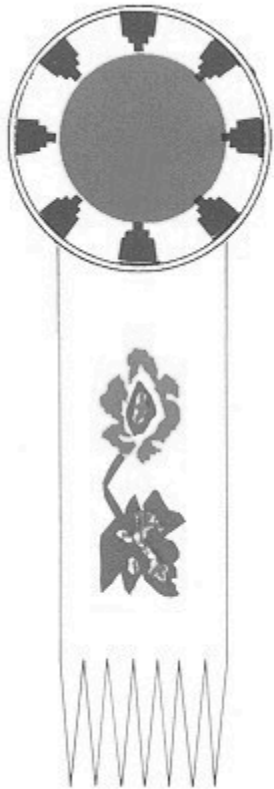


# Native Women's Association of Canada



## A FIRST NATION CITIZENSHIP CODE

~ 1986 ~

First Nations Determining Citizenship  
Encouraging Self Determination

*An NWAC Guidebook*

## A FIRST NATION CITIZENSHIP CODE



The Native Women's Association of Canada would like to extend our appreciation to all those who contributed in the preparation of this booklet.

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## INTRODUCTION

The determination of citizenship is one of the fundamental components of self-determination. Its importance is stressed in many documents including the Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere:

*No state, through legislation, negotiation or other means, shall take actions that interfere with the sovereign power of an indigenous nation or group to determine its own membership.*"\*

The right to determine citizenship means little, however, unless that right is exercised. The purpose of this Guidebook is to encourage discussion about First Nations citizenship by providing a variety of examples which could be included in a community's Code. In this Guidebook, we use a First Nation-centered approach. For this reason, no reference is made to the existing government Band Lists, the Indian Act, or Bill C-31.

The first task for a First Nation is to determine who will be a citizen of that Nation. When First Nations have developed a Code, they may find that it does not comply with federal law. At that point, some First Nations may decide to modify their Code to take into account the Indian Act and Bill C-31. This First Nation-centered approach is preferable to *beginning* with the Indian Act and Bill C-31, *then* trying to make adjustments for First Nation concerns. Some First Nations may choose to ignore federal law altogether and thereby challenge federal jurisdiction.

The Guidebook contains sample provisions that might be included in a Citizenship Code, as well as examples of provisions on related issues such as residence, and the selection of Chief and Council. The Citizenship Code appears on the left side of the Guidebook with commentary and discussion on the right. The Code and Laws presented here are not meant to be complete in every detail. Instead, they are meant to highlight the major issues which would arise in any discussion on citizenship. When individual First Nations draft their own Code and Laws, they should include more detail and deal specifically with the needs of their particular Nation.

\* International NGO Conference on Discrimination Against Indigenous Populations in the Americas, 1977.

## A FIRST NATION CITIZENSHIP CODE

Enacted this \_\_\_\_\_day of \_\_\_\_\_, 19\_\_\_\_ .

### **Title**

1. This Code shall be known as the Citizenship Code of the \_\_\_\_\_Nation.

### **Inherent Right**

2. This Code is enacted pursuant to the inherent right of the \_\_\_\_\_Nation to determine its own citizenship.

### **Purpose**

3. The purpose of this Code is to
  - (a) preserve the cultural and political integrity of the \_\_\_\_\_Nation;
  - (b) preserve the sovereignty of the \_\_\_\_\_Nation through the exercise of the Nation's inherent rights; and
  - (c) provide the basis for the exercise of the rights and obligations of the citizens of the \_\_\_\_\_Nation and others under the jurisdiction of the \_\_\_\_\_Nation.

# **1. FIRST NATION CITIZENSHIP CODE**

## **TITLE**

The Code is entitled using the word "Nation" instead of "Band" to emphasize the inherent right to jurisdiction over citizenship and to get away from federal law terminology.

## **INHERENT RIGHT**

The Code should make it clear that the First Nation is not relying on delegated authority from the Indian Act. The Code is enacted as part of the exercise of the inherent jurisdiction of a First Nation.

