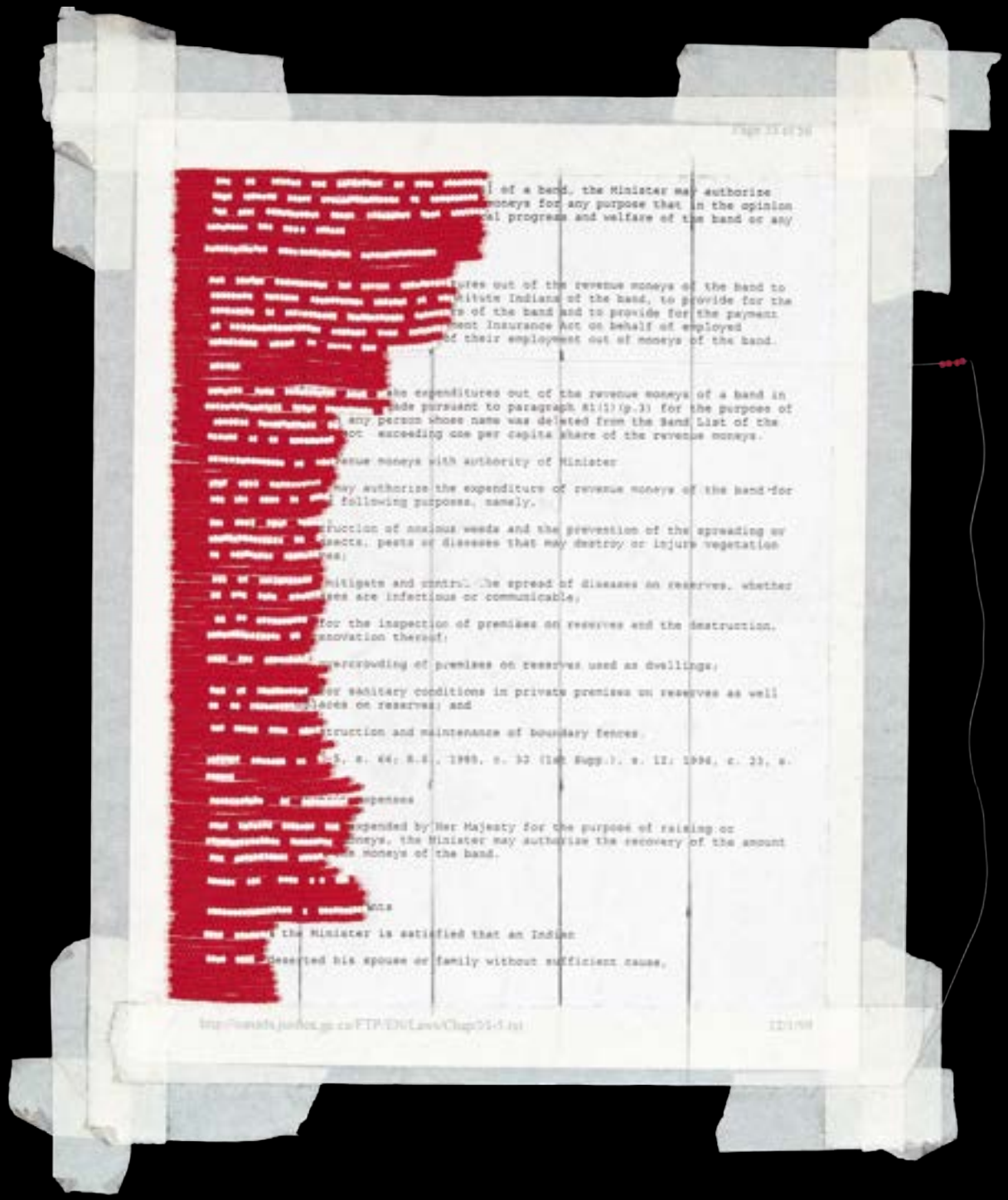
ACTING INDIAN

Reflections on Status, Citizenship & Belonging



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ABSTRACT

AS CANADA MOVES to amend the *Indian Act* through Bill S-2, Acting Indian: Reflections on Status, Citizenship & Belonging asks how First Nations can reconcile authentic understandings of citizenship with a legislative framework designed to sever kinship systems and replace them with administrative categories. Bringing together seven First Nation thinkers — Haida, Ts'msyen, St'át'imc, Cree, Anishinaabe, and Mohawk — the report returns, again and again, to a central distinction: status is not belonging, and a registration number is not citizenship. Jackson Pind traces the coercive history of enfranchisement and its consequences while Christina Gray and Jade Dumoulin assess whether legal reform can restore the relationships the Act severed, and Gina Starblanket argues for a return to a one-parent rule to remedy the discrimination introduced by the 1985 two-parent rule. Turning to community dynamics, Damien Lee cautions against membership codes that reproduce the Act's exclusions and proposes regional citizenship commissions while Vanessa Watts examines how status has mis-shaped identity verification in post-secondary institutions and Michaela McGuire argues that repair lies not in federal reinstatement but in reviving clan systems, adoption practices, and Nation-based constitutional orders. In the ongoing debate about S-2, the contributions in this edited volume make the argument that redefining citizenship will only be effective if on Indigenous terms — grounded in reciprocity, relationship, and care.

TABLE OF CONTENTS

Credits 2
Abstract 2
Editor's Introduction: The Hard Work of Belonging 4
Anishinaabe Encounters with Enfranchisement: Citizenship, Identity, and Colonial Law 8
Bill S-2 and the *Indian Act*: Relational Ethics of Care 14
Bill S-2: A Pathway to Relational Repair and Recovery 22
Section 10 Voting Thresholds: A Distraction from Decolonizing Band Membership 28
"Marry Out, Get Out": The Fait Accompli of Settler Logic in Indigenous Ancestry Verification Times 34
Beyond the Cage of Indian Status: Nation-Based Approaches to Belonging 38
Bibliography 43

EDITOR'S INTRODUCTION:

The Hard Work of Belonging

Hayden King

YEARS AGO, when I was working as a governance coordinator for my First Nation, I would sit with Elders once a month. We'd discuss a range of challenges facing the community and how to make change. In a session on citizenship, I asked the group: "What makes someone Anishinaabe?" Emily Norton-baa responded, saying, "If you work hard for the people." You were Anishinaabe if you worked hard for the people. It was a responsibility-based answer to the question and a response that centred the community. It also, I think, captures what Indigenous people have been saying about belonging for as long as Canada has been trying to legislate our identities: citizenship is about mutual support, reciprocity, and ultimately, care.

We have drifted from this understanding in the era of status, blood quantum, band councils, limited federal funding for services, and so on. We have moved, instead, towards a distorted form of individualism that makes the task of excavating and re-articulating Native notions of belonging… complicated. The sense of community is still there, of course, but through the violence of colonial policy and its consequences (from limited housing and gender violence to per caps and pretendians), we have been pushed to preserve what little we have, to be skeptical of "outsiders," and to think about citizenship as rights or entitlements – not responsibilities.

As the federal government, the courts, and the Senate move toward amending the *Indian Act* through Bill S-2, the question animating this Yellowhead Institute special report, Acting Indian: Reflections on Status, Citizenship & Belonging, is how we will square the "authentic" understandings of citizenship and our obligations to each other and our communities, with a legislative framework and the values it has embedded in our collective social and political life?

We have assembled a group of First Nation thinkers from across the country — Haida, Ts'msyen, St'át'imc, Cree, Anishinaabe, and Mohawk — asking them to offer reflections and, by extension, their guidance for others also grappling with these questions. The six contributions return again and again to a single theme: there is a difference between status and belonging. Every author, in their own approach, insists that a registration number is not the same as citizenship, and that the *Indian Act*'s categories were never meant to be a solution to a real problem facing First Nations; those categories were instead designed to create a substitute for systems of kinship; to erase those systems.

Jumping off from this shared argument, there is, interestingly, a variety of perspectives on the utility of the Senate's Bill S-2. Some argue that the legislation matters very little, and it's instead up to communities to work though, re-assert, and enforce their own visions of belonging. Others

argue that S-2 has potential, but there are critical issues that must be addressed in the legislation, lest we return this inertia of discrimination, attempted remedy, more discrimination. Finally, some feel the legislation should be passed immediately and we ought to begin working through implementation and the revitalization of notions of belonging within and among communities.

Jackson Pind's opening essay sets the context, describing his own experiences with the legacy of enfranchisement through the life of his ancestor, Chief Moses Marsden, whose 1909 enfranchisement — initially confusing to Pind — is ultimately understood against the backdrop of old-fashioned Canadian coercion. Remarkable in Pind's account is the participation of First Nation leaders in the crafting of Canadian approaches to status — and their ultimate betrayal. This would be a recurring trend and offers a lesson for the present.

That context is expanded upon by Christina Gray and Jade Dumoulin, who argue that legal reform must be judged not only by constitutional compliance but by whether it restores the relationships the Act sought to sever in the first place. Can federal legislation recognize and affirm Indigenous relationality, grounded in Indigenous feminist ethics of care? Using the more contemporary history of legislative attempts to tinker with status and recent case law (as well as S-2 itself), their legal analysis finds the answer is only a partial yes.

Gina Starblanket departs from the same place. Drawing on Indigenous feminist scholarship, Starblanket traces exactly how the 1985 shift to a two-parent requirement for conferring status disadvantages women and gender-diverse people in pernicious ways. Starblanket then makes a persuasive argument for a return to a one-parent rule, a remedy that can address the law's discriminatory clauses but cannot, in Starblanket's words, "legislate belonging."

Moving from an analysis of the legislation, the final three contributions consider more closely the dynamics at the community-level.

“As the debate provoked by S-2 goes on, there is now a renewed push to breathe life into the project of redefining citizenship on our terms. While the moment is compelled by the courts and government for their own purposes, could there be a path to get this right? Or, put another way: are we prepared to work hard for the people?”

Damien Lee focuses on implementation issues. This is a critical intervention, given the community politics that are likely to emerge following the amendments. Lee's analysis of the late-1980s rush to write membership codes after Bill C-31 shows how many of them reproduced or exceeded the *Indian Act*'s own exclusions. It is a caution for First Nations moving toward Section 10 band membership and treating "more First Nations control" as self-evidently decolonial. Lee's proposal for regional citizenship commissions is a concrete institutional alternative to the *Indian Act*'s diluted form of authority.

Vanessa Watts likewise asks questions about the exclusionary nature of existing approaches to citizenship and how they find their ways into institutional settings like post-secondary identity verification processes. Watts challenges the double standard applied to First Nation individuals in these settings, asking how racist, discriminatory identity categories can be upheld in spaces supposedly invested in reconciliation. S-2, or whatever the amendments to the *Indian Act* are ultimately introduced, will impact communities, programs and services, and so on, but they'll also influence post-secondary education and other professions requiring identity verification.

Finally, Michaela McGuire's contribution takes these insights to their furthest point, arguing that status reinstatement of any kind, however overdue, cannot repair the harm. The more urgent work is Nation-based: reviving clan systems, adoption practices, and constitutional orders, which define citizenship by ancestry and relationship rather than by federal remedy. Reading against Pind's opening history, McGuire's essay returns to the point: First Nations never stopped defining their own citizenship and those efforts must continue – but in relational and authentic ways.

As the debate provoked by S-2 goes on, there is now a renewed push to breathe life into the project of redefining citizenship on our terms. While the moment is compelled by the courts and government for their own purposes, could there be a path to get this right? Or, put another way: are we prepared to work hard for the people?

Anishinaabe Encounters with Enfranchisement: Citizenship, Identity, and Colonial Law

Jackson Pind

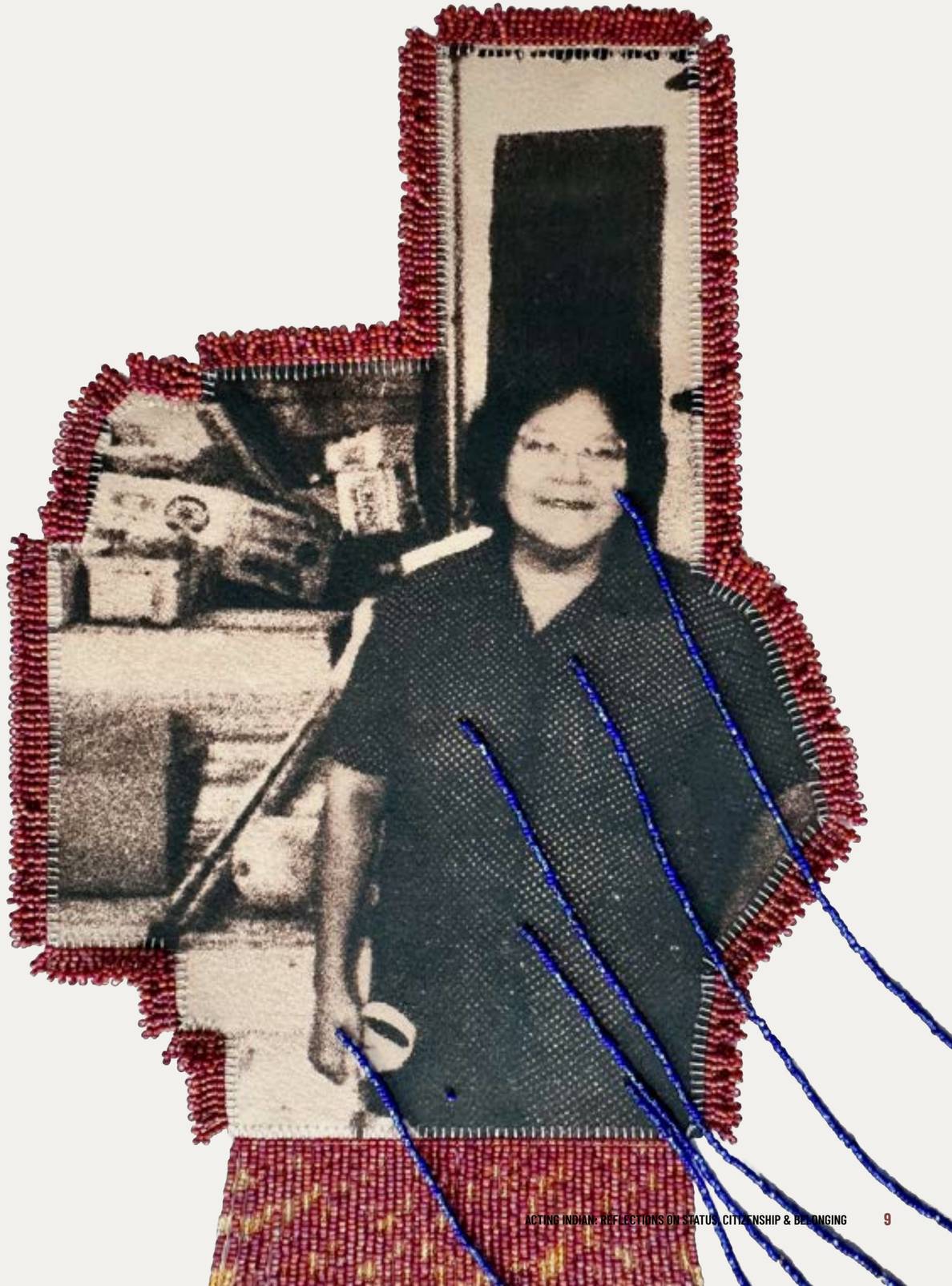
LONG BEFORE CANADA imposed legal definitions of Indian status, Anishinaabe nations had sophisticated systems governing belonging, kinship, adoption, political affiliation, and responsibility. Colonial status legislation attempted to replace these systems with racial and patriarchal legal categories that solely determined the identity of an Anishinaabe person based on the blood quantum of their parents. This system created a colonial administrative substitute for Indigenous citizenship. While Canada increasingly defined Indigenous identity through descent, registration, and state recognition, Anishinaabe nations continued to understand belonging through kinship, reciprocal responsibilities, political relationships, and community recognition. The history of resistance to status legislation is an enduring assertion that the Anishinaabe retain the inherent authority to determine their own citizenship and rights as First Nations.

