



WOLASTOQEY NATION IN NEW BRUNSWICK

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COLLABORATIVE PROCESS: ON INDIAN REGISTRATION, BAND MEMBERSHIP AND FIRST NATION CITIZENSHIP

COMMUNITY CONSULTATION:
KINGSCLEAR FIRST NATION
MADAWASKA-MALISEET FIRST NATION
OROMOCTO FIRST NATION
ST. MARY'S FIRST NATION
TOBIQUE FIRST NATION

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Disclaimer: The following report does not reflect the views, comments, and concerns of the entire Wolastoqey Nation. Feedback was gathered through a limited timeframe and process. The following represents only what was captured through the available means.

BACKGROUND

The Wolastoqey Nation in New Brunswick (WNNB) provides technical advice to Wolastoqey leadership and Resource Development Consultation Coordinators (RDCCs) in resource development consultation matters that relate to the implementation and exercise of Wolastoqey constitutionally protected rights.

The WNNB hired a facilitator – Lisa Perley-Dutcher – to conduct community engagement sessions on Indian Registration, Band Membership, and First Nations Citizenship. A total of five community engagements sessions were conducted (Kingsclear, Madawaska-Maliseet, Oromocto, St. Mary's, and Tobique), and feedback was captured in drafting a report.

COMMUNITY PARTICIPATION

The five Wolastoqey communities participating represented an approximate population of 6,529 (Stats Can, 2018). There were 10 to 50 participants at each community session. A total of 135 participants of all ages (mainly young adults to elders) attended the sessions, including Chiefs and Council members. Three sessions were held in the evening and two were held during the day, as per the request of the local RDCCs. Community notices inviting community members were sent out through various means in advance of the event.

A recorder was present at each session and participants were notified that the discussions would be documented at the session, but that no names or identifying information would be collected. Participants were also informed that the information gathered would help inform a final report that would be submitted to Indigenous and Northern Affairs Canada (INAC). At each session participants were given a handout that summarized a "Fact Sheet" (see attached) document provided by Indigenous and Northern Affairs Canada.

Session Objectives:

- i. To have a common understanding of the past issues and current issues related to "Indian Status"
- ii. To discuss First Nations assuming control of its own membership, registration, and citizenship
- iii. To discuss the 1951 cut-off
- iv. To document feedback, issues, and concerns of participants/community members

I. CURRENT ISSUES RELATED TO INDIAN STATUS

- Currently there are approximately 50% of those with Indian Status who have 6(2) status in Canada. The current out-marrying rates are so high that there will be no status Indians being born within the next 75-100 years, if not sooner. If there are no status Indians then there will be no rights, no fiduciary responsibility, no services, and no control over what happens to our land. The government agenda to “solve” the “Indian Problem” – going back to more than 150 years – will be achieved.
- Categories defined in 1985 were designed to define us out of existence. Categories 6(1.a) and 6(2) etc. . . . need to be replaced with a “6(1) all the way” policy.
- The categories created in 1985 as a result of Bill C-31 is a form of genocide to our people.
- INAC has made a mess of our status issues and now they want us to take it over.
- I have one status and my brother has another status – same parents.
- Women with 6(2) status are put in vulnerable situation if status dads won’t sign the child birth certificate, then child has no status.
- We have reached almost half being 6.2s in just 34 years.
- The “second generation cut-off” is affecting those whose families had nothing to do with Bill C-31. In other words, with this new categorization system, people who have never lost status have less ability to pass on status than those who did lose status (see below Case Person #1 & #2). Bill C-31 and all the amendments arising from court cases (*Descheneaux* and *McIvor*) afford the ability for those who lost status to transmit their status to at least three generations. Yet those who haven’t lost status, depending on who they and their children parent with (if that other parent is non-status) will only be able to transmit after two generations. This is discrimination against those who never lost status.
- The new category system is targeting both men and women and eventually their children, by creating a 6.2 category that restricts who they can parent with. Since approximately 50% of all status Native people in Canada has 6.2 status, then there is a continuation of discrimination

against the equality measure – status denied to both women and men and to those who never lost status (see below case Person #1).