## **PURPOSE**

The determination of citizenship is one of the most important rights of any nation. For First Nations, control over citizenship is vital for the preservation of cultural and political integrity. Without this control, it is difficult to see how the right of self-government of a people can be exercised. The sovereignty of a Nation is preserved through the exercise of the powers of that Nation. A Nation's sovereignty will be meaningless if all decisions are made by another government.

A Citizenship Code should provide a mechanism for determining who are citizens, and who are not citizens. Citizens of a Nation have the rights of, and obligations to, that Nation. Non-citizens do not share in all of the obligations and do not share in all of the rights of the Nation.

The three purposes presented in the Code outline the three fundamental objectives of a Citizenship Code. Individual First Nations may wish to elaborate on the purposes of enacting their Citizenship Code.

## **IDENTIFICATION OF CITIZENS**

The identification of citizens can be divided into three parts:

- 1.** Identification of citizens at the time of the enactment of the Citizenship Code;
- 2.** Description of those who will be born into citizenship after the Code is enacted;
- 3.** Persons who may be adopted as citizens of the Nation.

There will be a great deal of variation from Nation to Nation. Not all the possibilities can be listed here. What is suggested is a range of alternatives which may be considered. The final product should be tailored to meet the needs of the individual First Nation.

## **Citizens Born Before Code is Enacted**

A variety of approaches may be used for identifying current citizens of the First Nation. In some cases, the current Department of Indian and Northern Affairs' Band List would be used as a starting point. In the examples presented here no reference is made to these Lists, so that First Nation citizens can approach the question of citizenship based on their own understanding of who is and who is not a citizen of the Nation.

As stated in the Introduction, the First Nation-centered approach may result in a list of citizens which may not comply with the Indian Act and Bill C-31. First Nations which wish to comply with federal law should make the appropriate modifications to their Code.

Nations of the world have used two main criteria to determine citizenship: place of birth and parentage. Some Nations, including Canada, provide that anyone born in that country is automatically a citizen - it does not matter who the parents are. Other Nations provide that a child has the same citizenship as the parents, no matter where the child was born.



***Citizens Born Before the Code is Enacted***

***EXAMPLE A***

4. A person is a citizen of the \_\_\_\_\_ Nation if that person
- (a) is a descendant of a citizen of the Nation; and
  - (b) is at least one quarter blood of the \_\_\_\_\_ Nation.

***EXAMPLE B***

4. A person is a citizen of the \_\_\_\_\_ Nation if at least one parent of that person is or was a member of the \_\_\_\_\_ community and
- (a) that person was born in the community; or
  - (b) that person has a history of involvement or residence in the community.

***EXAMPLE C***

4. (1) A person is a citizen of the \_\_\_\_\_ Nation if that person is of \_\_\_\_\_ ancestry and has a connection to the Nation.
- (2) Factors which may be considered in deciding if there is a connection to the Nation include, but are not limited to
- (a) shared language and cultural traditions;
  - (b) length of residence in the community;
  - (c) degree of involvement in the affairs of the community;
  - (d) whether or not that person's parents were members of the community; and
  - (e) whether or not that person was born in the community.

***Citizens Born After the Code is Enacted***

***EXAMPLE A***

5. A person born after this Code is enacted is a citizen of the \_\_\_\_\_ Nation if both parents of that person are citizens of the \_\_\_\_\_ Nation.

***EXAMPLE B***

5. A person born after this Code is enacted is a citizen of the \_\_\_\_\_ Nation if that person
- (a) is at least one quarter blood of the \_\_\_\_\_ Nation; and
  - (b) has at least one parent who is a citizen of the \_\_\_\_\_ Nation.

***EXAMPLE C***

5. A person born after this Code is enacted is a citizen of the \_\_\_\_\_ Nation if that person's mother is a citizen of the \_\_\_\_\_ Nation.

***EXAMPLE D***

5. A person born after this Code is enacted is a citizen of the \_\_\_\_\_ Nation if that person's father is a citizen of the \_\_\_\_\_ Nation.

