

From The Past (1876) To The Present (2000): An Analysis
Of Band Membership Among
The Plains Cree Of Saskatchewan

A Thesis

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In Partial Fulfillment of the Requirements

for The Degree of

Master of Arts

in Indian Studies

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Abstract

For Plains Cree people, Band membership has undergone many changes from pre-treaty days to the present. Prior to the Indian Act of 1876, Plains Cree determined their own Band membership. Plains Cree communities were not sedentary, therefore, the admittance of new members was probably predicated on the individual's ability to contribute to a particular way of life. In addition, kinship ties were a factor in the admittance of new Band members through birth and through marriage.

The Indian Act placed the authority to decide Band membership in the hands of the Superintendent General of Indian Affairs. The Indian Act gave him the final say in who or who was not a Band member. The creation of reserves gave him even more power in restricting Band membership and the mobility of the once free Plains Cree people was severely restrained.

Since the Amendment to the Indian Act in 1985 known as Bill C-31, Plains Cree people once again have the opportunity to determine their own Band membership, and have regained a degree of freedom. How they deal with the many obstacles that they continue to face will test the

success of Bill C-31 (Bill to Amend the Indian Act), and, indeed, self-government in the 21st century.

This study examines traditional aspects of membership among Plains Indians in Saskatchewan, including organization of Band societies, traditional criteria for Band membership, and the influence of political leadership and conflict in membership. It then examines Band membership under the Indian Act and the influence of recent amendments to the Indian Act regarding re-instatement of Indian status and Band membership. Four Band membership Codes in Saskatchewan are examined. Interviews with re-instated status Indians were conducted to determine their experiences in the application of membership codes in their reserve communities. Conclusions are drawn through the use of community profiles, existing Band codes, and interviews as to the efficacy of existing membership codes and recommendations are given for the development of future membership codes in the province and throughout the country.

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Chapter 1

Band Membership

Introduction

Since the 1980s, Indian people in Canada have made significant advances in regaining autonomy over their day-to-day lives. Such changes are partly due, not only to the relentless struggle of Indian leaders to receive parity in constitutional matters, but also to the passage of the Charter of Rights and Freedoms within the Canada Act of 1982 and Bill C-31 (An Act to Amend the Indian Act) by the Parliament of Canada. The changes incorporated in the 1985 Act to Amend the Indian Act, herein known as 'Bill C-31,' attempted to bring the Indian Act into accord with the Charter of Rights and Freedoms. Bill C-31 attempted to assure equality of treatment to men and women who are listed as Indians in the Indian Register and to restore individuals to the Indian Register who lost their legal Indian status because of earlier provisions in the Indian Act. Bill C-31 enabled Indian Bands to assume control over their memberships giving them the power and authority to determine rules and criteria for admission of individuals into their particular Indian Band. This right to determine membership was granted under Bill C-31 and is now part of the

jurisdictional powers of Band governments. This study examines the many issues involved in the evolution of Band membership as practiced among Plains Cree Indians in Saskatchewan before the 1876 Indian Act and after the implementation of Bill C-31.

The fear of diminishing band funds has led some communities to oppose reinstated individuals as Band members. Thus, some Bands may create membership codes that are exclusive in nature to limit membership in order to protect financial and cultural aspects of their communities.

Band membership was at one time flexible and inclusive among the Plains Cree, (Campbell, 1975; Milloy, 1988; Pettipas, 1994) Since the implementation of the Indian Act in 1876 and Bill C-31 in 1985 Band membership has become more exclusive in nature.

Band governments across Canada may function more effectively with formally established membership codes because the enrollment procedures they practice and the records they keep could facilitate good government. This might be the case, especially in such areas as the administration of community laws, the distribution of

community assets, and the implementation of community programs. An established membership code would ensure legitimate representation by Band governments, especially with respect to legal and political relationships entered into between Indian Bands and other governments. Band membership that is properly maintained by formally established rules, procedures and official records may facilitate legitimate elections of Band governments, reducing the potential for challenges or criticisms.