My family's story of enfranchisement is tied to the decision of my ancestor, Chief Moses Marsden of Alderville First Nation, who enfranchised in 1909 to gain a pathway to Canadian citizenship.[1] I have often wondered what circumstances could compel a leader of his community to voluntarily relinquish his status as an Indigenous person under the *Indian Act*. What would force someone to leave his community, relocate to a nearby town, and bring his wife and thirteen children with him? Was it financial? Religious? Or something more coercive?

These questions remain largely unanswered. As a historian, I have spent years thinking through his decision and the forces that pulled him away from everything he knew. Over time, especially as I have grown older and started a family of my own, his decision has become more understandable with the pressures facing Michi Saagiig Anishinaabeg communities in the early 20th century. I do not blame him. Rather, I understand that no one would make such a decision freely. There was nothing truly "voluntary" about enfranchisement, despite the colonial paperwork that framed it that way.

Moses was Chief at a time when both an Indian Residential School and an Indian Day School operated in his community. His thirteen children would have been compelled to attend one of them. His own experiences, and the desire to protect his children, were likely central to his decision to leave so they could instead attend public school. At the same time, Alderville faced intense settler encroachment. Valuable lands were being taken, along with access to water and to manoomin, or wild rice, a central food source for the Anishinaabeg. The lake that the community had been forced onto decades earlier was being steadily depleted. Archival records from Library and Archives Canada also reveal a concerted effort by Chief Moses to protect

[1] Library and Archives Canada (LAC), Record Group 10, Indian Affairs (RG10-B-3), Volume 7195, File 8002-5, Part 2, "Alnwick Agency – Enfranchisement – Marsden, Moses M."



the rice beds in the years before he enfranchised. As chief, he travelled to Ottawa to petition the government, emphasizing that wild rice was essential to the community's survival. After repeated refusals, and even an admission from a government official that granting land to a wealthy Toronto cottage owner would "deprive the Indians of their living," Moses made the decision to enfranchise.[2] A few years later (after the mandatory enfranchisement probationary period), Prime Minister Wilfrid Laurier signed Moses' enfranchisement paperwork, formally ending his legal status as an Indian under Canadian law. But that document did not define who he was. His identity, and the legacy he carried forward, extended far beyond the state's recognition of being an "Indian."

Despite his legal enfranchisement, Moses and his children continued to be recognized as members of the community at Alderville. This enduring recognition is reflected in the Alderville War Memorial, Canada's first Indigenous war memorial, which commemorates both Moses and his son, Fred Marsden (my great-grandfather), for their military service, despite the fact that both men had been enfranchised more than two decades earlier.[3] Their inclusion demonstrates that the community maintained its own understanding of belonging and citizenship, one that existed alongside and challenged the definitions imposed through the *Indian Act*. Coming to understand this history has allowed me to see Moses' decision to enfranchise with greater clarity and compassion. It also shapes my support for contemporary efforts to restore status to descendants who were unjustly excluded and to challenge the ongoing impacts of enfranchisement today.

ANISHINAABE CITIZENSHIP AND BELONGING

Through my search to better understand my family's story, I came to realize that this resistance to colonial definitions of status is only one chapter in a much longer history of Anishinaabe identity. As Heidi Bohaker demonstrates through her work on Anishinaabe clan systems and doodem signs, identity and belonging were historically expressed through complex networks of kinship, nationhood, and diplomatic relationships. Doodem identities represented systems of responsibility that connected individuals to their families, communities, and broader political relationships.[4] Clan systems helped organize governance, leadership, diplomacy, and social obligations, creating a framework where belonging was understood through participation, relationships, and responsibilities rather than through a fixed biological or legal category.

This understanding of identity stood in direct contrast to the colonial systems that Canada later imposed through legislation such as the *Indian Act*. Colonial governments increasingly sought to define Indigenous identity through state recognition, legal status, and imposed categories of descent. In doing so, Canada attempted to transform belonging from a relationship maintained within Indigenous communities into an administrative category controlled by the state. For Anishinaabe communities, however, citizenship and belonging continued to be grounded in relationships, responsibilities, and recognition by the community itself. A person's place within the nation was not created through government documentation but through their ongoing connections and contributions to their community.

This distinction is essential for understanding the history of enfranchisement and status legislation.

When Canada enfranchised individuals and removed them from the legal category of "Indian," it assumed that it could also determine the boundaries of Indigenous identity and citizenship.

We see the use of doodem signs as an important marker of identity and meaning as the period of colonization begins. Some of our earliest Treaties with the Settlers have our clan signs that can be traced today to ongoing responsibilities in these territories. One of the more well-known is the Great Peace of Montreal in 1701, where dozens of great lakes Indigenous nations, including the Anishinaabe, agreed to a peace treaty using our doodem signatures. In our territory, with Treaty 20, or the Rice Lake Purchase of 1818, you can see several Anishinaabe doodemag that signed the agreement, representing our clan families and our identities.[5] These signatures also include two clans, the Reindeer and White Oak, who are sadly far fewer in number in contemporary Anishinaabe society. Their near disappearance reflects the significant disruptions, pressures, and transformations that Anishinaabe communities have experienced over the past two centuries as a result of colonization.

[2] Library and Archives Canada (LAC), Record Group 10, Indian Affairs, Volume 2898, File 183,727, *"Alnwick Agency – Correspondence, Reports and Memoranda Regarding the Dispute between the Indians of Rice and Mud Lakes and the Alnwick and Alderville Bands Relating to the Wild Rice on Rice Lake* (Clippings)," microfilm reel C-11294, 16.

[3] Jackson Pind, "The Alderville War Memorial: A Bizarre Monument or A Community's Search for Meaning?," *Active History*, June 6, 2017 https://activehistory.ca/blog/2017/06/06/the-alderville-war-memorial-a-bizarre-monument-or-a-communitys-search-for-meaning/.

[4] Heidi Bohaker, *Doodem and Council Fire: Anishinaabe Governance through Alliance* (Toronto: University of Toronto Press, 2020).

[5] Amelia Healey, "Treaty 20," Great Lakes Research Alliance for the Study of Aboriginal Arts and Cultures (GRASAC), November 10, 2022, https://grasac.artsci.utoronto.ca/?p=2221

PRE-CONFEDERATION "CIVILIZATION"

As colonization expanded across Turtle Island, Indigenous nations experienced and responded to the emergence of new legal frameworks in varied ways, particularly those that defined citizenship and identity within the developing Canadian state. It is important to recognize that there was no singular Indigenous response, and that even within individual nations, including the Anishinaabeg, views differed and were often strongly contested throughout the 19th and 20th centuries. Because this brief discussion focuses specifically on Anishinaabeg perspectives, it cannot account for the full range of viewpoints across all Indigenous nations, nor can it capture the diversity of thought among all Anishinaabe leaders and communities. It is also necessary to acknowledge that the historical record is uneven and tends to privilege those Anishinaabe individuals who engaged directly with colonial officials or left written records of their concerns and political positions. As such, this analysis should not be read as representative of all responses to enfranchisement, citizenship, or identity, but rather as a limited window into how some Anishinaabe individuals understood, engaged with, and challenged these developments.

The *Gradual Civilization Act* of 1857, passed by the Legislative Assembly of the Province of Canada during John A. Macdonald's tenure as Attorney General for Canada West, introduced a formal process of enfranchisement that sought to replace Indigenous forms of belonging with colonial definitions of citizenship. The *Act* assumed that Indigenous peoples could be transformed into colonial citizens through individual enfranchisement, land allotments, and abandonment of legal recognition as "Indians."[6] This conflicted with Anishinaabe understandings of belonging rooted in clan, kinship, community responsibilities, and political relationships.

The *Gradual Civilization Act*, therefore, did not produce a uniform First Nation response. Some Anishinaabe leaders engaged with colonial institutions as a means of protecting their communities and advancing their interests, while a majority rejected the assumption that Canadian citizenship could replace Indigenous belonging. The central issue was not whether Indigenous peoples participated in colonial society, but whether participation required surrendering their land, laws, identities, and political relationships. The policy ultimately failed because it rested on the flawed assumption that Indigenous peoples would abandon their rights, identities, and political relationships in exchange for Canadian citizenship.

POST-CONFEDERATION ENFRANCHISEMENT

After the Canadian state was formed, Anishinaabe leaders continually brought forward issues with the newly imposed system of status and thereby governance of their communities. One of the more prominent voices was Kahkewaquonaby (Rev. Peter Jones) and his son, Dr. Peter E. Jones, who served on the Grand General Indian Council of Ontario and Quebec that formed in 1870. This was an Anishinaabe-dominated Council. The Haudenosaunee undertook their advocacy through the Haudenosaunee Confederacy at Grand River.[7] The Grand Council reviewed the implementation of the *Indian Act* and subsequent other laws that were introduced in the following decades include the *Indian Advancement Act* of 1884. The council would hear petitions from First Nations regarding new legislation and then convey those concerns to the government.

The *Gradual Enfranchisement Act* of 1869 was a further attempt by the newly formed Canadian state to introduce legislation aimed at expanding the enfranchisement of Indigenous people. This spurred an immediate reaction by First Nations in Ontario including Anishinaabe and Haudenosaunee nations who came together in 1870 in their largest gathering since the Treaty of Niagara in 1764.[8] However, the nations did not agree on their responses to enfranchisement, as the Anishinaabeg did not entirely oppose the idea, whereas the Haudenosaunee were completely against it. Some Anishinaabe leaders, including Reverend Allan Salt and William Wawanosh, asked the government to allow four representatives to sit in the House of Commons to represent the different nations.[9] Further meetings by the Anishinaabeg and Haudenosaunee in 1874 further widened the divide between them with different approaches on how to handle the enfranchisement process.

By this period, Dr. Peter Jones led the Grand Council and petitioned the Superintendent-General David Laird to change the enfranchisement process.[10] The motion proposed a form of enfranchisement that allowed Indigenous men to enter Canadian society with full property rights while maintaining treaty relationships with band councils retaining authority over applications. It also called for enfranchised men's families to retain treaty annuities, reflecting a desire for dual belonging rather than complete assimilation. These ideas were not realized,

[6] J. R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada, 3rd ed.* (Toronto: University of Toronto Press, 2000), 141-143.

[7] Coel Kirkby, "Reconstituting Canada: The Enfranchisement and Disenfranchisement of 'Indians,' Circa 1837–1900," University of Toronto Law Journal 69, no. 4 (2019), 500.

[8] Ibid, 505.

[9] Ibid, 506.

and the subsequent legislation was so unpopular that even Jones did not apply for enfranchisement. By 1876, "very few Indians had applied to be enfranchised, and only one application had been accepted." [11]

The arrival of the *Indian Act* in 1876 consolidated earlier legislation while maintaining enfranchisement as a voluntary path of assimilation. As part of this new legislation, enfranchised Indigenous men gained greater legal rights and remained connected to treaty relationships through continued access to annuities and band payments, reflecting their position between Indigenous and Canadian citizenship. However, the experience of enfranchisement was different depending on the location of the First Nation and their social status within Canada. At first, the Grand Council approved of the *Indian Act* with a vote of sixty-six to one, and Anishinaabe Delegate William Wananosh passed a unanimous resolution to thank the government for passing the law.[12] However, they did reject a clause that allowed professional men to be automatically enfranchised after completing their training.

In the ensuing decade, the actual experience of enfranchisement was much different than what the government promised. In 1879, Reverend John Jacobs recounted that although he initially sought enfranchisement under section 86(1) of the *Indian Act*, he abandoned the process after the Department of Indian Affairs clarified that professional enfranchisement required men to surrender their legal and financial ties to their band.[13] Retaining their treaty rights was essential to Anishinaabe understandings of enfranchisement and was promised when the *Indian Act* was first implemented after repeated petitions from First Nations leaders. These ideas were also repeated at a Grand Council meeting in Cape Croker First Nation, which stated, "An Indian adopting the provisions of the enfranchisement clauses of the *Indian Act*, would be entitled to that privilege, but it has always been unfair to the Indian, for he would . . . be obliged to sever his connection with his people, and there would be great danger in breaking up the tribal union, which now exists, and which the Aborigines are anxious to retain."[14] These disagreements around the legal mechanism of losing treaty rights through enfranchisement would continue to dominate discussions across First Nations as they fought the government for continued recognition of their place both in Canadian society and their inherent rights as Anishinaabeg.

By 1885, the Macdonald government allowed certain First Nations to vote under the *Electoral Franchise Act* without enfranchisement, providing they met certain property requirements. Here again, Dr. Peter E. Jones wrote to Macdonald stating, "I now thank you, on the part of the memory of my father and on part of myself, as for many years we advocated and urged this step as the most likely to elevate the aborigines to a position more approaching the independence of the whites." [15] Jones uses this *Act* as inspiration to start the first Indigenous-owned newspaper in the country, *The Indian*, which argued that Indigenous people must become knowledgeable about the new Canadian political and legal system.[16] However, the *Act* also exposed the limits of this inclusion, as Indigenous peoples continued to face colonial efforts to restrict their political rights.

In 1886, Reform MP William Mulock challenged the voting rights of Anishinaabe men on Georgina Island, arguing that they "place[d] power in the hands of people who are not able intelligently to exercise it."[17]

These debates demonstrated that access to the franchise did not translate into full political equality, as Indigenous peoples remained subject to assumptions of inferiority and exclusion within the Canadian state.

In addition, the *Electoral Franchise Act* only included eastern First Nations (most likely to support the conservative government in elections, especially compared to the Prairie nations, who were heavily against Macdonald) and would be short-lived as the Wilfrid Laurier Liberal government would repeal this policy in 1898. During this period, Anishinaabe leaders continued to "use the Grand General Indian Council to advocate a vision of enfranchisement that respected and retained their status as members of a treaty-recognized nation."[18]

In 1920, amendments to the *Indian Act* expanded the federal government's ability to enfranchise First Nations people, including those deemed qualified through education, professional achievement, or military service. While enfranchisement could be voluntary, it occurred within a colonial system that pressured Indigenous people to surrender their legal status. Once enfranchised, individuals lost Indian status and many of the rights associated with it, including treaty protections, as reflected in the experiences of my own ancestor.

The period from 1920 to 1960 marked one of the most oppressive eras of colonial rule for Anishinaabe communities, as governments intensified policies of assimilation through the *Indian Act*, residential schools, day schools, enfranchisement, restrictions on cultural and political expression, and the continued dispossession of Indigenous lands and governance, especially through the Williams Treaties of 1923.[19] Although First Nations men gained the right to vote without losing Indian status under the *Canada Elections Act* in 1960, enfranchisement under the *Indian Act* had long operated coercively, as the enfranchisement of a man automatically stripped his wife and children of their status until 1951, while First Nations women continued to lose their status upon marrying a non-status man until 1985.

These gendered provisions generated ongoing Anishinaabe resistance, including the advocacy of Jeanette Corbiere Lavell, a Wiikwemkoong Anishinaabe woman who challenged the discriminatory status provisions of the *Indian Act* after losing her own status through marriage. Her legal challenge in *Attorney General of Canada v. Lavell* (1974) exposed how colonial law imposed unequal definitions of Indigenous citizenship on women and men, while contributing to broader movements that ultimately pressured the federal government to amend the *Indian Act* through Bill C-31 in 1985.[20]

CONCLUSION

The questions raised by Moses Marsden's life remain with us today. Who decides who belongs? What makes someone Anishinaabe? For more than a century, Canada has attempted to answer these questions through legislation and bureaucracy. Yet Anishinaabe people never surrendered their own answers. Long before the *Indian Act*, belonging was grounded in kinship, reciprocal responsibilities, community recognition, and relationships to land and water. Colonial status legislation sought to replace these systems with administrative categories, but it never displaced the authority of Indigenous nations to define themselves.