In general, First Nations in Canada have traditionally given more emphasis to the citizenship of the parent. Systems using clans, matrilineality and patrilineality place high importance on a person's ancestors. Therefore, a person's ancestry would be one of the factors to be considered in determining citizenship in a First Nation. Some First Nations may require that the individual have a certain degree of relationship to the ancestors of that Nation.

A second factor that would be important is connection with the community. Although some First Nations may rely solely on blood relationships, others may want to limit citizenship to people who have ties to the community through relatives, social relationships, or birth.

EXAMPLE A places emphasis on parentage and blood quantum. Some First Nations may require blood quantum of that specific Nation, while other First Nations may require a certain degree of First Nation blood. This example does not consider connection to the community in deciding citizenship.

EXAMPLE B requires that one parent of the citizen be a member of the community and that the citizen be born in, or be an active member of, the community.

EXAMPLE C provides the greatest flexibility, in that a number of factors can be considered in looking at who is or is not a citizen.

These factors include the following:

- language and culture
- residence in the community
- involvement in the affairs of the community
- family relationships in the community
- place of birth

These examples are given to illustrate some ways of handling the priorities of the First Nations. All of these examples require that the citizen be a descendant of a First Nation person. People of other races, such as whites, who are spouses are considered in this Code under the section on adoption (Section 6).

## **Citizens Born After the Code is Enacted**

Once the present list of citizens is established, the question of future generations must be settled. With respect to the citizenship of children, the major factors that would be considered are the following:

- (i) should both parents be citizens?
- (ii) should only one parent be a citizen? - if it is one parent, should it be the mother, father, or either?
- (iii) should there be a requirement for a certain percentage of First Nation blood?

EXAMPLE A illustrates a situation where *both* parents must be citizens of the Nation.

EXAMPLE B illustrates a situation where only one parent must be a citizen, and the child must be at least one quarter First Nation blood.

EXAMPLE C illustrates a situation where the mother must be a citizen.

EXAMPLE D requires that the child's father be a citizen.

***Citizens By Adoption***

6. A person of indigenous ancestry shall be adopted as a citizen of the \_\_\_\_\_ Nation if that person
- (a) is an adopted child of a citizen of the \_\_\_\_\_ Nation;
  - (b) becomes a spouse of a citizen of the \_\_\_\_\_ Nation; or
  - (c) is in a special situation where the citizens of the \_\_\_\_\_ Nation decide that adoption is appropriate in the circumstances.

***Ceasing to be a Citizen***

***EXAMPLE A***

7. A person found to have been enrolled as a citizen who did not qualify for citizenship at the time of enrollment shall be removed from the \_\_\_\_\_ Nation Citizens Roll and shall be considered never to have been a citizen of the \_\_\_\_\_ Nation.

***EXAMPLE B***

7. (1) A person ceases to be a citizen when that person
- (a) renounces citizenship in the \_\_\_\_\_ Nation;
  - (b) becomes a citizen of another First Nation; or
  - (c) became a citizen through marriage and the marriage has been terminated.
- (2) A person found to have been enrolled as a citizen, who did not qualify for citizenship at the time of enrollment, shall be removed from the \_\_\_\_\_ Nation Citizens Roll and shall be considered never to have been a citizen of the \_\_\_\_\_ Nation.

***Enrollment Officer***

8. (1) An Enrollment Officer shall be appointed who shall be responsible for maintaining the \_\_\_\_\_ Nation Citizens Roll.
- (2) The duties of the Enrollment Officer include
- (a) considering applications for enrollment;
  - (b) adding and deleting names from the \_\_\_\_\_ Nation Citizens Roll; and
  - (c) providing information concerning the Citizenship Code.
- (3) The Enrollment Officer shall make a decision on an application for enrollment or deletion within fourteen days and give reasons for the decision.

## **Citizens by Adoption**

There are situations in which First Nations may want to adopt people as citizens. The situations will vary from Nation to Nation depending on the traditions of the Nation. For example, some tribes in the United States do not permit adoption at all. The most common situations faced in Canada would involve spouses and adopted children, but there may be other special circumstances where adoption is warranted.

