

The Erosion Of The Rights Of Indigenous People  
To Self Determine Their Identity

Georgina Martin

B.A., University of Northern British Columbia, 1998

Thesis Submitted In Partial Fulfillment Of

The Requirements For The Degree Of

Master Of Arts

in

Interdisciplinary Studies

The University Of Northern British Columbia

February 2007

© Georgina Martin, 2007



Library and  
Archives Canada

Bibliothèque et  
Archives Canada

Published Heritage  
Branch

Direction du  
Patrimoine de l'édition

395 Wellington Street  
Ottawa ON K1A 0N4  
Canada

395, rue Wellington  
Ottawa ON K1A 0N4  
Canada

*Your file* *Votre référence*  
*ISBN: 978-0-494-28439-1*  
*Our file* *Notre référence*  
*ISBN: 978-0-494-28439-1*

**NOTICE:**

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

**AVIS:**

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

---

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.

  
**Canada**

In Memory of  
Ned Moise and Nancy Moise

## Abstract

The important features of Indigenous identity include: kinship, familial ties, culture, language, and connection to community. The critical need to explore identity became evident based on my lived and lost experience as a Secwepemc person. If Aboriginal identity is not addressed the discord between traditional identity will accelerate. The state of cultural preservation is threatened to a point of extinction.

An exploration of the complex question of Aboriginal identity that investigated the impacts of Aboriginal identity through the imposition of various definitions of membership in one's Indigenous community was carried out. The main thrust of this study was to explain how the *Indian Act* as a colonial tool, defined membership in patriarchal ways that is incompatible with Indigenous ways of defining membership.

Community members of a British Columbia First Nations Band were interviewed and while the sample was small, the results led to recommendations concerning the importance of Aboriginal self determination of membership.

## TABLE OF CONTENTS

Dedication	ii
Abstract	iii
List of Tables and Diagrams	v
Acknowledgement	v
Chapter 1 Introduction	1
1.1 The Question and its Implications	1
1.2 Positioning Myself Within the Research	7
1.3 Research Community	13
1.4 Conceptualizing the Parameters of the Research Problem	14
1.5 Progression of the Thesis	17
Chapter 2 The Evolution of Band Membership: An Overview	20
2.1 Aboriginal Practices	20
2.2 Canim Lake	21
2.3 The Nisga'a	24
2.4 Witsuwit'en	27
2.5 Plains Cree	30
2.6 Upper Tanana Athapaskans	31
2.7 Government Policy and Implementation pre 1867 to 1985	32
2.7.1 Band Membership Influence, 1985 Forward	38
2.7.2 The Sandra Lovelace Case	38
2.7.3 The Corbiere Decision	41
Chapter 3 Modern-Day Concepts of Citizenship and Membership: A Literature	46
3.1 Aboriginal Views on Citizenship and Band Membership	46
3.2 Non-Aboriginal Views on Citizenship and Membership	52
3.3 The Royal Commission on Aboriginal Peoples Report	61
3.4 Legislative Authority Governing Aboriginal People	66
3.5 The Nisga'a Final Agreement	68
3.6 Lheidli T'enneh Agreement-In-Principle (AIP)	70
Chapter 4 Canim Lake Community Questionnaire: Method, Results and Discussion	73
4.1 Introduction	73
4.2 Method	74
4.3 Results	76
4.4 Discussion	91
Chapter 5 Conclusion and Recommendations	93
5.1 Recommendations	99
Bibliography	101
Appendix I Indian Act and Bill C-31 Amendments	106
Appendix II Canim Lake Band Membership Rules	107

Appendix III Citizenship, Membership and Self-Governance Questionnaire	108
Appendix IV Informed Consent Form and Information Sheet	109
Appendix V Letter of Approval	110

## LIST OF TABLES AND DIAGRAMS

Table 4.1: Knowledge of Band Membership Code	77
Table 4.2: Are Membership Codes User Friendly	78
Table 4.3: Deciding Band Membership	79
Table 4.4: Blood Quantum Requirement	81
Table 4.5: Dual Citizenship	82
Table 4.6: Dual Citizenship Between Aboriginal Nations	83
Table 4.7: Nisga'a Agreement	84
Table 4.8: Nisga'a Citizenship	85
Table 4.9: Non-Nisga'a Rights	86
Table 4.10: Band Membership Based on Residency	87
Table 4.11: The Number of Years of Residency to Obtain Band Membership	88
Table 4.12: Five Key Elements Identified as Important to the Determination of Band Membership	89
Table 4.13: What Benefits Should a Band Member Enjoy in Another Community?	90
Table 4.14: Identify the benefits you enjoy through Band Membership	91

## Acknowledgement

The master's thesis is a long and arduous process with many challenges. Thankfully there were many people along the way who extended their sincere support, encouragement and inspiration. I would like to thank the professors at the University of Northern British Columbia who tirelessly gave of their time during my undergraduate and graduate studies. Professors Greg Poelzer, Tracy Summerville, Ed Black, Mary Louise McAllister. I also thank my current advisor and supporter Dr. Paul Madak, committee members Dr. Graham Smith, Dr. Antonia Mills and Paul Michel.

I thank my grandparents Ned and Nancy Moise for spiritual guidance. I thank them for their wisdom, nurturing and the instilment of their strong values within my conscience. My grandfather would say "if you can't finish something don't even start." I almost didn't finish but those words were too powerful to ignore.

I thank the people who are always close by my side and were with me throughout the toil and glory of this journey, my family; my husband Pat and my children, Kirsten, Kyle, Denise, Trevor and Melissa. They were all very inspiring and instrumental in my push to complete the thesis. I also thank my best friend Lena Paul who would not allow me to believe that the task could not be accomplished.

I thank my fellow students for their support, Pam Flagel and Tracy Wolsey. Pam and Tracy were always willing to listen to my ideas and give their input.

I thank the Canim Lake community for their participation, support and contribution. I am grateful to my sponsor Lake Babine Nation, without both communities support this document would not have been possible.

## Chapter 1 Introduction

### 1.1 The Question and its Implications

This thesis explores how the rights of Indigenous people to self identify have been eroded to a point where the integrity of Indigenous identity has been compromised. The erosion of identity is an important issue due to its impact and implications associated with the struggle for Aboriginal self-determination. This thesis argues that the *Indian Act* of 1876 legally forces Indian Bands to construct Band membership codes in such a way that traditional identity is undermined. For the purpose of this study identity includes beliefs, knowledge, customs, language, attitudes and behavior. Although my research topic is meant to explore how communities are responding to the significance of Indigenous identity, it cannot be done in isolation from modern day treaty making in British Columbia (BC) because both identity and Band membership are vital determinants for First Nation's people in BC.

The *Indian Act* is a statute that was passed by Parliament in 1876 and it is currently administered by the Department of Indian Affairs and Northern Development (DIAND). The Minister has the sole responsibility to Parliament for the administration of the *Act*. The original *Act* governing Indian status remained intact from 1876 to 1985, 109 years. The pertinent passage of the *Indian Act* is section 6 which outlines how a person is entitled to be registered under the *Act* (refer to Appendix I). An Aboriginal person in Canada must satisfy this criterion; otherwise they are not legally Indian according to the Federal Government.

The *Indian Act* was amended on June 28, 1985 when Parliament passed Bill C-31 which is an *Act to Amend the Indian Act* (see Appendix I). This gave Aboriginal communities the ability to define Band membership although the federal government retained

jurisdictional authority to determine who is a status Indian. The separation of responsibilities meant that first and foremost, the federal government applies their jurisdiction to approve Indian status at birth or when an individual is reinstated under Bill C-31. On June 28, 1987 two years following Bill C-31 bands could chose to have DIAND maintain control of band membership.<sup>1</sup> If the band kept band membership with DIAND, it meant that anyone who had Indian status automatically had a right to band membership. The amendment extended the option to those who lost membership to apply to regain it. In addition, bands could control their own membership based on an approved set of membership rules. The rules were required to respect two principles:

- a majority of band electors consent to the band's taking control of membership, as well as to a set of membership rules; and
- existing band members and those who are eligible to have band membership restored do not lose their entitlement to band membership because of something that occurred before membership rules were adopted.<sup>2</sup>

Since the inception of Bill C-31 some Aboriginal communities chose to administer their membership. Specifically, this study will place emphasis on Canim Lake's existing band membership code (see Appendix II).

In spite of the Bill C-31 amendment an Aboriginal person is still required to first and foremost satisfy federal legislation to be legally defined as a status Indian. Upon recognition of legitimate legal status under the *Indian Act* the individual can be considered for band membership in a band.

This is counter to Aboriginal autonomy because it continues to sever Aboriginal identity from kinship and familial ties. Rather, only when Band members meet *Indian Act* legislation will they enjoy *Indian Act* rights and benefits as stipulated by the enduring power

---

<sup>1</sup> [http://www.johnco.com/native/bill\\_c31.html](http://www.johnco.com/native/bill_c31.html): First Nations, Bill C-31, Indian Act, 1

<sup>2</sup> [http://www.johnco.com/native/bill\\_c31.html](http://www.johnco.com/native/bill_c31.html), 2.

of the *Indian Act*.<sup>3</sup> The federally legislated *Indian Act*, created the problem and compounded it by connecting Band membership with access to federal support payments. The current legal and political climate will not allow Aboriginal communities in British Columbia to exercise exclusive authority to define Band membership while it remains connected to the *Indian Act*.

In 1992, a tripartite relationship was established within the British Columbia Treaty Commission (BCTC) represented by federal, provincial and the First Nations Summit. The BCTC mandate is to oversee and facilitate a six-stage process for negotiating modern day treaties. Band membership is a key element in treaty negotiations due to its association between resource settlements and/or compensatory distribution of monies. The *Indian Act* has a profound impact on this process due to the legal connection between Indian Status and treaty payments. The connection between the two poses challenges for First Nations governments because Band membership determination will always require the consideration of monetary impact to community and individuals. The resultant treaties will affect every man, woman and child on the current and future Band membership list. Therefore, a key question becomes: “Will the connection between Band membership and treaties detract from the principle of Indian identity?”

Prior to contact and interruption by foreigners, Secwepemc<sup>4</sup> people upheld an organized system to determine and identify their membership. Being Secwepemc means “Person of the Land of the Flowing Waters”; Secwep = Land of the Flowing Waters; Mc= Person.

---

<sup>3</sup> The legislated sections of the *Indian Act* that apply to this thesis are contained in Appendix I

<sup>4</sup> Secwepemc is the preferred term that will be used in this thesis to identify Shuswap people.

This traditional system is reinforced by the words of Chief Sophie Pierre from St. Mary's Band. Chief Pierre acknowledged her belief in the treaty process however; she stated that self-government and self-determination can only happen when First Nations know who the "self" is. This concept of self can only be found in the traditional practices of each Aboriginal nation. The "self" as an individual is synonymous with self in the community, the two are always fluid. Therefore, it is extremely important to know the definition of self as it relates to membership in the community. In this thesis "self" is meant to be the construction of Aboriginal identity being as a continuum of individual, family, community through kinship.

The *Indian Act* fostered the assault on Indigenous identity. This assault unjustly emerged within *Indian Act* definitions, which are contrary to traditional law. For example, the policies contained in the *Indian Act* proceeded to hinder the clan system and the matrilineal system. The impact on Aboriginal women and their child(ren) is very damaging. Many Aboriginal women and their child(ren) were uprooted from their communities. Women lost the benefits and services, such as access to community housing and were disconnected from their extended family. In addition, pre-1985 legislation permitted immigrant women of European descent to marry an Indian man and inherit Indian rights and benefits. These rights and benefits extended to the children of the mixed marriage. In contrast, many Indian women lost their Indian status in accordance with *Indian Act* legislation when they married a non-Indian man. Indian women were deemed to be non-Indian although their Indian heritage remained intact. They felt and continue to feel the absolute injustice of this *Indian Act* policy. The exclusion from Indian status for full-blood Aboriginal women conflicts with the traditional concept of identity. A similar trend evolved

for Band members who left the community due to inter-tribal marriage or for education or economic reasons and never returned. The later category of people along with their children also became disconnected from their homeland.

Many Aboriginal women and their offspring lost their Indigenous identity as a result of *Indian Act* legislation while others lost their identity through separation from family and culture when they were forced into residential schools, were adopted out or disenfranchised. The separation from family and culture is a serious impediment to the sustenance of Aboriginal culture because the traditions are practiced less. Traditional knowledge is further limited when the Elders die without the opportunity to pass on their knowledge in the community. The *Indian Act* of 1876 affected Aboriginal women in particular because it has the federal jurisdictional authority to define who is, and who is not, legally an “Indian.” From 1876 to 1985, Indian status determination was based on the western patrilineal system contrary to traditional matrilineal systems. This meant that Indian status was determined by the individual’s relationship to a male person. According to the *Indian Act* every Indian woman was dependent on a man, first her father, then her husband, for her identity, rights and status.

Frank Cassidy and Robert Bish explained that the authority to define criteria, benefits and responsibilities of citizenship is a key jurisdictional power claimed by sovereign governments.<sup>5</sup> Indian governments often assert that they have the power to determine their citizenship. In reality, the Government of Canada maintains the power to create citizens and

---

It is important to note that for the purpose of this thesis, the terms “Indian Bands,” “Bands,” “First Nations,” “Aboriginal communities,” are used interchangeably. Alternatively, the definitions outlined by the Assembly of First Nations reflect the language used for Band member and citizen. “Band member” is a term used by the federal government to refer to members of a Band who are registered on the Band list. Citizen: refers to First Nation individuals. This term is used because nations; First Nations or otherwise; have citizens, not members.

<sup>5</sup> Bish, R.L., and Frank Cassidy, *Indian Government: It’s Meaning in Practice*. (British Columbia: Oolichan Books and the Institute for Research on Public Policy, 1989), p. 53.

maintain that Indians are citizens of Canada and “members” of their Bands which are subordinate governments that provide their communities with local services. Bish and Cassidy advised that when fundamental change is under consideration, the ultimate authority to create citizens becomes a critical question and is therefore, an important element of the treaty process. Bish and Cassidy state that the efforts of Indian people to govern themselves raises four distinct questions. These are:

- Who creates and defines the rights and obligations of citizenship for Indian peoples?
- What are these rights and privileges?
- How do First Nation governments choose who is to be a citizen and who is not?
- To what extent are Indian people citizens of Canada and to what extent are they citizens of First Nations governments and how can these different dimensions of citizenship be accommodated to one another?<sup>6</sup>

Bish and Cassidy suggested that the answers to these questions will determine who is an Indian within the treaty process; who decides who is an Indian; and what it means to be an Indian in relation to a First Nation government as well as to other forms of provincial and federal governments. The traditional dimension of Indian government will differ from First Nation to First Nation, but Indian people must assert that only those who belong to their Nations have the right to create, define and govern their citizens.<sup>7</sup> In this context, Bish and Cassidy considered traditional citizenship in Indian s and membership in Indian governments synonymous.<sup>8</sup>

Although very little written data was found on how membership in a Secwepemc community was traditionally determined it is well known that the Secwepemc people have an oral history about their unique set of criteria and circumstances. Historically, Secwepemc communities enjoyed a very strong social fabric. For example, my grandparents retold

---

<sup>6</sup> Bish, Cassidy, *Indian Government*, 53.

<sup>7</sup> Bish, Cassidy, *Indian Government*, 54.

<sup>8</sup> Bish, Cassidy, *Indian Government*, 54.

Secwepemc Elders stories about how Secwepemc people travelled between communities for hockey competition. In addition, the Secwepemc people supported each other when tragedies occurred or when help was needed for important celebrations. It was clear that the social fabric of Secwepemc identity extended beyond individual Secwepemc communities to the family of communities. I recall when a visitor was introduced in our community they would immediately be identified through their father, mother, sister, brother, aunt, and uncle lineage. The individual did not stop at the self; they were connected to their extended family.

## 1.2 Positioning Myself Within the Research

Identity is a critical issue that confronts Aboriginal people today because in addition to defining oneself as Indigenous, Aboriginal leaders are cognizant that membership is directly connected to treaty settlements. While Aboriginal identity is legislated and defined by the *Indian Act* it is evident that the true sense of Aboriginal identity is absent from the composition of Band member determination. Therefore, the legislated relationship has seriously compromised the true sense of Aboriginal identity. The esteem of Secwepemc identity in particular is deteriorating. The deterioration is connected to loss of language and cultural practice. One might question “Is Aboriginal identity genuine in accordance with Aboriginal beliefs and traditions or is it simply a commodity?”

I am interested in this topic because I am an Aboriginal person of Secwepemc descent and I believe the preservation of Aboriginal identity is an important one for the Secwepemc people. The particular Secwepemc people I grew up around and know the most about include: Canim Lake, Williams Lake, Dog Creek, Canoe Creek, Soda Creek, and Eskemtc communities. I am a former community member of the Williams Lake Indian Band which is situated seven miles south of the City of Williams Lake in the heart of the Cariboo. My

ability to speak and understand the Secwepemc dialect is extremely limited due to the multi-generational impact of the Cariboo (St. Joseph's Mission, Williams Lake) Residential School not permitting the dissemination of the Secwepemc language. Therefore, this body of research could both benefit and apply to any of the above Secwepemc communities. Canim Lake chose to actively participate in this research project when the opportunity was presented by the Cariboo Tribal Council. When the initial test pilot of the community questionnaire, was completed it became evident that the task was too enormous to accomplish in a thesis project therefore the sample size was reduced from the family of Secwepemc communities to a single community. Canim Lake felt that the research project would provide useful data for the enrolment portion of their treaty. I lived and worked in Canim Lake for a period of time therefore, the reciprocal respect between community and researcher matched.

My conviction and connection to the importance of being Secwepemc is grounded in my lived experience as a Secwepemc person. I say this because I experience a sense of belonging to my community of origin. Although I cannot claim a strong connection to my Secwepemc language, I do value my identity as a Secwepemc person. I thank my grandparents, my revered teachers for my rootedness to Secwepemc identity during my formative years. They taught me the sense of community, moral values to respect others, to uphold a strong work ethic, and to be a provider. In particular, I clearly recall the direction I received from my grandfather. He strongly encouraged me to acquire an education and return the lessons to my people. This thesis is the culmination of that request. My grandfather's guidance was first and foremost to remember where I came from. I believe these lessons are what solidified my connection to Secwepemc identity. On the other hand, my grandmother's role was participative. I clearly recall the trips with her to the sweats by

the creek, creek fishing, picking and drying berries and the preparation of deer and moose hides. I argue that this same sense of community identity and kinship contributes to the survival of many Aboriginal people because it is mandatory for each individual to have a sense of belonging, an anchor to their roots in order for the individual to know who they are and where they came from.

Intrinsically the moral fabric of Secwepemc identity begins with the self and connects with family and community. Identity was not isolated, it went beyond the child because when the child was introduced along with their community of origin they were immediately identified with their father, mother, sister, brother, aunt, and uncle lineage. Identity did not stop at the individual; it was fluid and embedded the person in their community.

Therefore, Secwepemc identity extends beyond the confines of the Secwepemc individual to community and into the family of Secwepemc Nations. For example, the Secwepemc people engaged in competitive hockey amongst the various Secwepemc communities. In addition, the people supported each other during tragedies and celebrations. Community cohesion occurred when the people come together and helped each other out in times of need. It could be by helping out a family who lost everything in a fire or preparing food for a potluck wedding feast. The affected parties knew that unsolicited and unpaid help would be available. The caring and sharing of Secwepemc communal life was illustrated when a hunter or group of hunters killed a deer or moose. The message would reach every household to ensure that every family was invited to share the meat.

I departed from my homeland around age 12; therefore the majority of my life experience has been in an urban setting. I profess that the preservation of my connection to identity were the voices and lessons of my grandparents. The urgent state of identity was

brought home recently when my 14 year old daughter Kirsten said, “I don’t feel like I am a real Native, I think the only difference between me and a white person is the color of my skin. It’s sad because I don’t know anything about my own culture.” Her powerful statement confirmed my concern that the obliteration of identity is at a very critical stage. It is likely that other urban Aboriginal people have similar thoughts. I believe that the discord between traditional identity and *Indian Act* identity encourages cultural annihilation. This is a result of the historical developments of colonial rule since contact.

The erosion of kinship, familial ties and Aboriginal customs commenced with European influence. The European settlers eradicated and replaced the original values and authority within Aboriginal communities with their own. Eventually, the authority shifted from traditional customs and practices to delegation by outsiders, thereby displacing the authority of esteemed and trusted leaders and Elders. The *Indian Act* and the federal citizenship policies that went with it altered customary laws. Aboriginal communities were placed in a subordinate position and oppressed by European ideology. The mindset of Aboriginal people was seriously altered. The goal of this inquiry is to reveal how Aboriginal people’s identity has been eclipsed into a hegemonic mindset. Antonio Gramsci explained that the definition provided by Anthony Giddens is the easiest to understand. Giddens defined ideology as “shared ideas or beliefs which serve to justify the interest of the dominant group”. The hegemonic ideology legitimizes the differential power the dominant group holds. It proceeds to distort the real situation that people are in.<sup>9</sup> Gramsci identified two distinct forms of political control: domination which referred to direct physical coercion and hegemony which is ideological control and more crucial, consent.

---

<sup>9</sup> Burke, B. (1999) “Antonio Gramsci and informal education’, *the encyclopedia of informal education*, <http://www.infed.org/thinkers/et-gram.htm>. Last updated: January 30, 2005. p. 2, 3.

The prevailing consciousness is internalized by the population and it becomes part of what is generally called ‘common sense’ so the philosophy, culture and morality of the ruling elite appear to be the natural order of things.<sup>10</sup> Gramsci coins hegemony as an appropriation of beliefs in a way that the world view ‘common sense’ of subordinate classes work to support the needs of the dominant classes and the dominated consent to their own oppression. Gramsci claims that “the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules”.<sup>11</sup> Gramsci further suggested that the only way to break the ideological bond between the rulers and the ruled was to employ and build up a ‘counter hegemony’ to that of the ruling class.<sup>12</sup> One option is to look at critical theory which is not a single theory, but a collection of theories that provide the means to resolve problems by enabling people to gain more control over their lives. It works toward change for better relationships, for a just and rational society.<sup>13</sup> It attempts to reveal factors that prevent groups and individuals from taking control of, or influencing decisions that crucially affect their lives.<sup>14</sup> This is important in respect to how Indian identity is currently exercised. The appeal of Critical theory for Indigenous people is that it:

- questions the ‘status quo’ social relations of domination and subordination;
- looks behind taken for granted explanations of dominant interests;
- takes into account structural impediments as well as other cultural concerns; i.e. economics, power, ideology;
- aims to transform to make change;
- enables collective struggle to be articulated and developed;
- enables generalization to be made;
- provides a theoretical platform.

---

<sup>10</sup> Burke, B. (1999) “Antonio Gramsci, 3.

<sup>11</sup> Gibson, Rex. *Critical Theory and Education*. Hodder & Stoughton: London, 1986, p. 53.

<sup>12</sup> Burke, B. (1999) “Antonio Gramsci, 4.

<sup>13</sup> Gibson, Rex. *What is Critical Theory?* Hodder & Stoughton: London, 1986, p. 2.

<sup>14</sup> Gibson, Rex. *What is Critical*, 5.

In order to reveal how Secwepemc identity was dismantled and influenced by the *Indian Act*, this thesis will reference critical theory. Critical theory referred to the imposition of colonization and legislation and how it manipulated the mindset of Aboriginal people to the point where they believed the imposed rules and way of life to be their own. I will demonstrate how Aboriginal people became masters of the imposed rules of colonization by accepting the imposition of legislated identity.

The best solution to Band membership or treaty citizenship is to restore authority to its rightful place, the community. In order to achieve political autonomy within the nation state, it is important for Aboriginal communities to instill key aspects of self-determining authority by determining members of their nation based on their values and beliefs. I believe it is of utmost importance for Aboriginal communities to place greater emphasis on what membership meant in an Aboriginal community prior to colonization and abolish the *Indian Act* imposed criteria for membership.

I purport that Indigenous identity can be supported within the community by incorporating pre-contact membership ideals such as the customary clan or kinship system into Band membership rules. The traditional concept of identity captures the essence of individual Band member connection and supports the inclusiveness of their connection to community. The clan structure is associated to traditional territories for each clan. Part of the clan system evolves around family kinship. In addition, Elders play a crucial role in the retention of cultural identity. They assist youth to retain their connection to culture while promoting and supporting a sense of identity. The retention of identity is extremely important because it grounds the individual's concept of who they are and their connection to

their community of origin (land base). With the return of Elders to their esteemed position of teachers and bearers of the culture the Indigenous group will move toward its origins.

Therefore, the revival of culture and identity is vital within each respective community to ensure that cultural integrity and identity is sustained and maintained. I believe there are many instances where Indigenous people who left their homeland endure by means of intrinsic connection to traditional identity. The internal bond is resilient because the tribal heart is indestructible. Unfortunately, if the value of culture is not protected it could collapse with the loss of Elder teachers.