Today, we are witnessing the reassertion of that authority in new and meaningful ways. In November 2025, Alderville First Nation recognized Pemadeshkodeyong (Rice Lake) as a legal person under its own Chi-Naaknigewin, or constitution. The same lake that Moses fought to protect for its manoomin over a century ago is once again the subject of assertions of governance through Anishinaabe law.[21] Rather than treating the lake as property, Alderville has recognized it as a living relative with inherent rights, responsibilities, and guardians. Moses' petitions to protect the rice beds, the community's refusal to define belonging solely through enfranchisement, and Alderville's contemporary exercise of its own constitutional authority all reflect the same enduring principle: Anishinaabe nations possess the inherent right to govern their own relationships with both their people and their territories.

Between 1876 and 1920, only 250 First Nations people successfully applied for enfranchisement, with Moses representing just one documented example of the difficult choices Indigenous peoples faced under these laws.[22] While we know about individuals like Moses who resisted or navigated colonial attempts to redefine their citizenship, the experiences of many others who confronted these same pressures remain less visible. The struggle over status has, therefore, never been simply about who appears on a government register; it has always been about whose laws determine belonging.

The future of Anishinaabe citizenship may not lie in perfecting the *Indian Act*, but in remembering and revitalizing the laws, relationships, and responsibilities that governed belonging long before Canada sought to regulate it. As Alderville's recognition of Rice Lake demonstrates, those laws are not relics of the past. They continue to evolve, offering living frameworks for governance, environmental stewardship, and identity that are rooted in Indigenous legal traditions rather than colonial definitions.

[10] Ibid.

[11] Canada, *Lands and Monies under the Indian Act: Selected Provisions in Historical Perspective*, Parliamentary Research Branch, Library of Parliament, Background Paper BP-395E (Ottawa: Library of Parliament, 1988), 452; Elias Hill was the only individual known to have applied for enfranchisement. Although the Six Nations Confederacy Council refused to grant him a reserve land allotment, agreeing only to provide a cash payment in lieu of land. Coel Kirkby, "Paradises Lost? The Constitutional Politics of 'Indian' Enfranchisement in Canada, 1857–1900," *University of Toronto Law Journal* 65, no. 4 (2015): 633.

[12] Coel Kirkby, "Reconstituting Canada," 511.

[13] Ibid, 512.

[14] Ibid, 513.

[15] Donald B. Smith, *Sacred Feathers: The Reverend Peter Jones (Kahkewaquonaby) and the Mississauga Indians* (Toronto: University of Toronto Press, 1987), 243-244.

[16] Shelley Hulan, "Charm Offensive: Epideixis and a Microhistorical Reading of The Indian," *Mosaic: An Interdisciplinary Critical Journal* 43, no. 3 (2010): 51-67

[17] Ibid.

[18] Kirkby, "Reconstituting Canada,", 538.

[19] CJack Hoggarth and Jackson Pind, "100 Years of the Williams Treaties in Ontario: Anishinaabeg Perspectives," *The Narwhal*, December 1, 2023, https://thenarwhal.ca/ontario-williams-treaties-anishinaabeg-perspectives/

[20] Pam Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Saskatoon: Purich Publishing, 2011), 102.

[21] Taynar Simpson, "Rice Lake Granted Legal Rights under First Nation Law: The Move Turns Reconciliation into Environmental Action on a Lake Facing Invasive Species, Pollution and Declining Oxygen Levels," *Broadview*, June 17, 2026, https://broadview.org/rice-lake-legal-rights/

[22] Joseph H. Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford: Oxford University Press, 2000), 186

Bill S-2 and the *Indian Act*: Relational Ethics of Care

Christina Gray (Ałaxsgaaxsił Gaax Aganłaak) and Jade Dumoulin[23]

HOW DO WE NAVIGATE the legal exclusions created by enfranchisement and the second-generation cut-off under the *Indian Act* [24] and colonial policies that sever Indigenous[25] identity and belonging while honouring relational ethics of care for our communities across generations?

To answer this question, we draw on relational ethics of care, a framework that centres relationality and responsibility to kin across time and generations rather than individual rights or legal status.

This framework draws on Indigenous feminist scholarship, which reimages ethics of care as a framework that reveals how care practices and social norms reproduce the structures of settler colonialism, and how that framework can be expanded and grounded in Indigenous worldviews.[26]

Building on this, Indigenous scholars like Leanne Betasamosake Simpson (Alderville First Nation)[27] and Kim TallBear (Sisseton-Wahpeton Oyate) have articulated relational frameworks that reground kinship and care in Indigenous worldviews. For TallBear, decolonial kin-making distributes care and responsibility across extended kinship networks and beyond human ties to encompass other-than-human relationships to land and water, all of which are grounded in Indigenous ways of knowing and being.[28]

Drawing on this ethics of care framework, we examine the Canadian legal landscape surrounding Bill S-2[29] through two lenses: first, as a doctrinal analysis of how the law has severed Indigenous identity and belonging through enfranchisement and the second-generation cut-off; and second, as a relational inquiry into what it means to restore belonging. We begin with the history that created these inequities.

[23] The authors are grateful to Claire Truesdale and Ryan Beaton for their thoughtful comments and insights on an earlier draft of this brief.

[24] *Indian Act*, RSC 1985, c I-5, s 6 [*Indian Act*].

[25] In this brief, we use the term "Indigenous" to refer broadly to the First Nations, Métis, and Inuit peoples of Canada. We use "First Nations" specifically to refer to those Indigenous peoples who are, or may be, registered or registrable as "Indians" under the *Indian Act*.

[26] Eva Jewell, "Towards an Anti-Colonial Feminist Care Ethic" in Gina Starblanket, ed, *Making Space for Indigenous Feminism*, 3rd ed (Winnipeg: Fernwood Publishing, 2024) 168.

[27] These relational frameworks act to expand the ethics of care framework beyond how it was traditionally understood within a Western feminist tradition in order to capture the depth of relational obligations that Indigenous people have long embodied and practiced. As feminist scholars Berenice Fisher and Joan Tronto defined it, care encompasses "everything that we do to maintain, continue, and repair our 'world' so that we can live in it as well as possible. That world includes our bodies, our selves, and our environment, all of which we seek to interweave in a complex, life-sustaining web." Bernice Fisher & Joan C Tronto. "Toward a Feminist Theory of Caring" in Emily K Abel & Margaret K Nelson, eds, *Circles of Care: Work and Identity in Women's Lives* (Albany: State University of New York Press, 1990) 35.

[28] Kim TallBear, *Native American DNA: Tribal Belonging and the False Promise of Genetic Science* (Minneapolis: University of Minnesota Press, 2013); Kim TallBear & Angela Willey, "Critical Relationality: Queer, Indigenous, and Multispecies Belonging Beyond Settler Sex & Nature" (2019) 10:1 Imaginations 5; Kim TallBear, "Making Love and Relations Beyond Settler Sex and Family" in Adele E Clarke & Conna Haraway, eds, *Making Kin Not Population* (Chicago: University of Chicago Press, 2018) 145; Leanne Betasamosake Simpson, "Land as Pedagogy" in *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017) 145-174.

[29] Bill S-2, *An Act to amend the Indian Act (new registration entitlements)*, 1st Sess, 45th Parl, 2025 (as passed by the Senate 4 December 2025) [Bill S-2].

For over a century, the *Indian Act* has operated as a tool of the colonial project, disconnecting Indigenous peoples from their land, communities, ancestors, and identities. The *Indian Act* was not the first or only legislation to enfranchise Indigenous people. From early legislation such as the *Gradual Civilization Act* of 1857[30] through to the *Indian Act* in 1876 and until 1985, enfranchisement was the legal mechanism to strip First Nations people of their Indian status. Additionally, after Confederation, in 1869, the Canadian government introduced the *Gradual Enfranchisement Act* — the first legislation under Canadian law with an enfranchisement mechanism that deprived Indian women of their status upon marriage to non-Indian men.[31]

The federal government coerced registered First Nations people into choosing whether to retain their Indian status or gain similar rights to Canadian citizens, which are now often taken for granted, such as the right to vote in federal elections, practice in certain professions, or access higher education.[32] Those who were unsure whether to choose enfranchisement also faced the reality that by giving up their Indian status they could protect their children from being forced to attend residential schools.[33] When a man chose enfranchisement, it also led to the enfranchisement of his wife and children.[34] Some Indian women had to choose whether to retain their Indian status or marry whomever they wished, even if he were a non-Indian man.[35] The federal government framed many of these choices as "voluntary" enfranchisement, but they were coercive at heart.

With the second-generation cut-off, the *Indian Act* has systematically excluded First Nations people and their descendants from the very communities to which they belong. Each individual forced to weigh Indian status against other rights and privileges faced profound consequences. They had to consider the implications for their identity, their sense of belonging, and their kinship ties. They also had to weigh their ability to live in their community, on their land, and among their relations.

The impact of these legal frameworks is not merely theoretical; it has disrupted and ruptured kinship networks. To understand how these administrative categories fracture the reality of family and belonging, we turn to former Ulkatcho chief, Lynda Price, and her son, former goalie for the Montreal Canadiens, Carey Price, who provided testimony at the Senate Standing Committee about how the lingering effects of sex-based discrimination and the second-generation cut-off can impact families.

The Price family's loss of status was a direct product of sex discrimination: under the *Indian Act*'s "marrying out" rule, an Indian woman who married a non-Indian man was stripped of her status, while an Indian man was not.

When the 1985 amendments of Bill C-31 introduced the 6(1) and 6(2) distinctions, the Canadian government created a new inequity in the process of addressing an old one: whether a descendant of an enfranchised person received 6(1) or 6(2) status depended entirely on the timing of their birth and their parent's marriage relative to the date of April 17, 1985 — when Bill C-31 was passed.[36] This is often referred to as the 1985 cut-off rule, and it acts to perpetuate the differential treatment of the descendants of women impacted by sex discrimination in the *Indian Act*.

The Price family's experience illustrates why reform must move beyond mere constitutional compliance and toward the restoration of these severed relational ties.

Canadian courts have repeatedly found the Indian registration provisions to be discriminatory, yet Parliament has been slow to act.[37] First Nations advocates like Jeannette Corbiere Lavell, Yvonne Bédard, Sandra Lovelace Nicholas, Sharon McIvor, and Lynn Gehl have been at the forefront of calling attention to this issue. We argue that they, and others like them, have demonstrated practices of care aimed at working towards greater equality under the *Indian Act*. They have also shown what it means to restore belonging and relational ties for their families and for all others affected by the same discrimination. Bill S-2 represents the most recent attempt to address the residual harms of this colonial legacy, which persists to this day.

[30] *An Act to encourage the gradual Civilization of Indian Tribes in this Province, and to amend the Laws respecting Indians*, S Prov C 1857 (20 Vict), c 26 [Gradual Civilization Act].

[31] *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42*, SC 1869, c 6 [Gradual Enfranchisement Act].

[32] The voting restriction was in place until 1960, requiring an Indian to apply for enfranchisement under the Indian Act. See: *Dominion Elections Act*, SC 1920, c 46, s 29(1). Restrictions on professions and higher education were in place until 1920, see: Indian Act, RSC 1906, c 81, s 111..

[33] Olivia Stefanovich, "'Old wounds': Descendants of families who lost Indian status launch Charter challenge", *CBC News* (5 Jul 2021), online: https://www.cbc.ca/news/politics/charter-challenge-bc-supreme-court-status-enfranchisement-1.6088049.

[34] This derivative enfranchisement to wives and minor unmarried children occurred until 1985, see: *Indian Act*, RSC 1970, c I-6, s 109(1).

[35] This "marrying out" restriction was in place until 1985, see: Indian Act, RSC 1970, c I-6, ss 12(1)(b), 109(2).

[36] *Indian Act*, s 6(1)(a.3).

[37] *See Gehl v Canada* (Attorney General), 2017 ONCA 319; Descheneaux c Canada (Procureur Général), 2015 QCCS 3555; McIvor v Canada (Registrar of Indian and Northern Affairs), 2009 BCCA 153.

A question that remains is one of fundamental accountability: can the law repair what the law has broken?

In this brief, we argue that although Bill S-2 takes important steps toward addressing the discriminatory enfranchisement provisions, as required by the British Columbia Supreme Court's decision in *Nicholas v. Attorney General (Canada)*[38], it does not go far enough. We argue that legal reform must be understood not only as a matter of constitutional compliance, but as a matter of restoring the relational ties that the *Indian Act* has systematically severed across generations.

THE NICHOLAS DECISION

Nicholas is the legal impetus for Bill S-2. The parties in *Nicholas* agreed in 2022 to pause the litigation by placing it in abeyance while they pursued an out-of-court solution. Canada then introduced Bill C-38, a predecessor bill to Bill S-2, which would have removed the discriminatory registration provisions for enfranchisement that were the subject of the *Canadian Charter of Rights and Freedoms* challenge in *Nicholas*.[39] When Bill C-38 failed to pass into law, the plaintiffs resumed the litigation.[40] Before the Court released its decision in Nicholas, Canada introduced Bill S-2 on May 29, 2025, as a successor to Bill C-38.

In *Nicholas*, Canada conceded that portions of the *Indian Act*'s registration provisions were discriminatory on the basis of race or ethnic origin. Specifically, the provisions treated individuals with a family history of enfranchisement differently from those without. Both Canada and the plaintiffs agreed that the provisions unjustifiably infringe section 15 of the *Charter*, which guarantees the right to equal treatment under the law. In practice, people with at least one ancestor who had been enfranchised following an application for enfranchisement were denied registration and/or denied the ability to transmit the status to their descendants on the same terms as others with the same degree of "Indian" ancestry.

The Court declared that the discriminatory provisions of the *Indian Act* were unconstitutional but suspended the effect of that declaration until April 30, 2026.[41] The Court gave Parliament approximately ten months from the August 2025 judgment to amend the *Indian Act*, to encompass Parliament's sittings to the end of April 2026. This suspension reflects that the Court recognized the severity of the breach, but allowed Parliament the opportunity to remedy it before the declaration took effect.

The Court retained jurisdiction to extend the suspension if Canada brought an application for an extension of the suspension.[42] Canada sought an extension, but the Court ultimately denied one on May 14, 2026, granting only an interim suspension of 30 days from the date of its decision until June 13, 2026.[43] That interim suspension has expired and the Court's declaration of unconstitutionality is now in effect until Canada passes a bill amending the *Indian Act* or further court action. This applies only within the court's jurisdiction in British Columbia,

HOW THE SECOND-GENERATION CUT-OFF SEVERS BELONGING

The second-generation cut-off is the process by which, after two consecutive generations of parenting with a person not entitled to registration, the third generation is no longer entitled to registration.[44]

Canada introduced the second-generation cut-off through its 1985 amendments to the *Indian Act* in Bill C-31. Canada intended to bring the *Indian Act* into compliance with the then-new *Charter*, which came into effect in 1982 — except for the section 15 right to equality which also came into effect in 1985. In the amendment process, Canada removed some, but not all, of the sex-based discrimination in the *Indian Act* and introduced new discrimination in the form of the second-generation cut-off.

Through these amendments in Bill C-31, Canada created two distinct classes:

- 6(1), which means entitlement to registration under the *Indian Act* can be passed on to a person's children regardless of the identity of the other parent; and
- 6(2), which means entitlement to registration can only be passed on to a person's child if the other parent is also eligible for registration. If a person with 6(2) status has a child with someone who is not entitled to registration, that child is not eligible either.