The example here provides for adoption only if the person adopted is of indigenous ancestry. Some Nations may wish to go further and require a blood quantum. Adoption may be separate from the right of residence. Therefore, a First Nation may not wish to give citizenship to a non-Indian spouse, but may still allow the spouse to reside on the Nation's lands.

## **Ceasing to be a Citizen**

Where a person is enrolled as a citizen by mistake or because of fraud, that person can be taken off the Citizens Roll.

Factors that may be considered in taking away citizenship are the following:

- (i) should a citizen be allowed to voluntarily renounce citizenship in that First Nation?
- (ii) should citizenship be taken away if that person becomes a citizen of another First Nation?
- (iii) in cases where citizenship is granted to spouses, should the citizenship be taken away after the termination of the marriage?

EXAMPLE A provides for taking away citizenship only where there was a mistake or fraud.

EXAMPLE B provides for taking away citizenship when there was mistake or fraud, voluntary renunciation, acquiring citizenship in another First Nation, or the termination of a marriage.

## **Enrollment Officer**

There should be one person appointed to handle enrollment on the First Nation Citizens Roll. This would help ensure that there are consistent policies and prevent "passing the buck". The Enrollment Officer would have to make decisions one way or another within 14 days, so that the decision will not be delayed indefinitely.

The Enrollment Officer need not be full-time. Smaller First Nations may designate the Band Administrator to be the Enrollment Officer. Larger First Nations may require a Chief Enrollment Officer and Deputy Enrollment Officers. It is understood that the Enrollment Officer will be a citizen of the First Nation concerned.

## **THE CITIZENSHIP COMMITTEE**

### **Composition and Purpose**

9. (1) A Citizenship Committee shall be established, consisting of
  - (a) one traditional leader, and one alternate;
  - (b) one representative of the Chief and Council, and one alternate;
  - (c) one person who at one time had lost Indian status through the operation of the *Indian Act*, and one alternate;  
and
  - (d) one other citizen of the community, and one alternate.
- (2) The Committee shall have equal representation of men and women.
- (3) The Committee shall be responsible for
  - (a) hearing appeals from the decisions of the Enrollment Officer;
  - (b) considering proposed amendments to the Citizenship Code; and
  - (c) making recommendations on matters relating to the Citizenship Code.

### **Appeals to the Citizenship Committee**

10. (1) Any person or group of persons affected by the decision of an Enrollment Officer may appeal to the Citizenship Committee.
- (2) The Committee shall set a date for a hearing as soon as possible, and in any case no later than one month after the Committee receives notice of an appeal.
- (3) The alternate may sit on the Committee when the regular Committee member
  - (a) cannot attend the hearing; or
  - (b) has a conflict of interest.
- (4) The Committee shall invite both the Enrollment Officer and the person or group of persons appealing to appear before the Committee.
- (5) The Committee shall hear both sides of the case, and may accept any evidence that seems relevant to the case, including the evidence of witnesses.
- (6) The Committee shall make a decision as soon as possible, and in any case no later than one month after the hearing, and give reasons for the decision.
- (7) The Committee may
  - (a) uphold the decision of the Enrollment Officer;
  - (b) order the Enrollment Officer to add a name or names to, or remove a name or names from, the Citizens Roll;  
or
  - (c) make any other order appropriate in the circumstances.

## **CITIZENSHIP COMMITTEE**

### **Composition and Purpose**

Most First Nations have committees to deal with special issues such as housing and policing. Another special committee may be established to deal with Citizenship. This Committee could hear appeals from the decisions of Enrollment Officers and could make recommendations on the operation of the Citizenship Code. For example, the Committee may hear suggestions on changing the Code, and recommend a change.

In order to represent a cross-section of the Nation, the Committee might consist of four people: an Elder, a representative of Council, a person who at some time was not considered an Indian under the Indian Act, and a citizen of the community. There are many other possibilities for the Committee, of course. In the future, there will be no need for a representative who was at one time "non-status". In order to prevent discrimination, or the appearance of discrimination, the Committee may be made up of two men and two women.