### 1.3 Research Community

The Canim Lake Band is a Secwepemc community located in the central interior of British Columbia thirty kilometers east of 100 Mile House. The main community is situated along Bridge Creek, west of Canim Lake with a population in 1992 of 85 living off the reserve, and 380 living on the reserve.<sup>15</sup> Canim Lake is comprised of six parcels of designated reserve land, totaling 5,074 acres, one hundred acres of which is prime agricultural land. Children from kindergarten to grade twelve acquire their education from the Eliza Archie Memorial School while adult education is made available through the Canim Lake Campus of Gonzaga University. The Canim Lake Band is an ethnic division of the Interior Salish.<sup>16</sup>

Information was collected from Canim Lake Band members through a community questionnaire that I produced for this project.. The questionnaire results provide feedback and comments from a sample of Band members' that indicate their knowledge and thoughts about membership criteria. The questionnaire was the way I introduced the relevant topics. I

---

<sup>15</sup> Canim Lake - Gonzaga University Students, *the Shuswap People in Story*, (Canim Lake, BC, 1992).

<sup>16</sup> Canim Lake – Gonzaga.

then followed this questionnaire with qualitative interview questions. The information collected could be valuable for Canim Lake if the community chooses to explore the issues further. I am afraid if left unexamined the basis for Secwepemc identity will become diffused.

#### 1.4 Conceptualizing the Parameters of the Research Problem

How is it possible for an individual and community to identify their affiliation and membership when the definition of being Indian is legislated by an external government? The loss of identity is a major threat to the loss of a people because it severs individual identity from community and culture. The formation of identity is by language, custom, tradition and practice. Therefore, the loss of culture and identity eradicates the Aboriginal continuum. Aboriginal youth are especially threatened by lose of culture if they replace hunting, trapping and fishing by opportunities to get a drivers license, chat on the internet, and pursue contemporary trends. This reality will continue as Aboriginal people migrate to urban centres and youth either lose touch with their homeland or do not develop communal and cultural roots.

Aboriginal women were caught in the loss of Aboriginal identity when they lost their Indian status and place in the community by marrying non-Indians. Many Aboriginal women moved away from the reservation and rarely returned. These women often ultimately lost their connection to their culture and community of origin. Their children inherited this loss. Therefore, it is imperative for Aboriginal women to regain stature in their respective communities. Although the issue of identity under the *Indian Act* is a source of personal pain and frustration for Indian women, the identity loss applies to both female and male persons who are disconnected from community. Both the sexist definition of 'Indian' and the

selective application of involuntary enfranchisement provisions created a legal fiction in respect to cultural identity.<sup>17</sup> Canadian law created categories of aboriginality as though Aboriginal identity could be chopped and channeled into specific compartments or eradicated completely.<sup>18</sup> The categories identified by colonial and federal policy were Métis, Inuit and Indian which was further defined as status and non-status Indian.<sup>19</sup> Currently within post Bill C-31 status categories, there are 'new status' and 'old status' Indians, on-reserve and off-reserve status Indians, subsection 6(1) status Indians and subsection 6(2) status Indians. The categories are not connected to culture, upbringing or identity. It had everything to do with administration, bureaucracy and the federal policy of assimilation.<sup>20</sup>

The loss of identity and the movement of Band members living off-reserve versus on-reserve is a challenge. The out migration caused a definite shift in Aboriginal representation and ensuing values and a further threat for traditional and cultural value retention. The lack of concentration to these stark facts supports the assimilationist policies of the Department of Indian Affairs.

Alternatively, self-determination supports the progress of self-government. These terms are separate, intertwined and necessary in the identification and uniqueness of Band member identity. Frank Cassidy's explanation of self-determination is considered to be a right of the people or group of peoples who choose their own destiny without external control.<sup>21</sup> This is relevant to this study. Exclusive authority to determine Band membership

---

<sup>17</sup> Canada, Minister of Supply and Services, "Report of the Royal Commission on Aboriginal Peoples," *Perspectives and Realities*, 4, (1996), p. 23.

<sup>18</sup> Canada, "Perspectives and Realities," 23-4.

<sup>19</sup> Canada, "Perspectives and Realities," 24.

<sup>20</sup> Canada, "Perspectives and Realities," 24.

<sup>21</sup> Cassidy, Frank, ed., *Aboriginal Self-Determination*, Lantzville, BC: Oolichan Books, 1991, p. 1

is a result of self-determination. Cassidy further purports that self-government is the practice of the group exercising control of their political, cultural, economic and social structures.

Self-government can occur without self-determination.<sup>22</sup> Self-governance in part relies on the authority of BC's Aboriginal people to define their own citizenship and band membership. Federal policies negate the ability of each Aboriginal community to determine autonomous citizenship or band membership because citizenship and Band membership determination relies on federal jurisdiction, *Indian Act* or treaty negotiations. Legislative *Indian Act* amendments in 1985 continued to affirm federal authority with respect to defining "Indian" status. The definition under legislative authority works against the concept of Aboriginal identity and kinship ties, despite self-government initiatives. Aboriginal people in British Columbia initially relied on pre-existing laws to define their membership. Currently, Aboriginal people have the option to remain within the confines of the *Indian Act* or negotiate their citizenship by treaty.

An important consideration for Aboriginal communities in defining their citizenship within the BC Treaty process or community-based band membership is to devise a method that accommodates and combines traditional and contemporary values within community-based traditional structures. The movement toward self-control would support the concept of self-determination although the entire slate cannot be wiped clean Aboriginal people could impart important aspects of traditional identity. *Indian Act* policies cannot be transplanted into an Aboriginal governing structure if the cultural preservation of Aboriginal nations is to be revived and protected. I seek to apply Gramsci's critical theory to take back control of Secwepemc identity.

---

<sup>22</sup> Cassidy, *Aboriginal*, 1.

It is a fundamental human right for an Aboriginal person to identify who they are and where they come from. This could begin by each individual having the ability to deconstruct the current *Indian Act* legal identity and reconstruct a traditional identity that cannot be legislated away. In addition, every Aboriginal community's cultural diversity and unique qualities must be respected. In essence the cookie cutter approach (one size fits all) will not work. It would cause undue harm and injustice to the process of cultural reconstruction. To this end, Aboriginal communities will realize their goal of cultural diversity in the development of Band membership codes and governance policy that satisfy each community's frame of reference.

#### 1.5 Progression of the Thesis

The next chapter, chapter two will investigate Band member identity in terms of past and current practices. The chapter begins with a look at how some Aboriginal communities recognized the legitimate members of their community based on a review of the literature. The communities discussed are: Canim Lake, the Nisga'a, Witsuwit'en, Plains Cree, and the Upper Tanana Athapaskans. These groups were selected to illustrate a cross section of approaches to member identification, based on the differences in their social organization of kinship traditions. The ensuing discussion on federal government policy implementation in the early 1800s demonstrates how blood quantum became the legal marker of Indian identity through the male line. The blood quantum debate is meant to show how the *Indian Act* developed the legislated blood quantum requirement. The segment on blood quantum further describes how Aboriginal peoples were accepted or rejected based on their blood quota. Reference is made to tribes in the United States as many of the blood quantum identity issues are universal to North America. The chapter concludes with two *Charter of Rights and*

*Freedoms* challenges that altered legal Band member identity. These are the Sandra Lovelace case that resulted in the amendment to the *Indian Act* in 1985 that permits Indians who lost their status through marriage to a non-Indian to regain it through Bill C-31; and the John Corbiere challenge that recognizes and affirms off-reserve Band member's rights to vote in on-reserve Band elections.

Chapter Three is a literature review that explores various Aboriginal and non-Aboriginal authors' views concerning autonomous Band membership and citizenship. The chapter concludes with the Nisga'a Final Treaty and the Lheidli T'enneh Agreement-in-Principle. Citizenship is considered from a non-Aboriginal perspective while Band membership is viewed through an Aboriginal lens. It demonstrates how various principles and opinions can contribute to the development of Band membership criteria and citizenship concepts. The intent is to present ideas for Aboriginal communities to ponder for Band member determination.

Chapter Four presents and discusses the findings of the Canim Lake questionnaire. The discussion is particular to Band member criteria. The Canim Lake Band opted to manage and administer their Band membership code in accordance with the 1985 Bill C-31 amendments. The questionnaire I created was given to a sample of on-reserve and off-reserve Band members to seek their opinions and concerns regarding Band membership arrangements. The intent was to generate Band member's opinions and observations of how existing Band membership arrangements are understood by and communicated to the membership. Ultimately, the Band membership and citizenship questionnaire information could be useful in the treaty development process for Canim Lake.

The concluding Chapter Five highlights key points identified by various authors that support the reconstruction of Aboriginal identity. The results from the Canim Lake community questionnaire assisted in the development of recommendations for further research. The emphasis is on the transformation of Band membership to a community driven framework that incorporates self-determining powers in a meaningful way.

## Chapter 2 The Evolution of Band Membership: An Overview

The nature and implementation of Band membership in Aboriginal communities experienced massive change since the advent of colonial policies in the 1800s. This chapter will illustrate how these policies altered Indian identity. The discussion will focus on the inclusion of Aboriginal customs and the impact of colonial influence. This will include: a) Aboriginal practices regarding Band membership, b) the implementation of government policy pre-colonial (1867, *British North American Act*) to 1985 and, c) policy change, from 1985 onward. This overview provides a broad-spectrum on policy development relevant to Indian government and Canadian state policy specific to Band membership. The chapter concludes with a discussion on the 1985 Bill C-31 amendment to the *Indian Act* regarding Indian status and the recent 1999 Corbiere Supreme court decision since both impact Band membership rights.

### 2.1 Aboriginal Practices

Up to a certain point in time Aboriginal communities understood and recognized who the legitimate members were in their communities based on that communities recognized set of criteria. Cultural significance and Clan or kinship systems played an all encompassing role in the way communities determined their membership. Although not exhaustive, this section looks at identity in the following communities: Canim Lake, the Nisga'a, the Witsuwit'en, the Plains Cree, and the Upper Tanana Athapaskans of the Yukon-Alaska borderlands. The purpose of this is to establish whether Aboriginal communities were given the opportunity to bring forward their systems and beliefs.

## 2.2 Canim Lake

There is very little written about the Secwepemc people of Canim Lake. The Secwepemc history of Canim Lake was primarily preserved through the passing of oral stories by the Elders. As time progressed, the people of Canim Lake felt that it was necessary to preserve their oral history as it was recorded from interviews with their Elders. In the *Shuswap People in Story* documentary, Janice Frank spoke about her rich and proud background as a Secwepemc person. She learned folklore, which is an important element of the Secwepemc way of life from her parents.<sup>23</sup> Janice's mother interpreted the native Secwepemc name to mean "don't know" which means that the Secwepemc tribe is not really known and did not really know where it came from. The reason she gave for this is because everything is taken for granted, acceptance comes without understanding.<sup>24</sup> Thus, the Secwepemc people's nomadic lifestyle helped them to survive. Traditionally, Secwepemc beliefs and values were passed on and accepted without question by the people.<sup>25</sup> The traditional belief system set the standard for the people of Canim Lake to know and understand their origin without question.

Mary-Anne Archie explains that the Secwepemc identity is imbedded in their oral stories, culture and language. The beliefs and values were traditionally passed on, accepted and respected without question by the people.<sup>26</sup> Although the Elders interviewed in the community did not reveal a lot about the early history of the Secwepemc people, they do know that the Secwepemc language in all its dialects throughout the territory served as an anchor for Secwepemc identity. There are two great spirits that the Secwepemc believed in,

---

<sup>23</sup> Canim Lake - Gonzaga University Students, *The Shuswap People in Story*, (Canim Lake, BC, 1992), p. 4.

<sup>24</sup> Gonzaga, *Shuswap People*, 1.

<sup>25</sup> Gonzaga, *Shuswap People*, p. ii, 1.

<sup>26</sup> Gonzaga, *Shuswap People*, 2.

the “Old One” and “Coyote.” The “Old One” is the chief of the ancient world and was all powerful. He regulated the seasons, weather and animals. He led the different tribes into the country they now inherit and gave them the languages they speak.<sup>27</sup> The adults spoke of their stories and repeated them to many people of all ages in the community as well as visitors to Secwepemc country. This is how the history of the Canim Lake people was transmitted over time.<sup>28</sup>

Elizabeth Pete conjures how story telling played an important role in Secwepemc oral tradition. She attests that the long winter nights were spent recounting tales and legends. The young people and children would hear these stories being told over and over again from many different people, from visitors from other parts of Secwepemc country as well. This is the way that the history of the Secwepemc people was transmitted through time.<sup>29</sup> James Teit said that, “When a fresh story was told, at first the young people flocked to hear it, and afterwards it went the rounds of all the houses.”<sup>30</sup>

In the 1980s and 1900s Secwepemc became the preferred term for the Shuswap people. There were seven Secwepemc divisions, each consisting of a number of Aboriginal bands, communities occupying a distinct portion of resource-producing territory, seasonal as well as winter settlements.<sup>31</sup> Ignace explained that historically there were 25 Aboriginal bands existing prior to the 1860s. Several of these bands dwindled with the remaining members moving to neighboring communities.<sup>32</sup> While kinship reckoning was generally bilateral most individuals developed a sense of “belonging” to or affiliation through birth.

---

<sup>27</sup> Gonzaga, *Shuswap People*, 2, 4.

<sup>28</sup> Gonzaga, *Shuswap People*, 4.

<sup>29</sup> Gonzaga, *Shuswap People*, 4.

<sup>30</sup> Gonzaga, *Shuswap People*, 4.

<sup>31</sup> Marianne Boelscher Ignace, “Shuswap,” *Plateau*, 12, 203-219.

<sup>32</sup> Boelscher Ignace, “Shuswap,” 203.

Aboriginal bands were loosely knit networks of extended families centered around the habitual use and occupation of camping grounds, winter village sites, and hunting, fishing, and gathering grounds.<sup>33</sup> During the late nineteenth century, settlements were dispersed. The sense of reckoning membership in one band or another was rather flexible.<sup>34</sup> Orality was the foundation on which the community based their knowledge and this extended to membership. Traditionally, people were accepted in the community based on personal merit and character. There were non-Secwepemc people who became immersed and were accepted into the community based on their ability to function and participate as a community member. Membership in earlier times was recognized without attachment to a legal definition. People could have no Secwepemc blood or legal *Indian Act* status but yet be considered a member on community terms.

In support of Canim Lake's history, Frank Cassidy and Robert Bish indicate that many First Nation governments historically found their ultimate justification in terms of the power of the creator. Cassidy and Bish explained that power originally determined the activities and subjects of jurisdiction. It empowered their citizens, and gave them status equal to that of governments.<sup>35</sup> Cassidy and Bish restated the history of Seklep, "Coyote, the teacher, gentle trickster and law-giver," as told by the Secwepemc people of southeastern British Columbia as an example of the way Indian peoples see the origin of their governments. Coyote introduced the Secwepemc people to their social institutions and laws. Coyote taught them to provide for and defend themselves. Coyote went away with the Old One, high chief of all spirit people.<sup>36</sup>

---

<sup>33</sup> Boelscher Ignace, "Shuswap," 210.

<sup>34</sup> Boelscher Ignace, "Shuswap," 210.

<sup>35</sup> Bish, Cassidy, *Indian Government*, 32.

<sup>36</sup> Bish, Cassidy, *Indian Government*, 32.

The Old One sent Coyote to travel over the land of the Indian and make it right. He was sent because the earth was much troubled by great fires, winds, famine and floods. There was much that the Indian needed. During that period there were many kinds of animals, birds, and fishes that did not exist, many kinds of trees, plants and berries.

Coyote introduced the people to the sweat lodge, the pipe, the ceremonies, and the winter dances and gave them sacred laws to live by. He taught them many methods of catching, procuring and preserving food; and how to make weapons and tools.

He brought forth many new plants and put them in places where they were required. He also brought forth the animals...Coyote introduced the salmon into the river and trout into lakes, and taught people how to catch and prepare these foods.

He did many things for the Indian people but many he left unfinished and promised to return at end times. The last thing he did was take the different tribes to the countries they now inhabit; until this time they were all crowded together and he gave them the languages they were to speak.<sup>37</sup>

Cassidy and Bish stated that the Secwepemc maintain that no other person or persons gave them the authority to govern themselves; this right is spiritually grounded in the land and its resources.<sup>38</sup> What is found in the *Shuswap People in Story*, 1992 is that Shuswap identity was imbedded in oral history, culture and language as the most important marker of Band member identity.

### 2.3 The Nisga'a

The Nisga'a have occupied and used the lands of the Nass Valley since time immemorial. Their long historical presence has never placed any doubt in the minds of the Nisga'a people as to whether they have land title and ownership rights over this region. The Nisga'a reclaimed 2020 square kilometres of the Nass River in Northwestern British Columbia, south of the Alaska Panhandle. It is a land of great diversity, with forested coastal mountain ranges, deep fiords inlets and pristine glacial-fed lakes. It is a landscape which has provided the Nisga'a with deep cultural traditions and livelihood.

---

<sup>37</sup> Bish, Cassidy, *Indian Government*, 32-3.

<sup>38</sup> Bish, Cassidy, *Indian Government*, 33.

The elders of the Nisga'a tribe recall the early days, before the Europeans and missionaries arrived, when they lived in many villages throughout the Nass Valley. The lands and waters of the Nass region provided the Nisga'a with an abundance of resources such as timber and fish. Historically, the Nisga'a people relied on salmon and the oil-rich oolichan of the Nass River, a member of the smelt family which is deeply embedded in Nisga'a culture. The oolichan provides a strong cultural link to the past because the oil derived from the oolichan was traditionally used for trading.<sup>39</sup> The Nisga'a developed a far-reaching trading network which penetrated deep into the interior and extended up and down the coast.

The Nisga'a assert that for more than 10,000 years they have thrived on their lands, and their people and government were organized in a complex society. They were established within four clans: Gisk'ahaast (Killer Whale), Laxgibuu (Wolf), Ganada (Raven) and Laxsgiik (Eagle).<sup>40</sup> The clan system was and remains the governance structure of the Nisga'a's everyday life and is derived from mutual respect. Ownership of lands was collective, whereby the Chiefs of each tribe had ownership vested upon them. All members of each tribe shared in the right to resources of the land, and the land was therefore always owned by the tribe.

Today, the landscape has not changed significantly but within the context of ownership it has. The Nisga'a people have gone through many challenges since first contact in 1781 with an American trading vessel.<sup>41</sup> Culturally, politically and socially the colonization of British Columbia has been a great challenge for the Nisga'a. Today, the total

---

<sup>39</sup> Nishga Tribal Council. Citizens Plus: The Nishga People of the Nass River in North Western British Columbia.

<sup>40</sup> Nisga'a Nation Web Site. *Who we are*. On-line. Available: <http://www.ntc.bc.ca/who.html>

<sup>41</sup> Raunet, Daniel. Without Surrender, Without Consent. (Vancouver, Toronto: Douglas & McIntyre, 1996), p. 19.

Nisga'a population is approximately 6000. Of this total, there are approximately 2500 Nisga'a residing in the traditional territory and the other 3500 reside throughout Canada and the world.

"From Time Before Memory", the Nisga'a people of the Nass Valley remained very traditional in their cultural practices. They spoke their own language and operated their own institutions. They enjoyed the Nisga'a way of life. The Nisga'a nation is made up of all the Nisga'a, of whom the majority live in the Nass Valley.<sup>42</sup> There are two facts that the Nisga'a use to identify themselves their "tribe" and their "house". There are four Nisga'a tribes: Ganada, Laxgibuu, Gisk'aast, and Laxsgiik. Every Nisga'a is a member of one of these tribes or clans. A Nisga'a is also a member of a "wilp" or house.<sup>43</sup> At birth a Nisga'a is a member of the following: 1) a nuclear family (parents, sisters, brothers); 2) a wilp (house); 3) a pdeek (tribe); and 4) the Nisga'a nation.<sup>44</sup> A "wilp" is a special kind of Nisga'a family. Its members are descended from a common female ancestor. A Nisga'a becomes a member of her or his mother's wilp when s/he is born.<sup>45</sup> The members of the wilp have special rights, properties and responsibilities to each other. By virtue their membership is immediate and complete. From the moment of birth, the rights of the *pdeek* belong to that Nisga'a.<sup>46</sup>

There are important rules in Nisga'a society respecting how members behave toward each other. These rules help the Nisga'a to know how to behave in different situations and during difficult times. Each house has chiefs, territories, rights, history, stories, songs, dances and traditions. Members of the various tribes and wilps attend many feasts and

---

<sup>42</sup> Nisga'a Language and Culture Department, School District No. 92, *From Time Before Memory*, (Nisga'a: 1996), p. 24.

<sup>43</sup> Nisga'a Language, *Before Memory*, 14.

*Pdeek and Wilp*; *Pdeek* is the Nisga'a word for tribe or clan; *Wilp* is the Nisga'a word for "house."

<sup>44</sup> Nisga'a Language, *Before Memory*, 15.

<sup>45</sup> Nisga'a Language, *Before Memory*, 18.

<sup>46</sup> Nisga'a Language, *Before Memory*, 15.

important ceremonies. This is how Nisga'a members learn about their wilp (house) and pdeek (tribe). The passing of knowledge is an important part of a Nisga'a person's identity.<sup>47</sup>

The elders profess that from the time of birth, a Nisga'a has a place in the community. Their family makes room for them and the relatives and friends greet and accept them into their lives.<sup>48</sup> As a member of a wilp and pdeek each Nisga'a has a relationship with many others. The ties help the Nisga'a to gain an understanding of the interdependence of all the people and institutions in their community.<sup>49</sup> The membership rights of a Nisga'a person are inherent. There is no question of belonging, it is decided at birth.

According to the Nisga'a law, being a member of the Nisga'a nation is a birthright. A Nisga'a has a place in the community and is accepted at birth. The Nisga'a maintained four elements of identity previously discussed. Their ancestral connection has been fluid through history. These elements are absent from the *Indian Act* which proves that the *Indian Act* is a legal instrument that forced the Nisga'a to fabricate band membership rules that undermine their self-determination. Band membership was not only fabricated the *Indian Act* also sought to eliminate Nisga'a membership because the *Act* interfered with the Nisga'a clan system and their matrilineal system. The *Indian Act* forced many aboriginal communities including the Nisga'a to determine their status based on a patrilineal system.

#### 2.4 Witsuwit'en

Antonia Mills explained that the Witsuwit'en call their matrilineal descent groups made up of several houses "pdeek". In English they are referred to as clans or tribes.<sup>50</sup> Mills put in plain words that members of a clan are thought to be related through their mother's

---

<sup>47</sup> Nisga'a Language, *Before Memory*, 14.

<sup>48</sup> Nisga'a Language, *Before Memory*, 25.

<sup>49</sup> Nisga'a Language, *Before Memory*, 25.

<sup>50</sup> Antonia Mills, *Eagle Down is Our Law: Witsuwit'en Law, Feasts, and Land Claims* (Vancouver: UBC Press, 1994), p. 102.

lineage. It is assumed that all clan members are descendants of a common ancestor, although the Witsuwit'en do not name or specify the ancestor.

Mills outlined clan membership as the maker of identity. Clan membership determined on which side of the feast hall the Witsuwit'en person should be seated. It also identified the person's right to the land. Witsuwit'en law is clear that inheritance of titles and land is passed on through the mother's clan.<sup>51</sup> There are five Witsuwit'en clans, the Gilserhyu (Frog) clan; the Laksilyu (Small Frog) clan; the Gitdumden (Wolf) clan; the Laksamshu (Fireweed) clan; and the Tsayu (Beaver) clan. In the feast hall they operate as four as the Tsayu and Laksamshu clans act as one unit for feasting purposes.<sup>52</sup>

Mills articulated that in terms of kinship a house is a matrilineage of people who are so closely related that only the members know how their members are related. The matrilineages are called houses because the male members of the matriline and their spouses, children, and occasionally in-laws occupied a common long house at the summer fishing villages.<sup>53</sup>

Mills pointed out that the orientation of the Witsuwit'en toward their territories and the fact that all the houses in a clan combine to host the feasts when a house member dies shows that the clan rather than the house is the most frequently used marker of Witsuwit'en identity.<sup>54</sup> The Witsuwit'en recognize the similarities between their law and the law of the Canadian state. The principles of Witsuwit'en law defined how the people own and use the surface of the earth when they are dispersed on the territories and how they govern

---

<sup>51</sup> Mills, *Eagle Down*, 102.

<sup>52</sup> Mills, *Eagle Down*, 102.

<sup>53</sup> Mills, *Eagle Down*, 107.

<sup>54</sup> Mills, *Eagle Down*, 110.

themselves and settle disputes when they are gathered together in the feast hall.<sup>55</sup> The organization into houses and clans, which intermarry, provided the foundation of property rights. Marriage and reciprocity of the interconnections of the clans provided the Witsuwit'en with a distinctive form of confederation.<sup>56</sup>

The law of the Witsuwit'en is the law of matrilineage and matrilineal succession. The law is that you belong to your mother's side. The law of matrilineage places every Witsuwit'en within a house and clan. As a member of this group, each individual has rights to use the territory of his or her house and clan. In accordance with Witsuwit'en law, the whole clan takes responsibility for the actions of its members. The clan will compensate members of an offended party if a clan member commits an offence and in turn, the clan will support its members if they are offended.<sup>57</sup> The inheritance of Witsuwit'en names and territories also occur through the mother's side. The Witsuwit'en maintained the integrity of their clans, practiced their marriage and residence laws, and passed on jurisdiction over their discrete territories in the feast hall.<sup>58</sup>

It is evident that Witsuwit'en identity is imbedded in the clan system and follows the female lineage. The *Indian Act* ignores these elements which prove that the *Indian Act* forces the Witsuwit'en to undermine and extrapolate their identity. The *Indian Act* legally established that Indian status would be determined by the individual's relationship to a male person. This totally disregarded the Witsuwit'en beliefs and practices as the law of matrilineage and matrilineal succession was and is the law of the Witsuwit'en.