[38] *Nicholas v. Attorney General (Canada)*, 2025 BCSC 1596 [*Nicholas*].

[39] *Nicholas* at paras 11-15.

[40] *Nicholas* at para 16.

[41] *Nicholas* at para 77.

[42] *Nicholas* at para 73.

[43] *Nicholas v Attorney General (Canada), 2026 BCSC 887.*

[44] *Indian Act, s 6.*

The creation of 6(1) and 6(2) status establishes a hierarchy among First Nations people registered as "Indians" under the *Indian Act* based on race and family history. Children with only one parent entitled to 6(2) status are treated differently than those with one parent entitled to 6(1) status or those with two parents entitled to status.

Understood through the lens of relational ethics of care, this hierarchy does not merely create a legal distinction; it fractures intergenerational kinship ties and relational bonds of belonging by severing children from their communities on the basis of ancestry and timing, rather than lived connection. In a relational worldview, a person's identity and well-being are understood to arise from their relationships and obligations — to family, community, ancestors, the land, and other living beings — rather than from their standing as an isolated individual.

By severing the relational bonds of belonging, the cut-off impairs the ability of First Nations governments and individuals to care for all their relations and fulfill their obligations to one another.

In practice, the second-generation cut-off affects how individuals and families navigate issues such as identity, membership, access to services, and housing. Status is tied to membership in a First Nation, unless the First Nation has taken control of its membership list and decides not to rely on the registration provisions under the *Indian Act* as a condition to determine membership. Without status and/or membership, an individual cannot necessarily access the same services from their First Nation, regardless of how connected they are to it.

The ethics and protocols differ across Indigenous legal orders, but regardless of how care may look in each context, the cut-off disrupts relationships, reciprocity, and interconnected ways of being that inform the practice of care ethics.[45] It is a framework that embraces interconnectedness, interdependence, and the deep relationships among all living things, rather than one rooted in individuality and independence.[46]

[45] Andrea Doucet, Eva Jewell & Vanessa Watts, "Indigenous and Feminist Ecological Reflections on Feminist Care Ethics: Encounters of Care, Absence, Punctures, and Offerings" in Sophie Bourgault, Maggie Fitzgerald & Fiona Robinson, eds, *Decentering Epistemologies and Challenging Privilege: Critical Care Ethics Perspectives* (New Jersey: Rutgers University Press, 2024) 109.

[46] Doucet, Jewell & Watts at 114.

[47] *Nicholas* at para 23

BILL S-2'S CHANGES TO THE *INDIAN ACT*

The changes to the *Indian Act* under Bill S-2 fall under three general categories:

1. Entitlement to registration for individuals and families affected by certain enfranchisement provisions.
2. General reforms to the *Indian Act*.
3. The Senate's expanded scope of reform.

Each of these changes under Bill S-2 has implications for restoring ties that the *Indian Act* has forcibly severed.

ADDRESSING THE LEGACY OF ENFRANCHISEMENT

A key part of Bill S-2 is how it seeks to redress the lingering effects of several enfranchisement provisions which used to be in the *Indian Act*.

Families continue to be severed from their communities because of their family's history of enfranchisement and Bill S-2 seeks to address the lingering effects of these historic *Indian Act* provisions. Each of these mechanisms severed relational ties in different ways including through individual choice, marriage, profession, residence, or executive order.

Of the historic enfranchisement mechanisms under the *Indian Act*, "voluntary" enfranchisement produces the specific inequity at the very heart of the *Nicholas* case.

Under the current *Indian Act*, certain direct descendants of those affected by these forms of enfranchisement are already eligible for status, though in many cases more remote descendants, such as grandchildren and great-grandchildren, are not. The issue that Bill S-2 addresses is narrower. As the Court recognized in *Nicholas*, certain descendants of voluntary enfranchisees may be eligible only for 6(2) status, while others who do not have the same family history of enfranchisement but have the same "degree of 'Indian' ancestry" are eligible for 6(1) status, an inequity that does not arise for the other categories of enfranchisees.[47]

Bill S-2's amendments are, therefore, about parity: ensuring that descendants of voluntary enfranchisees are eligible for the same level and kind of status as others who share the same degree of ancestry. Whether they ultimately qualify for 6(1) or 6(2) status depends on whether the House of Commons preserves the Senate's removal of the second-generation cut-off — and with it, whether these families' severed ties are restored fully or only in part.

Furthermore, Bill S-2 extends that entitlement to include those directly affected by the "voluntary" enfranchisement of their band, which affects the descendants of the only band ever enfranchised under these provisions.[48]

GENERAL REFORMS

Outside of enfranchisement, Bill S-2 addresses three procedural updates to the *Indian Act*: voluntary deregistration,[49] reaffiliation with a natal band,[50] and the replacement of offensive language.[51]

Of these reforms, the reaffiliation provision is most directly relevant to the relational ethics of care at the heart of this brief.

Bill S-2 addresses previous discrimination in the *Indian Act* that forced women to cease membership with their band if they married a man from a different band. Until 1985, a woman was required to become a member of her husband's band upon marriage. While *Indian Act* status and membership are not determinative of relational ties, and many of these women and their descendants may have retained kinship or relational ties to their natal communities regardless of status, Bill S-2 enables women who were forcibly removed from their band to register with their natal band if they choose. It also enables their descendants to make that decision.[52] In so doing, Bill S-2 presents an opportunity for these women and their descendants to formally assert their belonging with their natal band, since they did not voluntarily choose to become members of their husband's. For other families, those relational ties may have been severed completely, and this is a pathway to begin the process of restoring them.

[48] A Bill S-2, cl 4.

[49] A Bill S-2, cl 3.

[50] A Bill S-2, cl 5.

[51] A Bill S-2, cl 1.

[52] A Bill S-2, cl 5.

[53] Government of Canada, "Appearance before the Standing Senate Committee on Indigenous Peoples (APPA) - Bill S-2, An Act to amend the Indian Act (new registration entitlements) (November 5, 2025)", online: <https://www.sac-isc.gc.ca/eng/1767026441341/1767026737611>.

[54] *Ibid.*

[55] Standing Senate Committee on Aboriginal Peoples, *Make it stop! Ending the remaining discrimination in Indian registration* (June 2022) (Chair: Hon Brian Francis), online: <https://sencanada.ca/content/sen/committee/441/APPA/reports/2022-06-27_APPA_S-3_Report_e_FINAL.pdf> [*Make it stop!*].

[56] *Make it stop!* at 26.

[57] *Make it stop!* at 26.

[58] *Make it stop!* at 23.

THE SENATE AMENDMENTS: EXPANDING THE SCOPE OF REFORM

During the review of Bill S-2 by the Standing Senate Committee on Indigenous Peoples, the Committee introduced significant amendments to remove the second-generation cut-off from the *Indian Act*, which were adopted by the Senate.

Under those amendments, the scale of individuals and families affected is magnified. Initially, Bill S-2 was estimated to enable approximately 3,500 people to restore their ties to their communities that were forcibly severed through enfranchisement provisions in the *Indian Act*.[53] Removing the second-generation cut-off would expand that reach dramatically, with an estimated 22,620 additional people immediately becoming entitled to registration.[54] Since its inception, the second-generation cut-off has consistently severed generational ties within First Nations. With the removal of this cut-off, Bill S-2 will not only restore the ties of many more families than initially estimated, but also ensure relational ties are maintained throughout future generations.

A LONG-OVERDUE RECOMMENDATION

This is not the first time the Senate Committee has recommended that the Government of Canada remove the second-generation cut-off. In 2022, the Senate Committee reviewed the 2017 amendments to the *Indian Act* through Bill S-3. It made nine recommendations to the Government of Canada to address the remaining inequities in the registration provisions and end discrimination against First Nations women and their descendants,[55] one of which noted that "the repeal of section 6(2) of the *Indian Act* is necessary and long overdue."[56] Bill S-2, as amended by the Senate, would finally implement this recommendation.

The Senate Committee recognized that the second-generation cut-off was a continuation of assimilationist policies and an issue of justice,[57] and that it has had an adverse and disproportionate effect on First Nations women and their descendants. Prior to Bill S-2, the Senate Committee noted that women are more likely to be registered under 6(2) due to the ongoing effects of sex-based discrimination under the *Indian Act* : unstated or unknown paternity can lead to First Nations children being registered as 6(2) or ineligible for registration because the father is not named or cannot be named.[58]

Restoring belonging and the reaffiliation of First Nations women and their descendants is critical. Leanne Simpson writes about how Nishnaabeg knowledge originates from *Gaa-izhi-zhaawendaagoziyaang* (meaning "that which is given lovingly to us by the spirits"), which requires "long-term, stable, balanced warm relationships within the family, extended family, the community and all living aspects of creation."[60] To know how to care for one another and to receive care in reciprocity requires having and maintaining all these relationships with one's kin, the land, and all other beings.

THE SENATE AMENDMENTS: THE CASE FOR REMOVING THE SECOND-GENERATION CUT-OFF

In order to remove the second-generation cut-off, Bill S-2 would eliminate the two-tier system of status that Canada introduced in 1985, replacing it with a one-parent rule. The question is not only whether Parliament has the legal obligation to make this change — it does — but whether it has the political will to honour the relational obligations that come with it.

When the Senate Committee heard from witnesses on Bill S-2, the majority sent the message that Bill S-2 did not go far enough.

Many First Nations governments, organizations and advocates wrote and spoke about how Bill S-2 is an opportunity to end the discriminatory second-generation cut-off.

Advocates included Sharon McIvor and Jeannette Corbiere Lavell — two key figures challenging sex-based discrimination in the *Indian Act.* Pam Palmater (Mi'kmaq lawyer and academic), Lynda Price, Carey Price, and Zoë Craig-Sparrow (Musqueam advocate at Justice for Girls) also spoke to their experiences with status eligibility and how the second-generation cut-off impacts their families.

The Price family exemplifies how the lingering effects of sex-based discrimination and the second-generation cut-off can operate together within a single family. As explained above, the family's loss was a result of the "marrying out" rule and the 1985 amendments that then based each descendant's entitlement to 6(1) and 6(2) distinction entirely on the timing of their birth and their parent's marriage relative to the date of April 17, 1985.

The consequences of that timing is starkly illustrated within the Price family. Despite the changes to the *Indian Act* over the years, Carey Price's children are not eligible for status because he has 6(2) status due to being born after April 16, 1985, and because his mother, Chief Price, married her husband after that date as well.[61] However, Chief Price's niece has 6(1) status because she was born before April 17, 1985, meaning her children are eligible to be registered for status.[62] In the Price family, the second-generation cut-off impacts one branch of the family sooner than another — purely because one cousin was born earlier, despite both having the same genealogy.[63]

IMPLEMENTATION, FUNDING, AND THE LIMITS OF LEGISLATIVE REFORM

The Standing Committee on Indigenous and Northern Affairs studied Bill S-2 following its second reading on February 27, 2026, with Parliament then facing the April 30 deadline set by the Court in *Nicholas*. The proposed one-year implementation period, referenced during House debates, was intended to give the government time to prepare for the significant expansion in eligible registrants.

That potential expansion raises significant questions about federal funding commitments and their impact on band resources and community service delivery. Proponents of the Senate amendments argue that the benefits of restoring intergenerational connections outweigh the administrative challenges.[64] However, in a time of federal fiscal austerity, First Nation communities may face real resource constraints in serving a significantly expanded membership base without corresponding increases in federal funding. For example, some First Nation governments have raised concerns about how expanded registration will affect band governance, service delivery, and citizenship codes.[65]

Across the political spectrum, there has been recognition that First Nations must have greater authority over their own membership.[66] Whether Parliament uses Bill S-2 as an opportunity to meaningfully advance First Nations self-determination over citizenship, rather than simply expanding a state-defined registry, remains an open and critical question, one among broader questions about citizenship and self-determination that no single piece of legislation can resolve. While Bill S-2 addresses specific discriminatory provisions, it does not resolve the fundamental tension between Canadian state-defined status and First Nations-defined citizenship or the principles of belonging and relationality.

A path forward grounded in relational ethics of care requires not only constitutional compliance with the *Nicholas* judgment, but a meaningful expansion of First Nations' authority to define their own citizenship on their own terms, recognizing that registration under the *Indian Act* is not a substitute for Indigenous belonging.

Whether Parliament preserves or strips the Senate's removal of the second-generation cut-off will reveal whether reform is driven by a genuine commitment to ending discrimination or only by the minimum action needed to satisfy the court.

While the *Nicholas* decision required Canada to fix the enfranchisement provisions, it did not require Canada to remove the second-generation cut-off. If Parliament amends the *Indian Act* only to the extent the court compels — addressing enfranchisement while leaving the cut-off in place — it will achieve constitutional compliance with the *Nicholas* ruling while leaving other forms of discrimination intact. That piecemeal approach is not nearly enough. Coordinated advocacy targeting the Standing Committee on Indigenous and Northern Affairs, the Minister of Indigenous Services, and the broader public remains essential to ensuring that legislative reform addresses the full scope of ongoing discrimination, rather than only what the Courts require.

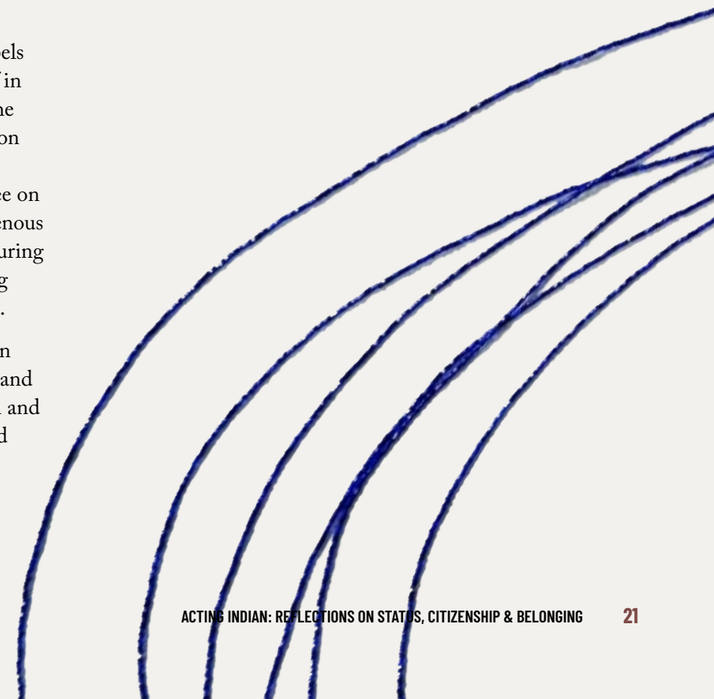
The debate over Bill S-2 presents an opportunity to begin reorienting the relationship between the Canadian state and Indigenous peoples. We must move away from exclusion and assimilation, and toward the care, belonging, and restored kinship that the *Indian Act* has long denied.

CONCLUSION

The question we are left with is *whether the law that broke these relationships can also restore them, and whether legislation can ever fully achieve that*.

Canadian law operates within inherent limits: even at its most precise and well-intentioned, it can never fully repair what colonialism has broken. It can remove discriminatory provisions, restore legal status, and create pathways to reaffiliation, but it cannot legislate belonging or restore kinship ties. The debate over Bill S-2 — particularly whether the Senate amendments to remove the second-generation cut-off will be preserved — has laid bare the gap between mere constitutional compliance and genuine action to restore relationships. Advocates will continue this work as a matter of kinship, not merely legal entitlement. At its core, this is a question of whether Canada will continue to use the *Indian Act* to define and limit Indigenous identity or begin to restore the relational ties it has severed across generations.