### **Appeals to the Committee**

Hearings before the Citizenship Committee should be informal. The Enrollment Officer should explain the reasons for his or her decision, and the person appealing should explain his or her side of the story.

The example here provides for alternates to sit on the Committee. This would be important to reduce the chances of Committee members hearing appeals from close relatives, and being seen to have a conflict of interest. The procedures are not outlined in detail in the example given here. There are no time limits, nor requirements for written notices or written decisions.

The advantage of making the process this informal is that it reduces the risk of Committees getting bogged down in technicalities. It would also allow for the use of traditional ways for making decisions. The disadvantage is that the lack of clear guidelines may result in confusion. For example, what if someone wants to appeal two years after the Enrollment Officer's original decision? To avoid this confusion, some First Nations may wish to spell out their procedures in greater detail.

## **APPEALS TO THE COUNCIL OF ELDERS OR REGIONAL APPEAL TRIBUNAL**

### **EXAMPLE A**

#### **Composition and Purpose of the Council of Elders**

11. (1) A Council of Elders shall be established consisting of six Elders appointed from the First Nations in the \_\_\_\_\_ region.
- (2) The Council shall be responsible for hearing appeals from the decisions of the Citizenship Committee of the First Nations of the \_\_\_\_\_ region.

#### **Appeals to the Council of Elders**

12. (1) A person or group of persons who appeared before the Citizenship Committee may appeal the decision of the Committee to the Council of Elders.
- (2) The Council shall set a date for a hearing as soon as possible, and in any case no later than one month after the Council receives notice of the appeal.
- (3) A panel of four members of the Council shall hear the appeal and no member of the panel may be a citizen of the \_\_\_\_\_ Nation.
- (4) The Council shall invite both the Enrollment Officer and any person or group of persons who appeared before the Citizenship Committee to appear before the Council.
- (5) The Council shall hear both sides of the case, and may accept any evidence that seems relevant to the case, including the evidence of witnesses.
- (6) The Council shall make a decision as soon as possible, and in any case no later than one month after the hearing, and give reasons for the decision.
- (7) The Council may
  - (a) uphold the decision of the Enrollment Officer;
  - (b) order the Enrollment Officer to add a name or names to, or delete a name or names from, the Citizens Roll;
  - or
  - (c) make any other order appropriate in the circumstances.
- (8) The decision of the Council of Elders is final.

### **EXAMPLE B**

#### **Composition and Purpose of the Regional Appeal Tribunal**

11. (1) A Regional Appeal Tribunal shall be established consisting of six members appointed from the First Nations in the \_\_\_\_\_ region.
- (2) The Tribunal shall have equal representation of men and women.
- (3) The Tribunal shall be responsible for hearing appeals from decisions of the Citizenship Committees of the First Nations of the \_\_\_\_\_ region.

#### **Appeals to the Regional Appeal Tribunal**

12. (1) A person or group of persons who appeared before the Citizenship Committee may appeal the decision of the Committee to the Regional Appeal Tribunal.
- (2) The Tribunal shall set a date for a hearing as soon as possible, and in any case no later than one month after the Tribunal receives notice of the appeal.
- (3) A panel of four members of the Tribunal shall hear the appeal and no member of the panel shall be a citizen of the \_\_\_\_\_ Nation.
- (4) The Tribunal shall invite both the Enrollment Officer and any person or group of persons who appeared before the Citizenship Committee to appear before the Tribunal.
- (5) The Tribunal shall hear both sides of the case, and may accept any evidence that seems relevant to the case, including the evidence of witnesses.
- (6) The Tribunal shall make a decision as soon as possible, and in any case no later than one month after the hearing, and give reasons for the decision.
- (7) The Tribunal may
  - (a) uphold the decision of the Enrollment Officer;
  - (b) order the Enrollment Officer to add a name or names to, or delete a name or names from, the Citizens Roll;
  - or
  - (c) make any other order appropriate in the circumstances.
- (8) The decision of the Regional Appeal Tribunal is final.