---

<sup>55</sup> Mills, *Eagle Down*, 141.

<sup>56</sup> Mills, *Eagle Down*, 141.

<sup>57</sup> Mills, *Eagle Down*, 142.

<sup>58</sup> Mills, *Eagle Down*, 163.

## 2.5 Plains Cree

David Mandelbaum wrote about the Plains Cree. He indicated that they were loose shifting units usually named for the territory they occupied. Each band has its own range, their limits were not clearly defined; a band could travel a hundred miles or more from its usual location to join in a Sun dance or hunt with another band.<sup>59</sup> Individuals or whole families would sometimes separate from their group to follow another chief.

“The most important consideration in the demarcation of band divisions was that all the members of a band lived in the same general territory.”<sup>60</sup> Mandelbaum explained that the prestige and power of the leading chief established band cohesion. An influential leader attracted more families and held their allegiance. In the last half of the nineteenth century, the noted warrior Black-bear rose to chieftainship because of his abilities. He created a new band and several Plains Cree, Assiniboin and Plains Ojibwa joined his camp. Kinship ties transferred according to band allegiance. If a family became dissatisfied with their neighbors, they would move to another camp with relatives in another band.<sup>61</sup> Every band had a stable nucleus that consisted of relatives of the chief. These members would not normally leave the group. The band increased by permitting young men to marry and settle into the group.<sup>62</sup> According to Mandelbaum acceptance into band membership was simple. Any person who lived in the encampment for a period of time and traveled with the group became known as one of its members. Newcomers could usually trace kinship with several people in the band and establish their status. When kinship was non-existent, marriage into the band furnished the immigrant with the social alliances required to adjust to the course of

---

<sup>59</sup> David G. Mandelbaum, *The Plains Cree: An Ethnographic, Historical, and Comparative Study*. (Regina: the Canadian Plains Research Center, University of Regina, 1979), p. 105.

<sup>60</sup> Mandelbaum, *Plains Cree*, 105.

<sup>61</sup> Mandelbaum, *Plains Cree*, 105.

<sup>62</sup> Mandelbaum, *Plains Cree*, 105.

communal life. Recruits from other bands of Plains Cree or from other tribes constantly augmented the numbers of each band.<sup>63</sup>

For the Plains Cree, kinship and acceptance were the sole markers of their identity. If their existence was threatened, the group would permit immigrants with social alliances to join them otherwise members were identified by relation. In this case, the *Indian Act* destroyed true self-determination because prior to *Indian Act* influence, membership was not forced on legal grounds, inclusion was based on residency and allegiance through community connection and participation.

## 2.6 Upper Tanana Athapaskans

Norman Easton introduced a concept of ethnicity that is based on the social expression of group membership that serves to maintain group identity.<sup>64</sup> The people of the Upper Tanana are descendents of speakers of the Athapaskan Native language known as Upper Tanana or the dialect of Scottie Creek. They identify themselves as the Scottie Creek Dindeh. Most of these people live in Beaver Creek, Yukon, and Northway, Alaska. Members of this group can be found in other communities within and outside the region that moved due to marriage or economic reasons but maintain their primary identification as Scottie Creek people.<sup>65</sup> The Scottie Creek people were known as foragers. Their hunting and gathering followed the seasons within a specified region defined by a geographical watershed. They gathered in semi permanent villages for economic and ritual purposes and moved in small extended families during times of resource scarcity.<sup>66</sup> They traveled for the purposes of trade, establishing and maintaining family and kinship relations. Kin based

---

<sup>63</sup> Mandelbaum, *Plains Cree*, 106.

<sup>64</sup> Norman Alexander Easton, "Intergenerational Differences in Ethnic Identification in a Northern Athapaskan Community," *The American Review of Canadian Studies*, 31:1/2 (2001), 105-120.

<sup>65</sup> Easton, "Intergenerational Differences," 105.

<sup>66</sup> Easton, "Intergenerational Differences," 105.

activity was promoted and regulated by clan membership. Their political relations were egalitarian with emphasis on the authority and responsibility of the individual to make their choices.<sup>67</sup>

The Scottie Creek territories were not extensively exposed to new settlers. Their lands were inaccessible until the Alaska Highway was built in 1943.<sup>68</sup> With minimal disturbance, the Scottie Creek people were able to maintain their culture and identity unlike many interior Athapaskans. They remained socially and economically intact with almost complete control of their adaptations.<sup>69</sup> This is an example of how an Aboriginal community remained fluid and secure when left alone.

The Scottie Creek Dindeh maintain their identity is based on the concept of ethnicity. Although some members moved outside the region for marital or economic reasons they retained their primary identification as Scottie Creek people. There was minimal disturbance amongst the people so they were able to keep their culture and identity intact. This demonstrates when left alone the preservation of Scottie Creek identity is strengthened. However, the influx of *Indian Act* legislation robbed Aboriginal communities of their original identity.

## 2.7 Government policy and implementation pre 1867 to 1985

Government policy implementation prior to the 1867 *British North American Act* and up to 1985 established band membership policies that seriously impaired Aboriginal people's ability to manage their affairs. The historical developmental of government policy demonstrates how Aboriginal communities have been and continue to be disadvantaged.

---

<sup>67</sup> Easton, "Intergenerational Differences," 106.

<sup>68</sup> Easton, "Intergenerational Differences," 106.

<sup>69</sup> Easton, "Intergenerational Differences," 106.

John Tobias wrote that goals were established by the federal government under the premise that Indians were incapable of dealing with the Europeans without being exploited. The Government of Canada assumed responsibility for the protection of the Indian and their property. This arrangement established a special status for the Indian in the political and social structure of Canada.<sup>70</sup> Tobias says that this distinction was embedded in the constitution of Canada through Section 91, Subsection 24, of the *British North American Act* of 1867. He further elaborated that the basic principles of Indian policy pre-date Confederation. Subsequent policies are a carry-over of the policies developed by the imperial government. "Protection" of the Indians was the first principle of imperial Indian policy. Tobias explained that its roots were based on the eighteenth-century European struggle for empire in North America. Indian superintendents were appointed under the guise of protecting Indian lands from European encroachment and to encourage the Indian alliance with the British through annual distribution of presents.<sup>71</sup> A boundary line was established between Indian lands and European settlement, which could only be altered by the Crown making treaties to take the surrender of Indian title to the land.<sup>72</sup> The policies initially adopted included regulations for trade in the period 1745-61, which were incorporated into the Royal Proclamation of 1763.<sup>73</sup> After 1815, the British adopted a policy to civilize the Indians as an integral part of their relationship with them. In the 1830s the British initiated several experiments in civilization. They entailed the establishment of Indian reserves in

---

<sup>70</sup> John L. Tobias, *Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy*. In *Sweet Promises: A Reader on Indian-White Relations in Canada*, edited by J.R. Miller, (Toronto: University of Toronto Press, 1991) p. 127.

<sup>71</sup> Tobias, *Indian Policy*, 128.

<sup>72</sup> Tobias, *Indian Policy*, 128.

<sup>73</sup> Tobias, *Indian Policy*, 128.

isolated areas. In 1839, legislation in Upper Canada was enacted which ruled that reserves were among the crown lands on which settlers were forbidden to encroach.<sup>74</sup>

In 1844, the commission established by Governor General Sir Charles Bagot recommended that reserves be properly surveyed and illegal timber cutting eliminated by a timber licensing system, in order to combat settler encroachments and trespassing.<sup>75</sup> The commissioners were also concerned that Crown protection of Indian land was contrary to the goal of full citizenship in mainstream society. Maintaining a line between Indian and colonial lands kept Indians sheltered from various aspects of colonial life, such as voting (only landowners could vote at the time), property taxation, and liability to have one's property seized in the event of non-payment of debt.<sup>76</sup> The Bagot Commission recommended that Indians be encouraged to adopt individual ownership of plots of land, and that the reserve system be gradually eliminated. The Crown's financial obligations were to be reduced by taking a census of all the Indians living in Upper Canada. Crown officials were to prepare band lists and no Indian could be added without official approval, and only persons listed as band members would be entitled to treaty payments.<sup>77</sup> The commission further recommended that (1) all persons of mixed Indian and non-Indian blood who had not been adopted by the band; (2) all Indian women who married non-Indian men and their children; (3) and all Indian children who had been educated in industrial schools would be ineligible to receive payments. These recommendations formed the heart of the Indian status, band membership and enfranchisement provisions of the *Indian Act*.<sup>78</sup>

---

<sup>74</sup> Tobias, *Indian Policy*, 129.

<sup>75</sup> Royal Commission, "Looking Forward," 267-8.

<sup>76</sup> Royal Commission, "Looking Forward," 268.

<sup>77</sup> Royal Commission, "Looking Forward," 268.

<sup>78</sup> Royal Commission, "Looking Forward," 268.

By 1850, Indian lands were given special status by being protected from trespass by non-Indians and being free from seizure for non-payment of debt or taxes.<sup>79</sup> Indian lands were designated as being held in trust by the crown and free from taxation. Tobias explained that legislation was somewhat different in Lower Canada. There was less political involvement to civilize the Indians as the Churches were prominently engaged in this work. The most remarkable difference in Lower Canada's legislation is the way it defined who was an Indian. The definition included all persons of Indian ancestry and all persons married to such persons, belonging to or recognized as belonging to an Indian band by the religious orders, and living with that band.<sup>80</sup> There were often intermarriages and non-Indians living on reserves.

Tobias stated that subsequent legislation modified the definition by requiring that ancestry and membership had to be traced through the male line. In addition, a non-Indian woman gained Indian status if she married an Indian man. The *Act* of 1850 set the precedent for non-Indians to determine who is an Indian and Indians had no say in the matter.<sup>81</sup>

The 1850 Lower Canada *Land Act* began the process of defining 'Indians' for reserve residency purposes while the new legislation under the *Civilization Act* set in motion the enfranchisement mechanism through which persons of Indian descent and culture could be removed from Indian status and band membership. These two laws combined to commence the process of replacing the natural, community-based and self-identification approach to determining group membership with the purely legal one controlled by non-Aboriginal government officials.<sup>82</sup> It was the *Gradual Civilization Act* of 1857 that furthered the step in

---

<sup>79</sup> Tobias, *Indian Policy*, 129.

<sup>80</sup> Tobias, *Indian Policy*, 129.

<sup>81</sup> Tobias, *Indian Policy*, 129.

<sup>82</sup> Royal Commission, "Looking Forward," 272.

the direction of Canadian government control of deciding who is an Indian. The Royal Commission on Aboriginal People's Report stated that the tone of the *Gradual Civilization Act*, especially the enfranchisement provisions, asserted the superiority of colonial culture and values. It set in motion a process of devaluing and undermining Indian cultural identity.<sup>83</sup> Only Indians who renounced their communities, cultures and languages could gain the respect of Canadian society. Thus began the psychological assault on Indian identity that would escalate with the *Indian Act* prohibitions on cultural practices such as traditional dances and costumes and by the residential school policy.<sup>84</sup>

The 1868-69 *Lands and Enfranchisement Acts* dealt with the legal definition of "Indian" in various ways. The 1869 *Act* added a "blood quantum" proviso to the definition of Indian. It states:

In the division among the members of any tribe, band or body of Indians, of any annuity money, interest money or rents, no person of less than one-fourth Indian blood born after the passing of this Act, shall be deemed entitled to share in any annuity, interest or rents, after a certificate to that effect is given by the Chief or Chiefs of the band or tribe in Council, and sanctioned by the Superintendent-General of Indian Affairs.<sup>85</sup>

This clause originated due to the possible existence of people legally defined as Indians but with little Indian blood.

The *Lands and Enfranchisement Act* of 1869 instituted the Canadian statute governing the status of Native women after marriage to non-Indians or to Indians from other bands.<sup>86</sup> Clause six of the *Act* stipulated that if an Indian woman married a non-Indian, she and her offspring would not be entitled to collect annuities, be members of her band, or be an

---

<sup>83</sup> Royal Commission, "Looking Forward," 273.

<sup>84</sup> Royal Commission, "Looking Forward," 273.

<sup>85</sup> Ottawa. Treaties and Historical Research Centre. P.R.E. Group, Indian and Northern Affairs. *The Historical Development of the Indian Act*: Second ed. (Ottawa, 1978), p. 53.

<sup>86</sup> Ottawa, *Treaties*, 54.

Indian within the meaning of the *Act*. If the woman married an Indian from another band she could receive annuities as a member of his band and their children would be considered Indians belonging to that band or tribe under the terms of the 1869 *Act*.<sup>87</sup> The *Gradual Enfranchisement Act* of 1869 was the first law to deny Indian status to an Indian woman who married a non-Indian and prevented her children from acquiring status as well.

In 1872, the General Council of Ontario and Quebec Indians attempted to have the clause changed in order that “Indian women may have the privilege of marrying when and whom they please without subjecting themselves to exclusion or expulsion from their tribe.”<sup>88</sup> The *Act* was never changed; instead some of the stipulations concerning status and membership of married Indian women were extended to include illegitimate children, Indians who continuously resided outside of Canada for five years and recipients of half-breed lands or scrip under the terms of the *Act* of 1874.<sup>89</sup>

These laws carried forward to the first *Indian Act* in 1876.<sup>90</sup> The *Indian Act* of 1876 stressed patrilineal descent and legitimate birth as criteria for Indian status. This arrangement is modeled after European society’s patrilineal and patriarchal lineage. Section 11(1)(f) of the original *Indian Act* decreed that non-Indian and non-status women marrying status Indian males took the status designation of their Indian spouse.<sup>91</sup> The revised *Indian Act* of 1876 encompassed three areas of concern: lands, membership and local government.<sup>92</sup>

On August 22, 1879 a memorandum confirmed “the legal status of the Indians of Canada as that of minors with the Government as their guardians.” Band membership and

---

<sup>87</sup> Ottawa, *Treaties*, 54.

<sup>88</sup> Ottawa, *Treaties*, 54.

<sup>89</sup> Ottawa, *Treaties*, 54.

<sup>90</sup> Royal Commission, “Looking Forward,” 303.

<sup>91</sup> Linda Sutherland, “Citizen Minus: Aboriginal Women and Indian Self-Government, Race, Nation, Class and Gender.” MA Thesis, The University of Regina, Saskatchewan, 1995, p. 61.

<sup>92</sup> Ottawa, *Treaties*, 51.

Indian blood constituted key criteria for Indian status. The only alternative to being a ward of the State was enfranchisement, or ceasing to be an Indian.

The Royal Commission on Aboriginal Peoples points out that the recognition as ‘Indian’ in Canadian law often had nothing to do with whether the person was of Indian ancestry. For example, a woman of non-Indian ancestry was recognized as Indian and granted Indian status upon marriage to an Indian man while an Indian woman who married a man without Indian status lost her legal recognition as Indian. Although the status and band membership provisions slanted heavily against Indian women, the hardship worked on Indians of both sexes. This was accomplished through the exercise of the superintendent general’s power to determine who was a member of a band. This power permitted the removal of individuals deemed ineligible from reserve communities by federal authorities.<sup>93</sup> The power imbalance remains virtually unchanged with the exception of the developments precipitated by the 1985 amendments to the *Indian Act* contained in Bill C-31, which is explained in the subsequent section.

#### 2.7.1 Band Membership Influence, 1985 Forward

The discussion on Band membership influence will focus on two important decisions that reconfigured the landscape of Aboriginal identity and band membership in Canada. These are the *Indian Act* amendment conceived as Bill C-31 and the Supreme Court challenge that was brought forward by John Corbiere.

#### 2.7.2 The Sandra Lovelace Case

The impetus for Bill C-31 is the United Nations Human Rights Committee ruling that Canada violated the human rights of Sandra Lovelace, a Melacite woman from the Tobique Indian reserve in New Brunswick. The Committee stated that the operation of Section

---

<sup>93</sup> Royal Commission, “Looking Forward.” 303.

12(1)(b) of the *Indian Act* denied Lovelace the right to live on her native reserve and enjoy her own culture—a right guaranteed to minorities under Article 27 of the International Covenant on Civil and Political Rights.<sup>94</sup> The Lovelace case intended to rectify the discriminatory practices of the *Indian Act*. The intent was to dismiss the clause that caused Indian women and their children to lose their “Indian” status when the woman married a non-Native man. On the contrary, Native men were not affected when they married non-Native women.<sup>95</sup>

A precursor to the implementation of the 1985 *Indian Act* amendment is the 1982 amendment of the constitution, which incorporated the *Canadian Charter of Rights and Freedoms*. The *Charter* included the provision, in section 15, that “every individual is equal before and under the law without discrimination based on race, national or ethnic origin, color, religion, sex, age, or mental or physical disability”.<sup>96</sup> Section 15 came into effect on April 15, 1985. This amendment is the impetus for the Lovelace case to successfully win the court challenge forcing the federal government to eliminate the sexual discriminatory practices of the *Indian Act* in the same year.

This led to the passage of Bill C-31. The bill amended several sections of the *Indian Act* particularly the status and band membership provisions. Indian status would continue to be determined by the federal government; status was restored to those who lost it under subsection 12(1)(b) and other similar discriminatory sections of the status and membership provisions.<sup>97</sup> The general rule is that future Indian status would be granted to individuals with at least one parent with status. The concept of enfranchisement was totally abolished

---

<sup>94</sup> Sutherland, “Citizen Minus,” 64.

<sup>95</sup> [http://www.mta.ca/faculty/arts/canadian\\_studies/english/about/study\\_guide/famous\\_women/sandra\\_lovelace.html](http://www.mta.ca/faculty/arts/canadian_studies/english/about/study_guide/famous_women/sandra_lovelace.html), 1.

<sup>96</sup> Royal Commission, “Perspectives,” 33.

<sup>97</sup> Royal Commission, “Perspectives,” 33.

and those who lost status through enfranchisement had their status restored. Although Band membership was guaranteed for some classes of persons restored to Indian status or admitted to Indian status for the first time not all were guaranteed automatic Band memberships.<sup>98</sup> Indian status and Band membership developed into separate entities. In July 1981, the Canadian government granted exemptions from the United Nations ruling to Indian bands that requested it and in 1985; the *Indian Act* was finally revised.<sup>99</sup>

Two broad categories of Indians were created and each held different rights. The first group is referred to as the charter group. The charter group represents the original people who held band membership on April 17, 1985. The non-charter group is the female children of the charter group who initially lost their Indian status and was reinstated under Bill C-31. Subsection 6(1) of the *Indian Act* extends status to persons whose parents are defined as 'Indian' under section 6 of the *Act*. Subsection 6(2) extends status to persons with one parent who is or was an Indian under Section 6.<sup>100</sup> All Indians who had status when the 1985 rules came into effect are referred to as 6(1) status Indians. The difficulties arise for the children and grandchildren of 6(1) and 6(2) status Indians. For the grandchildren of present generation 6(1) and 6(2) Indians their status will depend on how their parents and grandparents acquired status. By the third generation, the net results of the new rules and the effects of the 6(1)/6(2) distinctions will be felt.<sup>101</sup>

For many individuals who regained status, Bill C-31 is a dismal failure. Indian Bands who chose to administer membership can decide who is eligible to be a Band member and they may exclude Bill C-31 reinstatements or "accept as Band members persons who have no

---

<sup>98</sup> Royal Commission, "Perspectives," 33-4.

<sup>99</sup> [http://](#), "Lovelace," 1

<sup>100</sup> Royal Commission, "Looking Forward," 305.

<sup>101</sup> Royal Commission, "Looking Forward," 305.

status.”<sup>102</sup> In order for first generation children of reinstated Band members to be eligible for Indian status they must marry a status Indian. The discrimination continues because the descendants of Indian males who married non-Indians do not incur loss of status if they marry out but the descendants of reinstated females lose their status if they marry out.<sup>103</sup> In order for Aboriginal communities to be inclusive, the exclusionary history and effects of Aboriginal women must be reconciled. The women and their children need to be brought back into the fold.

### 2.7.3 The Corbiere Decision

The second critical occurrence affecting Band membership rights is the Corbiere Case that challenged *Indian Act* elections in John Corbiere *et al* vs. the Batchewana Indian Band and Her Majesty the Queen. Seventy percent of the Batchewana Band’s membership lives off reserve. Most of these members were re-registered on the Band List as a result of the *Indian Act* changes made by Bill C-31.<sup>104</sup> John Corbiere argued that section 77(1) discriminated against non-resident members on the basis of residency – where they live. This kind of discrimination is not allowed under section 15 of Canada’s *Charter of Rights and Freedoms*.<sup>105</sup> Corbiere further argued that discrimination based on where you live is the same as any other kind of discrimination.<sup>106</sup>

The issue is the section of the *Indian Act* prohibiting non-resident Band members from voting in Band elections held under the *Indian Act*. The judgment was rendered by the Supreme Court of Canada (SCC) on May 20, 1999.<sup>107</sup> In the SCC ruling, it states that “off-

---

<sup>102</sup> Sutherland, “Citizen Minus,” 68.

<sup>103</sup> Sutherland, “Citizen Minus,” 68.

<sup>104</sup> <[http://www.anishinabek.ca/uo/roj\\_0310b.htm](http://www.anishinabek.ca/uo/roj_0310b.htm)> Appendix ‘B’ – Corbiere v. Canada Summary.

<sup>105</sup> <[http://www.afn.ca/corbiere/corbbook\\_e.pdf](http://www.afn.ca/corbiere/corbbook_e.pdf)> The Assembly of First Nations.

<sup>106</sup> <[http://www.afn.ca/corbiere/corbbook\\_e.pdf](http://www.afn.ca/corbiere/corbbook_e.pdf)> The Assembly of First Nations.

<sup>107</sup> *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203

reserve Band member status should be recognized as an analogous ground. From the perspective of off-reserve Band members, the choice of whether to live on- or off-reserve, if it is available to them, is an important one to their identity and personhood, and is therefore fundamental. Also critical is the fact that Band members living off-reserve have generally experienced disadvantage and prejudice, and form part of a “discrete and insular minority” defined by race and place of residence. In addition, because of the lack of opportunities and housing on many reserves, and the fact that the *Indian Act*’s rules formerly removed Band membership from various categories of Band members, residence off the reserve has often been forced upon them, or constitutes a choice made reluctantly or at high personal cost.”<sup>108</sup> The SCC ruled that the words “...and is ordinarily resident on the reserve...” in section 77(1) of the *Indian Act* are unconstitutional. It violates the equality rights of Band members who do not live on reserves.<sup>109</sup> The SCC further ruled that the words violated the equality provision of the *Canadian Charter of Rights and Freedoms* and stated that is it discriminatory to deny a non-resident Band member the right to vote in Band elections held under section 77(1).<sup>110</sup> The Supreme Court supported the fact that it is a form of discrimination for non-resident band members to be denied voting rights. This means that First Nation members living off the reserve have the right to vote in elections and referendums.<sup>111</sup>

The Supreme Court reasoned that decisions made by Chief and Council affect people who leave the reserve because Band Councils make decisions about land or community

---

<sup>108</sup> *Corbiere*, supra note #80.

<sup>109</sup> The Corbiere Decision handout, Assembly of First Nations Conference, (Winnipeg, Manitoba) June 2000.

<sup>110</sup> The Corbiere Decision handout, Assembly of First Nations Conference, (Winnipeg, Manitoba) June 2000.

<sup>111</sup> <[http://www.afn.ca/corbiere/corbbook\\_e.pdf](http://www.afn.ca/corbiere/corbbook_e.pdf)> The Assembly of First Nations.

property on behalf of their membership.<sup>112</sup> The Supreme Court contended that since non-resident members can be affected by decisions made by elected representatives, they should be allowed to participate in electing their representatives. Therefore, the words "...and is ordinarily resident on the reserve" must be taken out of section 77(1) of the *Indian Act*. Any First Nation that runs section 74 elections must allow all their eligible members to vote in elections for Band Council regardless of residency.<sup>113</sup>

The Court tried to balance the interests of Band member's off reserve with the interests of those who live on-reserve. One of the judges, L'Heureux-Dube, J., stated in the written decision:

Recognizing non-residents' right to substantive equality in accordance with the principle of respect for human dignity, therefore, does not require that non-residents have identical voting rights to residents. Rather, what is necessary is a system that recognizes non-residents' important place in the band community. It is possible to think of many ways this might be done, while recognizing, respecting, and valuing the different positions, needs and interests of on-reserve and off-reserve band members. One might be able to divide the "local" functions which relate purely to residents from those that affect all band members and have different voting regimes for these functions. A requirement of a double majority, or a right of veto for each group might also respect the full participation and belonging of non-residents. There might be special seats on a band council for non-residents, which give them meaningful, but no identical, rights of participation. The solution may be found in the customary practices of Aboriginal bands. There may be a separate solution for each band. Many other possibilities can be imagined, which would respect non-residents' rights to meaningful and effective participation in the voting regime of the community, but would also recognize the somewhat different interests of residents and non-residents. However, without violating s.15(1), the voting regime cannot, as it presently does, completely deny non-resident band members participation in the electoral system of representation. Nor can that participation be minimal, insignificant, or merely token.<sup>114</sup>

---

<sup>112</sup> <[http://www.afn.ca/corbriere/corbbook\\_e.pdf](http://www.afn.ca/corbriere/corbbook_e.pdf)> The Assembly of First Nations.

<sup>113</sup> <[http://www.afn.ca/corbriere/corbbook\\_e.pdf](http://www.afn.ca/corbriere/corbbook_e.pdf)> The Assembly of First Nations.

