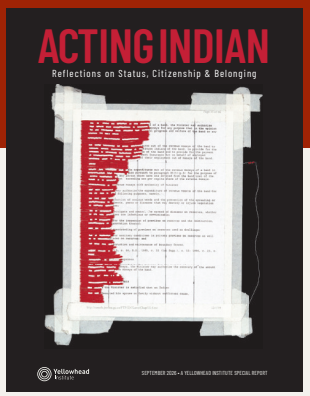
Band Membership Rules
Section 10 Steps

Yellowhead Institute



This resource is from the Yellowhead Special Report, **Acting Indian: Reflections on Status, Citizenship & Belonging.**

INTRODUCED AS PART of the 1985 amendments to the Indian Act, Section 10 is a provision that allows First Nations to opt into developing membership codes rather than relying on existing federal processes. Under the current system, when a First Nation opts into Section 10, it must write a membership code, hold a vote, and then submit the code to the federal government for review and approval. The process is not ideal, but as First Nations confront yet more amendments and potentially have new members added to their band lists, many are now contemplating membership or citizenship laws to assert some degree of control over who belongs.

Step One: Write a Membership Code

In the current process, bands must consult with their communities and draft a membership code that is then presented to the community for ratification. In drafting a membership code, a band may consider:

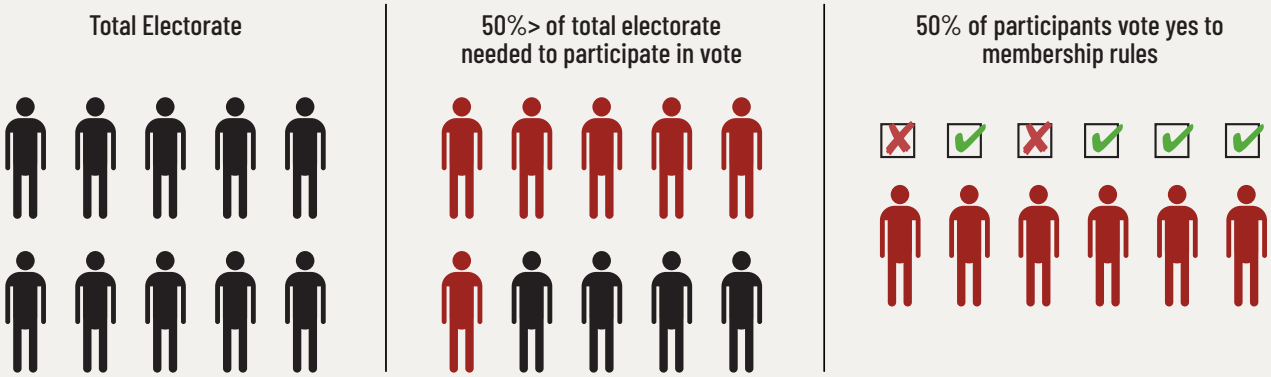
- Who is the code meant to include and exclude?
- Who will be meaningfully involved in creating the rules?
- How is the code similar to any existing codes and how does it differ?
- Is membership defined according to Indigenous legal traditions or categories inherited from the Indian Act?
- How does status, descent, and blood quantum factor into band membership?
- Are women, adoptees, and 2SLGBTQQIA+ community members accounted for?
- What concerns are guiding the membership decisions (belonging, funding, etc.)?

Band Membership Rules
Section 10 Steps

Step Two: Hold a Community Vote

Currently, in order for the Minister of Indigenous Services Canada (ISC) to consider approval of the code, the band must reach a double majority vote of all band members. This means that a majority of electors must participate in a vote, and a majority of those must vote in favour of the membership rules presented to the community. Here's an example of what that admittedly steep hurdle looks like:

Double Majority Voting



Under the current double majority voting threshold, if a band has 1,000 registered members, at least 501 of those members must participate in the vote. If only 499 participate, the vote automatically fails. If 600 vote, then at least 301 must vote in favour of the codes for it to pass.

Step Three: Submit Code to Indigenous Services Canada

ISC reviews the code to ensure the First Nation has met the legal requirements under the *Indian Act*, including the required voting process and whether the code protects the Acquired Rights of those affiliated with the band. If approved by the Minister, the First Nation officially becomes a Section 10 band and assumes responsibility for maintaining its own membership list. All additions and deletions to and from the band's membership list are the responsibility of the band from that point forward.

While these processes do not affect status determination (that authority continues to rest with the federal government) it does allow First Nations to welcome new members who may not have status and/or (hypothetically) reject those who have status from belonging as band members.

Band Membership Rules
Section 10 Steps

Step Back: The Challenges of Section 10

While approximately 230 First Nations control their membership rules though Section 10, many have not met the ratification threshold.[1] The federal government's *Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds* has heard these challenges and is contemplating changes.

Moreover, as Damien Lee points out in the Acting Indian Special Report, many of these approaches to membership or citizenship are just as restrictive as the Indian Act's registration framework, and at times even more so.

Section 10 is an opportunity for First Nations to secure somewhat more authority over membership but it is on the federal government's terms and conditions. Will the collaborative process address these issues?

Luanne Redeye, *Grandmother's Granddaughter I*, 2024

[1] Since implemented June 28, 1987, only 30 First Nations have successfully transitioned under the current rules.