Legal reform is necessary, but not sufficient. Ultimately, what is required is a paradigm shift away from a legal order that grants or withholds Indigenous identity, toward recognition of Indigenous peoples' own authority to define belonging on our own terms — an authority grounded in ethics of care, kinship, and community, which no Canadian law has ever been able to fully extinguish.



[60] Leanne Betasamosake Simpson, "Land as pedagogy: Nishnaabeg intelligence and rebellious transformation" (2014) 3:3 Decolonization: Indigeneity, Education & Society 1 at 9-12.

[61] Standing Senate Committee on Indigenous Peoples at 9:22.

[62] Standing Senate Committee on Indigenous Peoples at 9:22.

[63] Standing Senate Committee on Indigenous Peoples at 9:22.

[64] *House of Commons Debates*, 45-1, Vol 152, No 91 (27 February 2026) online: <https://www.ourcommons.ca/Content/House/451/Debates/091/HAN091-E.PDF>.

[65] The Mohawk Council of Kahnawake has opposed Bill S-2. They take the position that reform must be First Nation-led by communities rather than imposed by the federal government. Further, that the Indian Act should be abolished entirely rather than amended piecemeal. See Eve Cable, "Second Generation Cut-Off to End", The Eastern Door (27 November 2025), online: <https://easterndoor.com/article/second-generation-cut-off-to-end>.

[66] *House of Commons Debates.*

Bill S-2: A Pathway to Relational Repair and Recovery

Gina Starblanket

BILL S-2 PROMISES to end the *Indian Act's* second-generation cut-off and the two-parent rule,[67] which represent two of the most immediate and enduring manifestations of the Canadian settler state's drive towards the elimination of Indigenous peoples. From an Indigenous feminist approach, ongoing inequities in the *Indian Act* are not merely a legislative or policy matter; they constitute a direct form of harm to Indigenous peoples' relational freedom and, specifically, to the self-determination of Indigenous women and LGBTQ2S+ people. They can also represent a form of inter-Indigenous violence when discriminatory processes and the racialized and heteropatriarchal logics on which they rely are not only imposed upon but are also actively reproduced from within Indigenous communities.

By curtailing the ability of First Nations people to pass status to future generations, the second-generation cut-off and two-parent rule expedite the assimilatory aims of the *Indian Act* and promise the eventual elimination of First Nations peoples as status Indians. With the federal government's support for Bill S-2 waning, critical questions remain about the purpose, scope, and implications of proposed changes.

This brief explores the implications of Bill S-2 as a measure to bring the *Indian Act* into conformity with relevant rights standards at domestic and international levels.[68] My approach rejects the politicized logics of crisis and scarcity as justifications for perpetuating discriminatory identity and membership regimes. This intervention forms part of a living history of debates surrounding the *Indian Act*, and I aim to transform rather than reinforce the contours of this conversation. To this end, I actively avoid the reproduction of binary frames that have too often served to narrow and flatten conversations around gendered and sexualized violence generally, and *Indian Act* amendments in particular.

THE TWO-PARENT REQUIREMENT

Recognizing the diversity of Indigenous peoples across temporal and geographical contexts, Indigenous ways of life prior to contact with settlers can nonetheless be characterized as relational and as commonly grounded in the interconnectedness of humans with Creation. Practices of courtship, birth, and child-rearing spanned extensive periods and were closely observed and guided by Elders to ensure the proper preparation of humans for adulthood, parenthood, and community life. Knowledge and teachings were rooted in local sites and origin stories, and were passed on intergenerationally through family and kin relations. This gave rise to far more dynamic grounds for understanding identity, knowledge transmission, and the role of the self than those we see in contemporary contexts. That is, each person was regarded as having unique gifts and faculties and received individual teachings, direction, and guidance for self-development and fulfillment. Knowledge and law were embodied, with the most significant laws in a Nehiyaw context relating to the "bonds of human relationships" (miyo-wicehtowin), which are "created,

[67] *Bill S-2, An Act to amend the Indian Act* (*new registration entitlements*), as passed by the Senate December 4, 2025. The aim of the amendments is to bring the Indian Act into conformity with section 15 of the *Charter of Rights*.

[68] The author extends her gratitude to constitutional law expert Mary Eberts for contributing to her understanding of the Indian Act, 1985, and the challenges and changes to it.

nourished, reaffirmed, and recreated" to strengthen and maintain unity among Indigenous communities.[69]

Nehiyaw elders describe these relational bonds as "integral and indispensable components of their way of life."[70] Marriage outside of one's community did not break these bonds but rather extended and diversified kinship circles, enabling new or strengthened alliances and networks of protection. Individuals were regarded as belonging to the whole, or oneness, of Creation, and identity was understood in far more complex and dynamic terms than by a calculation of blood or parentage. For many Indigenous peoples, treaty relationships were negotiated to ensure that pre-existing ways of life would continue despite the impacts of settlement in our homelands.

That would not be the case. Just as the numbered treaties were being negotiated, the *Indian Act* of 1876 consolidated two earlier pieces of colonial legislation restricting the ability of First Nations women to pass on "Indian status" to their children. From 1869[71] until 1985, the father alone could pass on status. Before 1985, all First Nations women who were federally registered under Canada's *Indian Act* lost Indian status upon marriage to a non-Indian man. For a brief time, from the 1950s to 1985, a First Nations woman could confer status on a child born out of wedlock.[72]

THE SECOND-GENERATION CUT-OFF

Before 1985, a First Nations man would give status to a non-status woman when they married. Their children would have status derived from their father. By contrast, a First Nations woman would lose her status upon marriage to a non-status man. Their children would not have status.

The constitutional entrenchment of gender equality in the *Canadian Charter of Rights and Freedoms* (the *Charter*) compelled Canada to amend all legislation that violated the *Charter*, which included amending the *Indian Act*'s marrying out requirement. In 1985, Bill C-31 was intended to remedy the inequality in the Act's status provisions by replacing a one-parent requirement for transmitting Indian status with a two-parent requirement. Section 6(1)(c) of Bill C-31 restored status to the woman who had lost it by marrying out. However, the father of their children was not given status. The children of that marriage received status under Section 6(2) of the 1985 Act, because they had only one status parent. They could not transmit status to a child unless they were parents with a status person.

The status man and the woman to whom he had given status were able to comply with the two-parent requirement as soon as Bill C-31 was passed. However, this woman could not confer status before 1985 — only a man could do that. Thus, her acquired right was not simply preserved; it was enhanced because, under the 1985 Act, she could now confer status. The child of that marriage would receive status under s.6(1)(f). Even if the child did not parent with a status person, he or she could transmit status to a child. The disparate treatment of the man and woman who married out before 1985, favouring the man and exiling the woman, was thus imported into the 1985 legislation.

Therefore, Bill C-31 ended up creating different types of Indian status: two parents could confer what has come to be known as "full status," while one parent would confer what is known as "partial status," thus creating what is referred to as the "second-generation cut-off" — a rule that limits the ability of First Nations people to pass on legal recognition of Indian status to future generations. This means that after two consecutive generations of parenting with a person not entitled to registration, the third generation is no longer entitled to registration.

In addition to creating different types of Indian status, Bill C-31's two-parent requirement violates Section 15 of the *Charter* by failing to consider the markedly different ways in which men, women, and gender-diverse persons are socially constructed and situated.

The two-parent requirement relies on a heteropatriarchal binary of gender, sexuality, and nuclear family formations that stands in contradistinction to more fluid and dynamic grounds for identity, family, and belonging in Indigenous communities. It also disproportionately harms LGBTQ2S+ folks whose intimate partner and family relations do not parallel heterosexual partnerships with discrete mother and father figures.

However, even when the parents are cisgender and heterosexual, forms of discrimination remain intact. It is much easier to identify a child's mother than the father. Women's role in carrying, birthing and nursing a child is generally documented in health care and social systems and is hard to conceal or deny. The identity of a father can be easily concealed or unacknowledged, and in some situations, it cannot be discovered at all.

Another major consideration involves the differing life circumstances of those subject to the two-parent requirement. Unstated paternity is highly correlated with the age of the mother at the time of the child's birth: younger mothers experience higher rates of unstated paternity on birth registrations.[73]

Jo-Anne Fiske and Evelyn George suggest that concerns about safety are more responsible for young mothers not identifying the child's father than simple unawareness of the registration rules.[74] The father's name may be unknown due to the circumstances surrounding conception. In contexts where the mother has had multiple intimate partner relationships, a woman may not know the identity of the child's father, the father may not want to be named due to social, cultural, or financial considerations, or she may be reluctant to disclose the father's name. This is particularly true in contexts where either parent is underage or when the child was conceived in instances of rape, incest, or adultery. In such circumstances, it may be impossible to get the father's name included on the application for registration. Fear of violence resulting from disclosure is a real and material risk since Indigenous women and girls face disproportionate levels of violence relative to non-Indigenous women in Canada.[75]

In instances where a mother is considered "full status," and registered under Section 6(1) of the *Indian Act*, an inability or reluctance to identify the child's father results in transmission of "partial" 6(2) status. In instances where a mother is registered under Section 6(2) of the *Indian Act*, her inability or reluctance to name the child's father would mean that her child would not have status at all.

The circumstances described above do not apply to all Indigenous people. However, it is clear that a substantial number of Indigenous women, gender-diverse persons, and their children experience prejudice from the two-parent rule. The two-parent requirement is a considerable departure from pre-contact notions of kinship and relationality without accompanying justification. Moreover, Courts have ruled that cost alone, or fear of diluting the cultural identity of First Nations, is not a sufficient argument to justify provisions that violate Section 15.[76]

BILL S-2: A MODE OF REPAIR AND RECOVERY

In her 2019 final report on Indian registration, band membership, and First Nations citizenship, Claudette Dumont-Smith identified the second-generation cut-off as the issue with the most significant long-term consequences for Indigenous peoples, noting its divisive effects within families, its disproportionate impact on smaller and urban-adjacent First Nations, and its potential to entirely eliminate eligibility for Indian registration within a matter of two generations.

Women, and those descended in the maternal line, are more disadvantaged by the second-generation cut-off than men and those descended in the paternal line. This has been the finding in three cases: *McIvor and Descheneaux* in Canadian Courts, and *Matson*[77] before the United Nations Committee on the Elimination of Discrimination Against Women. This disadvantage arises because the preferential treatment of men with status was carried forward into the 1985 Act.

Two aspects of the provisions introduced in 1985 to govern transmission of Indian status violate Section 15 of the *Charter*. One aspect, the requirement that there be two status parents to confer "full" status, has not been challenged in litigation.

Since 1985, legal challenges to Section 6 of Bill C-31 have concentrated on provisions outlining the adverse consequences of having only one status parent. Although that litigation has been successful, the resulting amendments to the *Indian Act* have not fully removed from Section 6 the discrimination against women and the maternal line of descent. Interpreting Section 15 in accordance with the Supreme Court jurisprudence honours and acknowledges the First Nations women who strove for many decades to correct the discrimination in the *Indian Act.* It is also required by Canada's own laws and constitution.

In 1985, Parliament realized that it could not just end the practice of taking status away from women who married

[69] Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (University of Calgary Press, 2000), 15.

[70] Doucet, Jewell & Watts at 114

[71] Government of Canada, *Archived - An Act for the gradual enfranchisement of Indians, the better management of Indian affairs and to extend the provisions of the Act*, 31st Victoria, c.42, SC 1869, last modified September 15, 2010, https://www.sac-isc.gc.ca/eng/1100100010204/1618939577385.

[72] Government of Canada, *Indian Act*. 1951, c. 29, s.11(e); Government of Canada, *An Act to amend the Indian Act*, S.C. 1956, c.40, s.3; Government of Canada, *The Indian Act*, RSC 1970, c. I-6.11(e).

[73] Stewart Clatworthy, "Unstated Paternity: Estimates and Contributing Factors," in *Aboriginal Policy Research, Volume 2: Setting the Agenda for Change*, edited by Jerry Patrick White, Paul S. Maxim, and Daniel J. K. Beavon (Thompson Educational Publishing Inc., 2004): 227-229, http://thompsonbooks.com/wp-content/uploads/2020/02/APR_Vol_2Ch11.pdf.

[74] Jo-Anne Fiske and Evelyn George, "Bill C-31: A Study of Cultural Trauma" in *Aboriginal Policy Research: Making a Difference*, edited by Jerry P. White (Thompson Educational Publishing Inc., 2007), http://thompsonbooks.com/wp-content/uploads/2020/02/APR_Vol_5Ch3.pdf

[75] Government of Canada, "Understanding Indigenous Women and Girls' Experiences with Victimization and Violence," last modified November 25, 2025, https://www.justice.gc.ca/socjs-esjp/en/women-femmes/wgv-ffv.

[76] See discussion of *Descheneaux* case below.

[77] Committee on the Elimination of Discrimination Against Women, *Views adopted by the Committee under Article 7(3) of the Optional Protocol concerning Communication No. 68/2014 (CEDAW/C/81/68/2014)*, 11 March 2022.

out. There had to be some repair of the harm it did. The "repair" Parliament proposed in 1985 with Bill C-31 proved insufficient, as evidenced by the ensuing litigation. Over 40 years of the second-generation cut-off has resulted in great harms that must be addressed immediately, so they are not compounded further. Additionally, further delay will make the repair job even more complicated when the legislation is finally changed. And what of those who do not qualify for whatever repair measures are ultimately decided upon?

Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*[78] states the following:

> **States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.**

Passing Bill S-2 as it came from the Senate would not foreclose these kinds of consultations. Without clear metrics of success or a commitment to substantive action, embarking on additional rounds of consultation risks further delay to the dismantling of policies that actively constrain the relational freedom of Indigenous people. We must be cautious not to let Canada operationalize the duty to consult in a way that diverts attention from and suspends its outstanding liabilities and obligations to Indigenous peoples.

RETURNING TO A ONE-PARENT APPROACH

Bill S-2 is the latest legislation to amend the *Indian Act*. It will address some of the remaining inequities in *Indian Act* registration and band membership provisions, such as the second-generation cut-off, through a one-parent rule,[79] returning Canada to an approach to conferring Indian status that was in effect from 1876 to 1985 (albeit in a discriminatory form) and honouring both men and women in doing so. The one-parent rule would also provide some assurance that Indigenous women are not prejudiced in their right to confer status on their children and can remain in their home communities to raise them.

A one-parent requirement for conferring status leaves flexibility for First Nations governments and bands to build into their own governance instruments and other requirements, including a two-parent rule if that is what they want. Many First Nations organizations and local governments have themselves adopted the one-parent rule for determining membership. The one-parent rule for determining status is not incompatible with band control over their own membership codes, which is one of the aims Canada sought in the Bill C-31.

To ensure that the one-parent rule would provide a constructive base for the exercise of First Nations' self-determination, Canada has a responsibility to assume the appropriate costs of adding new status Indians to the population. S-2 will undoubtedly impact Indigenous communities, but so will carrying on the exclusion of kin relations and furthering the reproduction of racialized and heteropatriarchal logics from within our communities.

> **Like our ancestors who negotiated treaties, Indigenous communities should be concerned with enabling Indigenous futures rather than contributing to the legislative elimination of our own peoples. This means actively challenging arguments grounded in deficit or scarcity in favour of the status quo.**

Facilities, services, and land will absolutely be needed to reverse the impacts of the long-standing government practice of sex and gender discrimination. However, the longer Bill S-2 is delayed, the more individuals will be denied Indian status, and the more deeply these impacts will be felt by First Nations people, amplifying existing asymmetries that prevent many from belonging and participating in their communities.

It would be unfortunate if the refusal to pass Bill S-2, as it came from the Senate, were to lead to yet another litigation marathon. Litigation consumes resources that could be used to implement policy and practical reforms and prolongs the timeline for real change. We have already seen the disorder and disruption that the second-generation cut-off has caused to families and communities. That would continue throughout any litigation. The longer the delay in fixing the second-generation cut-off, the larger the rescue and recovery project needed to correct its harmful effects.