In pre-treaty times an Indian Band's membership may have been solely predicated on the basis of social relationships, common language, and way of life. Individuals may have gained membership merely because the Band leaders recognized them as members. Modern realities, however, are such that determining membership by the old means may no longer be possible or desirable for Bands.

Band membership for Indian people is affected by many circumstances. For example, Band membership can be lost by individuals marrying into other Bands or being adopted out of the community. Indian people who were adopted out of

their communities as children may wish to return to their Bands as adults.

In practice, there are many issues involved in determining Band membership. These include Band affiliation and blood quantum. Band affiliation means that an individual would have to establish a linkage with the community in some way by ancestry or descent, kinship, marriage, adoption, residence or legal process. Blood quantum means the degree of lineal descent of an individual. In the Indian Act lineal descent was determined through the male line. (Government of Canada, 1989).

When selecting blood quantum as a membership criterion, problems may emerge the measurement of "Indian blood" This can have consequences for membership. According to "Indian Band Membership" a pamphlet put out by The Department of Indian and Northern Affairs Canada (Government of Canada, 1990b), Indian blood could be interpreted as an individual having a required amount of 'Indian blood', or descent, regardless of the community of residence. Proving blood quantum or descent can be a very difficult proposition.

Study Objective

This study examines issues involved in the evolution of Band Membership among four selected Plains Cree Bands in Saskatchewan. This study also examines the issues of traditional Band membership during pre-treaty times, the changes in membership brought about by the Indian Act, and how these changes relate to traditional forms of membership. One purpose of this study is to provide research information for the use of Indian Bands in the development of rules governing membership within their Band codes.

The literature on traditional Plains Cree Band membership will be reviewed by examining the period before the introduction of the Indian Act in 1876. Traditional systems will then be compared to contemporary membership codes developed under Bill C-31 in order to determine utility of traditional criteria and how they can be applied in membership code development.

Fundamental changes were made to the Indian Act in 1985. One such change was to recognize the right of Indian nations to control their own Band membership. Another change was that persons who lost their Indian status and

Band membership because of sexual or other discrimination under the Indian Act, particularly section 12(1)A, are now eligible to have their Indian status restored under recent amendments. Band membership may also be restored if a Band membership code allows for such cases. Section 12(1)A states that:

any person who is a member of a Band is entitled to have his name entered in the Band List maintained in the Department for a Band if the council of the admitting Band consents (Government of Canada, 1989:11).

Furthermore, all persons enfranchised under section 109(1) of the Indian Act are eligible to have their Indian status restored. Enfranchisement was a process whereby an Indian person lost his or her Indian status and gained full Canadian citizenship which occurred if he or she served in the military, entered into the Christian ministry, or obtained a university degree. Enfranchisement originated when termination of Indian status was the only way for status Indians to gain full Canadian citizenship. Children of enfranchised persons are eligible to apply for Indian status within the meaning of the Indian Act. Thus, Bill C-

31 has also helped to abolish the practice of enfranchisement.

Band control of membership is recognized in the revised Indian Act of 1985 (Bill C-31), providing Bands have a membership code that conforms to provisions of the Charter of Rights and Freedoms. This will not satisfy those Bands claiming an inherent right to determine membership regardless of Canadian legislative criteria. Yet, Boldt has this to say about Bands circumventing the Charter:

The notion that Indians need protection for their human rights from the Canadian government and society, but do not need protection from injustice and abuse by their own government and communities, is insupportable (Boldt, 1993:149).

Bill C-31 creates two registers of membership: one maintained by the Department of Indian and Northern Affairs, and the other by the Indian Bands. Indian status held by virtue of the Indian and Northern Affairs list does not automatically confer Band membership. The federal government still exercises control of Indian status under the Indian Act (Government of Canada, 1990a), but Indian Bands control Band membership.

Indian and Northern Affairs Canada (INAC) (Government of Canada, 1990b), suggests four criteria that Bands use when establishing Band membership codes: tribal affiliation, ancestry, blood degree, and residency. These four criteria are discussed below along with some suggestions for their consideration in the development of membership codes.