<sup>114</sup> <[http://www.anishinabek.ca/uo/roj\\_0310b.htm](http://www.anishinabek.ca/uo/roj_0310b.htm)> Appendix 'B' – Corbiere v. Canada Summary.

The Court was clear that the decision related only to the constitutionality of voting distinctions. The decision did not address any of the issues such as extension of entitlements to off-reserve Band members or issues of federal or provincial jurisdiction.

In the application of its decision, the Supreme Court referenced the importance of findings of the Royal Commission on Aboriginal Peoples report particularly for off-reserve members. The following two quotes are found in the decision:

Throughout the Commission's hearings, Aboriginal people stressed the fundamental importance of retaining and enhancing their cultural identity while living in urban areas. Aboriginal identity lies at the heart of Aboriginal peoples' existence; maintaining that identity is an essential and self-validating pursuit for Aboriginal people in cities.<sup>115</sup>

And:

Cultural identity for urban Aboriginal people is also tied to a land base or ancestral territory. For many, the two concepts are inseparable. Identification with an ancestral place is important to urban people because of the associated ritual, ceremony and traditions, as well as the people who remain there, the sense of belonging, the bond to an ancestral community, and the accessibility of family, community and elders.<sup>116</sup>

The *Corbiere* decision directly impacts First Nations elections and subsequently how Bands are governed. The resultant inclusion of off-reserve residents will vary across Canada. It is evident that the legislative *Indian Act* (Bill C-31) amendment and the *Corbiere* Supreme Court Decision will reshape Band membership direction in Aboriginal communities. Bill C-31 and the *Corbiere* decision were precipitated through challenges under the *Charter of Rights and Freedoms*. Hence, these two elements commenced another phase of Band membership determination and its attendant categorizations.

The overview of community systems at the beginning of this chapter clearly indicates that Aboriginal communities had their own method of identification. They knew who their

---

<sup>115</sup> *Corbiere*, *supra* note #23.

<sup>116</sup> *Corbiere*, *supra* note #23.

people were and who belonged there. The connection to community and identity was as diverse as the community itself. The culture, beliefs, and traditions subsisted as the moral fiber of the Nation. Unfortunately, traditional and customary practices eroded with colonial influence and the development of policies. The leading force in the dismantling of the independence of Aboriginal people is the *Indian Act*. The *Act* dictated and governed the lives of the people, and more importantly their identity. The forced change modified and numbed the traditional system of identity. Policy change and court cases continue to influence Aboriginal people's lives. While the Bill C-31 amendment and the Corbiere Supreme Court decision represent some corrections to the *Indian Act*, we still need to ask, "Where are the opportunities for Aboriginal people to legitimize their identity?"

A literature review in the next chapter will provide several Aboriginal and non-Aboriginal authors views on identity. The aim is to put forward methods and ideas as possible alternatives. The chapter closes with modern Band member enrolment arrangements within the treaty context.

## Chapter 3 Modern-Day Concepts of Citizenship and Membership: A Literature Review

This chapter shifts to contemporary views of citizenship and Band membership. Citizenship is explained from non-Aboriginal perspectives while Band membership is viewed through an Aboriginal lens. The purpose of this chapter is to review principles and identify opinions that support or challenge the notion of community driven Band membership and or citizenship. In the discussion, citizenship is often equated to self-determination for Aboriginal peoples whereas citizenship is also required to be legally attached to Canada. The ensuing discourse is divided into four parts. The first part searches for Aboriginal principles and opinions regarding Band membership and citizenship. Next, the discussion shifts to non-Aboriginal views on the topic. The third section examines what the Royal Commission on Aboriginal Peoples Report has to say on the topic and the final section discusses the enrollment criteria in the recent Nisga'a Final Agreement and the Lheidli T'enneh Agreement-in-Principle. The purpose of this chapter is to create a frame of reference for building Band Membership ideals within contemporary society.

### 3.1 Aboriginal Views on Citizenship and Band Membership

Dr. Taiaiake Alfred indicated that contemporary community life is structured within two value systems that are fundamentally opposed. One is rooted in traditional teachings that structure social and cultural relations while the other is imposed by the colonial state, and structures politics. This disunity is the cause of factionalism in Native communities and contributes to the alienation within them.<sup>117</sup> Dr. Alfred felt that Indigenous people have made significant progress toward reconstructing their identities to the point where the threat of assimilation is not as overwhelming and is manageable. Dr. Alfred stated that Western

---

<sup>117</sup> Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Toronto: Oxford University Press, 1999), p. 1.

society is successfully engaged in the first stages of restoration of the autonomous power and cultural integrity in the area of governance.<sup>118</sup>

In the indigenous tradition, the idea of self-determination starts with the self; political identity—with its inherent freedoms, powers, and responsibilities.<sup>119</sup> Dr. Alfred affirmed that the fundamental task facing Aboriginal communities is to overcome the racial, territorial, and ‘status’ divisions that are features of the political landscape. Factions and conflicts have developed based on divisions between ‘status versus non-status’, enrolled versus non-enrolled’, or ‘on-reserve versus urban’. Because of these conflicts the question becomes, who is Indigenous? The answer must respect the integrity of Indigenous nations and their traditions and reject the divisive categories defined by the state. Dr. Alfred believes that when resolving questions of Indigenous identity and membership determination it is the Indigenous nations that have this right. The existing problem is that Indigenous nations are engaged with the state in a complex relationship where varying degrees of interdependency exist and history has created a range of definitions to replace those that were securely and collectively held by Aboriginal communities.<sup>120</sup>

Traditionally, Indigenous societies were strong and there was no question of cultural boundaries, therefore, people did not have to think about their group affiliation or whether or not they were truly Indian. The breakdown in traditional societies created in Native people many questions about belonging. Today, Native people have difficulty determining an accurate positive definition of being Native. The only degree of certainty that can be achieved is ‘process’- fairness, openness, and regularity - in determining who is and is not a member of the group. Formerly, traditional philosophies focused attention on individual

---

<sup>118</sup> Alfred, “Peace, Power,” 2.

<sup>119</sup> Alfred, “Peace, Power,” 25.

<sup>120</sup> Alfred, “Peace, Power,” 85.

characteristics possessed by a person, membership was determined by beliefs, behavior and blood relationship to the group. Both are still essential to being Indian.<sup>121</sup>

Alfred suggested that collective views on culture and blood have shifted over time in response to the social, political, and economic forces that affected the group's need for self-preservation. He further suggested that the return to a traditional framework and formulation will clarify the confusion introduced by imposed criteria and result in certain membership definitions for every community. Alfred claimed that the collective right of Native communities to determine their members must be recognized as a fundamental right of self-determination and be respected as such. No other nation (or state or organization) has the right to force an identity on another nation. Respecting the right of communities to determine membership for themselves promotes the reconstruction of Indigenous nations as groups or related people descended from historic tribal communities who meet commonly defined cultural and racial characteristics for inclusion. Unfortunately, this would exclude many thousands of people who self-identify or people with minimal blood connections who have been admitted by the state as Indigenous.<sup>122</sup>

In her book, *Journeying Forward*, Patricia Monture-Angus examined historically what Aboriginal people have tried to accomplish on the journey toward reclaiming individual and collective identities. She indicated that as Aboriginal Peoples (that is, Indian (First Nation), Inuit and Métis) there is no single Aboriginal "perspective" on anything.<sup>123</sup> Homogeneity does not even exist within First Nations, Métis or Inuit cultures. It is her intent to articulate only one Aboriginal view of the pathway (or pathways) away from oppression.

---

<sup>121</sup> Alfred, "Peace, Power," 85.

<sup>122</sup> Alfred, "Peace, Power," 84-5.

<sup>123</sup> Patricia Monture-Angus, "Journeying Forward: Dreaming First Nations' Independence." (Halifax: Fernwood Publishing, 1999), p. 21.

It is her belief that understanding the nature of the oppressive relationships with governments is the first and central task of the broader goal.<sup>124</sup>

The phrases self-government, self-determination and sovereignty do not hold exactly the same meanings from the Aboriginal points of reference. But a single Aboriginal tradition or notion of self-government appears to exist when it is juxtaposed against the dominant non-Aboriginal system.<sup>125</sup> Monture-Angus believed that presenting two worldviews that are diametrically opposed moves further away from solutions as the competing understandings create distance rather than relationships.<sup>126</sup> This problem originates in Canada's constitution. Sections 91 and 92 divide legislative authority between the federal and provincial governments. Under section 91(24) the federal parliament has authority over "Indians and Lands Reserved for Indians." Monture-Angus stipulated that while section 91(24) remains a part of Canada's constitution, Indian people will never be free from their subordinated position.<sup>127</sup> Monture-Angus indicated that Section 91(24) is unnecessary to sustain the legal validity of the "nation to nation" relationship. She pointed out that Aboriginal peoples can rely on both the *Royal Proclamation of 1763* and treaties.<sup>128</sup> She further maintained in some areas of the country the *Royal Proclamation* must be seen as treaty rather than a unilateral Crown act.<sup>129</sup>

Monture-Angus acknowledged that the rights philosophy and law in Canada are based in a liberal individualist ideology. The judiciary and Canadian lawmakers characterize two principle streams of rights: rights of individuals and rights of groups.<sup>130</sup> She referred to Bryan Swartz who stated that, "Every person is inherently equal in legal dignity with every

---

<sup>124</sup> Monture-Angus, "Journeying Forward." 21.

<sup>125</sup> Monture-Angus, "Journeying Forward." 28.

<sup>126</sup> Monture-Angus, "Journeying Forward." 28.

<sup>127</sup> Monture-Angus, "Journeying Forward." 34.

<sup>128</sup> Monture-Angus, "Journeying Forward." 34.

<sup>129</sup> Monture-Angus, "Journeying Forward." 34.

<sup>130</sup> Monture-Angus, "Journeying Forward," 135.

other. No special personal or ethnic history is necessary to entitle a person to equal respect from the state. The individual is to be free from restrictions in defining and pursuing his or her own ends in life...<sup>131</sup> Monture-Angus believes that the legacy of taken lands, residential schools and child welfare practices clearly indicate that with respect to Aboriginal people domiciled in Canada the law has not lived up to its vision.

Individual rights when bundled together are considered group rights. Examples of individual rights bundled as groups rights are language and religion. Individuals hold both individual and group rights and they can choose to exercise them accordingly. Examples are the right to individual self-autonomy which includes the right to live free of violence and language rights which accrue to individual people as members of groups.<sup>132</sup>

When Aboriginal people assert their rights to political autonomy as nations they most frequently borrow the language of collective rights. Collective rights are similar to group rights because they are held by an identifiable group of individuals together. Aboriginal people rely on this notion to protect the exercise of rights which are unique to the way they organize their nations, communities, clans and families.<sup>133</sup> Collective rights are insufficient to fully reflect Aboriginal rights as individual rights are also embedded in the collective. Elders have explained that it is not possible to be self-determining without a society where people understand what it means to be responsible. In the Aboriginal sense it is concurrent to themselves, their communities and their nations.<sup>134</sup>

Monture-Angus indicated that Bill C-31 provided Indian people with a new membership and status system that still contained gender inequalities. The current system denied Indian women who married non-Aboriginals the right to register their grandchildren yet Indian men who married non-Aboriginals did not suffer the same encumbrance. The

---

<sup>131</sup> Monture-Angus, "Journeying Forward," 135.

<sup>132</sup> Monture-Angus, "Journeying Forward," 135.

<sup>133</sup> Monture-Angus, "Journeying Forward," 136.

<sup>134</sup> Monture-Angus, "Journeying Forward," 139.

separation of Indian status and Band membership created a more complicated system for negotiating and securing registration for Indian children.<sup>135</sup> In addition to Bill C-31, the Corbiere Supreme Court decision extended voting rights to off-reserve Band members creating another source of distinction and division in Aboriginal communities. The federal government recognizes that since it failed to place control in Aboriginal nations to define their own citizenship, the current disputes about representation must be worked out in Aboriginal communities.<sup>136</sup>

Andrew Bear Robe suggested that the political concept of treaty federalism is one viable option worthy of First Nations collective consideration regarding the constitutional amendment process for the recognition and entrenchment of the inherent right to Aboriginal self-government in Canada.<sup>137</sup> The belief is that since First Nations entered into treaties with the British and other European powers and eventually with the American and Canadian governments they can now enter into modern treaties or agreements to share Canadian sovereignty and jurisdiction.<sup>138</sup> Treaty federalism is another form of restating the historic and unique First Nation – Crown relations since colonial times. It translated historic principles and understandings into twentieth century political thought and expression. It can restate the unique union of First Nation sovereignty with federal sovereignty through bi-lateral treaties dealing with matters such as Indian lands, peaceful co-existence and concurrent jurisdiction.<sup>139</sup> Bear Robe indicated that if treaty federalism is going to work within Canadian politics, as a means of federating First Nations into the constitutional framework there are a number of Aboriginal rights principles that should be acknowledged and affirmed by

---

<sup>135</sup> Monture-Angus, "Journeying Forward," 143.

<sup>136</sup> Monture-Angus, "Journeying Forward," 149.

<sup>137</sup> Andrew Bear Robe, "Treaty Federalism – A Concept For the Entry of First Nations Into the Canadian Federation and Commentary on the Canadian Unity Proposals." (Gleichen, Alberta: Siksika Nation Tribal Administration, 1992), p. 17.

<sup>138</sup> Bear Robe, "Treaty Federalism." 11.

<sup>139</sup> Bear Robe, "Treaty Federalism." 21.

Parliament and the Canadian polity in order to facilitate meaningful dialogue and progress.

The principle applicable to this study is:

- (i) the right to determine who is a member and who is entitled to become a member of the nation according to customary law or newly enacted First Nations laws;<sup>140</sup>

Treaty federalism can breathe new life into the new political and legal relations between Canada and the First Nations and continue to develop concurrent Aboriginal sovereignty.<sup>141</sup>

### 3.2 Non-Aboriginal Views on Citizenship and Membership

Non-Aboriginal views on citizenship and membership also present an alternative outlook and definition that will be referenced in the discussion around citizenship and membership. This section reviews the differences and similarities between citizenship and membership that will provide benchmarks for the ensuing analysis.

Citizenship is separated into three elements, civil, political, and social. The civil element included the following: rights necessary for individual freedom-liberty of the person, freedom of speech, thought and faith; the right to own property and to conclude valid contracts; and the right to justice.<sup>142</sup> The political element referred to the right to participate in the exercise of political power, as a member of a body invested with political authority or as a member of the electors who elected the political authority. The corresponding institutions include parliament and the councils of local government. The social element included the whole range from a small quantity of economic welfare and security to the right to share fully in the social heritage and live the life of a civilized being in accordance with the standards prevailing in society. The institutions most closely connected are the educational system and social services. The justice element is a different order because it is

---

<sup>140</sup> Bear Robe, "Treaty Federalism." 23.

<sup>141</sup> Bear Robe, "Treaty Federalism." 27.

<sup>142</sup> Marshall, T.H. and Tom Bottomore, "Citizenship and Social Class." (Illinois: Pluto Press, 1996) p. 8.

the right to defend and assert one's rights in terms of equality with others and by due process of law.<sup>143</sup>

Civil rights came first, and were established similar to their modern form before the first *Reform Act* was passed in 1832. Political rights were second; their extension was one of the main features of the nineteenth century although the principle of universal political citizenship was not recognized until 1918. Social rights virtually disappeared in the eighteenth and early nineteenth centuries. Social rights revived with the development of public elementary education, but it did not attain equal partnership with the other two elements of citizenship until the twentieth century.<sup>144</sup> T.H. Marshall stated that the rights with which the general status of citizenship was invested were extracted from the hierarchical status system of social class, which robbed it of its essential substance. He further asserted that the equality implicit in the concept of citizenship though limited in content undermined the inequality of the class system.<sup>145</sup>

An examination of the relationship between citizenship and social class was pursued initially as the movement toward greater social equality was seen as the latest phase in the evolution of citizenship from the achievement of civil rights to the acquisition of political rights and finally social rights.<sup>146</sup> T.H. Marshall's study of the development of citizenship was more concerned with Britain, more narrowly England as a more or less homogeneous society in the immediate post-war period (1949). However, the context has changed and new questions regarding citizenship have emerged that need to be examined in a broader framework.<sup>147</sup>

---

<sup>143</sup> Marshall and Bottomore, "Citizenship, Social Class." 8

<sup>144</sup> Marshall and Bottomore, "Citizenship, Social Class." 17.

<sup>145</sup> Marshall and Bottomore, "Citizenship, Social Class." 21.

<sup>146</sup> Marshall and Bottomore, "Citizenship, Social Class." 55.

<sup>147</sup> Marshall and Bottomore, "Citizenship, Social Class." 65.

Brubaker examined the problems created by massive post-war migrations in Europe and North America against the background of the analysis of the meaning of citizenship in the twentieth century. There is an important distinction to be made between formal and substantive citizenship. Formal citizenship can be defined as ‘membership of a nation-state’; while substantive citizenship in terms of T.H. Marshall’s conception is an array of civil, political, and social rights involving some kind of participation in the business of government.<sup>148</sup> Brubaker observed:

That which constitutes citizenship—the array of rights or the pattern of participation—is not necessarily tied to formal state-membership. Formal citizenship is neither a sufficient nor a necessary condition for substantive citizenship... That it is not a sufficient condition is clear: one can possess formal state-membership yet be excluded (in law or in fact) from certain political, civil, or social rights or from effective participation in the business of rule in a variety of settings... That formal citizenship is not a necessary condition of substantive citizenship is perhaps less evident. Yet while formal citizenship may be required for certain components of substantive citizenship (e.g. voting in national elections), other components... are independent of formal state-membership. Social rights, for example, are accessible to citizens and legally resident non-citizens on virtually identical terms, as is, participation in the self-governance of associations, political parties, unions, factory councils, and other institutions...<sup>149</sup>

Brubaker raised broader questions about citizenship concerning criteria for access to citizenship, the status of resident non-citizens, and dual citizenship. Brubaker mentioned Carens argument that those residing and working in a nation should be granted the right to become citizens after a moderate passage of time.<sup>150</sup> Dual citizenship raised major questions about the connection between citizenship, residence, and the rights of the individual. Increasingly, civil and social rights, and with some limitations political rights, are granted to people who live and work, or retire in a particular country regardless of their nationality.<sup>151</sup>

---

<sup>148</sup> Marshall and Bottomore, “Citizenship, Social Class.” 66.

<sup>149</sup> Marshall and Bottomore, “Citizenship, Social Class.” 66.

<sup>150</sup> Marshall and Bottomore, “Citizenship, Social Class.” 83.

<sup>151</sup> Marshall and Bottomore, “Citizenship, Social Class.” 84.

Joseph Carens explained that citizenship is conceptually inadequate because it does not appreciate the multiple dimensions of citizenship and the complex relationships among those dimensions.<sup>152</sup> It is inadequate in the sense that it does not correspond to actual practices in Canada and other states that embody recognition of multiple forms of belonging and overlapping citizenships. Carens explored three dimensions of citizenship in a political community – the legal, the psychological, and the political. The legal dimension of citizenship refers to the formal rights and duties that one possesses as a member of a political community; the psychological dimension to one’s sense of identification with the political community or communities to which one belongs; and the political dimension to one’s sense of representational legitimacy of those who act authoritatively on behalf of and in the name of the political community.<sup>153</sup>

The unitary model of nation-state expects and prescribes that every individual possess the legal status of citizenship only in relation to one political community. The incidence of dual citizenship has grown in recent years. One of the reasons is the gradual elimination of gender bias in laws regulating the transmission of citizenship.<sup>154</sup> Most laws made the citizenship of children dependent exclusively upon the citizenship of the father, now citizenship passes through either parent so if the parents have different citizenships, the child will possess both.<sup>155</sup> In states where citizenship is determined by place of birth (United States and Canada), children born to foreign parents acquire dual (or triple) citizenship at birth. Canada and Australia do not require renunciation of one’s previous citizenship as a

---

<sup>152</sup> Joseph H. Carens “Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness.” (New York: Oxford University Press Inc., 2000) p. 161.

<sup>153</sup> Carens, “Culture, Citizenship, and Community.” 162.

<sup>154</sup> Carens, “Culture, Citizenship, and Community.” 162-3.

<sup>155</sup> Carens, “Culture, Citizenship, and Community.” 163.

condition of naturalization so that immigrants can retain their old citizenship even after acquiring a new one.<sup>156</sup>

Dual citizenship created few serious problems in practice. It is an arrangement that enabled people who have substantial ties to more than one political community because of their residence, family ties, or place of origin, to protect their vital human interests in each. Another kind of dual citizenship that is more important than the simultaneous holding of two state citizenships is the membership in two political communities within the same state.<sup>157</sup>

In respect to Aboriginal peoples, Carens supported the vision of differentiated citizenship that Charles Taylor labels 'deep diversity'. This is an arrangement where Aboriginal people could have a self-governing Aboriginal community as their primary locus of political identity and still participate as Canadian citizens. Carens presupposed that most Aboriginal people living within the geographical territory identified as Canada will continue to be legal Canadian citizens regardless of the forms of Aboriginal self-government that emerges. Carens suggested that since Aboriginal self-government will be exercised within Canada, it is important to reflect on what being within Canada means to both Aboriginal and non-Aboriginal people and to consider what Canadian citizens share in common.<sup>158</sup> He indicated that this sort of reflection is important for the acceptance of the Aboriginal peoples' claim to their right to self-government as a fundamental moral right or inherent right rather than a discretionary delegation of political authority from the Canadian government.

For most of the nineteenth and twentieth centuries, Indians were treated like subjects rather than citizens. Initially, enfranchisement and full citizenship status were provided as a reward for becoming 'civilized', adopting Euro-Canadian values and practices and repudiating Indian culture and identity. For a long period of Canadian history, full Canadian

---

<sup>156</sup> Carens, "Culture, Citizenship, and Community." 163.

<sup>157</sup> Carens, "Culture, Citizenship, and Community." 164.

<sup>158</sup> Carens, "Culture, Citizenship, and Community." 179.

citizenship was treated as incompatible with a distinct Indian identity.<sup>159</sup> In 1960, the franchise and full Canadian citizenship was extended to Indians without abolishing special Indian status. The denial of the franchise to Indians was explicitly premised upon the inferiority of Indian culture and the subordinate status of Indian communities. Therefore, removing this stigmatization without requiring the abandonment of Indian culture and community is perceived as a move toward an egalitarian version of differentiated citizenship.<sup>160</sup> This granted equal respect to Indians without denying their distinctive position in relation to the rest of Canadian society.

In his analysis, Will Kymlicka indicated that group rights tend to be controversial in political systems. Canada's system is founded on liberal-democratic values, in particular the ideals of individual freedom and social equality.<sup>161</sup> A liberal democracy aspired to be a 'society of free and equal citizens' as the prominent contemporary liberal philosopher John Rawls has put it. Liberals have assumed that the best way to achieve such a society is by guaranteeing each citizen an identical set of individual civil, political, and economic rights – the common rights of citizenship.<sup>162</sup> Currently ethnic groups demand more than these individual rights. They not only want common rights accorded to all citizens but also specific rights that recognize and accommodate their particular ethnocultural practices and identities.<sup>163</sup>

Kymlicka argued that the adoption of 'blood quantum' membership rules by some Native bands is a notable exception to the trend towards cultural definitions. He said that the rules are controversial within Aboriginal communities, and are widely seen as violating Aboriginal people's own understanding of themselves as peoples and cultures rather than

---

<sup>159</sup> Carens, "Culture, Citizenship, and Community." 186.

<sup>160</sup> Carens, "Culture, Citizenship, and Community." 186.

<sup>161</sup> Will Kymlicka, "Finding Our Way: Rethinking Ethnocultural Relations in Canada." (Oxford University Press, 1998), p. 6.

<sup>162</sup> Kymlicka, "Finding Our Way." 61-2.

<sup>163</sup> Kymlicka, "Finding Our Way." 62.

rac<sup>164</sup> Blood quantum rules were strongly criticized by the Royal Commission on Aboriginal Peoples (RCAP). It was argued in the RCAP report that blood quantum rules violate human rights and traditional practices. This violation is counter-productive to cultural survival.<sup>165</sup>

Kymlicka suggested that the basic precondition for accommodating national aspirations of First Nations is the development of a system for dividing and sharing power in order to establish self-government. Federalism is an avenue that can accommodate Aboriginal communities as a ‘third order of government’ within the existing federal system. This will allow communities to exercise a collection of powers carved out of both federal and provincial jurisdictions or through a form of ‘treaty federalism’ that predates and exists outside the 1867 Confederation.<sup>166</sup>

Federalism is the ideal mechanism for accommodating territorially defined national minorities within the multination state because where a minority is regionally concentrated; the boundaries of federal subunits can be drawn to form a majority in one of the subunits. Therefore, federalism can provide meaningful self-government for a national minority guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society.<sup>167</sup> In essence, federalism provides a constitutionally protected realm of self-government for the national minority along with the economic, military, and sociocultural benefits of participation in a larger state.

However, Kymlicka suggested that federalism will not work for Aboriginal peoples in Canada because they are few in numbers and the communities are dispersed across provincial lines with the exception of the north; therefore, federal subunits would not create a province

---

<sup>164</sup> Kymlicka, “Finding Our Way.” 96.

<sup>165</sup> Kymlicka, “Finding Our Way.” 96.

<sup>166</sup> Kymlicka, “Finding Our Way.” 135.