- The government is trying to control whom our people marry/parent with and there is something very wrong with this. How can you ensure that your grandchildren will not marry out or parent with a non-Native? This is unconstitutional and interferes with our rights and freedoms.
- Having status gives us rights, entitlement to land, etc. What will happen when no more status Native people being born?
- The government is ignoring our treaties.
- I believe that the government is inflicting the White Paper of 1969 policy – we should utilize Charter of Rights & Freedoms vs. discrimination/assimilation because the government is trying to get rid of us.
- Children are being denied not only status but also being rights holders to treaties and lands. The government doesn't want to honour our treaties – and the fewer status Indians the better – and once they are denied status there is no way to regain it.
- We now have status cards that expire, and if we don't renew them we will not be able to use them and they don't make it easy to re-apply.
- If you are denied status and want to protest, there is a timeline on protesting cases of discrimination (1 year), and most people don't know this. Those with status are being kept in the dark about the categories that they have been assigned. Most people with status are not even aware what they have been categorized. We are being kept in the dark about our status until it is too late. You will only get this information if you request it. These are deliberate acts to get rid of status Indians, and this is a slow genocide.

Cases of remaining inequities:

- Case of discrimination – Person #1 (parents both status Indians): Person #1 is a status Indian who married in 1984 and never lost status upon marrying a non-status person, as the law had changed and the Chief and Council were given the power decide not to take members off the band list since it took the changes of Bill C-31 to take effect one year later (1985). So person #1 never lost status. They had 3 children and one of those children married a non-Native and had a child who was denied status. After the death of Person #1's father, the mother remarries a non-Native and she has other children. Mother loses status and the children

do not gain status until the passing of Bill C-31. A sister who regained 6.1 status is now able to transmit status to her grandchildren and great grandchildren (even if the children marry out) as a result of *Descheneaux* and *Mclvor* court decisions. So the sister who regained status now has the ability to pass on status to one more generation than Person #1, who never lost status.

- Case of discrimination – Person #2 (parents both status Indians and she marries a Native prior to 1985): They have 3 sons with 6(1) status and one son marries a non-status and their son/grandson is 6(2) and will not be able to transmit status if he parents with a non-status. Status math doesn't add up – after two generations of out marrying status is no longer granted, but the 1st generation is misnamed – now called “parenting out” – I don't agree with this as parents are not a generation. It is only when they generate a child – the child is the first generation. So our children and grandchildren are being cut out a generation sooner than they should be. *Descheneaux* and *Mclvor* did not upgrade our status.
- Case of discrimination – Persons #3: A case of custom adoption – define what is kinship (lineage and DNA) – e.g., family X – labeled non-Indians (and family divided) – in past a majority of families pushed out by Indian agents. My granddaughter $\frac{1}{4}$ and no status but other children with $\frac{1}{4}$ have status.
- Case example provided: 1985 cutoff – if married out – they get an extra generation (2 parents with status and siblings married out) – regained – their children have more status being born before 85 vs. me – children born after 1985.

II. FIRST NATION CONTROL OF MEMBERSHIP, REGISTRATION, AND CITIZENSHIP

Membership and Registration:

- Bands need to have the ability to define their own membership. If we take this over how will we decide who can have membership and who can't?
- There are many non-status members currently living in the community.
- There is currently low numbers in some communities and are wondering how do we increase our numbers?
- We may get the opportunity to define membership but not Indian status.
- Indian status is the bigger question as status determines funding for services and housing.
- Decisions of status or membership should be based on genealogy.

- In one community non-status members (descended from 1st generation) have band membership, which gives them services – but community is not receiving funding.
- Many people want to be Native now and want all the rights that come with it. It seems that some are in it for what they can get (i.e., fishing and harvesting wood). What about responsibilities related to being a member like learning the language and culture and making contributions to the community. Is there a point where you are no longer considered Maliseet?
- Will the Canadian Government relinquish their control over defining status?
- Self-government is something that the government is trying to impose on our leadership yet we are not able to define our own people in our own ways.
- Some communities have the capacity and own-source revenue to be self-governing and some communities struggle with providing basic services to community members.
- Government wants us to determine who are members are – but what is not being discussed is how are new members going to be funded? How has government decided this will happen?
- Community X has taken control of band membership; however, INAC still determines status. Decisions are made by community members and usually through referendum. They established their own membership code in 1987 and amended it in 2014. Almost all community members are married out (2nd generation) and roughly 38% don't have status but have membership (190 of 500) but services provided for all – but have to be descendants of four founding families/11 founding members – DNA testing also done.

Citizenship:

- A citizen is of a nation versus a community – all of our people from all of the Wolastoq communities need to define citizenship
- We are citizens of “Turtle Island” (North America) and then the borders were imposed upon us but we are still treaty people and we never surrendered our land.
- At the border we are being forced to identify as Canadian or American and we should be respected as Indigenous Nations.
- We are not the property of the government and that is why we should get rid of the Indian Act and our status cards.