## **APPEALS TO THE COUNCIL OF ELDERS OR REGIONAL APPEAL TRIBUNAL**

### **Composition and Purpose**

Some First Nations are considering setting up a regional body that would hear appeals from individuals who disagree with the decision of a Citizenship Committee. A Council of Elders or a Regional Tribunal would ensure that a final decision is made by knowledgeable people who are not members of the First Nation itself.

### **Appeals to the Council or Tribunal**

The example given here is very informal. There are no strict time limits or requirements for written notices or written decisions. The advantage is that technicalities will not complicate cases, and that there is room for traditional ways of handling disputes. The disadvantage, again, is that there may be confusion and disagreement on the rules because the rules are not written down. For this reason, some First Nations may want to describe the process in greater detail.

**Definitions**

13. *In this Code,*

“*adopted child*” means a child adopted by the traditional laws and customs of the \_\_\_\_\_Nation or by the laws of the province.

“*community*” includes both a geographic community, cultural and political community.

“*spouse*” includes

- (i) a person considered to be a spouse according to the traditional laws of the \_\_\_\_\_Nation;
- (ii) a person married under the laws of the province; or
- (iii) a person in a permanent relationship.

**Review**

14. *This Code shall be reviewed by the Citizenship Committee within one year of its enactment.*

**Amendment**

15. *This Code may be amended after*

- (i) appropriate notice is given to the citizens of the \_\_\_\_\_Nation that an amendment is proposed;
- (ii) citizens are consulted on the desirability of the amendment; and
- (iii) the majority of the citizens who are eligible to vote consent to the amendment.

## **Definitions**

Some of the terms that are used in the Code can be described in greater detail. The example illustrates some terms that may be included in the definitions.

*Adopted child* includes children adopted both by traditional First Nation laws and by provincial laws.

*Community* may be difficult to define exactly. Most communities exist in a geographic area. However, some First Nations are dispersed and do not live on reserves. They do have meetings and get together regularly, so that they are still a "community" in a cultural and political sense.

*Spouse* may be extended beyond those who are married under provincial law. Marriages considered valid under traditional First Nation laws, and "common law" marriages may also be recognized.

## **Review and Amendment**

It has been suggested that any Code that is enacted should be reviewed within one year to determine whether it is operating in the way intended by the citizens of the First Nation.

There should be a provision explaining how the Code can be changed. The example here makes it clear that a Band Council Resolution is not sufficient. There must be notice given to the citizens, consultation, and a referendum. In this example, the majority of the citizens must consent to the amendment.

## PART B

### A FIRST NATION RESIDENCE LAW

Enacted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

#### **Title**

1. This Law shall be known as the \_\_\_\_\_ Nation Residence Law.

#### **Inherent Right**

2. This Law is enacted pursuant to the inherent right of the \_\_\_\_\_ Nation to determine residence on the \_\_\_\_\_ Nation lands.

#### **Right of Residence of Citizens of the Nation**

3. Every citizen of the \_\_\_\_\_ Nation shall have the right to reside on the \_\_\_\_\_ Nation lands.

#### **RIGHT OF RESIDENCE OF NON-CITIZENS**

##### **Close Relatives**

##### **EXAMPLE A**

4. (1) A person who is not a citizen of the \_\_\_\_\_ Nation, but is a spouse or dependent of a citizen, may reside on the \_\_\_\_\_ Nation lands, unless the citizens of the \_\_\_\_\_ Nation object.  
(2) Residence on \_\_\_\_\_ Nation lands by these people does not give these people any interest in the \_\_\_\_\_ Nation lands.

##### **EXAMPLE B**

4. (1) A person who is not a citizen of the \_\_\_\_\_ Nation may reside on the \_\_\_\_\_ Nation lands if that person is  
(a) a child of, or a child in the custody of, a citizen residing on \_\_\_\_\_ Nation lands;  
(b) a spouse of a citizen residing on \_\_\_\_\_ Nation lands; or  
(c) a dependent of a citizen residing on \_\_\_\_\_ Nation lands.  
(2) Residence on \_\_\_\_\_ Nation lands by these people does not give these people any interest in the \_\_\_\_\_ Nation lands.