BEYOND BINARY FRAMES

The proposed amendments to the *Indian Act* are long-overdue and necessary measures to support and nurture the self-determination of Indigenous people across multiple sites and scales of social and political life. Approaches that treat individual and collective rights as incompatible or contradictory have long been challenged by Indigenous feminist scholars who foreground the interconnections between individual, familial, communal, and political life.

As Joyce Green (2014) and Emma Larocque (2005) have thoroughly demonstrated, the rights, experiences, and well-being of Indigenous women are indivisible from the well-being of Indigenous nations and communities. Scholars such as Bonita Lawrence (2004), Sarah Hunt (2015), and Dian Million (2013) have illustrated how the embodied and everyday experiences of Indigenous women are not merely private matters but deeply political ones, revealing how colonial power transcends multiple scales of life. Indigenous feminists also refuse the notion that the political activism of Indigenous women undermines collective self-determination or sovereignty movements (Carlson & Steinhauer 2013; Trask 1999; Barker 2017; Kauanui 2018). Instead, they highlight how colonial gender hierarchies have shaped both state policy and community life, and how efforts to confront those hierarchies are integral to movements towards Indigenous resurgence (Simpson & Hunt 2023).

The argument that *Charter* protections for Indigenous women would threaten Indigenous self-government, which featured prominently in the years leading up to Bill C-31, proved largely overstated. The political efforts that Indigenous women took to end discrimination neither led to mass assimilation into mainstream feminist movements nor into frameworks of liberal individualism.

If anything, we have only witnessed further co-optation of Indigenous leaders into neoliberal economic development schemes and a scarcity-based perspective on membership that believes righting historic wrongs costs too much.

Access to *Charter* protections has not resulted in the violation or derogation of Indigenous peoples' collective rights or nationhood; Indigenous communities have continued to advance their respective movements towards self-government (recognized as an inherent right by the federal government in 1995), either within Canada's constitutional framework or outside it. There is no evidence that addressing the immediate needs of Indigenous women and LGBTQ2S+ people, and the imperative of community-building, cannot co-exist.

Too many resources have already been expended in the name of depriving Indigenous women of basic human rights standards. In light of the absence of collective networks of justice, accountability, and support within Indigenous communities, *Charter* protections have often functioned as one of the few mechanisms available to Indigenous people facing discrimination. To acknowledge this reality is not to celebrate the *Charter* as a sufficient horizon for justice, but to situate it as an important tool available to Indigenous peoples in light of the pervasiveness of heteropatriarchal logics and power structures within Indigenous and non-Indigenous contexts.

The conditions produced by colonialism have historically and contemporarily left many Indigenous women and gender-diverse folks facing multiple layers of discrimination arising from outside and within their communities. The particular location Indigenous women and LGBTQ2S+ people occupy, and the unique relations to violence that they experience, were never adequately captured by the language of individual versus collective rights; efforts to transform the *Indian Act* were, and remain, struggles against interconnected forms of exclusion operating across multiple sites of power.

CONCLUSION

The regime of status and membership imposed through the *Indian Act* are vital components in the machinery of settler violence against all Indigenous peoples, and specifically against Indigenous women, LGBTQ2S+ people, and future generations.

> **The *Indian Act's* discriminatory policies undermine individual and collective self-determination and, beyond the legislative elimination of Indigenous peoples, threaten ongoing harm to Indigenous peoples' relational capacities into the future.**

I regard the persistence of discriminatory policies, and of racialized, heteropatriarchal, and individualistic logics post-Bill-C31 as contributing to a breakdown of relational ways of being in Indigenous contexts. Passing Bill S-2 as received from the Senate, and consulting on the matters noted above, would honour the legacies of activism undertaken by Indigenous women over time and would satisfy the requirements of both the *Charter* and the *UN Declaration*.

However, even after the *Indian Act* is further amended, ongoing work is necessary to resist the reproduction of gendered and colonial norms, hierarchies, and harms within communities and to cultivate a resurgence of Indigenous and transnational networks of care and accountability in the interest of future generations.

[78] United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61/295, U.N. Doc, A/RES/61/295 (September 13, 2007), 6. https://docs.un.org/A/RES/61/295.

[79] It will also enable persons who wish to have their names removed from the Indian Register to apply for deregistration; support women who were automatically transferred to their husbands' First Nation, and their descendants, to seek reaffiliation with their natal First Nation; and it will replace certain offensive and outdated references about First Nations persons with a disability.

Section 10 Voting Thresholds: A Distraction from Decolonizing Band Membership

Damien Lee

AS CANADA SCRAMBLES to consult First Nations before it is required to make court-ordered changes to the *Indian Act* that could result in thousands more status Indians, it is simultaneously exploring options for bands to expedite the process of taking control of their membership lists. These discussions are taking place as parliamentarians contemplate *Bill S-2, An Act to amend the Indian Act (new registration entitlements),* which aims to restore status to enfranchised people and institute a one-parent approach to registration entitlement.

If passed into law, Bill S-2 could create 320,000 new status Indians by 2066.[79] This is a scary number for not only Canada but also many First Nations, with the implicit understanding that creating a windfall of more status Indians could put pressure on finite resources. There seems to be a rush to rethink membership governance as a result.

However, while all Indigenous peoples have the right to determine their membership, history has shown that fast-tracking control over membership governance in the face of such large numbers of new status entitlements can result in First Nations excluding kin in the name of protecting power and resources.

As the Bill S-2 drafting process runs its course in the two chambers of Canada's parliament, the government is engaging First Nations communities, organizations, and individuals in a parallel process that explores how bands and the federal government might respond in a world where Indian status and band membership look drastically different than they do today. Among other things, *The Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds*[80] explores what First Nation membership governance might look like if bands were permitted to take control over their membership in a relatively more streamlined way.

[79] Indigenous Services Canada, "Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds, Registration Reform and Legal Solutions Committee: Guidebook," n.d., 5.

[80] It is important to note that this collaborative process began two years before Canada began its work on Bill S-2. This collaborative process commenced in November 2023, whereas work on Bill S-2 began in September 2025. For more, see respectively: Indigenous Services Canada, "The Collaborative Process on the Second-Generation Cut-off and Section 10 Voting Thresholds," modified: 2025-11-18, https://www.sac-isc.gc.ca/eng/1706281094364/1706281216732; Indigenous Services Canada, "Government of Canada Moves Forward on Bill S-2," modified: 2025-09-24, https://www.canada.ca/en/indigenous-services-canada/news/2025/09/government-of-canada-moves-forward-on-bill-s-2.html.

Beyond the bounds of federal processes, this moment of focused conversation on membership should also push First Nations to consider the shape of alternatives.

SECTION 10'S DOUBLE MAJORITY

Under the current system, for a First Nation to control its own membership list, it must write a membership code and then hold a vote. If the code is accepted by electors, it is sent off to Ottawa for review and, ideally, approval from the Minister of Indigenous Services Canada. Once approved, the First Nation is considered a "Section 10 band," referring to the section of the *Indian Act* that allows First Nations to opt into controlling their own membership. Roughly one third of all First Nations have enacted such codes in this way, with the most recent doing so in March 2026.[81]

However, with the possibility of 320,000 new status Indians on the horizon, many First Nations are wary of a wave of first-time or reinstated Indians returning to reserves, where in many cases they are perceived to put undue pressure on meager resources, and/or as throwing predictable forms of electoral politics off kilter. These concerns emerged in previous amendments to the *Indian Act* regarding status — whether valid or not — and are now giving rise to the emerging rush for First Nations to get control over their membership lists before the so-called floodgates open.

But there is one problem: Enacting a Section 10 membership code currently requires a double-majority vote of all band members.[82] 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. While not the only hurdle to achieving Section 10 status, this double-majority threshold has prevented some bands from membership self-governance over the years.

First Nations have argued that this bar is too high. As such, the *Collaborative Process* is contemplating lowering the Section 10 voting threshold. Many want it changed to a simple majority, which means a decision is passed if 50%+1 of those who participate in a vote agree with the changes being proposed, with no minimum requirement for voter turnout.

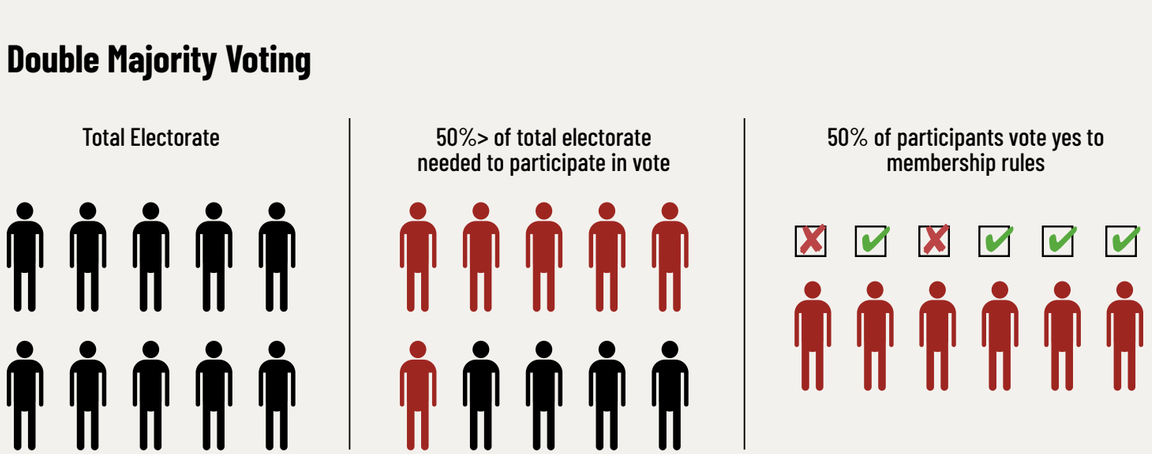
While this may enable First Nations to more easily take control of membership, it may be a path for some bands to reproduce settler colonialism in membership governance – if care is not taken to get it right.

SPEED, SELF-GOVERNMENT & EXCLUSION

My research has shown that when First Nations are provided the opportunity to control their membership for the first time, many write membership codes that are at least as restrictive as the *Indian Act*, with some going further to make membership even more restrictive, such as instituting blood quantum requirements. These developments show that band-controlled membership is not the same as a First Nation using its own kinship laws to determine belonging. While this is always possible, and does occur in rare cases, First Nations generally tend to reproduce settler colonial definitions of Indianness in their membership codes unless great care is taken to avoid doing so.[83]

THERE IS MUCH WE CAN LEARN FROM THIS HISTORY.

Bill S-2 and the accompanying conversation about membership control are not the first time that First Nations have been asked to make last-minute decisions about membership in the face of a supposed deluge of new status Indians. We faced the same scenario in the mid-1980s. With the passage of Bill C-31, Canada created more than 174,000 status Indians by the turn of the century[84] while simultaneously creating a pathway for First Nations to control their own membership for the first time in decades. Legitimate concerns about the capacity of reserve-based resources and infrastructure being able to handle untold numbers of new Indians were stoked into a political campaign



[81] See: Sipekne'katik First Nation, "History made: Sipekne'katik said yes!," Facebook [public post], March 31, 2026, https://www.facebook.com/photo.php?fbid=1383927927082763&set=pb.100063967056617.-2207520000&type=3. Copy of post on file with author.

[82] Abenakis of Odanak v. Canada (Indian Affairs and Northern Development) (FCA 126 2008), http://canlii.ca/t/1zf5c

[83] For an excellent specific study on this, see: Ariane Wilson, "Re-Membering Our Nations: Indigenous Custom Adoption and Determining Belonging Beyond the Indian Act," Unpublished master's thesis, University of Calgary, 2022, http://hdl.handle.net/1880/114941.

[84] Stewart Clatworthy, "Re-assessing the Population Impacts of Bill C-31," Four Directions Projects Consulting, 2001, https://publications.gc.ca/collections/Collection/R2-363-2004E.pdf.

[85] Specifically, these children typically acquired Indian status under ss.6(2) of the *Indian Act*, 1985. See: Genevieve Renard Painter, "Sex Discrimination, Assimilation, and Austerity: The Untold Story of Canada's Indian Act, 1975-1985," *Osgoode Hall Law Journal 62*, no. 1 (2025): 278–79, https://doi.org/10.60082/2817-5069.4101.

that pushed back on the federal government's initial plans of unilaterally putting Indians onto bands' membership lists. As a compromise, Canada agreed to let First Nations exclude children of women who regained their status after marrying non-Indian men,[85] *but only if they wrote membership codes that explicitly did so within two years of Bill C-31 coming into force* (i.e., by June 28, 1987). Interestingly, the vast majority of Section 10 membership codes in existence today were approved just days before that deadline.

That said, and despite the hype, people who got or regained their status due to Bill C-31 did not result in a "flood," nor dramatically strain band resources as expected by First Nation leadership at the time.[86]

Bill C-31's history tells us a few things. First, it is overly idealistic to assume that returning membership control to First Nations *automatically* promotes the resurgence of inherent Indigenous kinship laws. Settler colonialism is a deeply embedded structure[87] that shapes how we think about family, community, and nation.

Some Section 10 bands have shown themselves to be willing to exclude kin in the name of protecting power and money under the guise of self-governance.

Second, a membership devolution scheme that creates a need for speed due to a perceived deluge of new members migrating to reserves (whether real or not) will inevitably create collateral damage. Many of the Section 10 membership codes written in the mid-1980s excluded people who otherwise belong with their nations, and it is likely that this was due to many bands rushing to get their codes approved within the two-year window noted above. Not surprisingly, there is an emergent body of Section 10-based litigation as a result. In other words, speed is the enemy of getting it right when it comes to band membership.

ALTERNATIVE FRAMEWORK FOR MEMBERSHIP: CITIZENSHIP COMMISSIONS

Yet, there are solutions that don't involve the courts. First Nations can and should still take advantage of any opportunity that affords them more power in determining their membership lists. Rather than lowering the Section 10 voting threshold and leaving it at that, I would argue for an entirely different framework. Canada can amend the *Indian Act* so that First Nations determine their membership by default while working with us to create regional or treaty territory-based citizenship commissions that do the hard work of reimagining membership governance in ways that align with Indigenous legal orders.[88] This would necessarily take time and a transition period, and the bar would need to be set high so that we avoid simply reproducing Indian status and blood quantum ideas in the process. Given what I have seen in my research, a citizenship commission approach to membership control might just promote actual decolonization in the long run.

Within a citizenship commission framework, First Nations would appoint representatives to regional commissions where citizenship/membership lists are determined and maintained. These commissions would also be responsible for reviewing complaints and appeals from individuals who may be entitled to membership within their respective First Nation. Citizenship commissions might be framed by treaty territory or by region since nations are constituted outside of the reserve-based framework. Alternatively, nations might establish other boundaries that they see as defining their kinship area.

However, the bar for commissioner qualifications needs to be high. We don't just need bums in seats — establishing confidence in this model will require expertise, humility, and a commitment to transparency. For a citizenship commission to work, it needs to have legitimacy in terms of applying membership provisions in ways that are fair, abide the provisions of a respective membership law as they are written — rather than what any given band council of the day may find politically expedient — and ideally in ways that are congruent with the Indigenous legal orders of the respective territory. In other words, success would rely heavily on individuals who are independent and widely trusted. It may even be worth considering a commissioner from a First Nation outside the respective region to promote objectivity in decision-making and appeals or, in rare cases, a non-Indigenous expert where a specific expertise is needed (e.g. on an ad hoc basis to assist in settling disputes if parties cannot agree on an Indigenous expert, or to add capacity in providing research for policy development). Such appointments, were they to happen at all, would need to be designed in such a way that engenders trust and respect amongst constituent First Nation members.