<sup>167</sup> Kymlicka, “Finding Our Way.” 135.

or territory with an Aboriginal majority. Many Aboriginal people have suggested that self-government should be a form of 'treaty federalism' predating the 1867 federation. The aim is to create a new level of Aboriginal governments within the existing federal system that will redefine (on the basis of existing treaties, combined with the signing of new treaties) a distinctive political status that would exist outside the current federal system.<sup>168</sup>

Although substantial powers have been devolved from the federal government to Band councils self-government has been primarily tied to the system of reserved lands. Indian bands have acquired increased control of health, education, family law, policing, criminal justice, and resource development. Aboriginal people want their rights affirmed in constitutionally protected treaties and recognized as inherent rights of self-government rather than powers delegated by the federal government.<sup>169</sup>

Anne-Marie Mawhiney discussed options presented by the *Special Committee on Indian Self-Government* to deal with Band Membership. The following procedure was suggested as one that could be adopted by First Nations:

1. The people in each community would begin with the *Indian Act* list, plus those who might be reinstated by any changes in legislation.
2. These people would get together to ask who might be missing and to include those they wished to include.
3. These people would agree on membership criteria and thus decide on who else might be included or excluded. The criteria should be in accordance with standards and international convenances concerned with human rights.
4. These same people would agree on appeal procedures and mechanisms.
5. The whole group would then determine their form of government and apply for recognition.<sup>170</sup>

---

<sup>168</sup> Kymlicka, "Finding Our Way." 144.

<sup>169</sup> Kymlicka, "Finding Our Way." 144-5.

<sup>170</sup> Anne-Marie Mawhiney, "Towards Aboriginal Self-Government: Relations between Status Indian Peoples and the Government of Canada 1969-1984." (New York & London: Garland Publishing, Inc., 1994), p. 67.

Mawhiney presented enlightening suggestions toward a process that removes *Indian Act* restrictions, as the *Indian Act* remains in effect for Indian status identification. The suggestions captured in items 2 through 5 align with self-determination at the community level. The options posed by Mawhiney appear to be simple and straightforward. In reality can they be put to use?

In James Tully's view if First Nations are to identify with Canada their status as First Nations has to be recognized in the constitution and their constitutional culture has to be continued.<sup>171</sup> This means explicit recognition that First Nations are independent nations with the inherent right to govern themselves in accordance with their own legal and political traditions; their languages; and their cultural practices. They must also have the autonomy to exercise jurisdiction over the territories they have not ceded to the Canadian government.<sup>172</sup> Tully explains that Aboriginal peoples will understand their political identity within Canada as a federation of Aboriginal nations and the federal government based on treaty relations negotiated in accordance with the resolutions of recognition, continuity and consent.<sup>173</sup> These resolutions are embodied in treaty relations and are best expressed in the practice of treaty federalism developed by the Haudenosaunee (Iroquois) confederation. This practice is referred to as the *Two Row* treaty systems to honor the belts of two parallel rows of purple wampum belts. The two equal rows,

symbolise two paths or two vessels, traveling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's boat.<sup>174</sup>

---

<sup>171</sup> James Tully, *The Crisis of Identification: the Case of Canada*, edited by John Dunn. Political Studies, Special Issue: Contemporary Crisis of the Nation State? (Blackwell: Oxford UK & Cambridge USA, 1995), p. 86.

<sup>172</sup> Tully, *Crisis*, 86.

<sup>173</sup> Tully, *Crisis*, 87.

<sup>174</sup> Tully, *Crisis*, 87.

Tully claimed that the steady movement toward disunity and separation in Canada is caused by the failure to mutually recognize and accommodate the aspirations of First Nations along with others.<sup>175</sup>

Menno Boldt discussed the importance of the constitution. In *Surviving as Indians*, he indicates that the most fundamental requirement of Indian self-government is the constitution that defines it and the constitution must derive from the will of [band] members.<sup>176</sup> The constitution is described as one of Indian nationhood which grows out of cultural and social aspirations and needs of the Indian people.<sup>177</sup> It is not an act of government but of the people and the constitution comes before the government.<sup>178</sup> According to Boldt, the Canadian government can not prescribe the constitution nor can the Indian elite class drive it. The elite class is defined as influential landowners, politicians, bureaucrats, and a few entrepreneurs.<sup>179</sup> It is essential that it is an act of self-determination by all [band] members. Creating a constitution involves key 'decisions of nationhood,' which in turn becomes the framework for defining Indian identity. It is a combination of defining the duties and responsibilities of individual members as well as the cultural values and social systems they will adhere to.<sup>180</sup>

### 3.3 The Royal Commission on Aboriginal Peoples Report

The Royal Commission on Aboriginal Peoples Report (RCAP) explained that just as individuals exercised personal autonomy in a community within a framework of community ethics, communities exercised considerable autonomy within the larger

---

<sup>175</sup> Tully, *Crisis*, 95.

<sup>176</sup> Menno Boldt, *Surviving As Indians: The Challenge of Self-Government* (Toronto: University of Toronto Press, 1994), p. 157.

<sup>177</sup> Boldt, *Surviving*, 157.

<sup>178</sup> Boldt, *Surviving*, 157.

<sup>179</sup> Boldt, *Surviving*, 124.

<sup>180</sup> Boldt, *Surviving*, 157.

network of what were termed as tribes or nations by colonial society.<sup>181</sup> Nations were demarcated on the basis of language, or dialect, and territory. Relationships within the nation were knit together by clan membership that went beyond immediate ties of blood and marriage.<sup>182</sup>

In respect to citizenship in Aboriginal nations, RCAP's view is that the right of an Aboriginal nation to determine its own citizenship is an existing Aboriginal and treaty right within the meaning of section 35(1) of the *Constitution Act*, 1982.<sup>183</sup> The rules and processes governing citizenship must satisfy certain basic constitutional standards from section 35. These standards prevent an Aboriginal group to unfairly exclude anyone from enjoying collective Aboriginal and treaty rights guaranteed by section 35(1), which includes the right to self-government.<sup>184</sup> Aboriginal and treaty rights are guaranteed equally to male and female persons in section 35(4). These rights are generally collective rather than individual therefore an individual can only access them through membership in an Aboriginal group.<sup>185</sup>

Under the traditional practices of most Aboriginal groups, birthright was not the only method by which group membership could be acquired. It could be acquired through marriage, adoption, ritual affiliation, long-standing residence, cultural integration and group acceptance.<sup>186</sup>

RCAP acknowledged that citizenship confers rights, entitlements and benefits upon individuals as well as responsibilities. These rights include civil, democratic and political rights (for example, the right to participate in the selection of leaders); cultural and economic rights (such as the right to pursue traditional economic activities); and rights to

---

<sup>181</sup> Royal Commission, "Looking Forward," 661.

<sup>182</sup> Royal Commission, "Looking Forward," 661.

<sup>183</sup> Royal Commission, "Restructuring the Relationship," 237.

<sup>184</sup> Royal Commission, "Restructuring the Relationship," 237.

<sup>185</sup> Royal Commission, "Restructuring the Relationship," 237.

<sup>186</sup> Royal Commission, "Restructuring the Relationship," 238.

social entitlements, such as those that flow from treaties and those in areas such as education and health care.<sup>187</sup> Different rights and responsibilities extend to citizens and non-citizens on Aboriginal lands. Cultural rights or rights to carry on certain economic activities may differ for citizens and non-Aboriginal residents on those lands.<sup>188</sup> All residents regardless of citizenship should have the means to participate in the decision making of Aboriginal governments.<sup>189</sup>

The Royal Commission explained that treaty making does not require parties to surrender their deepest beliefs and rights as a precondition for creating practical arrangements for coexistence. The international arena permits treaties to be made by nation-states that reflect the cultural and political diversity of all humanity.<sup>190</sup> The treaties between the treaty nations and the Crown are based on mutual consent and do not require either nation to surrender its identity and culture.<sup>191</sup>

Most Aboriginal people see the importance of their national cultures, languages and traditions as a central part of their collective and individual identities. Aboriginal cultures have been subject to erosion and direct assault from governmental policies. Aboriginal peoples see self-government as a main vehicle to repair the damage to their national cultures and restoration of their languages, way of life and basic identities.<sup>192</sup>

The Royal Commission considers the right of self-determination to be vested in Aboriginal nations rather than small local communities. Aboriginal nation means a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a territory or group of territories.<sup>193</sup>

---

<sup>187</sup> Royal Commission, "Restructuring the Relationship," 252.

<sup>188</sup> Royal Commission, "Restructuring the Relationship," 252.

<sup>189</sup> Royal Commission, "Restructuring the Relationship," 258.

<sup>190</sup> Royal Commission, "Restructuring the Relationship," 20.

<sup>191</sup> Royal Commission, "Restructuring the Relationship," 20.

<sup>192</sup> Royal Commission, "Restructuring the Relationship," 140.

<sup>193</sup> Royal Commission, "Restructuring the Relationship," 166.

The Royal Commission indicated that it is important to distinguish between self-determination and self-government. Although they are closely related the two concepts are distinct and carry different practical consequences.<sup>194</sup> According to RCAP, self-determination refers to the right of an Aboriginal nation to choose how it will be governed – it could adopt separate governmental institutions or join public governments that embrace both Aboriginal and non-Aboriginal people. On the other hand, self-government is a natural outcome of the exercise to the right of self-determination, which refers to the right of peoples to exercise political autonomy.<sup>195</sup> Therefore, self-determination is the collective power of choice whereas self-government is one possible result of that choice.<sup>196</sup>

The Royal Commission presented three possible models of self-governance. They are the nation model, the public government model, and the community of interest model. These models include the following general features:

- ⇒ lands and territory
- ⇒ citizenship
- ⇒ jurisdiction and powers
- ⇒ internal government organization
- ⇒ urban extensions of Aboriginal nation government
- ⇒ associated models of inter-Aboriginal government organizations.<sup>197</sup>

The nation model of Aboriginal government's approach to citizenship permits Aboriginal people to enjoy a form of dual citizenship in their Aboriginal nation and Canada. Eligibility for citizenship and citizenship in the nation would depend on the criteria set by the nation's constitution, citizenship law or code, cultural norms, unwritten customs or conventions.<sup>198</sup> These criteria could be applied nation-wide or adapted at the community level. Eligibility for citizenship would be considered on the basis of:

---

<sup>194</sup> Royal Commission, "Restructuring the Relationship," 175.

<sup>195</sup> Royal Commission, "Restructuring the Relationship," 175.

<sup>196</sup> Royal Commission, "Restructuring the Relationship," 175.

<sup>197</sup> Royal Commission, "Restructuring the Relationship," 245-6.

<sup>198</sup> Royal Commission, "Restructuring the Relationship," 251.

- community acceptance,
- self-identification,
- parentage or ancestry,
- birthplace,
- adoption,
- marriage to a citizen,
- cultural or linguistic affiliation, and
- residence.<sup>199</sup>

Citizens of an Aboriginal nation may identify with social or political groups within the nation. Identification may be based on clan or family membership or residence in a community or urban area.<sup>200</sup>

The public government model is intended to serve a constituency of residents including Aboriginal and non-Aboriginal people who live in a defined territory.<sup>201</sup> Aboriginal residents could be from various Aboriginal nations and backgrounds. The rights of residents may be differentiated to allow the Aboriginal majority to retain constitutionally protected Aboriginal and treaty rights which includes self-government.<sup>202</sup> Aboriginal residents are eligible for certain exclusive economic rights. They also have the right to own, use, regulate and enjoy specific cultural property in order to promote and protect Aboriginal heritage, culture, language and traditions.<sup>203</sup> Aboriginal and non-Aboriginal persons will need to prove residency in order to establish eligibility to stand for government office or leadership positions. Shared and differentiated rights of Aboriginal and non-Aboriginal citizens would be set out in the constitution or laws of the public government.<sup>204</sup>

The community of interest model would consider membership in the government based on Aboriginal identity and voluntary affiliation. It would consist of individuals (or families) of Aboriginal heritage with potential emotional, familial, cultural, political or other

---

<sup>199</sup> Royal Commission, "Restructuring the Relationship," 251.

<sup>200</sup> Royal Commission, "Restructuring the Relationship," 252.

<sup>201</sup> Royal Commission, "Restructuring the Relationship," 267.

<sup>202</sup> Royal Commission, "Restructuring the Relationship," 267.

<sup>203</sup> Royal Commission, "Restructuring the Relationship," 267.

<sup>204</sup> Royal Commission, "Restructuring the Relationship," 267.

affiliations with a particular nation.<sup>205</sup> The government would have the authority to establish membership rules and determine the criteria to assess a person's affiliation with an Aboriginal people. Individuals could be eligible for membership based on:

- self-identification as an Aboriginal person;
- claims of affiliation with, or citizenship in, an Aboriginal nation; or
- documented evidence of affiliation with an Aboriginal people or nation.

The *Canadian Charter of Rights and Freedoms*, provincial, territorial and appropriate Aboriginal charters would apply to this model of government.<sup>206</sup> Depending on the government's structure and purpose, membership rights and entitlements may be limited to political rights (for example, the right to stand for executive office) and to social, economic and cultural rights (for example, entitlement to programs and services delivered by the government).

Finally, the Royal Commission indicated that as nations rebuild citizenship codes they will embrace all individuals who have ties to the nation who, for various reasons had been excluded in the past. Therefore, new citizenship provisions would eliminate the after effects of Bill C-31, which created categories of 'full Indians' and 'half Indians'.<sup>207</sup> Rather than impose restrictive band membership codes that destroyed communities over time, Aboriginal nations would implement a citizenship code that fosters inclusion and nurtures nation building.<sup>208</sup>

### 3.4 Legislative Authority Governing Aboriginal People

In 1867 Canada was formed and Section 91(24) of *The Constitution Act 1867*, (Canada's first constitution) gave the Parliament of Canada jurisdiction over, "Indians, and

---

<sup>205</sup> Royal Commission, "Restructuring the Relationship," 273.

<sup>206</sup> Royal Commission, "Restructuring the Relationship," 274.

<sup>207</sup> Royal Commission, "Perspectives and Realities," 53.

<sup>208</sup> Royal Commission, "Perspectives and Realities," 53.

land reserved for Indians”.<sup>209</sup> In 1871, the Colony of British Columbia became a province by joining Canada. Under the *Terms of Union*, the federal government retained responsibility for Indians. The province of British Columbia received authority over the land and its resources, as did all provinces.<sup>210</sup>

Subsequently, the *Indian Act* was created in 1876. It consolidated all existing laws in the provinces and territories concerning Indian people. The *Indian Act* focused on lands, membership, and local government. The *Indian Act 1876* and subsequent revisions also defined who is an Indian. This is termed as *Indian status* and enables the Federal Ministry of Indian Affairs to provide services to those people who are defined as Indians. The provisions in the *Indian Act* also outline the Superintendent General’s administrative powers over Indian Affairs.<sup>211</sup> Under the existing relationship between bands and the federal government, Indian Bands do not own their reserves. The land reserved for Indians is legally owned by the State (Federal Crown) and administered on their behalf by the Indian Band.

Current legislation affecting Aboriginal and treaty rights are sections 25 and 35 of the *Constitution Act, 1982*. Within the meaning of this *Act*, Indians, Inuit and Métis peoples are referred to collectively as the "Aboriginal peoples of Canada."<sup>212</sup> The main purpose of s. 25 is to prevent s.15 “equality rights” from overriding the special status and rights of Aboriginal people.<sup>213</sup> Aboriginal and treaty rights are constitutionally protected by s.35 of the *Constitution Act, 1982* and cannot be extinguished except by constitutional amendment. Federal or Provincial legislation may not interfere with these rights.<sup>214</sup>

---

<sup>209</sup> Boldt, Menno. *Surviving As Indians: The Challenges of Self-Government*. (Toronto: University of Toronto Press, 1993), p. 310.

<sup>210</sup> Ministry of Aboriginal Affairs, Government of British Columbia. *Historical References*. Last Updated: January, 1998. On-line. Available:<http://www.aaf.gov.bc.ca/aaf/history/history.htm>

<sup>211</sup> Ministry of Aboriginal Affairs. *Historical References*.

<sup>212</sup> Woodward, Jack. *Native Law*. (Vancouver: Carswell Ltd., 1990), p. 3.

<sup>213</sup> Woodward, 78.

<sup>214</sup> Woodward, 67.

### 3.5 The Nisga'a Final Agreement

The Nisga'a Final Agreement sets out the criteria and process to determine who is subject to the benefits, rights and responsibilities contained in the Agreement.<sup>215</sup> Therefore, citizenship includes the rights and obligations included with membership in the Nisga'a Nation Treaty.

1. An individual is eligible to be enrolled under the Agreement if the individual is:
  - a. of Nisga'a ancestry and their mother was born into one of the Nisga'a tribes;
  - b. a descendant of an individual described in subparagraphs 1(a) or 1(c);
  - c. an adopted child of an individual described in subparagraphs 1(a) or 1(b); or
  - d. an aboriginal individual who is married to someone described in subparagraphs 1(a), (b), or (c) and has been adopted by one of the four Nisga'a tribes in accordance with *Ayuukhl Nisga'a*, that is, the individual has been accepted by a Nisga'a tribe, as a member of that tribe, in the presence of witnesses from the other Nisga'a tribes at a settlement or stone moving feast.<sup>216</sup>

Enrolment under this Agreement does not:

- a. confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
- b. except as set out in this Agreement or in any federal or provincial law, impose any obligation on Canada or British Columbia to provide rights or benefits.<sup>217</sup>

The Enrolment Committee hears applications and determines eligibility, in addition, an Enrolment Appeal Board will hear and determine appeals regarding disputes arising from applications for enrolment.<sup>218</sup> Everyone who is subject to Nisga'a law will have the fundamental freedom of religion, expression, assembly and association. Nisga'a citizens will have the right to vote, the right to liberty and security of person and other legal rights in accordance with the *Charter of Rights and Freedoms*.<sup>219</sup>

It is important to understand the implications of s.25 of the *Constitution Act, 1982*, because it does not allow equality rights to override the special status of Aboriginal people.

---

<sup>215</sup> Ministry of Aboriginal Affairs, *Fact Sheets*.

<sup>216</sup> Canada, British Columbia, Nisga'a Nation, "Nisga'a Final Agreement". 1998, p. 241.

<sup>217</sup> Nisga'a Final Agreement, 241.

<sup>218</sup> Ministry of Aboriginal Affairs, *Fact Sheets*.

<sup>219</sup> Nisga'a Tribal Council. 1995. *Nisga'a Government*. Schoolnet Web Link. On-line. Available: <http://www.schoolnet.ca/aboriginal/nisga1/govnt-e.html>

The Nisga'a citizens are protected by the *Charter* on an individual basis but these same equality rights do not give all residents in Nisga'a territory the same rights as Nisga'a citizens. Non-Nisga'a residents do not have the right to vote in Nisga'a elections or receive benefits that arise from the settlement of the Land Question.<sup>220</sup>

Finally, the Nisga'a will extend additional and continued benefits to its citizens. The Agreement elaborates on the continued delivery of programs already in place. An example is the assumption of full control of School District 92 which is predominantly populated by Nisga'a children. The Nisga'a already assert substantial influence over curriculum in this district. They will also take possession of the local health board, which is currently under federal control in addition to the Northern Native Fishing Corporation.

The Nisga'a *Lisims* Government can make laws in respect of Nisga'a citizenship but it can not confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any other rights or benefits under the *Indian Act*.<sup>221</sup> The Nisga'a Constitution grants authority to the Nisga'a government to allow non-Nisga'a people to be made citizens. The Agreement states that every Nisga'a participant who is a Canadian citizen or permanent resident of Canada is entitled to be a Nisga'a citizen.<sup>222</sup> Therefore, the Nisga'a have the autonomy to exercise this power if they so wish. Upon execution of the agreement, non-Nisga'a citizens will be subject to the powers of the new government but they are guaranteed limited defined rights of participation, consultation and appeal.<sup>223</sup>

Andrew Robinson explained that Nisga'a membership is an interesting issue. Robinson indicated that when people get adopted by the Nation they can be adopted via two streams. The first is adoption from another Nation which entitles them to "certain rights".

---

<sup>220</sup> Nisga'a Tribal Council, *Nisga'a Government*.

<sup>221</sup> Nisga'a Tribal Council, *Nisga'a Government*.

<sup>222</sup> Malcolmson, John. "The Nisga'a Agreement-In-Principle: The Path to Shared Jurisdiction," *Native Issues Monthly*. 4 (1996): 11.

<sup>223</sup> Malcolmson, 11.

For example, it is similar to how Indian and Northern Affairs allows Band transfers. The Nisga'a focus on the person's Indian identity, they must be an Indian to get in. No non-First Nations can get membership. The second stream is the non-First Nation stream, these applications are denied. Formal adoptions are carried out and verified by the Council of elders, which deals with and accepts/denies all membership applications.<sup>224</sup> The Council is made up of chiefs from the four communities and the urban locals.

### 3.6 Lheidli T'enneh Agreement-In-Principle (AIP)

Within the Lheidli T'enneh Agreement-In-Principle, enrolment as a Participant will not confer or deny the Participant rights or benefits under any federal or provincial Law, including:

- a. rights of entry into Canada;
- b. Canadian citizenship; or,
- c. the right to be registered as an Indian under the *Indian Act*, or any other rights or benefits conferred by the *Indian Act*.<sup>225</sup>

To be eligible to be enrolled under the Final Agreement, the individual is:

- a. an individual with Lheidli T'enneh ancestry
- b. an Adopted Child of an individual described in paragraphs 2.a or 2.c or 2.e;
- c. a descendant of an individual described in paragraphs 2.a or 2.b. or 2.e notwithstanding any adoption or any birth outside marriage;
- d. an individual who, based on a significant attachment to the community, has been adopted under Lheidli T'enneh customary Law;
- e. a band member listed or entitled to be listed as a band member on the Lheidli T'enneh Band list under the *Indian Act* and who is an Indian as defined in the *Indian Act*.

For fair and thorough consideration of applicants, an Enrolment Committee will be created. The Enrollment Committee will be responsible for processing and finalizing enrollment but the Applicant carries the burden of proof that they meet eligibility criteria.

An Applicant who is a member of an Aboriginal group that has signed a treaty or land claims agreement in Canada can not be enrolled under the Final Agreement. An Applicant may apply by notifying the Enrolment Committee but if they are involved in another treaty or

---

<sup>224</sup> Robinson, Andrew, interview, 2006.

<sup>225</sup> Lheidli T'enneh Agreement-In-Principle, p. 32.

lands claims agreement they must relinquish their prior entitlement or withdraw their enrollment if accepted. An Enrolment Appeal Board is established to handle appeals. The Enrolment Committed and Board will be in place during the Initial Enrolment Period only.

Upon expiration of this timeframe, the Lheidli T'enneh Government will:

- a. be responsible for an enrolment process, including the application of the eligibility criteria;
- b. maintain the Enrolment Register;
- c. provide a true copy of the Enrolment Register to Canada and British Columbia each year or as otherwise requested by Canada or British Columbia; and
- c. provide information concerning enrolment to Canada and British Columbia upon request by Canada or British Columbia.<sup>226</sup>

According to the Prince George Citizen, December 23, 2006 the Lheidli T'enneh First Nation is positioned to be the first to sign a modern day treaty<sup>227</sup>. Lheidli T'enneh has approximately 300 members whose main reserve is east of Prince George along the Fraser River. The Treaty has been initialed by the three parties and the ratification vote is set for March 31, 2007. Lheidli T'enneh individuals must complete an enrolment application. They will be deemed eligible if they have Lheidli T'enneh ancestry on their mother's or father's side, a band member listed or entitled to be listed on the band list under the *Indian Act*, and an individual who has been adopted under Lheidli T'enneh custom. This includes a descendent, an adopted child and his or her descendents as those who also qualify.

With respect to the Nisga'a and Lheidli T'enneh, the enrolment sections of the Nisga'a Final Agreement (1998) and the Lheidli T'enneh Agreement-in-principle (2003) were reviewed because these documents establish the legal framework for membership within the nation. Therefore, these arrangements form the legal relationship that each will have within the Canadian state.

In summary, this chapter illustrates a variety of options and ideas proposed by various sources that can be evaluated and considered in preparation for community driven Band

---

<sup>226</sup> Lheidli T'enneh, AIP, 37-8.

<sup>227</sup> "Lheidli T'enneh Chooses Date For Treaty Vote." Prince George Citizen, 23, December 2006, p. 1.

In summary, this chapter illustrates a variety of options and ideas proposed by various sources that can be evaluated and considered in preparation for community driven Band membership within Aboriginal communities. For example, Canim Lake could align these ideas with their existing Band Membership code. The code will be discussed in the next chapter.

## Chapter 4 Canim Lake Community Questionnaire: Method, Results and Discussion

### 4.1 Introduction

In this chapter, I will describe and discuss the findings of the Canim Lake community questionnaire which I created regarding Citizenship, Membership and Self-governance. The desired outcome of the questionnaire is to gauge the level of knowledge and awareness about Band membership in the community of Canim Lake. This was done with qualitative interviews, by interviewing a randomly selected group of on-reserve and off-reserve Canim Lake Band members. The questionnaire which I administered is found in Appendix III. The views of both on and off reserve Band members is important because Band members can exercise the right to determine Band membership.

Since the Band electors consented to control of Band membership in accordance with Section 10 of the *Indian Act* it is imperative that the membership is informed about the decision making process. The communication of this information coincides with the development of autonomous decision making at the community level in preparation for self-determination.

