative Federal Budget" (March 2024) at 15, online: <https://manitobachiefs.com/wp-content/uploads/2024/04/2024-25-AMC-Alternative-Federal-Budget-for-First-Nations-in-Manitoba.pdf>.

²⁸⁴ Review of Accountability and Mutual Accountability Frameworks (December 2017) at 3, online (pdf): Assembly of First Nations <https://www.afn.ca/wp-content/uploads/2018/03/Review-of-Accountability-and-Mutual-Accountability-Frameworks.pdf> [AFN, Accountability Framework]

²⁸⁵ AFN, Accountability Framework at 2-3, 20.

PART 9: MOVING FORWARD

The AMC is committed to advancing self-government in citizenship and supporting First Nations self-determination. This Part outlines the AMC's strategic objectives and proposal for activities to achieve these goals, in alignment with UNDRIP and the federal government's commitment to reconciliation. The AMC's priorities are as follows:

1. Restoration of First Nations Citizenship Governance

The restoration of First Nations authority over citizenship matters must be the overarching priority and goal. First Nations citizenship laws will reclaim jurisdiction over identity and governance. This involves addressing criteria for acquiring citizenship, cultural connections, and decision-making processes, while respecting governance traditions and addressing identity fraud concerns.

2. Proposed Citizenship Entities

The AMC proposes various governance models for First Nations citizenship entities, including Nation-level authorities, Treaty organizations, First Nations organizations, and Tribal Councils. Each model offers unique strengths and challenges, and a flexible or hybrid approach may be most effective. The purpose of a citizenship entity or entities is to replace or supplement the Indian Registrar, focusing on First Nations autonomy and jurisdiction. Any such citizenship entity must provide adequate recognition of First Nations inherent rights and sovereignty, and support Nation-level decision making.

The AMC proposes that further engagement occur with First Nations in Manitoba to determine the most effective model for furthering the goal of self-government.

3. Federal Recognition Legislation

The AMC proposes the replacement of the *Indian Act* with modernized legislation (such as a *First Nations Citizenship Recognition Act*) that recognizes the inherent jurisdiction of First Nations to govern citizenship without qualification. The AMC has proposed the development of federal recognition legislation to support First Nations self-government over citizenship and provide an opt-in mechanism for First Nations who are ready to reclaim legislative jurisdiction in this area. Federal recognition legislation must be co-developed with First Nations, and First Nations inherent rights to self-determination over citizenship matters must be recognized in this legislation.

4. Funding and Fiscal Relations

New funding relationships with the federal government are required to support First Nations citizenship systems, including funding for identification instruments. Funding guarantees should be legislated and should not be based on the federal government's arbitrary and discriminatory

Indian Act status categories. A new path forward, including potential compensation, must be established to remedy the harm created by the colonial government's assimilationist and genocidal policies and legislative mechanisms.

AMC's ROLE

The Assembly of Manitoba Chiefs is committed to advancing self-government in citizenship and supporting First Nations self-determination. The AMC is mandated to facilitate the development of policy, legislative advocacy, and engagement sessions related to the development of federal recognition legislation or other federal recognition models. The AMC may also play a coordinating or advocacy role in the development of new fiscal relationships and funding models to support First Nations citizenship and governance in general. Further roles in development or implementation of citizenship systems must be mandated to the AMC by First Nations in Manitoba.

The AMC has established the CCOC and the CWG to oversee and implement the transition away from *Indian Act* status toward self-determination. The CWG will support First Nations in Manitoba to draft citizenship template laws and advocate for federal recognition of First Nations jurisdiction over citizenship, while the CCOC will play an advocacy role. The AMC can assist with the development of reports and dispute resolution mechanisms. It can also play a coordinating role to ensure that federal recognition legislation is properly co-developed between Canada and First Nations in Manitoba.

The AMC has provided Canada with a proposal and budget for engagement and citizenship model development to assist First Nations with determining how their traditional governance structures should be upheld, which includes the following tasks related to the AMC's coordination role:

- Drafting reports to assist First Nations in Manitoba with making decisions about citizenship models, including
 - Devolution of First Nations Authority Report: outlining the legislative history regarding band membership under the *Indian Act* and analyzing the interconnected issues of self-identification and identity fraud; and
 - Traditional governance structures report: outlining the traditional governance structures practiced by the five language groups of AMC member First Nations, which will also include an oral or ceremonial component honouring the knowledge.
- Developing template laws for each of the five First Nations language groups in Manitoba through research and engagement with First Nations.
- Identifying traditional dispute resolution mechanisms for each of the five language groups, and creating dispute resolution mechanisms that reflect First Nations customs and laws.

- Working with First Nations in Manitoba to identify aspects of the *Indian Act* that need to be repealed or amended for First Nations to assert self-governance over citizenship, and working with Canada to introduce amendments in Parliament.
- Strategically communicate with First Nations in Manitoba to ensure First Nations support and understanding of transition processes.
- Work with First Nations in Manitoba to develop a framework for Canada's and First Nations' laws to co-exist in harmony, and coordinate development of associated legislation in partnership with Canada.
- Create a Citizenship Implementation Action Plan to assist First Nations in Manitoba with determining how their traditional governance structures, laws and dispute resolution mechanisms will be upheld and resourced.