Furthermore, to promote fairness to applicants for citizenship, citizenship commissioners would need to be appointed for significant terms, such as 5 or 10 years. Doing so would foster a level of immunity to the ebbs and flows of community election cycles. Commissioners would also need to be paid fairly, and the commission body itself would need to be staffed properly, which obviously raises questions about funding and long term sustainability.

This is one suggestion, rooted in years of research. There are, no doubt, other visions for alternatives. But membership remains among the most contentious issues in First Nation communities today. Is there an opportunity for First Nations to think through these challenges outside federal frameworks that simply reproduce colonialism in communities? Now is the opportunity to push for new and different approaches.

[85] Specifically, these children typically acquired Indian status under ss.6(2) of the *Indian Act*, 1985. See: Genevieve Renard Painter, "Sex Discrimination, Assimilation, and Austerity: The Untold Story of Canada's *Indian Act*, 1975-1985," *Osgoode Hall Law Journal 62*, no. 1 (2025): 278–79, https://doi.org/10.60082/2817-5069.4101.

[86] Clatworthy, "Re-assessing the Population Impacts of Bill C-31," ix; and generally: Indian and Northern Affairs Canada, Evaluation Directorate, "The Impacts of the 1985 Amendments to the *Indian Act* (Bill C-31), Impacts on Bands: Individual Case Study Reports (Working Papers for Module 3), Vol.II," https://publications.gc.ca/collections/collection_2017/aanc-inac/R32-343-1990-2-eng.pdf.

[87] See: Patrick Wolfe, "Nation and MiscegeNation: Discursive Continuity in the Post-Mabo Era," Social Analysis: *The International Journal of Anthropology 36* (1994): 93–152.

[88] I have been contemplating a citizenship commission concept for some time, but recent conversations have deepened my thinking. I thank Dr. Sarah Morales (University of Victoria) for thinking with me on this idea.

“Marry Out, Get Out”: The Fait Accompli of Settler Logic in Indigenous Ancestry Verification Times

Vanessa Watts

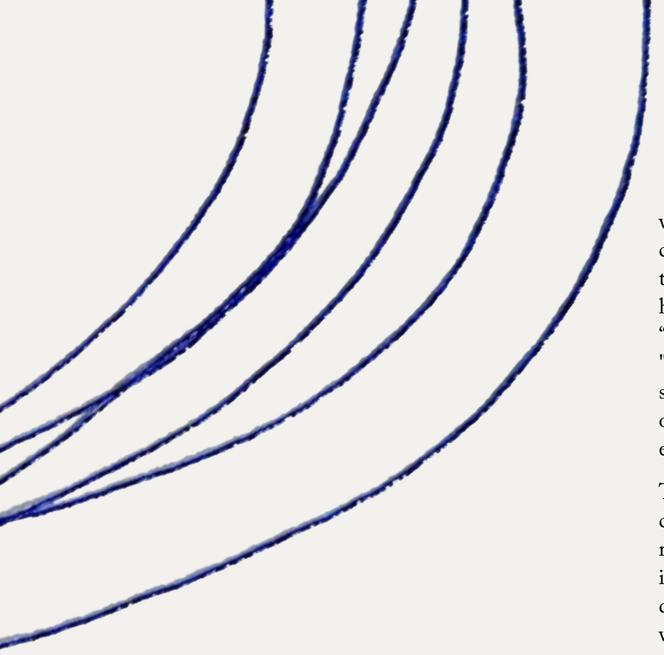
I HEAR AGAIN AND AGAIN that Indigenous identity is not about blood quantum, but connection. Simultaneously, and increasingly, I hear that Indigenous identity is about verifiable documents. Given the recent preoccupation with questioning Indigenous identity, how we reconcile connection and verification is an open question. Community connection matters, of course, but some people have legitimate reasons for disconnecting — or they simply had no choice. As we reflect on community and belonging, it is worthwhile to ask how legislative efforts to police Indigenous identity intersect with individual claims to Indigeneity, and how to disentangle authentic claims from inauthentic ones — if such a thing is possible.

While discussions of who belongs can sometimes be abstract, they have real-world consequences, many of which are community-based, involving individuals reconnecting to homes, families, and a specific geography. But there are also consequences in other areas, such as post-secondary education or employment, especially in reconciliation-focused sectors of the economy.

The reflections here are less about the strengths or weaknesses of Bill S-2, and more about how the application of concepts of “status” has influenced and distorted First Nation life in places like the university. Will the preoccupation with verifying Indigenous identity end with new *Indian Act* amendments? And, regardless of the answer, what are the avenues to recognize the distortions of Indigenous identity in institutional settings?

HIRES AND HIGHER EDUCATION

In response to a national imperative called “reconciliation,” in many sectors of society and the economy, and certainly in higher education, Indigenous-specific hires have been trending. These hires are incentivized. The positions being offered are elite, often coming with six-figure salaries and the opportunity for additional funding, thus allowing Indigenous people access into a system as scholars and educators, rather than subjects of anthropology and history texts.



It is no secret that where opportunities exist, people will lie to access them. This ongoing problem continues to pervert the work of Indigenous academics before us who have pushed for decades to carve out space for Indigenous peoples in higher education. And so we are here, at a place where universities across Canada are engaged in identity verification processes. Some have hired consultants, some have hired lawyers, and all those engaging in this work will very likely at some point have to work closely with human resource offices, legal departments, or human rights complaints units (or a combination of all three). Some Indigenous faculty are holding up their status cards at the beginning of a meeting (maybe as a joke, maybe out of fear). The environment that has been created by those attempting to profit through deception has produced uncomfortable work for Indigenous peoples, to say the least.

A strikingly similar process is unfolding in First Nation communities, with fewer institutional rules. At the same time governments and universities are preoccupied with identity, communities are often policing family life, and "marrying in" and "marrying out" have become colloquial phrases.

If you're lucky enough to have been born a 6(1) Indian, the super Indians of the Indian register, you're guaranteed to bequeath Indian status for at least one generation. No matter who you have a child with, that child will have status. But just because you are a 6(1) doesn't mean both your parents are status Indians — you could have a non-Native mother who married your Indian father before 1985. In fact, this could have happened quite a few times since 1876. But, if a truncated Indian status child (registered as a "6(2)" Indian) has a child with someone outside of the legal definition of an "Indian," tough luck for that grandbaby (this is known as the "second-generation cut-off"). And this doesn't account for a status Indian who has a child with an American Indian on the other side of the colonial border (tough luck again). Herein emerges a contrary logic to Indigenous identity.

This same scenario, if it were applied to the rules of Métis citizenship and Inuit membership , may produce different results. Indeed, that same grandchild of a status Indian who isn't entitled to legal Indian status (and thus, isn't entitled to documentation for professional purposes) might be considered verifiably Indigenous had this scenario emerged in a Métis citizenship or Inuit membership context. In fact, Indian status math fails the logic of Inuit and Métis citizenship, which allow for the maturation of these groups over time while also relying upon limits and demonstration of family ties and land-based and/or community-based connections. Rather, Indian status rules serve a particular colonial logic — a perverted one — that is designed to get rid of us.

At least that has been the math, which is itself now on trial. In *Nicholas v. Attorney General* (Canada), the Supreme Court of British Columbia declared the *Indian Act's* treatment of descendants of the "voluntarily" enfranchised an unjustifiable breach of the *Canadian Charter of Rights and Freedoms*. Bill S-2 is Ottawa's legislative answer and, in its original form, was a narrow fix that restored entitlement to a few thousand descendants of enfranchised Indians. Then the Senate amended the bill to remove the second-generation cut-off altogether, replacing the two-tier 6(1)/6(2) system with a one-parent rule — the very logic of transmission that Métis and Inuit systems already run on. If the House of Commons preserves those amendments, there will be many more new cards to hold up at the beginning of interviews.

PAPER INDIANS

Back on campus, by endorsing limits on First Nations identity categories for hiring purposes, universities may also be enforcing the sort of marrying-out logic that First Nations are legally compelled to avoid. In other words, the racism of the *Indian Act* has been adopted by post-secondary institutions.

First Nations communities and their membership have been under the auspices of the *Indian Act* since 1876 (and the *Gradual Civilization Act* of 1857 before this). There have, of course, been amendments to sections concerning Indian status (Bill C-31, C-3, S-3, and now pending, S-2), which have increased the number of status Indians. But having Indian status isn't the same as having citizenship; it is a state-sanctioned legal category of a race — and so, in other words, it is racist.

Yet in these times of ethnicity fraud, which are real and concerning, the Indian status card is continuously talked about as a quick and dirty way of verifying Indianness, or First Nations-ness. It doesn't necessarily preclude non-status First Nations peoples from being a legitimate category, but it is the benchmark. That being said, it is a benchmark that exists alongside Métis and Inuit forms of enrolment. Three legitimate forms of paper identity for three different categories of Indigenous peoples.

Again, the *Indian Act* is not the arbiter of citizenship; if anything, the Indian register system was designed to make future Canadian citizens with no connections to a legal category of Indian. And thus, it acts to create and then depopulate a particular "racial" category, whereas Métis and Inuit systems of citizenship (which, again, include genealogical confirmations as well as limits to these confirmations) can continue to expand.

While no identity certification system is without its problems (ethnicity fraud takes place across all categories of "Indigenous" peoples), Métis and Inuit are enacting sovereign citizenship in ways that First Nations cannot, or will not. The *Indian Act* operates this way: the more you marry out, the less Indian your generational line will be.

If we extend this particular logic backwards — by decades or even generations — it is likely that there are Métis and Inuit families with a similar history of marrying out in their genealogical lines. And yet, in those cases, those descendants are still considered Métis and Inuit and, therefore, verifiably Indigenous according to the rules of extra-Indigenous institutions.

TOWARD CITIZENSHIP?

Some First Nations have their own citizenship rules that exist to combat the restrictions of legal Indian status, whereas some First Nations with their own citizenship rules use a similar logic to the *Indian Act* — in essence, encouraging marrying in or "getting out." While it can be argued that how these First Nations conduct and implement their citizenship laws is their own business, I think it's fair to critique them. And so, when it comes time to show a "verifiable" Indigenous identity card for a job because somebody took advantage of their colleagues' trust, you may be shown an Indian status card, a Métis citizenship card, an Inuit beneficiary card, a band membership card, or even no card at all.

In summary, all of these categories could have the same history of marrying out, but it is only with First Nations peoples that the rules are enforced differently (often gendered) or in a way that facilitates an absence of a card. I worry institutions have very little understanding of this — worse, that we as Indigenous peoples may act too quickly in saying who is legitimate and who isn't. Or, perhaps even worse than that: we allow a non-Indigenous person to tell us who we are or who we are not. This is a grey space, an uncomfortable and murky one. And thus it's my contention that if we engage in blood quantum logic, we also need to apply the logic of denial that has governed First Nations people for almost 150 years.

Will Bill S-2 and the potential removal of the second-generation cut-off address this compounding inequity? Maybe. But equally important is the application of our understanding of belonging outside of any legislative shift. Yes, we must conceptualize belonging, but we also have to practice it in settings like the university where absurdity often eclipses thoughtfulness and where speculation has become an offshoot of reconciliation. In these spaces, where there are material attachments to reconciliation or Indigenization, identity is political. Engaging those politics requires an end to the hypocrisy that currently shapes approaches to reconciliation hiring.

Vanessa Watts is a 6(2) Indian who married in for love.

Beyond the Cage of Indian Status: Nation-Based Approaches to Belonging

Michaela M. McGuire

THE *INDIAN ACT* has been a central tool of a colonial, genocidal, sexist, racist, and criminal regime intent on dispossessing Indigenous Peoples from their Nations. For generations, amendments to the *Indian Act* have tinkered with our identities and impacted our sense of belonging. Bill S-2 (formerly Bill C-38) is the most recent proposed amendment intended to address the *Indian Act*'s remaining sex-based discrimination. However, remedying legislative discrimination does not address the intergenerational impacts of imposed identity on nationhood, sense of belonging, culture, and community.

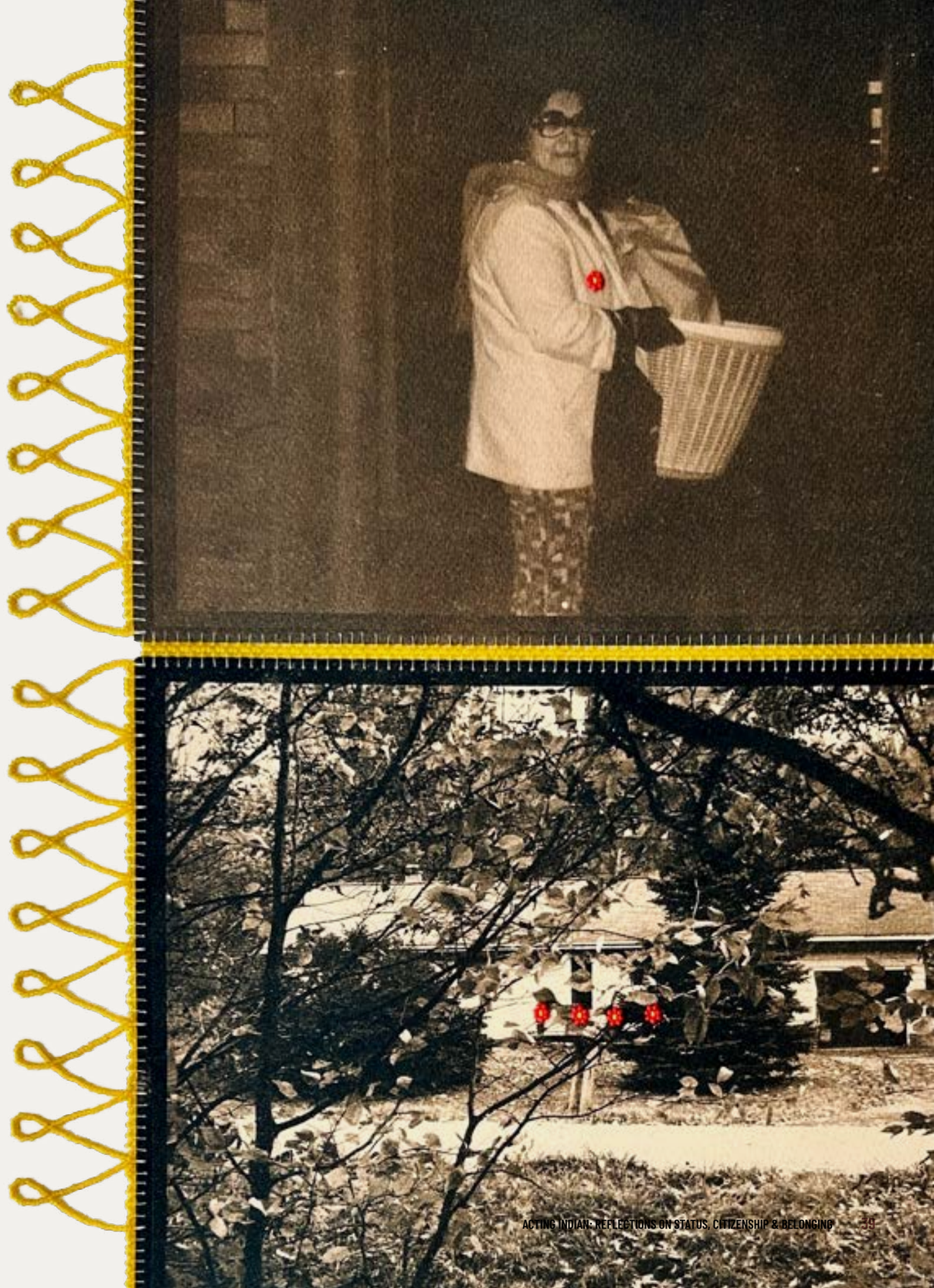
"Indian" status is a limited recognition of our inherent rights. However, having "Indian" status does not rectify legislative, cultural, and physical dispossession. As Venne argues, "the war against Indigenous Peoples went from unabashed destruction to more insidious attempts to diminish the Indigenous Nations into manageable units."[89] The imposition of a common identity and the formation of racialized "manageable units,"[89] were state tactics intent on ignoring our self-determination and inherent rights. It is time to move past a focus on the colonial need to control, confine, and assimilate us according to imposed notions of who "we" are.