Tribal Affiliation is one criterion for the development of Band membership codes. As a membership requirement, tribal affiliation means that an individual must demonstrate linkage with his or her Indian nation in some way. Where tribal affiliation is the desired criterion for membership, the minimum degree to which an individual can be affiliated with an Indian nation should be spelled out clearly or problems of interpretation will occur. The Tribal affiliation criterion may require considerable administration in order to keep track of all of the multiple affiliations that an individual may have with any number of Indian Bands or nations.

The second criterion is ancestry. Ancestry refers to descent through parental lines. As a membership criterion, ancestry may require an individual to establish his/her

relationship to a member of a Band through a " family tree." Ancestry, as a criterion, may require a person to trace lineal (direct) descent from someone on the Indian Registry, that is to be born to a Band member. There are two types of ancestry to keep in mind: lineal and collateral. Lineal ancestry implies that a person is a direct descendant; in other words, an offspring of a Band member, whose parents were Band members, and so on back to a set of parents who formed part of the original Band, thus, referring to sons, daughters, fathers, mothers, grandfathers, grandmothers. Collateral ancestry implies that a person is a relation of someone who is a Band member, but not a direct descendant, such as, aunts, uncles, nieces, nephews, sisters, brothers and cousins.

Blood Degree is the third criterion for developing Band membership codes. Within this membership criterion, there is a distinction between what might be considered as 'Indian blood' or 'Band blood. 'Indian blood' could be interpreted as an individual having a required amount of Indian ancestry, which is an unclear idea, regardless of community. Having a required amount of 'Indian blood' could satisfy

'Indian blood' criteria, because of having blood connections to various Bands combined. This may also be a sufficient amount to meet a 'tribal blood' requirement. 'Band blood', on the other hand could be only a required amount of blood or biological link to members of a specific Band. Proving blood quantum is a difficult task; figuring blood degree can become a highly complicated business. The more stringent the blood requirements especially 'Band blood', the lower the number of eligible applicants. The Band may limit the size of its membership by raising blood degree requirements. Setting the degree of 'Band blood' very high could guarantee that only closely linked descendants would be eligible for Band membership. Although blood degree may be a desired criterion because it ensures that the so called 'Indian purity' as biological descent of members of a Band is maintained, it may produce undesired results as it could exclude individuals from membership who are culturally or socially more a part of the Band than someone with a required degree of blood.

Also, a Band's decision to measure blood degree as a criterion for Band membership sets a standard of biological

determinism over Band membership that could be interpreted as racist. Indeed, since the Indian Act defines 'Indian' in terms of biological ancestry, and considering that these criteria are designed by INAC, the basis for these criteria could be interpreted racist as well. At the very least, membership based on blood quantum is divisive. At the most, membership based on blood quantum could lead to eventual termination of federal responsibilities to Indian people by a process of status elimination as blood becomes 'diluted.'

Finally, residency is the fourth criteria recommended by INAC for the development of Band membership codes. Residency implies that an individual has some connection with a Band, its community, and its lands, either by physically residing in or by maintaining a house in the community. Residency could be one way of ensuring that only those people who are closely involved with the Band, its lands, and community way of life, are eligible for Band membership. However, residency can be a confusing criterion, because it might be interpreted in many different ways by a Band, unless its meaning is clearly and specifically defined in the membership rules. When

developing residency rules, a community should consider determining at what point in a person's life residency is required before that person is eligible for membership; at birth; at time of enrollment; or a combination of these. A Band should determine how much contact with its community, or its lands, should constitute residency, such as continuous individual presence, the family maintaining a house, a minimum number of days residency per year, or a minimum number of days residency a month. If residency is interpreted too strictly by a community in its membership criteria, it may be unfair to those members who, in hard economic times, might have to forsake their residence in order to find employment outside the community, or leave the community for other reasons. One question that needs to be addressed is whether a Band member may live outside the community and return as he or she chooses. Finally, some communities may find that residency, as a requirement for enrollment, is no longer suitable, given the modern realities of mobility, economics and social life.