The research methods and interview process was piloted in March/April 2000 as part of Political Science 702: Scope and Methods. A descriptive analysis approach was taken. The questionnaire data is both quantitative and qualitative. The emphasis with this approach was to gain valuable qualitative responses. There were two groups of respondents involved in the pilot. The first were First Nations student attending the University of Northern British Columbia in Prince George BC and the second group was participants selected from one of the four communities affiliated with the Cariboo Tribal Council Treaty Society (Canim Lake,

Williams Lake, Canoe Creek, and Soda Creek). The basic tenet of the pilot was to test the questionnaire prior to taking it to the community of Canim Lake.

## 4.2 Method

The method used in this exercise is a “pencil and paper” questionnaire. The questionnaire was administered by personal interview between the researcher and respondent. The majority of the qualitative interviews took 15 minutes with additional time added in accordance with the depth of the responses. The average time to complete each questionnaire ranged from 15 to 20 minutes. Since this is an exploratory and descriptive type study, the design was intended to capture general information that permitted the respondent to offer their views, beliefs and attitudes in certain subject areas pertaining to existing or potential arrangements applicable to citizenship and membership in an Aboriginal community.

There were two groups of respondents surveyed simultaneously over a period of two weeks from March 13 to March 25, 2003. The questionnaire consists of three parts, the introductory set of questions was to collect demographic information only such as, year of birth, and gender, birthplace, and confirmation of Indian status, and Band membership, the balance of the questions were divided into sets of structured and unstructured questions. The majority of the interviews were administered in person while two were obtained by fax. The key respondents were composed of a sample group representing off-reserve and on-reserve Band members selected from the Band’s membership list. The respondents were selected by using the systematic sampling technique. The systematic sampling method is a simple sampling technique where the  $k$ th element in the total list is chosen (systematically)

for inclusion in the sample.<sup>228</sup> This method guards against human bias by applying a random number between 1 and 10. The Canim Lake Band Administrator selected the initial start up number then every tenth person listed on the Band register thereafter was chosen beginning with the randomly selected number. This format applied to both on-reserve and off-reserve Band member lists. Only Band members 18 and older were included in the survey. If a selected respondent was unreachable then the next person on the list was interviewed. At the time of the survey there were 202 on-reserve Band members and 156 off-reserve Band members. The combined total of on-reserve and off-reserve membership was 358. The Band member sample group consisted of 17 on-reserve members, of which 10 are male and 7 female, while the 11 off-reserve members consist of 4 male and 7 female for a total sample of 28 registered Band members. The completed surveys constitute 8% on-reserve and 7% off-reserve representation. To protect anonymity the questionnaire results are tabulated by numbers only, they do not include personal identifiable information.

The structured and unstructured questionnaire responses were tabulated and sorted by gender and on-reserve/off-reserve representation. A further breakdown of the sample groups of respondents indicated that 59% of on-reserve participants were male and 41% were female, while the off-reserve was 36% male and 64% female. The mean age for the on-reserve sample group was 38.53 years old and the off-reserve group was 33.64.

Although the size of the sample is small the results of the questionnaires produced insightful information that can be utilized as benchmarks about how community members feel toward certain aspects of membership within their community. The pertinent

---

<sup>228</sup> Earl Babbie, The Practice of Social Research (California: Wadsworth Publishing Co., 1986), p. 157.

components of the data are discussed by performing the ensuing tasks: (1) describing the data, (2) comparing components of the data, and (3) evaluating the data.

### 4.3 Results

#### Structured Responses

The structured questions followed the Likert scale question format. This style of format is frequently used in questionnaires. The respondent is provided with a statement and asked to select the most appropriate answer from the following categories: “strongly agree,” “agree,” “disagree,” “strongly disagree,” or “undecided.”<sup>229</sup> In this particular survey, no values were assigned to the five response categories. The responses were identified in accordance with the five response choices. There were 6 questions in the survey ranked on the Likert scale, these were questions 8, 9, 9a, 10, 11, and 12 where responses were strongly agree, agree, disagree, strongly disagree, and not sure. Since no major significance could be found from the data due to sample size, the strongly agree and agree categories were combined in addition to disagree and strongly disagree. There are three questions that solicited yes or no responses. These asked if the respondent was a status Indian, if their Band they are registered to has a membership code, and if one exists is it user friendly.

The questionnaire instrument can be found in Appendix III. The introductory questions in the instrument were used to collect demographics and confirm legitimate Band membership existed among the respondents. The Band membership questions asked if the person was a status Indian; which Band they were registered to; and how they obtained Band membership.

---

<sup>229</sup> Babbie, “Practice of Social Research.” 375.

When the results in the horizontal on-reserve quadrant are examined, the results show that 80% of the males are aware of the Band’s membership code while 57% of the females are aware (see Table 1 below). In comparison from Table 1 it can be seen that 50% of the off-reserve males were knowledgeable about the existence of membership codes and 43% of the females knew about the code. Therefore, a higher level of awareness was found among the on-reserve male and female respondents than among the off-reserve males and females. Cumulatively, the level of awareness was higher for respondents in the on-reserve category. Similarly, a higher percentage of off-reserve members (46%) were “unsure” of the existence of a membership code than were on-reserve members (29%).

Table 4.1: Knowledge of Band Membership Code

Question 5: Does the Band you are registered to, have an existing membership code?

Response:	Male	Female	Totals
<u>On Reserve</u>			
Yes	8	4	<u>12</u>
No	0	0	<u>0</u>
Unsure	2	3	<u>5</u>
Totals	10	7	<u>17</u>
<u>Off Reserve</u>			
Yes	2	3	<u>5</u>
No	0	1	<u>1</u>
Unsure	2	3	<u>5</u>
Totals	4	7	<u>11</u>

From Table 2 it can be seen that when asked if the membership codes were user friendly 60% of on reserve male respondents replied “yes” and 43% of the females replied “yes”. The positive result of user friendliness of the code within the male on reserve category corresponds with this respondent group’s level of knowledge that the code exists. This is the highest percentage of the entire group of respondents. For females, the highest response rate was found for the on reserve females who reply “yes” (43%) to question 5. In

the off reserve group the sense that the Band membership code is not user friendly is highly demonstrated in both off reserve male and females with 50 and 100% respectively showing that they were unsure that the code is user friendly or they could not answer the question (see Table 2 below). The incomplete category was added to represent the respondents who did not answer this question because they were unaware that a membership code existed at all.

Table 4.2: Are Membership Codes User Friendly

Question 5 b): If so, is it user friendly?

Response:	Male	Female	Total
<u>On Reserve</u>			
Yes	6	3	<u>9</u>
No	0	0	<u>0</u>
Unsure	2	2	<u>4</u>
Incomplete	2	2	<u>4</u>
Totals	10	7	<u>17</u>
<u>Off Reserve</u>			
Yes	1	0	<u>1</u>
No	1	0	<u>1</u>
Unsure	0	4	<u>4</u>
Incomplete	2	3	<u>5</u>
Totals	4	7	<u>11</u>

Question 7 asked the respondents who they felt should decide Band membership. For this question, they could select more than one option, or they could identify their own preference in the “other” category. In order to remain consistent with percentages, the percentages in the data is calculated according to the degree of responses. For example, the total responses are added together then the percentage is calculated according to the total number of responses. The on-reserve males showed a preference for Band membership to decide membership for 50%. The second two highest choices for the on reserve males were Chief and Council (14%), and Membership Council or Committee (14%). The final preferred options for the on-reserve males were equally distributed between the Indian Act, Tribunal and Adoptions at 8% each. The on-reserve females also weighted Band

membership as their preference the highest with 36%. The on-reserve female's second preference was a Membership Council or Committee for 18%. While the on-reserve females selected Chief and Council, Indian Act, Canadian Law, Tribunal, and Membership by-laws equally for 9% each.

The off-reserve males gave equal consideration to Chief and Council and Membership Council and Committee as their top two preferences; these choices are ranked at 38% each. The off reserve males then chose Indian Act and Tribunal (12%) each. The off-reserve females gave equal ranking to three preferences; Chief and Council, Membership Council or Committee and Band membership for 25% each. The off-reserve females then chose Indian Act, Elders, Family and Friends equally 8% of the time (see Table 3). It is interesting to note that Band membership was not one of the selections identified in the questionnaire but the respondents added it as an option. This category received the highest ranking for on-reserve males and females.

Table 4.3: Deciding Band Membership\*

Question 7: Who should decide if a person is a Band Member?

On Reserve Respondents	Male	Female
Band membership	7	
Chief and Council	2	
Membership Council or Committee	2	
Indian Act	1	
Tribunal	1	
Adoptions	1	
Membership By-laws	0	
Canadian Law	0	
Total	14	
Band membership		4
Membership Council or Committee		2
Chief and Council		1
Indian Act		1
Canadian Law		1
Tribunal		1
Membership By-laws		1

Adoptions		0
	Total	<u>11</u>
Off Reserve Respondents	Male	Female
Chief and Council	3	
Membership Council or Committee	3	
Indian Act	1	
Tribunal	1	
Canadian Law	0	
Band membership	0	
Adoptions	0	
Elders	0	
Family and Friends	0	
	Total	
	<u>8</u>	
Chief and Council		3
Membership Council or Committee		3
Band membership		3
Indian Act		1
Elders		1
Family and Friends		1
Canadian Law		0
Tribunal		0
Adoptions		0
	Total	<u>12</u>

\* The respondents could select their preferences from a choice of 5 options. These were Chief and Council, Membership council or committee, Indian Act, Canadian Law and Tribunal. Many added Band membership or general membership as the decision makers in the other category.

Question 8 asked respondents if they agreed with the statement that a blood quantum was “wrong in principle” and “inconsistent with the traditions of a majority of Aboriginal peoples”. This question was complex and the respondents needed a few minutes to dissect and interpret what was being asked. The interviewer found that respondents were generally challenged to think deeper before formulating their response. Table 4 below presents the results of question 8. From Table 4 it can be seen that 5 (50%) of the on-reserve males agreed with the statement, while 4 (40%) disagreed and 1 (10%) was not sure. The majority of female on-reserve respondents were unsure (57%), followed by 29% who disagreed and 14% agreed with the statement. In the off-reserve group, 75% of the males agreed with the statement in Question 8 while the remaining 25% disagreed with it. Among the female off-reserve respondents 57% agreed with the statement, 29% were unsure and 14% disagreed.

Therefore, overall when the results are combined within the on-reserve and off-reserve categories, 35% on-reserve agree, 35% disagree, and 30% are unsure whereas, 64% of the off-reserve respondents agreed with the statement, 18% disagreed and 18% were unsure (see Table 4).

Table 4.4: Blood Quantum Requirement

Question 8: The Royal Commission on Aboriginal Peoples Report says that a minimum blood quantum as a general requirement for citizenship is unconstitutional under section 35. It is wrong in principle and it is perceived to be inconsistent with the evolution and traditions of the majority of Aboriginal peoples. Do you agree with this statement?

Response:	Male	Female	Total
<u>On Reserve</u>			
Strongly Agree	1	0	<u>1</u>
Agree	4	1	<u>5</u>
Disagree	4	0	<u>4</u>
Strongly Disagree	0	2	<u>2</u>
Not Sure	1	4	<u>5</u>
Totals	<u>10</u>	<u>7</u>	<u>17</u>
<u>Off Reserve</u>			
Strongly Agree	1	1	<u>2</u>
Agree	2	3	<u>5</u>
Disagree	1	1	<u>2</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	0	2	<u>2</u>
Totals	<u>4</u>	<u>7</u>	<u>11</u>

Table 5 presents the responses made by on and off reserve respondents to question 9 which asked if they agreed with the statement that “The RCAP report says that Aboriginal people in Canada should enjoy dual citizenship, that they can be citizens of an Aboriginal nation and citizens of Canada”. From Table 5 below it can be seen that for the on-reserve male respondents 90% agreed and 10% disagreed with this. The on-reserves females totally agreed with the statement at 100%. Among the off-reserve male respondents, 100% “agreed” with the statement while 72% of the off-reserve females agreed and 14% disagreed and 14% were unsure.

Table 4.5: Dual Citizenship

Question 9: The RCAP report says that Aboriginal people in Canada should enjoy dual citizenship, that they can be citizens of an Aboriginal nation and citizens of Canada. Do you?

Response:	Male	Female	Total
<u>On Reserve</u>			
Strongly Agree	2	2	<u>4</u>
Agree	7	5	<u>12</u>
Disagree	1	0	<u>1</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	0	0	<u>0</u>
Totals	<u>10</u>	<u>7</u>	<u>17</u>
<u>Off Reserve</u>			
Strongly Agree	2	2	<u>4</u>
Agree	2	3	<u>5</u>
Disagree	0	1	<u>1</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	0	1	<u>1</u>
Totals	<u>4</u>	<u>7</u>	<u>11</u>

When asked if dual citizenship should be permitted between Aboriginal nations, 80% of the on-reserve males either “agreed” or “strongly agreed”. Of the remaining male respondents, 10% “disagreed” while 10% were unsure. The on-reserve females agreed with the statement 71% of the time and 29% disagreed (see Table 6 below). For the off-reserve group, 50% of the males agreed that dual citizenship should be permitted between Aboriginal nations, while the remaining 50% disagreed. Four (57%) of the off-reserve females agreed with the statement while 2 (29%) disagreed. One (14%) female off-reserve respondent reported being “unsure” (see Table 6 below).

Table 4.6: Dual Citizenship Between Aboriginal Nations

Question 9 a): Do you think that dual citizenship should be permitted between Aboriginal nations?

Response:	Male	Female	Total
<u>On Reserve</u>			
Strongly Agree	1	0	<u>1</u>
Agree	7	5	<u>12</u>
Disagree	1	2	<u>3</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	1	0	<u>1</u>
Totals	<u>10</u>	<u>7</u>	<u>17</u>
<u>Off Reserve</u>			
Strongly Agree	2	1	<u>3</u>
Agree	0	3	<u>3</u>
Disagree	1	2	<u>3</u>
Strongly Disagree	1	0	<u>1</u>
Not Sure	0	1	<u>1</u>
Totals	<u>4</u>	<u>7</u>	<u>11</u>

Question 10 which described the Nisga'a Agreement criteria for membership needed to be carefully explained to ensure that the respondents' answered in relation to how the Nisga'a has their agreement set-up. The intent of the question was to get a sense from the respondents about how they view other possible arrangements; it was not to suggest that this same arrangement would apply to Canim Lake. In a few instances the respondents qualified their response by saying that this was good for the Nisga'a but may not be for Canim Lake. From Table 7 below it can be seen that 90% of the on-reserve males' responses were in agreement with the Nisga'a agreement, while one (10%) respondent reported that they were "not sure". With the on-reserve female group respondents, 86% "agreed" with the concept while 14% disagreed. Off-reserve male respondents fully agreed with this at 100% while 71% of the females agreed, 14% either disagreed or were not sure (see Table 7 below).

Table 4.7: Nisga'a Agreement

Question 10: The Nisga'a agreement, deems a person to be enrolled as a member of their nation: 1) if they are of Nisga'a ancestry;  
 2) if they are an adopted child of a Nisga'a person or;  
 3) if they are married to a Nisga'a and have been adopted by one of the four Nisga'a tribes according to traditional law.  
 Do you agree with this concept?

Response:	Male	Female	Total
<u>On Reserve</u>			
Strongly Agree	1	0	<u>1</u>
Agree	8	6	<u>14</u>
Disagree	0	1	<u>1</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	1	0	<u>1</u>
Totals	10	7	<u>17</u>
<u>Off Reserve</u>			
Strongly Agree	0	0	<u>0</u>
Agree	4	5	<u>9</u>
Disagree	0	1	<u>1</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	0	1	<u>1</u>
Totals	4	7	<u>11</u>

When asked if the respondents were in agreement for non-Nisga'a people to become citizens, 60% of the on-reserve males were in agreement, while 40% disagreed. Of the on-reserve females, 4 (57%) agreed while 3 (43%) disagreed (see Table 8 below).

The off-reserve males were split with 50% either agreeing or disagreeing with the ideas of the Nisga'a government's ability of allowing non-Nisga'a people to become citizens. In the female off-reserve respondents, 5 (72%) agreed, while 1 (14%) disagreed and 1 (14%) was not sure. (see Table 8 below).

Table 4.8: Nisga'a Citizenship

Question 11: The Nisga'a Constitution grants authority to the Nisga'a government to allow non-Nisga'a people to become citizens. Do you?

Response:	Male	Female	Total
<u>On Reserve</u>			
Strongly Agree	1	0	<u>1</u>
Agree	5	4	<u>9</u>
Disagree	4	3	<u>7</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	0	0	<u>0</u>
Totals	<u>10</u>	<u>7</u>	<u>17</u>
<u>Off Reserve</u>			
Strongly Agree	0	0	<u>0</u>
Agree	2	5	<u>7</u>
Disagree	2	1	<u>3</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	0	1	<u>1</u>
Totals	<u>4</u>	<u>7</u>	<u>11</u>

Based on the data provided in Table 9 below, while 40% of the on-reserve males agreed that non-Nisga'a ancestry citizens have a right to education, etc, 60% disagreed. Unlike the on-reserve males, the majority of on-reserve females (71%) felt that non-Nisga'a ancestry citizens have the right to education, etc, while the remaining on-reserve female respondents split between disagree and not sure with 14% in each category. The off-reserve males equally (50%) agreed and disagreed with this idea. Among the off-reserve female respondents (43%) agreed and 57% disagreed. Disagreement with the arrangement outweighed agreement for both on-reserve males and off-reserve females, while off-reserve males were equally divided (50% in each) between agreeing and disagreeing. The on-reserve females (71%) ranked the highest in agreement with the statement.

Table 4.9: Non-Nisga'a Rights

Question 12: The Nisga'a agreement states that a Nisga'a citizen, who is of non-Nisga'a ancestry, has certain rights to education, programs and services but they do not have a right to vote in elections. Do you?

Response:	Male	Female	Total
<u>On Reserve</u>			
Strongly Agree	0	0	<u>0</u>
Agree	4	5	<u>9</u>
Disagree	5	1	<u>6</u>
Strongly Disagree	1	0	<u>1</u>
Not Sure	0	1	<u>1</u>
Totals	<u>10</u>	<u>7</u>	<u>17</u>
<u>Off Reserve</u>			
Strongly Agree	0	1	<u>1</u>
Agree	2	2	<u>4</u>
Disagree	2	4	<u>6</u>
Strongly Disagree	0	0	<u>0</u>
Not Sure	0	0	<u>0</u>
Totals	<u>4</u>	<u>7</u>	<u>11</u>

When the respondents were asked if residency should be considered as part of eligibility criteria, 4 of the on-reserve males (40%) indicated that residency should be considered while 60% said years of residency should not be included for eligibility (see Table 10 below). From Table 10, however, it can be seen that 86% of the on-reserve females felt that residency criteria should be used as a factor in determining Band membership, 14% said no. The off-reserve males were split on this suggestion with 50% saying yes and 50% no. The off-reserve females were also evenly split with 43% responding "yes" and 43% responding no. One off-reserve female (14%) stated that she was not sure (see Table 10).

Table 4.10: Band Membership Based on Residency

Question 14: Should membership criteria include a clause that would allow an Aboriginal person to become eligible for Band membership based on years of residency?

Response:	Male	Female	Total
<u>On Reserve</u>			
Yes	4	6	<u>10</u>
No	6	1	<u>7</u>
Not sure	0	0	<u>0</u>
Totals	<u>10</u>	<u>7</u>	<u>17</u>
<u>Off Reserve</u>			
Yes	2	3	<u>5</u>
No	2	3	<u>5</u>
Not sure	0	1	<u>1</u>
Totals	<u>4</u>	<u>7</u>	<u>11</u>

The respondents who felt that residency should be considered for Band membership were asked to recommend the number of years of residency that should be required and those results are shown in Table 11 below. There were a combined total of 10 on-reserve responses from male and female respondents. The ten on-reserve male and females combined totals are as follows: three individuals recommended 1 year, two selected 3 years, one chose 5 years and four preferred 7 years. For the off-reserve males and females, five recommended 3 years only (see Table 11 below). From the total sample population the following percentage shows the participation rate of respondents for recommending years of required residency. Forty percent of the on-reserve males responded, (70%) on-reserve females, (50%) off-reserve males, and (43%) off-reserve females. The highest participation rate was among on-reserve females and off-reserve males.

Table 4.11: The Number of Years of Residency to Obtain Band Membership

Question 14 b): If so, how many years?

Response:	Male	Female	Total
<u>On Reserve</u>			
1 year	1	2	<u>3</u>
3 years	0	2	<u>2</u>
5 years	0	1	<u>1</u>
7 years	3	1	<u>4</u>
Totals	<u>4</u>	<u>6</u>	<u>10</u>
<u>Off Reserve</u>			
1 year	0	0	<u>0</u>
3 years	2	3	<u>5</u>
5 years	0	0	<u>0</u>
7 years	0	0	<u>0</u>
Totals	<u>2</u>	<u>3</u>	<u>5</u>

### Unstructured Responses

The second part of the questionnaire consisted of unstructured questions. The results of the unstructured questions were tabulated by combining responses judged as being similar in nature. The sole purpose of these questions was to obtain a sense of how Band members felt about certain aspects of Band member determination.

The first open ended question is listed as question 6 on the questionnaire. It asked “Can you identify 5 key elements that is important for determining Band membership?” The list provided in Table 12 below represents a culmination of the elements that the respondents identified. The response required each respondent to identify the five elements that they felt were important and if respondents duplicated the item it is listed once only. The results are split between on-reserve and off-reserve only and not by gender. The gender split was not considered in this exercise due to the volume of information generated. The intent of the question was to acquire an overview of what is important to Band members in determining Band membership. The probe was to check if respondents were comfortable with the status quo or to find out if traditional identity would be an important factor. As shown, the total number of on-reserve respondents was 17 and off-

reserve number was 11. The results are ranked from highest to lowest number of responses in each category. From Table 12 it can be seen that the most often stated element for Band membership was “blood” with 41% (7 individuals) on-reserve and 45% (5 individuals) off-reserve providing that response. The second reported element was “good character” with 29% on-reserve (5 individuals) and 18% (2) off-reserve stating that this was an important element. Good character meant that the individual would be willing to be involved in the community and make a contribution. In addition, they would not have a record of violent crime. The next four elements of Band membership were given equal weighting and included such things as: marriage, status Indian, birth and residency (see Table 12).

Table 4.12: Five Key Elements Identified as Important to the Determination of Band Membership

	On Reserve	Off Reserve
Blood	7	5
Good character	5	2
Marriage	3	1
Status Indian	3	1
Birth	3	1
Residency	3	1
Contribute to the Band	3	0
Adoption	3	0
Transfer with 50% vote	3	0
Familial ties	1	3
1 year waiting period	2	0
Vote by majority	2	0
Written request	2	0
Desire to be a member	1	1
Heritage (identity)	1	1
Parent’s membership status	1	1
Address membership prior to vote	1	0
Off-reserve members retain membership	1	0
Pay a fee to be a member	1	0
Cultural knowledge/participation	0	1
Considered “community member”	0	1

The respondents were asked to identify what benefits they felt should be transferable while they are in another community. Table 13 indicates that the most often provided response by on-reserve individuals was that transferable benefits should be based on a community to community agreement (6 on-reserve individuals). The second two most often provided responses by on-reserve individuals (5), was education and training as well as none. The most often reported response by off-reserve individuals (4) was none should be transferable (see Table 13). The next desired benefit reported by the on-reserve group was social services (3 individuals). Both groups equally reported feeling that it depends on the person's desire to participate in the community.

Table 4.13: What Benefits Should a Band Member Enjoy in Another Community?

	On Reserve	Off Reserve
None	5	4
Education and training	5	0
On a community to community agreement	6	0
Social services	3	0
Registered members should receive benefits	0	2
Depends on person's desire to participate in the community	1	1
Housing	1	0
Hunting and fishing	1	0
All people should be treated equally	1	0
Tax considerations	1	0
Voting privileges	1	0
Funds based on residency enrolment	1	0
Unsure	0	1
Depends on ethics of the leadership	0	1
Depends on family relations	0	1
Health requirements	0	1

Finally, when the respondents were asked to identify the benefits they enjoy through Band membership there is a distinct difference in ranking of importance between the on-reserve and off-reserve respondents. Table 14 shows that both on-reserve (9) and off-reserve

(8) ranked education and medical services the highest. Tax exemptions were the third most often listed benefit reported by on-reserve respondents (7). The on-reserve respondents identified fishing and hunting rights (4), as well as housing (4) as being an important benefit for them. However, off-reserve respondents do not enjoy housing as a benefit (0). The results provided in Table 14, clearly indicate that the ranking of benefit enjoyment is linked mainly to residency. Benefit entitlement depends on whether the Band member is on or off reserve. Education and medical are two benefits that can be accessed by both on and off-reserve members regardless of residence.

