



FIRST NATIONS' AUTHORITIES TO DETERMINE BAND MEMBERSHIP

What authorities provide First Nations the ability to control membership?

In 1985, Bill C-31 created two separate systems for the control of band membership under sections 10 and 11 of the *Indian Act*. Section 10 gives the opportunity for First Nations to take control of their band membership by creating membership rules/codes. These rules/codes have to be approved by the Minister of Crown-Indigenous Relations of Canada. Section 11 band membership lists are maintained by the Indian Registrar.

First Nations can also take control of their membership if they signed a modern treaty or self-government agreement with Canada. This option was made available in 1995 through the *Federal Policy on Aboriginal Self-Government*.

First Nation Membership Control as of May 2018:

- Section 10 Bands – 37%
- Section 11 Bands – 57%
- Self-Governing First Nations – 6%

What is a section 10 Band?

Section 10 of the *Indian Act* allows an Indian Band to take control of its own membership so long as the Band can meet the requirements outlined in section 10. A Band is required to meet three specific requirements:

- **Notice: a) Notices I and II:** Under section 10(1), the Band must give notice to its electors of its desire to take control of its own membership **and** create membership rules for itself;
- **Notice III:** Under section 10(6), once all requirements under section 10 of the *Indian Act* have been met, the Band must give notice, in writing, to the Minister. In that notice, the Band must write that it is taking control of its own membership. In addition, the Band must provide the Minister with a copy of the membership rules.
- **Consent.** Under section 10(1), the intent to take control must be approved by a majority of the majority ("double majority") of the eligible electors of the Band. This means that the majority of the eligible electors of the Band must vote, and a majority of those who vote must be in favor. For further clarity, consent refers specifically to the intention to take control and to create rules.



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In addition to these three specific requirements, Bands also need to respect the rights of individuals, who are currently members, or entitled to be members, of their Band. The new rules that come into force do not allow the Bands to remove a current member from the membership list.

If the requirements of section 10 are met, Canada will notify the Band of the change of membership control and provide the Band with a copy of its band list. From that day forward, the Band is required to maintain its own band list and the Department has no further responsibility with respect to the Band's membership. Any individual who wishes to be a band member must contact the Band to be added to their membership list.

What is a section 11 Band?

Section 11 of the *Indian Act* describes membership rules for band lists maintained by the Indian Registrar. Membership on these lists is dependent upon an individual's eligibility for registration as a status Indian under the *Indian Act*. If an individual is registered and identifies

with a Band whose band lists are maintained by the Indian Registrar, then this individual automatically becomes a member of the Band. Family ancestry is used to see if the individual's parents or grandparents were members or if they were entitled to be members of the Band as well. No consent is required on behalf of the Band.

What is a self-government agreement?

Self-government agreements set out arrangements for First Nation communities to govern their internal affairs and take responsibility and control over the decision making that affects their communities. Self-government agreements address areas such as the structure and accountability of First Nation governments, their law-making powers, financial arrangements, and their responsibilities for providing programs