##### **Other Persons**

5. (1) Other persons who are not citizens of the \_\_\_\_\_ Nation may reside on \_\_\_\_\_ Nation lands with the consent of the citizens of the \_\_\_\_\_ Nation.  
(2) This consent shall not give the person any interest in the lands of the \_\_\_\_\_ Nation.

##### **Definitions**

6. In this Law,  
"child" includes a child adopted by the traditional laws and customs of the \_\_\_\_\_ Nation and a child adopted by the laws of the province.  
"spouse" includes  
(a) a person considered to be a spouse by the traditional laws and customs of the \_\_\_\_\_ Nation;  
(b) a person married under the laws of the province; and  
(c) a person in a permanent relationship.

##### **Amendment**

7. This Law may be amended after  
(i) appropriate notice is given to the citizens of the \_\_\_\_\_ Nation that an amendment is proposed;  
(ii) citizens are consulted on the desirability of the amendment; and  
(iii) the majority of the citizens who are eligible to vote consent to the amendment.

## **2. A FIRST NATION RESIDENCE LAW**

### **TITLE**

Laws with respect to residence may be very detailed. Some Nations provide "location tickets" or Certificates of Possession for specific lots. What is outlined here is not a detailed treatment of the land use system. Rather, major issues on who may reside on First Nation lands are discussed in the context of an overall process of determining citizenship.

### **INHERENT RIGHT**

The Law should be clear that it is enacted pursuant to the inherent jurisdiction of the Nation, and not pursuant to powers under the Indian Act.

### **RIGHT OF RESIDENCE OF CITIZENS**

This Law may provide that every citizen has the right to reside on the First Nation's lands.

### **RIGHT OF RESIDENCE OF NON-CITIZENS**

Almost every First Nation will have residents on the reserve who are not citizens. These persons may be teachers or nurses, spouses or children of citizens, or persons who have been part of the community for many years. Although these people may not be citizens, the Nation may want to consider the following:

- (i) should all non-citizens require the consent of the citizens of the First Nation?
- (ii) should close relatives of citizens, such as spouses, parents, and children, have an automatic right to reside with a citizen who is residing on the lands of the First Nation?

### **Close Relatives**

The examples here assume that the spouses and children are non-citizens. In Nations where a person becomes a citizen by marriage or by birth, these provisions are not necessary.

EXAMPLE A provides that a spouse or dependent child may reside with a citizen unless the citizens object. If this clause is desired, the First Nation should add procedural details on how permission to reside can be revoked.

EXAMPLE B gives the following people an automatic right to reside with a citizen on the First Nation's lands:

- a child
- a child of whom the citizen has custody
- a spouse
- a parent
- other dependents

"Other dependents" could include relatives who are disabled and being cared for by the citizen.

### **Other Persons**

This provision relates to non-citizens who have no close relatives in the First Nation. It would, for example, include teachers and nurses. The provision should make it clear that the consent of the citizens does not give the person any interest in the land of the First Nation.

### **Definitions**

The example here gives some terms used in the Residence Law which could be described in greater detail. "Child" includes adopted children, and "spouse" includes traditional and common law spouses.

### **Amendment**

This Law may be amended after citizens are notified and consulted about a proposed change.

**PART C**  
**A FIRST NATION GOVERNMENT LAW**

Enacted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ .

**Title**

1. This Law shall be known as the \_\_\_\_\_ Nation Government Law.

**Inherent Right**

2. This Law is enacted pursuant to the inherent right of the \_\_\_\_\_ Nation to self-government.

**Right to Select Chief and Council**

**EXAMPLE A**

3. Every citizen of the \_\_\_\_\_ Nation has the right to take part in selecting the Chief and Council in accordance with the traditional laws of the \_\_\_\_\_ Nation.

**EXAMPLE B**

3. Every citizen of the \_\_\_\_\_ Nation has the right to vote for Chief and Council.

**EXAMPLE C**

3. A citizen of the \_\_\_\_\_ Nation may take part in selecting Chief and Council if that citizen
  - (a) resides on the \_\_\_\_\_ Nation lands; or
  - (b) is active in, or has close connections to, the \_\_\_\_\_ Nation and temporarily resides off the \_\_\_\_\_ Nation lands.