Table 4.14: Identify the Benefits you Enjoy Through Band Membership

	On Reserve	Off Reserve
Education	9	8
Medical	9	4
Tax exemptions	7	1
Fishing and hunting rights	4	1
Housing	4	0
Employment	3	2
Identity, includes heritage, culture, language, history	3	2
Roots for self and children, extended family	1	3
Dental	2	1
Vote in Band elections	2	1
Social services	2	0
Entrepreneurial assistance	2	0
Band administration	2	0
Communal living	2	0
Vision care	1	1
Land benefits	1	0
Freedom – rural vs. urban	1	0
Recreational activities	1	0
Life skills programs	1	0
Treaty information	1	0
Retirement benefits	0	1

#### 4.4 Discussion

In respect to gender ratio the respondents' representation in the on-reserve survey group is as follows: male (59%) and female (42%). The off-reserve respondents were: male

(36%) and female (64%). Overall the comparative ratio of on-reserve eligible respondents, 18 and older (17) to on-reserve total registered Band members (202) was a ratio of 8%. The ratio for off-reserve respondents (11) to off-reserve total population (156) was 7%. Although the sample size is small the results of the questionnaire produced insightful information that can be considered as possible benchmarks in respect to how Canim Lake band members feel toward certain aspects of membership within their community. The results also identified common areas of concern. The limitation of the analysis is that the information is too small to infer meaning from a test of statistical significance. It cannot be confirmed that the sample size would be representative of the population therefore the probability of a sampling error is too great. This would increase the possibility of wrongly rejecting a null hypothesis or accepting a false null hypothesis, therefore it renders such testing inappropriate for this study. Therefore, a hypothesis of whether or not an individual's background influences views about membership cannot be proven.

The findings of the questionnaire did indicate that the Canim Lake community members who participated have surface knowledge about Canim Lake's Band membership code. The cumulative responses showed that the respondents interpreted and responded to questions in accordance with how they personally identify with specific elements of the code and how it relates to them. The overall intent of the questionnaire was to conduct a random sample of Canim Lake Band members who live on and off the reserve in respect to Band membership determination and authority. Since Canim Lake opted to administer their own membership it proves that they are moving toward self control by proactively including their Band members in Band member determination.

## Chapter 5 Conclusion and Recommendations

Prior to the Bill C-31 amendment to the *Indian Act* in 1985 there was no departure from the historical legislated influence of the Canadian government regarding Indigenous self-determination. Although the change to the *Indian Act* offered a process for Aboriginal communities to determine who the members of their Band would be, it was still aligned with the original philosophy of the *Indian Act*. As a matter of fact, Band membership began with all the members who held Indian status up to 1975, as defined in 1876.

It is important to understand that Aboriginal communities can only achieve political autonomy within the nation state when they enjoy important aspects of self-determining authority such as the right to determine the members of their nation. The legislated authority of the *Indian Act* denies this because the current legislated instrument retained the Federal Government's legal authority to decide who is an Indian in Canada. *Indian Act* legislation took hold and completely dictated how Aboriginal communities defined their membership. By looking at traditional methods of determining membership in Chapter 2 it is evident that traditional processes are absent in current Band member determination schemes and therefore all too often traditional identity is undermined.

It is also important to note that there is extensive research on the topic of the loss of autonomy for Aboriginal people. The major recipients of the colonized mentality regarding loss of legislated identity are the people who became disenfranchised, women in particular. Many authors such as Linda Sutherland in *Citizen Minus* concluded that colonial subjugation of Aboriginal people has been internalized. All too often the mentality of the colonizers has been accepted by the Aboriginal ruling elite. Therefore, the elite class has taken on the Euro-Canadian characteristics and approaches and turned these ideals and methods on their own

people by maintaining the colonizing mandate to exploit, oppress and dominate their own communities.<sup>230</sup>

Similar to the Aboriginal women who have been disenfranchised and subjugated into a subordinate position my voice is speaking on behalf of another group of people who because they live off-reserve have lost their connection to community, culture, language and beliefs. The cause of this separation happens for a variety of reasons and in my case it was the multi-generational effects of residential school that destroyed family cohesion.

Rather than blaming the leaders in Aboriginal communities, it is imperative to peel back the layers of the root cause. Without exposing the problems instigated by the loss of self-identity both rulers and community members will continue to accept the status quo. In addition to community healing, developing awareness of the colonizing behavior and attitude is necessary. Therefore, an objective of this thesis is to bring attention to the hegemonic relationships between Aboriginal people and the state which supports the colonizing process as discussed in the introduction. Community leaders have often internalized the current system imposed by the *Indian Act*, enforced by the Department of Indian Affairs, as their own. Band membership is the vehicle to lead the discussion in search for solutions to revolutionize the current oppressed mentality. If Band membership determination can be returned in some form to traditional/cultural practices applied before colonization it is hoped that Bands can move into a state of self-determination rather than one of imposition. It is necessary for communities to tell government that they will decide who their members are as a first step towards self-determination and autonomy.

---

<sup>230</sup> Sutherland, Linda. *Citizen Minus: Aboriginal Women and Indian Self-Government, Race, Nation, Class and Gender*. MA Thesis, The University of Regina, Saskatchewan, 1995, p. 133.

The imposed legislation eroded the right of Indigenous people to self determine their identity and this modification caused many Aboriginal people to lose their connection to community and cultural roots. Dr. Greg Poelzer indicated that while research has been concerned with constitutional and legal issues insufficient attention has been given to the broader cultural or sociological foundations upon which the current struggle for Native self-government is based.<sup>231</sup> Henderson, Benson and Findlay, stated that more than two decades of commissions, inquiries, reports, special initiatives, conferences and books have made it clear that the effects of colonization on Aboriginal peoples in Canada has eroded self-identity, and the only way to repair the damage is through reform that leads to decolonization.<sup>232</sup>

The report produced by the Royal Commission on Aboriginal Peoples entitled *Bridging the Cultural Divide on Aboriginal Peoples* found that colonization has systematically undermined the traditional Aboriginal world-view. The authors suggested that decolonization is not simple because Indigenous people have been dominated by European values and systems.<sup>233</sup> The most important aspect is decolonizing the mind; Aboriginal thinkers face the task of articulating “indigeneity” and distinguishing it from colonial intellectual traditions.<sup>234</sup> Aboriginal knowledge, heritage, language, and law in turn define how Aboriginal peoples will achieve self-determination and coexist within constitutional democracy.<sup>235</sup> Therefore, the incorporation of traditional and cultural practices into Band membership codes mark a return to a community’s tradition of validating identity and kinship thus moving away from colonization.

---

<sup>231</sup> Poelzer, “Toward a Theory,” 5.

<sup>232</sup> James (Sakej) Youngblood Henderson, Marjorie L. Benson, and Isobel M. Findlay, “Aboriginal Tenure in the Constitution of Canada.” (Scarborough, Ontario: Carswell Thomson Professional Publishing, 2000), p. 247.

<sup>233</sup> Youngblood Henderson, Benson, Findlay, “Aboriginal Tenure.”.284.

<sup>234</sup> Youngblood Henderson, Benson, Findlay, “Aboriginal Tenure.”.284.

<sup>235</sup> Youngblood Henderson, Benson, Findlay, “Aboriginal Tenure.”.444.

Dr. Taiaiake Alfred promoted the reconstruction of Indigenous nations to align with the continuum of historical tribal communities. He also indicated that caution is needed in respect to this approach, as it could exclude people with minimal blood connection that were once admitted by the state as Indigenous. In a sense what could happen is for many individuals who acquired Indian status with minimal to no blood quantum would be removed from the Indian register under this revision. Current members would need to prove their connection to the nation by historic tribal descendant. This would affect two classes of people, those without the historic tribal connection and the non-Aboriginal women who gained Indian status by marrying an Indian man since they have no blood quantum.

In addition, Patricia Monture-Angus felt that collective rights are insufficient to fully reflect Aboriginal rights as individual rights are also embedded in the collective. I understand that what Monture-Angus meant is that not everything can be satisfied collectively any longer. Since the dismantling of community cohesion, the prime example being the loss of identity for Aboriginal women the collective is not adequate to address individual rights. A prime example is Bill C-31 as it aligns with the *Charter of Rights and Freedoms* for the sole purpose of protecting the rights of the individual. The elders further advise that it is not possible to be a self-determining Nation when individuals do not understand what it means to be concurrently responsible to themselves, their communities and their nations.

As indicated by the elders, individual responsibility is required for self-determination. I believe the responsibility is reciprocal between individuals, leadership and community. It is equally important for individuals to understand their role in Band membership decisions and the administration to ensure that the members understand the membership code requirements. As demonstrated by the Canim Lake community questionnaire the member's knowledge of

their code varied. Almost 50% of the off-reserve members were not aware that a membership code existed. This is a strong indicator that more education and awareness is required to ensure that band members are fully informed about the code especially when they participate in band member determination. The results in response to the question about the user friendliness of the code are consistent with whether members were aware of the code. The strength of familiarity is with the on-reserve males. Both male and female off-reserve respondents could not strongly provide a positive response to the user friendliness of the code. This supports the suggestion that more awareness needs to occur. In addition to knowledge about membership it is evident from the questionnaire results that both on reserve males and females prefer that band members determine membership while the off-reserve respondents did not place a higher preference on band members to determine membership.

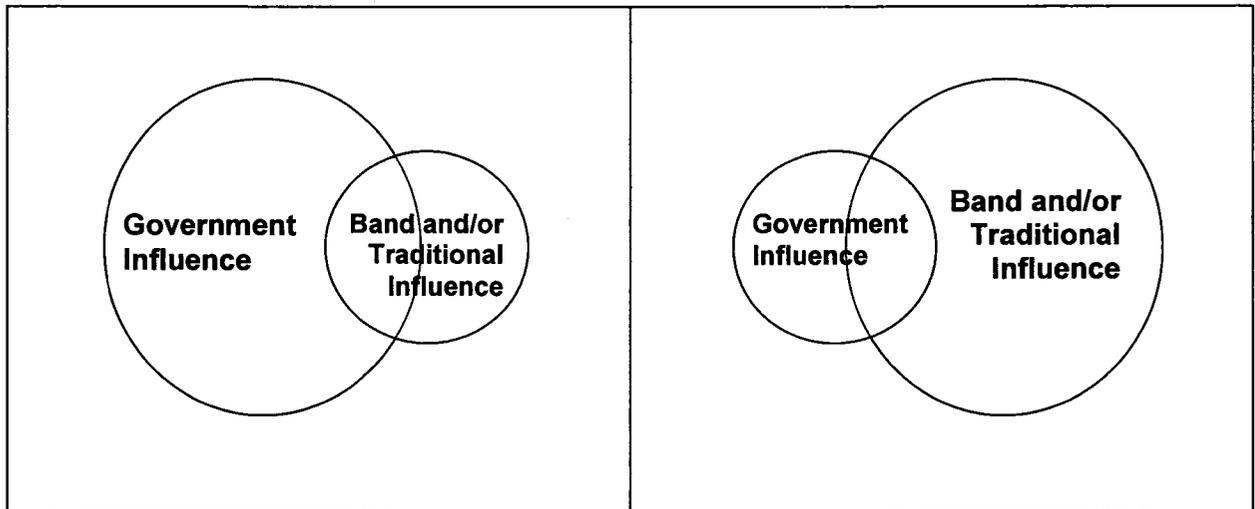
The Royal Commission anti-blood quantum position and the Nisga'a enrolment eligibility questions were asked as a probe to explore if respondents considered other options or examples. The questions were targeted specifically to determine if members would provide input to incorporate a traditional requirement in the definition of who they are. I did not sense or find a strong linkage between traditional identities to current membership determination.

True authority to govern a nation goes hand in hand with the authority to determine membership. It is time to move away from government control in this important aspect of governance by implementing important features of Aboriginal methods of control. The definition of who is an Indian must be returned to the Aboriginal community and taken out of the realm of the Federal Government. James Frideres writes:

Culture and race no longer affect the definition of an Indian: today's definition is a legal one. If someone who exhibits all the racial and cultural attributes traditionally associated with 'Indianness' does not

come under the terms of the *Indian Act*, that person is not an Indian in the eyes of the federal and provincial governments.<sup>236</sup>

Aboriginal communities need to regain ownership of defining who is Aboriginal and depart from the *Indian Act* definition. When Aboriginal ownership is regained, the circle of control and influence will transform as follows:



The above diagram depicts the reversal of roles. Aboriginal communities will regain their position within the Canadian state by moving away from a subordinate position to one of self-control. The transformation will diminish the government's realm of control and enlarge the Aboriginal community's authority. This concept is captivated by Dr Alfred, he stated that authority must be recognized as fundamental for self-determination as no nation (state or organization) has the right to force an identity on another. The historical mindset where enfranchisement and full citizenship status were considered a reward for becoming 'civilized' must be reversed and Aboriginal culture and identity restored. When the locus of control transfers to Aboriginal authority only then will self-determination exist.

---

<sup>236</sup> Darlene M. Johnstone, "Native Rights as Collective Rights: A Question of Group Self-Preservation, in *The Rights of Minority Cultures*, edited by Will Kymlicka. (Great Britain: Oxford University Press, 1998), p. 191.

## 5.1 Recommendations

Recommendations 1 to 3 are suggested for Band leaders and communities to prepare for greater self-determination of membership. Recommendations 4 and 5 require further research on Indigenous identity.

### Recommendation #1:

Embrace traditional identity and autonomous Band member determination in Aboriginal communities. This would be done on a community by community basis. The starting point would be to conceptualize what Band membership would mean if the community could begin with a clean slate.

### Recommendation #2:

Create pilot models of self-determination of membership suggested by various authors utilizing the Royal Proclamation and treaties as reference points; incorporate treaty federalism; or one of the models applicable to the community as suggested in the Royal Commission on Aboriginal Peoples report. Incorporate community's own traditional methods.

### Recommendation #3:

Establish a mechanism to include and invite off-reserve members to reconnect to community. This could be by inviting current and former members to receive community newsletters; host special events such as feasts/potlucks as a mini homecoming; offer accessible language courses on a user fee basis.

### Recommendation #4:

Conduct further community-based research; develop communication strategies to ensure that all community members fully understand their role in band member determination, treaties and decision-making processes.

### Recommendation #5:

Conduct further research on reversing the impact of the *Indian Act* on traditional Aboriginal identity.

I believe it is crucial for Aboriginal communities to place greater emphasis on what membership meant in their communities prior to colonization. It is notably important to understand the hegemonic shift of band membership from an individual/community sense of belonging to one that has become a commodity.

To put this in perspective, an example I can provide took place in the community of Canim Lake, where the study took place. The example demonstrates that an extension and acceptance of membership can take place that is not based on blood quantum. This example aligns with the spirit of community and sense of belonging. The story I will relate is about an individual from Chilcotin territory who was misplaced by the Coqualeetza hospital in Sardis. How I heard the story is that a young man was mistakenly considered to belong to a family from Canim Lake and upon discharge from the hospital, the young man was sent home with this family. No one understood why this happened and the arrangement was never challenged. The young man became an active participant in the community and was considered to be a community member regardless of his true identity. The family and community embraced him as one of their own. The individual grew up with his new family. He flourished in surroundings that would otherwise be considered hostile territory given the history of the Chilcotin and Shuswap wars. His integration into the community clearly represents the way of the Secwepemc people. People were accepted based on their character and ability to be a contributing member of the community. If certain criterion were honored, an individual could become a prominent member of the community based on who they were rather than percentage of blood quantum. These types of arrangements flourished in the spirit of Secwepemc tradition as opposed to federal legislation. I believe that it is imperative in the development of traditional methods that Secwepemc traditions are kept at the forefront.

## BIBLIOGRAPHY

- Alfred, Gerald R. "Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics And the Rise of Native Nationalism". Toronto: Oxford University Press, 1995.
- Alfred, Taiaiake. "Peace, Power Righteousness: An Indigenous Manifesto". Don Mills: Oxford University Press, 1999.
- Apple, Michael. "Cultural Politics and Education". New York: Teachers College Press, Columbia University Press, 1996.
- Apple, Michael. "Official Knowledge: Democratic Education in a Conservative Age." New York: Routledge, 1993.
- Applegate Krouse, S. "Kinship and Identity: Mixed Bloods in Urban Indian Communities." *The American Indian Culture and Research Journal* 23:2 (1999): 73-89.
- Babbie, Earl. "The Practice of Social Research," 4<sup>th</sup> ed. California: Wadsworth Publishing Co., 1986.
- Bear Robe, Andrew. "Treaty Federalism – A Concept for the Entry of First Nations into the Canadian Federation and Commentary on the Canadian Unity Proposals." Gleichen, Alberta: Siksika Nation Tribal Administration, 1992.
- Bish, R.L., and Frank Cassidy. "Indian Government: Its Meaning in Practice." British Columbia: Oolichan Books and the Institute for Research on Public Policy, 1989.
- Boelscher Ignace, Marianne. "Shuswap." In Plateau, edited by Deward E. Walker Jr., 203-219, Vol. 12. Smithsonian Institution, Washington, 1998.
- Boldt, Menno. "Surviving as Indians: The Challenge of Self-Government." Toronto: University of Toronto Press, 1994.
- Burke, B. (1999) "Antonio Gramsci and informal education", *the encyclopedia of informal education*, <http://www.infed.org/thinkers/et-gram.htm>. Last updated: January 30, 2005.
- Canada, Minister of Supply and Services, Report of the Royal Commission on Aboriginal Peoples. "Looking Forward, Looking Back", 1996.
- Canada, Minister of Supply and Services, Report of the Royal Commission on Aboriginal Peoples. "Perspectives and Realities", 1996.
- Canada, Minister of Supply and Services, Report of the Royal Commission on Aboriginal Peoples. "Restructuring the Relationship", 1996.

- Carens, Joseph, H. "Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness." New York: Oxford University Press Inc., 2000.
- Cassidy, Frank, ed., *Aboriginal Self-Determination: proceedings of a conference held September 30-October 3, 1990*, Lantzville, BC: Oolichan Books, 1991.
- Corbiere v. Canada. Minister of Indian and Northern Affairs. [1999] 2 S.C.R. 203.
- Durst, Durst. "Aboriginal Self government and Social Services: Finding the Path to Empowerment." prepared by Douglas Durst, Josephine McDonald, Cecilia Rich; coordinated by Douglas Durst; sponsoring organizations: Council of Conne River Micmacs, Innu Nation Board of Directors. [Canada : s.n.], 1993
- Easton, N. A. "Intergenerational Differences in Ethnic Identification in a Northern Athapaskan Community." *The American Review of Canadian Studies* 32:1/2 (2001): 105-120.
- Elliot, David. W. *Law and Aboriginal Peoples in Canada Third Edition*. North York, Ontario: Captus Press Inc., 1997.
- Fleras, Augie and Jean Leonard Elliott. *The 'Nations Within': Aboriginal-State Relations in Canada, the United States, and New Zealand*. Toronto: Oxford University Press, 1992.
- Freire, Paulo. *Pedagogy of the Oppressed*. New York: Penguin Books, 1972.
- Gibson, Rex. "Critical Theory and Education". In *What is Critical Theory?* Hodder & Stoughton: London, 1986.
- Grenier, Louise. "Working with Indigenous Knowledge: A Guide for Researchers." International Development Research Centre: Ottawa, 1988.
- Harker, Richard and McConnochie, Keith. "Education as Cultural Artifact: Studies in Maori and Aboriginal Education." Palmerston North (N.Z.): Dunmore Press, 1985.
- [http://www.afn.ca/corbiere/corbbook\\_e.pdf](http://www.afn.ca/corbiere/corbbook_e.pdf)
- [http://www.anishinabek.ca/uoi/roj\\_0310b.htm](http://www.anishinabek.ca/uoi/roj_0310b.htm)
- [http://www.johnco.com/nativel/bill\\_c31.html](http://www.johnco.com/nativel/bill_c31.html): First Nations, Bill C-31, Indian Act, September 1995.
- [http://www.mta.ca/faculty/arts/canadian\\_studies/english/about/study\\_guide/famous\\_women/sandra\\_lovelace.html](http://www.mta.ca/faculty/arts/canadian_studies/english/about/study_guide/famous_women/sandra_lovelace.html).
- <http://www.ntc.bc.ca/who.html>. Nisga'a Nation Web Site. *Who we are*. On-line.

[http://www.Supreme\\_court.htm](http://www.Supreme_court.htm), Supreme Court Decision Supports First Nations Position on Citizenship and Membership, 1999.

Johnson, Darlene M. "Native Rights as Collective Rights: A Question of Group Self-Preservation." In The Rights of Minority Cultures, edited by Will Kymlicka, 179-201. New York: Oxford University Press, 1995; reprint, 1996 & 1997.

Jordon, Deirdre, F. "Aboriginal Identity: The Management of a Minority Group by the Mainstream Society". The Canadian Journal of Native Studies VI. 2(1986): 271-311.

Kymlicka, Will. "Finding Our Way: Rethinking Ethnocultural Relations in Canada." Oxford University Press Canada 1998.

Lheidli T'enneh Agreement-In-Agreement. 2003.

"Lheidli T'enneh Chooses Date For Treaty Vote." Prince George Citizen, 23, December 2006, 1.

Mandelbaum, David, G. "The Plains Cree: An Ethnographic, Historical, and Comparative Study." Regina: Canadian Plains Research Center, 1979.

Marshall, T.H. and Tom Bottomore. "Citizenship and Social Class." Illinois: Pluto Press, 1996.

Mawhiney, Anne-Marie. "Towards Aboriginal Self-Government: Relations between Status Indian Peoples and the Government of Canada." 1969-1984. New York & London: Garland Publishing, Inc., 1994.

Mills, Antonia. "Eagle Down is Our Law: Witsuwit'en Law, Feasts, and Land Claims." Vancouver: UBC Press, 1994.

Miller, J.R., ed. "Sweet Promises: A Reader on Indian-White relations in Canada." Toronto: University of Toronto Press, 1991.

Monture-Angus, Patricia. "Journeying Forward: Dreaming First Nations' Independence." Nova Scotia: Fernwood Publishing, 1999.

Native Women's Association of Canada: Bill C-31: Unity for Our Grandchildren, Conference Proceedings. Ottawa: March 23-25, 1998.

Nisga'a Final Agreement. Canada, British Columbia, Nisga'a Nation. 1998.

Nisga'a Language and Culture Department. From Time Before Memory. School District No. 92 (Nisga'a), 1996.

- Nisga'a Tribal Council. 1995. "Nisga' Government". Schoolnet Web Link. On-line. Available: <http://www.schoolnet.ca/aboriginal/nisga1/govnt-e.html>.
- Nishga Tribal Council. "Citizens Plus: the Nishga People of the Naas River Valley in Northwestern British Columbia". New Aiyansh, BC. 1980.
- Malcolmson, John. "The Nisga'a Agreement-In-Principle: The Path to Shared Jurisdiction." In Native Issues Monthly. 4, 1996.
- Ottawa. Treaties and Historical Research Centre. P.R.E. Group, Indian and Northern Affairs. The Historical Development of the *Indian Act*: Second ed. Ottawa, 1978.
- Poelzer, Greg. "Toward a Theory of Native Self-Government: Canada and Russia in Comparative Perspective." PhD diss., The University of Alberta, 1996.
- Raunet, Daniel. "Without Surrender, Without Consent". Vancouver, Toronto: Douglas & McIntyre, 1996.
- Report of the Royal Commission on Aboriginal Peoples, Printed from For Seven Generations. Published by Libraxus Inc.
- Robinson, Andrew. Interview by author, September 2006.
- Ryser, R.C. "Nation-States, Indigenous Nations, and the Great Lie." In Pathways to Self-Determination: Canadian Indians and the Canadian State, edited by Leroy Little Bear, Menno Boldt, and J. Anthony Long. Toronto: University of Toronto Press, 1984: reprints, 1985, 1986, 1989, 1992.
- Tobias, John, L. "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy." In Sweet Promises: A Reader on Indian-White Relations in Canada, edited by J.R. Miller. Toronto: University of Toronto Press, 1991.
- Tully, J. "The Crisis of Identification: the Case of Canada." In Political Studies, Special Issue, Contemporary Crisis of the Nation State? 42 (1994): 77-96.
- Shafir, Gershon, ed. "The Citizenship Debates." Minneapolis: University of Minnesota Press, 1998.
- "Shuswap People in Story." Canim Lake - Gonzaga University Students, 1992.
- Sigurdson, R. "First Peoples, New Peoples and Citizenship in Canada." International Journal of Canadian Studies 14, (1996): 53-76.
- Smith, Linda Tuhiwai. "Decolonizing Methodologies: Research and Indigenous Peoples". New York: Zed Books Ltd, 1999.

Sutherland, Linda. "Citizen Minus: Aboriginal Women and Indian Self-Government, Race, Nation, Class and Gender". MA Thesis, The University of Regina, Saskatchewan, 1995.

Tully, James. "The Crisis of Identification: the Case of Canada". Political Studies, Special Issue. XLII. 42 (1994): 77-96.

Turner Strong, P. "Indian Blood": Reflection on the Reckoning and Refiguring of Native North American Identity." Cultural Anthropology 11(1996): 547-576.

University of Saskatchewan Native Law Centre, Legal Information Service. Indian Status and Band Membership: Updated 1986.

Woodward, Jack. "Native Law". Vancouver: Carswell Ltd., 1990.

Youngblood Henderson James (Sakej), Marjorie L; Benson, and Isobel M Findlay. "Aboriginal Tenure in the Constitution of Canada." Scarborough, Ontario: Carswell Thomson Professional Publishing, 2000.

Appendix I  
*Indian Act* and  
Bill C-31 Amendments

## INDIAN ACT

### “INTERPRETATION

2. (1) In this Act,

"band" means 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;

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

"child" includes a legally adopted child and a child adopted in accordance with Indian custom;

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

"council of the band" means

- (a) in the case of a band to which section 74 applies, the council established pursuant to that section,
- (b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

"elector" means a person who

- (a) is registered on a Band List,
- (b) is of the full age of eighteen years, and
- (c) is not disqualified from voting at band elections;

"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;

"Indian Register" means the register of persons that is maintained under section 5;

"member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;

"Registrar" means the officer in the Department who is in charge of the Indian Register and the Band Lists maintained in the Department.