Those affected by intergenerational identity regulation and displacement, who occupy the space in-between, who are mixed, or who have been othered within their own communities are still trying to find their way back home.

Belonging is a human right recognized by the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP).[90] By usurping the right to determine our identity through imposed and fabricated regulations, the Canadian state has continuously violated this human right. A status card does not equal community acceptance or a sense of belonging, nor does it remedy the harms caused by the *Indian Act*. It is up to our communities and Nations to do the work to ensure that our people feel like they belong.

[89] Sharon Venne, "She Must Be Civilized, She Paints Her Toenails," in *Being Indigenous* , edited by Neyooxet Greymorning, (Routledge, 2018), 171.

[90] United Nations. *United Nations Declaration on the Rights of Indigenous Peoples*. 2007. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.



STATE CRIME

Canadian and international law are rooted in colonialism and violence.[91] Accordingly, the multipronged genocidal elimination of Indigenous Peoples has been state-sanctioned through law, policy, and government.[92] The state's arsenal includes residential and day schools, Indian hospitals, the reserve system, the child welfare system, incarceration, and identity regulation. However, the state has attempted to evade culpability, to ensure "its own immunity from prosecution for genocide, crimes against humanity, and mass human rights violations … Canada has continued to take active measures to deny, minimize, and limit its liability."[93] These amendments to the *Indian Act* are the most recent in a series of remedial measures that fail to address the intergenerational ramifications of this state crime.

Crimes of the powerful are often the most harmful, requiring the pursuit of domination and control, culminating in human rights violations and genocide.[94] State crime upholds dominant hegemonic ideology, and the marginalization and dehumanization of Indigenous Peoples contributes to ongoing harm.[95] The denial, rhetoric, and apologies for "historic" wrongs is concomitant to Canada's insidious and long-standing crimes against Indigenous Peoples.

In delimiting who is and who is not "status," the Canadian state has classified, racialized, discriminated against, and strived to eliminate Indigenous Peoples, even though this "legal identity is a political, State construction."[96] The residential school system identified students by number, and this dehumanizing tactic continues today through the status system. Identification cards have been implemented by other states where "legal identity was used as a means to register, discriminate, persecute, and ultimately to effectuate genocidal policy aimed at the groups' total destruction."[97] The formation of a legal identity is a mechanism of reinforcing societal and racialized hierarchies and perpetuating the dehumanization of the "other."[98] The Canadian state has appropriated our right to determine our citizenship and Nationhood, according to our own laws, clan systems, and lineages. This continued tinkering with "status" perpetuates colonial violence.[99]

It is up to us as Indigenous Peoples, not as "status Indians," to do the important work of building our Nationhood and determining our own mechanisms for citizenship and membership according to our laws, governance, and societies.

STATUS REINSTATEMENT AS REMEDY?

Gaining status does not remedy the losses caused through generations of this genocidal policy. The multitude of historic and ongoing harms of *Indian Act* identity regulations include: language and cultural losses; physical displacement and not being able to live on reserve; racism; shame; alienation; exclusion; mental and physical health issues; not being able to participate and vote in band council elections; inability to participate in ceremony; and inability to harvest ancestral foods. Those who have been defined as "non-status" had their ties to their communities, families, homelands, and cultures severed. The cumulative impacts of these losses are "incalculable" and intergenerational.[100]

Exacerbating these losses, non-status and newly-status individuals (those reinstated through amendments to the *Indian Act*) experience racism on multiple levels. The internalization of colonial identity categories may result in discrimination, ostracization, and skepticism from within our communities. Simultaneously, those same individuals may be subject to anti-Indigenous racism.

Mixed identities, being white-passing, and coming from multiple Nations further complicates a sense of belonging. Stereotypical notions about how we "should" look affect those of us who do not fit into neatly defined phenotypes. To avoid ignorance, racism, and anti-Indigenous hate, we may opt to blend or not self-identify. The colonial fascination with "race" means those who assert multiple ethnicities are still subject to categorization based on their appearance.[101] Additionally, if our lineage includes multiple Nations or communities, we can only claim one First Nation band on our status card, contributing to further displacement.

Compounding existing identity issues, the actions of selfish and extractive pretendians — race-shifters or Indigenous identity fraudsters — have resulted in increased identity policing. As a result of this policing, those who have been displaced by the child welfare system, who are non-status, and/or who have mixed identities may experience increased anxiety and discomfort approaching their communities. Indigenous identity fraud thereby perpetuates colonial dispossession, exacerbating existing harms and contributing to the alienation of those with fractured relationalities.

In addition to gendered displacement, ongoing heteropatriarchy and misogyny continue to affect the treatment of Indigenous women within our communities. Disempowering Indigenous women through successive *Indian Act* amendments has had devastating impacts, especially on matriarchal societies. Pervasive racism and sexism culminated in status Indian male-privilege, and legislative shifts have not addressed the internalization of patriarchy. Consequently, sexism within Indigenous communities and governance often goes unnoticed and unchallenged. The proposed amendments to the *Indian Act* under Bill S-2 do not address the impacts of legislated discrimination on our societies, laws, and governance.

As the late Lee Maracle writes, "trapped in a cage of shame, we lash out at each other and spare you."[102]

The internalization of oppression, colonization, and racism exacerbates the trauma of dispossession. Being subject to racism impacts self-esteem and can contribute to turning harm inward, and to racism amongst our own Peoples. This internalization can make us feel like we are lesser than.

The reverberation of imposed identities across generations has contributed to massive losses. Instead of focusing solely on state solutions to these criminal acts — we need to turn towards ourselves, our Nations, laws, and governance systems.

NATION-BASED SOLUTIONS

Strengthening our Nationhood as Haida, Gitxsan, Cree, Tsimshian, etc., requires surpassing our construction as a "manageable group." Instead of relying on the state to find a solution for the harms it has caused, we need to turn our attention inwards. It is up to us to strengthen our Nations by including, accepting, and inviting in those who have been fractured from community through colonial and genocidal systems.

THE THING IS, WE KNOW WHO "WE" ARE.

Indigenous societies have complex clan, lineage, and governmental systems — all of which contain the components needed to remedy displacement and discrimination, and to ensure that our people have a sense of belonging. On the Northwest Coast, the potlatch system operates as a complex governance structure, a legal and ceremonial system, and a space for wrongs to be made right. Potlatch may be used to bring those who have been displaced through imposed governance structures back home to community, to who they are as Indigenous Peoples. By strengthening, revitalizing, and building upon existing governance structures — including the potlatch, ceremonies, and our Nation-based knowledge, value systems or laws — we can resist the state fascination with our identities and strengthen our Nationhood.

In matrilineal societies, when children are born to non-Indigenous mothers, clan adoption and other ceremonies are often in place to ensure cultural and clan belonging. Additionally, many Nations have their own citizenship and/or membership procedures. For example, in the Haida Nation's Constitution under A2.S1., "all people of Haida ancestry are citizens of the Haida Nation."[103]

The Canadian state has labelled us according to its interests, regulations, and fiscal concerns, but through inclusive and Nation-based definitions of citizenship, and turning to our own laws, values, governance systems, we can resist state

[91] SMichael Grewcock, "Settler-Colonial Violence, Primitive Accumulation and Australia's Genocide," *State Crime* 7, no. 2 (2018): 222–250, https://doi.org/10.13169/statecrime.7.2.0222.

[92] Chris Cuneen, "State Crime, the Colonial Question, and Indigenous Peoples," in *Supranational Criminology: Towards a Criminology of International Crimes*, edited by Alette Smeulers and Roelof Haveman (Intersentia, 2008), 159–180; Maxwell Sucharov, "The Ugly Truth to Canada's Big Lie: A Tale of Ongoing Settler Colonial Genocide of Canada's Indigenous Peoples and the Creation of an Apartheid State," *Psychoanalysis, Self and Context* 17, no. 2 (2022): 196–206, https://doi.org/10.1080/24720038.2022.2046753; Jeff Corntassel and Christine Bird, "Canada: Portrait of a Serial Killer," in *Surviving Canada: Indigenous Peoples Celebrate 150 Years of Betrayal*, edited by Myra Tait and Kiera Ladner (Arbeiter Ring Publishing, 2017), 193-209.

[93] Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools, *Upholding Sacred Obligations: Reparations for Missing and Disappeared Indigenous Children and Unmarked Burials in Canada*. Vol. 1 (2024), 289. https://osi-bis.ca/osi-resources/reports/?report-type=final-report.

[94] Elizabeth Comack, "Corporate Colonialism and the 'Crimes of the Powerful' Committed against the Indigenous Peoples of Canada," *Critical Criminology* 26, no. 4 (2018): 455–471, https://doi.org/10.1007/s10612-018-9414-y; Chris Cunneen, "State Crime, the Colonial Question, and Indigenous Peoples," in *Supranational Criminology: Towards a Criminology of International Crimes*, edited by Alette Smeulers and Roelof Haveman (Intersentia, 2008), 159–180; David Friedrichs, "Rethinking the Criminology of Crimes of States: Monumental, Mundane, Mislabeled and Miscalculated Crimes," *International Journal for Crime, Justice, and Social Democracy* 4, no. 4 (2015): 106–119, https://doi.org/10.5204/ijcjsd.v4i4.266.

[95] Natalie Hodgson, "Resisting the State Crimes of the Global North: Exploring the Potential of International Criminal Law," *Journal of International Criminal Justice* 22 (2024): 151–169, https://doi.org/10.1093/jicj/mqae010.

[96] Elizabeth Halodik, "Legal Identity as a Tool of State-Sponsored Genocide: Enforcing the Responsibility to Prevent through a Norm of Active Engagement," *Indiana International & Comparative Law Review* 32, no. 3 (2022): 436. https://doi.org/10.18060/26525.

[97] Halodik, "Legal Identity as a Tool of State-Sponsored Genocide," 466

[98] Ibid.

[99] Grewcock, "Settler-Colonial Violence."

[100] Bonita Lawrence, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview," *Hypatia* 18, no. 2 (2003): 20, https://doi.org/10.1111/j.1527-2001.2003.tb00799.x.

[101] Anne Marie Beals and Ciann L. Wilson, "Mixed-Blood: Indigenous-Black Identity in Colonial Canada," AlterNative: *An International Journal of Indigenous Peoples* 16, no. 1 (2020): 29–37, https://doi.org/10.1177/1177180119890141; Bonita Lawrence, "Real" *Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood* (University of Nebraska Press, 2004).

[102] Lee Maracle, *I Am Woman: A Native Perspective on Sociology and Feminism* (Press Gang, 1996), 85.

[103] Constitution of the Haida Nation, *Constitution of the Haida Nation* (Council of the Haida Nation 2026), 11, https://static1.squarespace.com/static/66a42eb6e157224ea438eb79/t/6877ec86949d274d95f98013/1752688798571/1.0.1-2023CHN-Constitution.pdf

confines. Instead of turning to the state for our liberation, we can turn to each other, learn from each other, and strengthen our collective resistance.

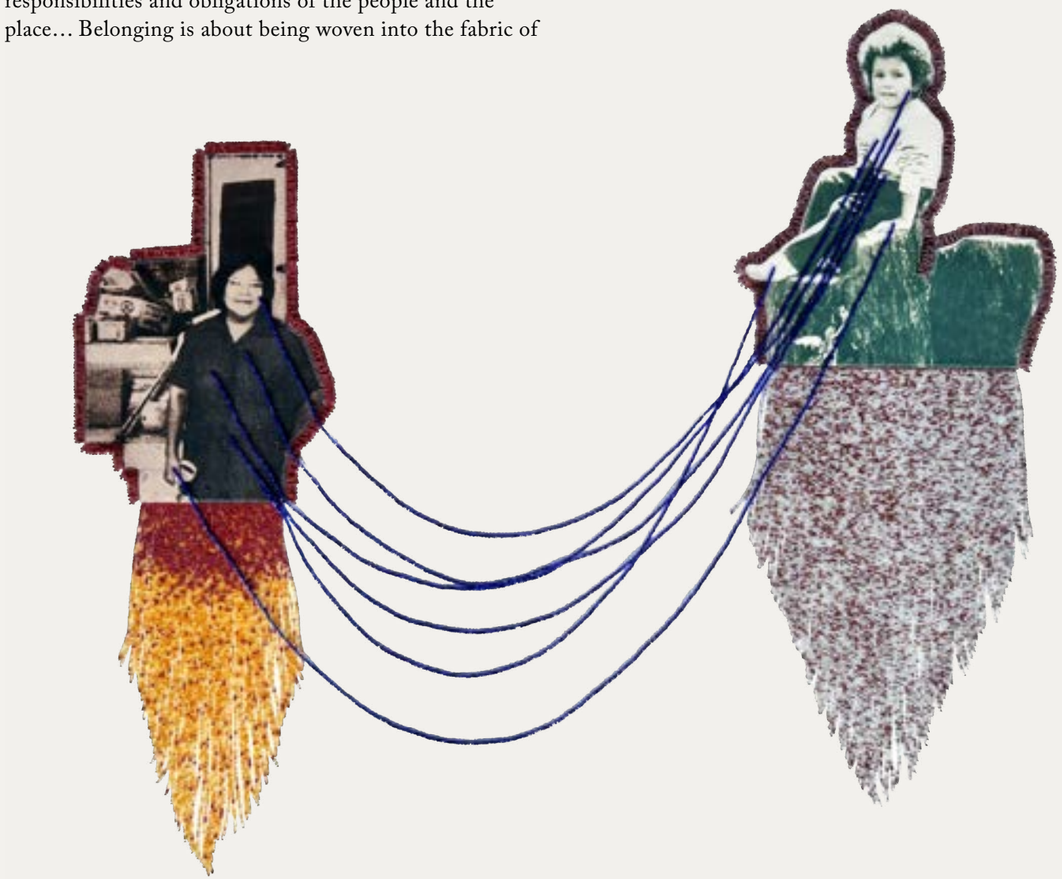
BRINGING OUR PEOPLE HOME

Doing the important work of bringing our people home is imperative to healing the trauma of displacement. Beginning to address the violent and genocidal dispossession of our Peoples involves sharing knowledge and being inclusive and welcoming. Addressing intergenerational harms is vital to our survival, strength, and self-determination.

Justice notes that "belonging… is about taking up the responsibilities and obligations of the people and the place… Belonging is about being woven into the fabric of the land and its legacies, accepting the knowledge that your future is a shared future, and that you are accountable to those around you."[104]

We have a collective responsibility as Indigenous Peoples to strengthen our Nations and move away from legitimizing state-imposed identities. Addressing discrimination is important – but status reinstatement does not equate to a sense of belonging – nor does it heal the trauma of being othered, made to feel less than, and the insidiousness of the Canadian State's control over our identities.

The *Indian Act* is the source of our oppression, a genocidal regime intent on our destruction as Peoples; it is not the solution.



[101] Daniel Heath Justice, "A Better World Becoming: Placing Critical Indigenous Studies," in *Critical Indigenous Studies: Engagements in First World Locations*, edited by Aileen Moreton-Robinson (University of Arizona Press, 2016), 26.

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