- Citizenship includes nation while membership is community-based (we have to discuss residency).
- Have to include traditional structures and treaty rights (for citizens).
- It seems to be understood here that citizenship is at the nation level – but maybe need prior or concurrent discussions – e.g., who defines – Wolastoqey nation as a whole or each community?
- Nation means sovereignty – and right to refer to as citizens – unceded sovereign Wolastoq land vs. just a member = a stakeholder (vs. a rights holder within a nation) – we exercise rights throughout the land – vs. when a First Nation agrees with a “project” (in so doing you have turned into individual rights – vs. collective rights).
- Citizenship has more to do with a nation – each community has their own priorities – social assistance and education. Take more time to sit down and decide as a Wolastoq Nation – not there yet – how to heal within communities (before going beyond) and what are the roles of the traditionalists, etc.?
- Each band should be determining their membership and then granting status (vs. backwards current process, with INAC defining status and granting First Nations some powers over band membership).
- Community with a membership code states that even if government changes its status rules, it will not override the community membership code.

III. 1951 CUT-OFF:

- Will the government still impose the 1951 cut-off if not wanted?
- If there is a big influx of people who are entitled to be community members as a result of the 1951 cut-off, then how will those financially stressed communities cope with the increase in demands?
- Participants felt that there was not enough time to discuss these important issues of the 2nd generation cut-off and the 1951 cut-off. A deadline of June 19, 2019, doesn't provide time for proper community engagement.
- Identity is a big issue and the government should not determine who I am – “I am a Native person and that is who I am – brought up Native and will always be – a lot of people don't meet the governments criteria – and Bill C-31 did not extend back past 1951. The government is willing to allow those who lost status pre-1951 to regain it, but this will reinstate those with no connection to community or the culture while those who have a connection are denied status such as the ones identified in the cases we have discussed.

- In one community, as a result of the 1951 cut-off – one family has 69 descendants from 1 woman who was able to demonstrate that she was a member of the community.
- Does the government have an estimate of total pre-1951 potential members?
- We know all 1st generation – and anyone who lost prior to 1951 is a small number – and probably registered with a another band – and our registration began in 1951 so remote chance – many of our members are non-status – we based our membership code on 1st generation and the family trees of our 11 persons.
- Lifting of 1951 cutoff – will we get more funding for services? And what services will we have to provide to members off-reserve?
- 1951 cutoff – need to halt this as we need to provide more info to the people – one of our biggest issues is identity because if no status, then no rights or land.
- A community conversation has to happen – effectively this will drastically affect who benefits and by how much housing and royalties, etc.
- It could be people with no connection – and coming with a lot of offspring.

IV. SOME OTHER CONCERNS OF COMMUNITY MEMBERS/PARTICIPANTS:

- Approximately 50% of those with “Indian status” in Canada are now registered as 6(2) (NWAC Lawyer, 2018).
- Why talk about the “seven generations” if we are not going to be here.
- Department of Indian Affairs had made many registry mistakes – we need to fix such situations. And how do you fix those situations if one can’t make connections back to grandparents – if you can’t see one’s family tree, then can’t fight/change situation.
- We have to challenge it in court – at a higher level.
- Now we are the ones who are discriminating – we got it both ways (element of purity) – government made us feel that we were taking away from others.
- It is a scarcity mentality – based on greed – if we buy into it . . .
- Stewart Clatworthy’s 2001 report prepared for the Department of Indian Affairs, “Re-assessing the Population Impacts of Bill C-31,” indicates that the legislation has led (from 1985 to 1999) to 174,500 individuals gaining status and that over the subsequent two generations (about 50 years) an additional 327,700 individuals will gain status (for a “total maximum growth” in population of 1.08 million due to Bill C-31). After that, however, given the current rate of marrying out, there will be “a rapid decline in the population entitled to registration,” with those being born not entitled to

- status out numbering those entitled by the ensuing generation and no children being born not entitled to status outnumbering those entitled by the ensuing generation and no children being born who are entitled to status “around the end of the fifth generation” (or about 125 years). This very real possibility of there not being any more status First Nations people being born in just over 100 years raises profound issue to the end of status.
- People want more knowledge and feel that this discussion should have happened a lot sooner and more than just the one time. We need to have time to think and discuss these serious matters that will affect our lives.
 - A band out west negotiated self-government and then had to go to court to get services for members.
 - Off-reserve organizational funding – why can't we get similar funding? And what can we do to get it?
 - Grand Council – inherent rights vs. Indian Act.
 - We can't have the truthful talk – why someone gets higher status or when someone says we should marry our own – we have to recognize that we oppress each other – we have to recognize and talk about this – and talk about custom adoption and those who have more status than my children – that has traumatized us – and is going to define us and leave some out.
 - What about non-Natives with no status? Somehow got status and resources – families have to have honest discussions.