## **DEFINITION AND REGISTRATION OF INDIANS**

### **INDIAN REGISTER**

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.
- (2) The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985.
- (3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.
- (4) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom.
- (5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

## **PERSONS ENTITLED TO BE REGISTERED**

6. (1) Subject to section 7, a person is entitled to be registered if
  - (a) that person was registered or entitled to be registered immediately prior to April 17, 1985;
  - (b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;
  - (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;
  - (d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;
  - (e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,
    - (i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

- (ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or
- (f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.
- (2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).
- (3) For the purposes of paragraph (1)(f) and subsection (2),
  - (a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a); and
  - (b) a person described in paragraph (1)(c), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that provision.

#### **PERSONS NOT ENTITLED TO BE REGISTERED**

- 7. (1) The following persons are not entitled to be registered:
  - (a) a person who was registered under paragraph 11(1)(f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and whose name was subsequently omitted or deleted from the Indian Register under this Act; or
  - (b) a person who is the child of a person who was registered or entitled to be registered under paragraph 11(1)(f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered.
- (2) Paragraph (1)(a) does not apply in respect of a female person who was, at any time prior to being registered under paragraph 11(1)(f), entitled to be registered under any other provision of this Act.
- (3) Paragraph (1)(b) does not apply in respect of the child of a female person who was, at any time prior to being registered under paragraph 11(1)(f), entitled to be registered under any other provision of this Act.

#### **BAND LISTS**

- 8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

## **BAND LISTS MAINTAINED IN DEPARTMENT**

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.
- (2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.
- (3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.
- (4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom.
- (5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.

## **BAND CONTROL OF MEMBERSHIP**

10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.
- 2) A band may, pursuant to the consent of a majority of the electors of the band,
  - (a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and
  - (b) provide for a mechanism for reviewing decisions on membership.
- 3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.
- (4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.
- (5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the

band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

- 6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.
- (7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith
  - (a) give notice to the band that it has control of its own membership; and
  - (b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.
- (8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.
- (9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.
- (10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.
- (11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

#### **MEMBERSHIP RULES FOR DEPARTMENTAL BAND LIST**

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if
  - (a) the name of that person was entered in the Band List for that band, or that person was entitled to have it entered in the Band List for that band, immediately prior to April 17, 1985;
  - (b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;
  - (c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or
  - (d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered

in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

- (2) Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band
- (a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or
  - (b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.
- (3) For the purposes of paragraph (1)(d) and subsection (2),
- (a) a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(c), (d) or (e) and who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which the person ceased to be a member shall be deemed to be entitled to have the person's name so entered; and
  - (b) a person described in paragraph (2)(b) shall be deemed to be entitled to have the person's name entered in the Band List in which the parent referred to in that paragraph is or was, or is deemed by this section to be, entitled to have the parent's name entered.
- (4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which that person has the closest family ties, as the case may be.

#### **ENTITLEMENT WITH CONSENT OF BAND**

12. Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, any person who

- (a) is entitled to be registered under section 6, but is not entitled to have his name entered in the Band List maintained in the Department under section 11, or
- (b) is a member of another band,

is entitled to have his name entered in the Band List maintained in the Department for a band if the council of the admitting band consents.

**LIMITATION TO ONE BAND LIST**

13. Notwithstanding sections 11 and 12, no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department.

**ENFRANCHISEMENT**

109. to 113. [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 20].”

**September 1995**

## **BILL C-31**

### **INTRODUCTION**

Important changes were made to Canada's *Indian Act* on June 28, 1985, when Parliament passed Bill C-31, an *Act to Amend the Indian Act*. Bill C-31 brought the Act into line with the provisions of the Canadian Charter of Rights and Freedoms.

The three principles that guided the amendments to the *Indian Act* were:

- removal of discrimination;
- restoring status and membership rights; and
- increasing control of Indian bands over their own affairs.

In addition to bringing the *Indian Act* into accord with the equality provisions of the Canadian Charter of Rights and Freedoms, Bill C-31 expanded band control over membership and community life, enabling Indian people to take an important step toward self-government.

The *Indian Act*, passed in 1876, combined all existing policies affecting Indians and outlined the responsibilities of the federal government, established by the *British North America Act* of 1867.

The *Indian Act* was subject to frequent legislative fine-tuning and amendments. However, until the 1985 amendments, its basic features remained the same from 1867 to 1985.

### **KEY AMENDMENTS BROUGHT BY BILL C-31**

#### **Registration (Status)**

- C-31 changed the registration system so that entitlement was no longer based on sexually discriminatory rules.
- The amendments, effective April 17, 1985:
  - treat men and women equally;
  - treat children equally whether they are born in or out of wedlock and whether they are natural or adopted;
  - prevent anyone from gaining or losing status through marriage;
  - restore Indian status for those who lost it through discrimination or enfranchisement;
  - allow first-time registration of children (and in some cases descendants of subsequent

generations) of those whose status is restored; and

- allow for the registration of children born out of wedlock if either parent was a registered Indian, regardless of their date of birth.
- The federal government continues to maintain the Indian Register. Those who were recorded in the Indian Register when the amendments came into force continue to be recorded there. Those whose status was to be restored or who are eligible to be registered for the first time must apply to the Registrar to be recorded.
- Two categories of persons were excluded from registration under the C-31 provisions:
  - women who gained status only through marriage to a status Indian, and later lost it (e.g. through re-marriage to a non-Indian); and
  - children whose mother gained Indian status through marriage and whose father is non-Indian.

## **Band Membership**

- Those who lost their membership in a band through sexual discrimination in the past, can apply to regain membership.
- Bands can control their own membership based on their own membership rules.
- Bill C-31 provides that, under the *Indian Act*, band membership rules respect two principles:
  - a majority of band electors consent to the band's taking control of membership, as well as to a set of membership rules; and
  - existing band members and those who are eligible to have band membership restored do not lose their entitlement to band membership because of something that occurred before membership rules were adopted.
- Two years after Bill C-31 was passed into law on June 28, 1987, bands who chose to leave control of their membership with the Department of Indian Affairs and Northern Development (DIAND) were subject to the *Indian Act* provisions that a person who has Indian status also has a right to band membership at the same time.
- Bands may still take control of their own membership registration, but the rights of those individuals already registered and added to the band list are protected.
- A woman who marries a member of another band no longer automatically becomes a member of her husband's band. Transfers between bands are still possible if the receiving band agrees.

## **New By-law Powers**

- Bands gained new by-law powers to regulate:

- which band members and other individuals reside on reserve;
  - the provision of benefits to non-member spouses and children of band members living on reserve; and
  - the protection of dependent children's right to reside with their parents or guardians on reserve.
- Bands can better control development on reserve lands.
  - The maximum fine for all by-law violations under section 81 of the *Indian Act* increased to \$1,000 from \$100.
  - Bands can seek court orders to enforce all by-laws made under section 81.
  - A provision empowers courts to make orders prohibiting the continuation or repetition of the offence by the person convicted.
  - Since some people accepted into band membership under band rules may not be status Indians, C-31 clarified that various sections of the *Indian Act* would apply to such members. The sections in question are those relating to community life (e.g., land holdings). Sections relating to Indians as individuals (e.g., wills and taxation of personal property) were not included.

### **Enfranchisement**

- C-31 abolished the concept of enfranchisement. Band membership is subject to band rules (for bands that had assumed membership control) or subject to the membership provisions of the *Indian Act*.

### **Intoxicants**

- Band by-laws cover:
  - prohibition of sale, barter, supply or manufacture;
  - prohibition of intoxication;
  - prohibition of possession;
  - exceptions re: intoxication or possession.
- By-laws apply on reserve if agreed to by a majority of electors at a special meeting called by a band council to review the proposed by-law.
- The Minister of Indian Affairs and Northern Development cannot disallow intoxicant by-laws.
- Maximum penalties:
  - \$1,000 or six months or both, for provision of intoxicants;

- o \$100 or three months or both, for possession and intoxication.
- Sections 94 to 100 of the *Indian Act* regarding control of intoxicants were repealed to permit bands to make the transition to band by-laws or to provincial laws if they desired.

## Funding

All status Indians including those newly registered as a result of Bill C-31 are eligible to apply for post secondary education assistance through DIAND and are eligible for non-insured health services through Health and Welfare Canada. This applies to both on-reserve and off-reserve Indians.

The federal government provides programs and services to Indians living on reserve much as provincial and municipal governments provide programs and services for other residents. For people living on reserve, the federal government provides funds for housing, elementary and secondary education, health services and social assistance, most of which are delivered by bands or tribal councils.

DIAND has undertaken to meet the additional cost of providing these programs and services to people who gained status as a result of the 1985 amendments.

## TWO-YEAR REVIEW

A review of the impacts of Bill C-31 was submitted to a Parliamentary Committee in June 1987. A study, *Impacts of the 1985 amendments to the Indian Act (Bill C-31)*, was tabled in the House of Commons on December 19, 1990.

---

This is one of a series of information sheets produced by the Communications Branch, Department of Indian Affairs and Northern Development. For information sheets on other topics, or for copies of the *Report to Parliament on the Implementation of the 1985 Changes to the Indian Act*, or copies of the study, *The Impacts of the 1985 Amendments to the Indian Act (Bill C-31)*, contact:

The Department of Indian Affairs  
and Northern Development  
Public Enquiries Kiosk  
Ottawa, Ontario  
K1A 0H4

Telephone: (819) 997-0380

QS-6047-002-EE-A5

Return To.....[LINKS](#)

Appendix II

Canim Lake Band Membership Rules

Since section 35 of the Constitution Act, 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, and;

Since section 25 of the Constitution Act, 1982 provides that the guarantee of individual rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada; and,

Since section 10 of the Indian Act, 1985 provides that a Band may assume control of its membership with consent of a majority of the electors of the Band; and,

Since a majority of the electors of the Canim Lake Indian Band have duly consented;

Now, therefore, the Canim Lake Indian Band Council enacts as follows:

1. INTERPRETATION: For the purposes of this Act, the following definitions apply:

"Band List" means a list of persons that is kept and maintained by Indian and Northern Affairs Canada which list the name of every person who is a member of the Canim Lake Indian Band at the time immediately prior to April 17, 1985.

"Blood Quantum" the blood quantum held shall be determined by adding together the blood quantum of the child's natural parents and dividing by two.

"Child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom.

"Indian" means a person who is registered as an Indian or is entitled to be registered as an Indian under the Indian Act.

"Member of a Band" means a person whose name appears on a Band list or who is entitled to have his/her name appear on a Band list;

"Registered" means registered as an Indian pursuant to the Indian Act;

"Membership Committee" means a group of Canim Lake Indian Band members appointed by the Canim Lake Indian Band Council.

"Marriage" includes common-law relationships as defined by the provincial and federal laws and are amendments thereto.

2.(a) Any person registered as a Canim Lake Indian Band member on the date these regulations are formally adopted by the Canim Lake Indian Band is a Canim Lake Indian Band member under these regulations.

(b) All persons who are entitled to have their name on the Canim Lake Indian Band Membership List pursuant to Section 6(1) (b), Section 6(1) (c) of the Indian Act, 1985;

(c) All persons born on or after April 17th, 1985 and are entitled to be registered under Section 6(1) (f) of the Indian Act, 1985 and both parents of that person are entitled to have their names entered in the Canim Lake

Indian Band membership List, or, if no longer living, were at the time of death entitled to have their names entered in the Canim Lake Indian Band Membership List.

3. New Members by Birth:

(a) After the Canim Lake Indian Band Membership Laws come into force, any child born to Canim lake Indian Band members shall be automatically registered as a Canim Lake Indian Band member, provided that the child has at least 1/4 Indian blood.

(b) After the Canim Lake Indian Band Membership Laws come into force any child with at least 1/4 Indian blood and with one parent a registered Canim Lake Indian Band member

i) May be registered as a Canim Lake Indian Band member at the parent(s) request.

ii) If not registered with the Canim Lake Indian Band before the child reaches the age of 18, the child may request registration.

4. New Members by Marriage:

(a) If the spouse of a Canim Lake Indian Band member has at least 1/4 Indian blood, he/she may apply for membership in the Canim Lake Indian Band. His/her membership becomes effective on the date of approval.

5. New Members by Transfer:

(a) Any Indian with at least 1/4 Indian blood may notify the Canim Lake Indian Band of his/her intentions to apply for membership in the Canim Lake Indian Band.

After a period of at least one year from said date of said notification, he/she may submit an application for membership in the Canim Lake Indian Band.

6. New Membership of Minors

(a) A child whose parents or parent may be entitled to Canim Lake registered Indian Band membership under sections 4 or 5 may become a Canim Lake Indian Band member if the child has 1/4 Indian blood.

i) At the request of the parent(s), or

- ii) If not registered with the Canim Lake Indian Band before the child reaches the age of 18, the child may request registration.
- (b) Any child with at least 1/4 Indian blood, adopted by a Canim Lake Indian member, may become a Canim Lake Indian Band member
  - i) at the requests of the parents
  - ii) If not registered as a Canim Lake Indian Band member before the child reaches the age of 18, the child may request registration.
- (c) Where a single Canim Lake Indian Band member adopts a child, the child will assume the same blood quantum of of the single adoptive parent.
- (d) A non-Indian person who may be adopted by Canim Lake Indian Band Member(s) is not eligible for membership in the Canim Lake Indian Band. No one person being adopted with less than 1/4 Indian blood may become a band member.

#### 7. Registration Process

- (a) Determination of Indian blood quantum:
  - i) All members of the Canim Lake Indian Band as of December 31, 1940 are deemed to be or to have been 100% Indian blood.
  - ii) The Canim Lake Indian Band Council shall keep a register of all Canim Lake Indian Band members and this register shall record the Indian blood quantum of each Canim Lake Indian Band members. This register shall be made available

for inspection by the Canim Lake Indian Band members or their duly appointed representative during regular office hours.

iii) In cases where the paternity of a Child born to a Canim Lake Indian Band Member is uncertain and if the child is entitled to registration under section 6(2) of the Indian Act, the child's blood quantum shall be determined by dividing the blood quantum of the mother to determine if the child is entitled to Canim Lake Indian Band Membership, unless the mother signs a declaration evidencing the blood quantum of the father.

iv) Any person applying for membership in the Canim Lake Indian Band shall be responsible for providing evidence of their Indian blood quantum.

b) Application for a transfer to Canim Lake Indian Band membership from another Indian Band be made to the Canim Lake Indian Band Council. All transfer applications shall be accompanied by a fee of \$200.00 (two hundred dollars) per unit to cover costs incurred by the Canim Lake Indian Band with respect to the transfer process as provided for in section 7(c) herein. The Canim Lake Indian Band Council may appoint a membership administrator to review all membership applications. The applicant shall be notified whether or not he/she meets the basic criteria of the Canim Lake Indian Band Membership Laws within two weeks of

the date of application.

(c) If the transferring applicant meets the basic criteria as determined by the Canim Lake Indian Band Council or by the Membership committee or by the membership administrator,

- i) the Canim Lake Indian Band Council shall give at least two weeks notice of a Canim Lake Indian Band general meeting to decide on the transferring application and
- ii) the Canim Lake Indian Band general meeting shall be convened within 8 weeks of receiving the transfer's application.
- iii) Where a majority of the electors of the Canim Lake Indian Band do not vote at a meeting called under this section, the Canim Lake Indian Band may call another meeting by giving two weeks notice and
- iv) Where a general Canim Lake Indian Band meeting is called pursuant to section 7 (c) and the proposed application is assented to at the meeting by a majority of the electors voting, the application shall be deemed, for the purpose of this section, to have been assented to by a majority of the Canim Lake Indian Band. The Canim Lake Indian Band Council may order that voting at a meeting called pursuant to section 7 (c) may be by secret ballot.
- v) All applicants who are accepted pursuant to this

section are not subject to sections 10, 11, 12 and 13.

d) The transferring applicant may appeal the Canim Lake Indian Band decision pursuant to section 7(c) by:

i) notifying the Canim Lake Indian Band Council within 6 (six) months of the date of decision.

ii) notice of appeal to the Canim Lake Indian Band Council shall be accompanied by a fee of \$200.00 (two hundred dollars) per unit to cover costs incurred by Canim Lake Indian Band with respect to the appeal process provided for in section 7(d) (e) (f) herein.

iii) The Notice of Appeal shall state the full grounds of appeal.

e) Within 8 weeks of the date of receipt of an appeal, the Canim Lake Indian Band council shall

i) Give at least two weeks notice of a Canim Indian Band general meeting to rule on the appeal;

ii) The decision of the majority of electors present and voting at the meeting shall be final.

f) A transferring applicant for Canim Lake Indian Band membership that has been rejected pursuant to section 7(e) may not re-apply for Canim Lake Indian Band Membership for one full year. The transferring applicant shall be limited to one appeal under section 7(e) and (f).

8. The following transferring applicants are not subject to

section 5 and section 7 (a) (d) (e) and (f) of the Canim Lake Indian Band membership Laws:

- i) Those transferring persons who have applied to the Canim Lake Indian Band Council prior to the adoption of the Canim Lake Indian Band Membership Laws by the Canim Lake Indian Band members.
- ii) Those transferring persons who were originally Canim Lake Indian Band members may be reinstated upon application to the Canim Lake Indian Band Council.

9. Any person or persons acquiring or possessing membership in the Canim Lake Indian Band must

- i) relinquish membership in any other Band and
- ii) Any Canim Lake Indian Band member who acquires and wishes to retain membership in any other Band must relinquish membership in the Canim Lake Indian Band.

10. Except for transferred members who have been registered as Canim Lake Indian Band members, a protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from the Canim lake Indian Band Membership list, within one year after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Canim Lake Indian Band Council or the Canim Lake Membership Committee or the Canim Lake Membership Administrator containing a statement of the grounds of the protest.

11. Except for transferred members who have been registered as

Canim Lake Indian Band members, the person making the protest must establish the grounds of the protest. The reviewing body pursuant to section 10 herein shall adjudicate on the grounds of protest and give notice in writing to the protester and protestee within 30 days of receipt of each protest.

12. Except for transferred members who have been registered as Canim Lake Indian Band members, a protest may be made under section 10 by any Canim Lake Indian Band member or his/her representative.
13. Except for transferred members who have been registered as Canim Lake Indian Band members, the appeal procedure pursuant to section 7 (c) shall be followed in respect of each protest launched. Any protestee shall be responsible for providing evidence of Indian blood quantum and shall be given full opportunity to state their case or to refute the grounds laid down by the protester to the reviewing body.
14. Notwithstanding the preceding eight sections, a person may apply to Chief and Council of the Canim Lake Indian Band if the applicant can plead a special case. The decision in these cases will be decided according to the procedure outlined in 7 (a).
15. The Canim Lake Indian Band Membership Laws shall be reviewed by the Canim Lake Indian Band council or the Canim Lake Indian Band Committee or the Canim Lake Indian Band Membership Administrator.

i) at the expiration of five years from date of

- formal adoption and every 5 years thereafter; and
- ii) the reviewing body under this section shall call a Canim Lake Indian Band general meeting with respect to the review and inform the Canim Lake Indian Band members of the review findings.
  - iii) at the meeting convened pursuant to section 11(ii) herein, any amendment proposed by a registered Canim Lake Indian Band member must have given the Canim Lake Indian Band Council 30 days notice in writing of the intention to seek amendment to the Canim Lake Indian Band Membership Laws. The notice of intention to seek this amendment must be accompanied by a supporting petition with at least 50% of the electors consenting to that amendment.
16. The Membership Laws of the Canim Lake Indian Band shall not be amended or repealed, and no decision by the Canim Lake Indian Band to return control of Canim Lake Indian Band membership to the Department of Indian Indian and Northern Affairs shall be valid, unless a majority of the Canim Lake Indian Band electors gives informed consent to such amendment, repeal or decision by vote or petition.
17. Final authority on all decisions made or to be made shall be the responsibility of the Canim Lake Indian Band Council.

Appendix III  
Citizenship, Membership and Self-Governance  
Questionnaire

CITIZENSHIP, MEMBERSHIP AND SELF-GOVERNANCE  
QUESTIONNAIRE

This questionnaire has been designed to capture Band Membership knowledge in an Aboriginal community. The date provided will assist in discussing parameters associated with defining band membership.

Year of Birth \_\_\_\_\_ Gender M  F

Where were you born? \_\_\_\_\_

1) Are you status Indian? Yes  No  If yes, go to question 2.

2) Which Band are you registered to? \_\_\_\_\_

3) How did you obtain your current band membership?

- a) Birth
- b) Marriage
- c) Adoption  by traditional custom?  or the legal system?

4) If you have **not** maintained your Indian Status or Band Membership, how did you lose it?

- a) Voluntary enfranchisement  In what year? \_\_\_\_\_
- b) Marriage  Mother marriage
- c) Parent voluntary enfranchisement
- d) Mother and grandmother, non-Indians
- e) Transfer  What year? \_\_\_\_\_

5) Does the Band you are registered to have an existing membership code?

Yes  No  Unsure

If yes, is it user friendly? Yes  No  Unsure

6) Can you identify 5 key elements that is important for determining Band membership?

---

---

---

---

---

7) Who should decide if a person is a Band member?

- Chief and Council
- Membership council or committee
- Indian Act
- Canadian Law
- Tribunal
- Other \_\_\_\_\_

8) The Royal Commission on Aboriginal Peoples Report (RCAP) says that a minimum blood quantum as a general requirement for citizenship is unconstitutional under section 35. It is wrong in principle and it is perceived to be inconsistent with the evolution and traditions of the majority of Aboriginal peoples. Do you agree with this statement?

Strongly Agree  Agree  Disagree  Strongly Disagree  Not Sure

9) The RCAP report says Aboriginal people in Canada should enjoy dual citizenship, that they can be citizens of an Aboriginal nation and citizens of Canada. Do you?

Strongly Agree  Agree  Disagree  Strongly Disagree  Not Sure

9 a) Do you think that dual citizenship should be permitted between Aboriginal nations?

Strongly Agree  Agree  Disagree  Strongly Disagree  Not Sure

10) The Nisga'a Agreement, deems a person to be enrolled as a member of their nation:

- 1) if they are of Nisga'a ancestry;
- 2) if they are an adopted child of a Nisga'a person or;
- 3) if they are married to a Nisga'a and have been adopted by one of the four Nisga'a tribes according to traditional law. Do you agree with this concept?

Strongly Agree  Agree  Disagree  Strongly Disagree  Not Sure

11) The Nisga'a Constitution grants authority to the Nisga'a government to allow non-Nisga'a people to become citizens. Do you?

Strongly Agree  Agree  Disagree  Strongly Disagree  Not Sure

12) The Nisga'a agreement states that a Nisga'a citizen who is of non-Nisga'a ancestry, has certain rights to education, programs and services but they do not have a right to vote in elections. Do you?

Strongly Agree  Agree  Disagree  Strongly Disagree  Not Sure

13) If you hold Band membership or are a Status Indian and reside in any Aboriginal community other than your own, do you feel that you should be entitled to membership benefits in that community? If so, on what basis?

---

---

---

---

---

---

---

14) Should membership criteria include a clause that would allow an Aboriginal person to become eligible for Band membership based on years of residency in a community? Yes  No

If yes, how many years?      1      3      5      7

15) Can you identify the benefits that you might enjoy through Band membership?

---

---

---

---

---

---

---

**Appendix IV**  
**Informed Consent Form**  
**and Information Sheet**

## Informed Consent Form and Information Sheet

*Introduction: In order to review and study membership criteria, we would appreciate your taking a few minutes to answer the following questions. All of your responses are confidential. Your responses will not be individually identified. Your individual responses will not appear in any report only group summaries and analyses will be reported.*

Do you understand that you have been asked to participate in a research study? Yes No  
(Please circle appropriate response.)

Have you read and received a copy of the attached Information Sheet? Yes No

Do you understand the benefits and risks involved in participating in this study? Yes No

Have you had an opportunity to ask questions and discuss this study? Yes No

Do you understand that you are free to refuse to participate or withdraw from the study at any time? You do not have to give a reason. Yes No

Has this issue of confidentiality been explained to you? Do you understand who will have access to the information you provide? Yes No

This study was explained to me by: \_\_\_\_\_

I agree to take part in this study.

\_\_\_\_\_  
Signature of Research Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

I believe that the person signing this form understands what is involved in the study and voluntarily agrees to participate.

\_\_\_\_\_  
Signature of Investigator

\_\_\_\_\_  
Date

**THE INFORMATION SHEET MUST BE ATTACHED TO THIS CONSENT FORM AND A COPY GIVEN TO THE RESEARCH PARTICIPANT.**

Appendix V  
Letter of Approval

UNIVERSITY OF NORTHERN BRITISH COLUMBIA  
3333 University Way, Prince George, BC, Canada V2N 4Z9

**Dr. Alex Michalos**  
**Chair, UNBC Ethics Review Committee**  
**Tel: (250) 960-6697 or 960-5820**  
**Fax: (250) 960-5746**  
**E-mail: michalos@unbc.ca**



**UNBC Ethics Committee**

March 17, 2000

Georgina Martin  
4219 Morgan Cres.  
Prince George BC  
V2N 3B2

**Proposal: 20000303.19**

Dear Ms. Martin:

Thank you for submitting the revisions to your proposal entitled, "Citizenship, Membership and Self-Governance."

Your Proposal has been approved and you may proceed with your research.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Michalos", is written over a printed name and title.

Alex Michalos  
Chair, UNBC Ethics Review Committee