**Right to Stand for Selection**

4. Every citizen of the \_\_\_\_\_ Nation may stand for selection as a Chief or a Councillor.

**Amendment**

5. This law may be amended after
  - (a) appropriate notice is given to citizens of the \_\_\_\_\_ Nation that an amendment is proposed;
  - (b) citizens are consulted on the desirability of the amendment; and
  - (c) the majority of the citizens who are eligible to vote consent to the amendment.

### **3. A FIRST NATION GOVERNMENT LAW**

#### **TITLE**

The examples given here do not deal comprehensively with First Nation governments. The purpose is to provide for discussions on determining who will be able to participate in selecting Chief and Council in the context of discussions on defining citizenship.

#### **INHERENT RIGHT**

This provision will make clear that the Law is made pursuant to an inherent right, and not pursuant to delegated authority from the federal government.

#### **RIGHT TO SELECT CHIEF AND COUNCIL**

First Nations may decide who may participate in selecting Chief and Council. Some First Nations will allow all citizens to participate, while others will restrict participation to active members of the community.

EXAMPLE A provides for participation of citizens in First Nations which do not use the electoral system. The traditional laws would dictate which citizens may participate.

EXAMPLE B allows all citizens to have a vote in elections.

EXAMPLE C restricts participation in selection to citizens who reside in the community, are active in the community, or have a close connection with the community.

#### **RIGHT TO STAND FOR SELECTION**

The example here provides that every citizen of the First Nation is eligible to stand for selection as a Chief or a member of Council.

#### **AMENDMENT**

The right to participate in choosing the government is very important and it is likely that citizens would want more than a resolution of Council to change the rules. Therefore this Law requires proper notice, consultation, and consent of the majority of citizens before a change can be made.



**PART D**  
**A FIRST NATION JURISDICTION LAW**

Enacted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ .

**Title**

1. This Law shall be known as the \_\_\_\_\_ Nation Jurisdiction Law.

**Inherent Right**

2. This Law is enacted pursuant to the inherent right of the \_\_\_\_\_ Nation to determine the extent of its jurisdiction.

**Application of Laws**

3. All persons on \_\_\_\_\_ Nation lands shall be subject to the laws of the \_\_\_\_\_ Nation.

**Rights**

4. All citizens of the \_\_\_\_\_ Nation have the right to exercise and benefit from the rights of the \_\_\_\_\_ Nation.

**Amendment**

5. This Law may be amended after
  - (a) appropriate notice is given to citizens of the \_\_\_\_\_ Nation that an amendment is proposed;
  - (b) citizens are consulted on the desirability of the amendment; and
  - (c) the majority of the citizens who are eligible to vote consent to the amendment.

#### **4. A FIRST NATION JURISDICTION LAW**

##### **TITLE**

The Law outlined here deals with the jurisdiction of First Nation laws over persons on First Nation lands.

##### **INHERENT RIGHT**

The Law should make it clear that it is enacted pursuant to the inherent right of the Nation. This is not jurisdiction delegated under the Indian Act.

##### **APPLICATION OF LAWS**

Both citizens and non-citizens must abide by the laws of the First Nation. This is an important requirement for non- citizens who are permitted to reside on the land of the First Nations.

##### **RIGHTS**

Rights cannot be extinguished. This provision makes it clear that citizens have the right to exercise, and benefit from, the rights of the Nation.

##### **AMENDMENT**

In order to change this Law, appropriate notice, consultation with citizens, and the consent of the majority of the citizens are required.

## **CONCLUSION**

The Native Women's Association of Canada encourages you to begin developing a First Nation Citizenship Code. We see this as an important step in reaffirming and declaring our Nations' self-governing powers without tailoring our communities to the requirements of the Indian Act or the Federal Government. As you work towards developing a citizenship code based on the needs of the citizens of your Nation, we hope that this model Citizenship Code will be of assistance.

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