V. QUESTIONS FOR FOLLOW-UP:

- What is the Assembly of First Nations' position on these topics?
- Does funding from federal government cover those who are not living in the community?
- Do they have an estimate of total pre-1951 potential members?
- Why are we doing legal court cases? Discrimination is acknowledged under Indian Act.
- Is there a way to convince government that we set up a process for gaining status? It is not easy to become a member.
- What will government accept?
- Some communities' capacity is different (e.g., some have been managing own membership for several years – and still have some issues).
- Some FN communities in NB cannot produce a status Indian – especially some small bands.
- It is affecting small bands faster – two generations and likely no more status – what is going to happen to our communities and people?
- It's our future and our lives – what will happen to our grandchildren?
- It all derives from the Indian Act – some are talking about abolishing Indian Act – would this reinstate our people?
- Indian Affairs' register – deal with gender status but not sexual orientation?
- Many of those communities moving away from the Indian Act are out west, as they have access to resources – and ideally located – to generate resources .
- So how is government going to provide services?

- Why is government so eager on this matter?

VI. POSSIBLE SOLUTIONS

- One parent codes – “6(1.a) all the way” – no extinction date
- Custom or community adoptions
- Increase education of the youth about these issues
- A collective (Wolastoqey) class action lawsuit based on a variety of cases
- Take issue of genocide to the United Nations
- Get rid of Indian Act
- Take control back in defining our own members
- Develop our own membership codes
- Unity of traditional and Indian Act chiefs and leadership
- Decisions of status or membership should be based on genealogy
- Genealogical trees need to be researched

VII. MOVING FORWARD

It was clear to participants that the Government of Canada has a particular agenda through Indian Act control using status and complex categories for determining who is and who is not a status Indian. There have been a lot of families that are divided because of status issues, and now the government wants to hand it over to First nations once they have made a big mess out of it. It is understood that there are a lot of court cases still pending around status issues. Perhaps the government needs to clean up their mess before handing that responsibility over to First Nations.

Most participants felt that each community should determine its own membership code and then determine who gets status. Deciding status and automatic membership – bottom line – if you are a member you should have status (health care & tax benefits). One way that was mentioned frequently was to focus on the development genealogical trees so that this information could be used to determine status. Another key issue discussed is how are communities going to provide for all of their members with this expansion of status? Will the federal government provide adequate resources so that all of our members (who would also have status) can be treated fairly?

VIII. SUMMARY:

Many participants were not aware of the issues around Indian status that still existed, particularly in terms of the 2nd generation cut-off. Most participants

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were also not aware that there were categories for status that was implemented in 1985 that would further exclude and extinguish Indian status of both males and females. It was verbalized several times that this categorization is an act of genocide or legislative extinction to systematically extinguish Indian status and rights (to services and resources).

It was seen as ironic by participants that now the government wants us to determine who are members are after there is such a mess that has been created with the various changes being implemented to grant status and to deny it. Taking on new members will require new funding to provide adequate services and resources.

There were many concerns expressed regarding the 1951 cut-off in relation to adequate funding and resources for those returning back to community. If the government is proposing to lift the 1951 cut-off, then what assurances will First Nations have that adequate funding will be provided? Participants also wanted to know how government decided this will happen?

There was also skepticism that the Canadian government wouldn't relinquish their control over defining status. Many communities will not challenge this, as so many depend on federal funds to support their communities.

There is a belief that the government is still trying to impose the 1969 White Paper policy again and that this should be resisted, and that we should utilize the Charter of Rights and Freedoms to end discrimination.

It was stated by one chief that this is one of our most important issues facing our people. The chiefs (and councils) need to be aware of these issues and advocate on behalf of their people, and the Assembly of First Nations needs to be getting back to First Nations' grassroots issues.

An Elder explained that reconciliation requires that we be given official status in Canada like the English and French people. Canada is legally obligated to clean up issues of discrimination as a result of the Indian Act.

Solutions include pushing for a one-parent code and "6(1.a) all the way," with no extinction date, and to eliminate the categories created and also possibly eliminate the Indian Act. Each First Nation needs to start developing its own membership code so that they can be prepared to take on such issues in the event that the government is able to relinquish their responsibilities.