Bill C-31: An Amendment to the Indian Act

The stated purpose of 'Bill C-31' was to Amend the Indian Act in order to eliminate sexual discrimination in the Indian Act. It did so by giving women and men, who had involuntarily lost their Indian status, as well as their first-generation offspring, an opportunity to apply for reinstatement. 'Bill C-31' also gave an opportunity to control membership by Bands. Many Plains Cree Bands have designed their own Band membership codes assuming the right to exclude some people from becoming Band members who have been reinstated as status Indians by the federal government on the basis of their relationship to the Band. Now people can successfully regain Indian status, but not necessarily Band membership. Consequently, Indian people who have regained status may not be able to reside on their Band's reserve or have other membership rights.

It is recognized that: " The authority to define the criteria, benefits, and responsibilities of membership is one of the most treasured of jurisdictional powers claimed by sovereign governments" (Cassidy and Bish, 1989:53). In Canada, this authority over membership was returned to

Indian Bands in 1985 by the federal legislation, 'Bill C-31,' *An Act To Amend the Indian Act* (Government of Canada, 1985). Therefore, Indian people may be subject in terms of membership to two different jurisdictions, Canadian and Indian governments. The Canadian government has the exclusive right to determine rules of citizenship in Canada. Canadian citizenship, as defined in the Citizenship Act of Canada, means that members have the freedom to choose, but assumes that shared values govern those choices:

How we take part in and in which aspect of society...[it] is not a special privilege; it is a right for all those who qualify. Being a member of Canadian society means that we accept certain rights and responsibilities that are based on our traditions and shared values (Government of Canada, 1992:4).

However:

membership in Indian government is not so much a matter of citizenship as it is a matter of entitlement of certain rights and privileges as a member in a legislatively-created grouping that is more than a registered society and yet less than a real government (Cassidy and Bish, 1989:55).

In a report by the Government of Saskatchewan, titled Reinstatement of Status Information System, one Indian

reserve leader speaks to the issue of Band membership when he says:

There is no greater intrusion and arrogance of assuming the right to tell another nation, another people of another culture, who is and who is not a member of their community, and who can and who cannot live on their lands (Government of Saskatchewan, 1990:142).

Indian leaders claim that the jurisdictional power to control membership was never relinquished during the signing of the pre-confederation, post-confederation or Numbered treaties. The Assembly of First Nations Impact Report, cited in Cassidy and Bish, on 'Bill C-31,' states that:

Indian leaders have never agreed that the Federal Government, through legislation like the Indian Act, should determine who is recognized as an Indian. The federal government's relationship is to First Nations as collectivities, not to our citizens as individuals (Cassidy and Bish, 1989:56).

Finally, because Bill C-31 gave Bands an opportunity to develop their own Band membership codes, this has, in some ways, restored Indian people's rights to determine Band and community destiny. However, because only the federal government can determine Indian status, Indian communities

are still left with little decision making power. Some Indian leaders appear resentful of "Bill C-31 Indians" because of the support they have to provide for reinstated Indians. This has led some bands to create membership criteria which keep re-instated Indians out of a Band and thereby off the reserve and ineligible for Band-administered programs.

Methods

This study draws on the written tradition and interviews to produce a juxtaposition of traditional and contemporary Band membership within Plains Cree societies. Traditional Band membership practices are examined by reviewing the relevant literature. Contemporary Band membership issues are examined by using government documents on Bill C-31 and the Indian Act, community profiles (Table One) of existing Band membership codes, and interviews of individuals (Table Two: Interview One) who have acquired Indian status and Band membership through Bill C-31. Interviews were used to gather opinions and viewpoints of Indian people's experience in the subject of Band membership. The results of these interviews are integrated

with research into Band membership to produce recommendations for development of Band membership codes.

The following method was used to select respondents for interviews. The respondents were selected from members of Cree Bands in Saskatchewan. The names were garnered by word of mouth, particularly on the University of Regina campus. The researcher acquired 'leads' from talking to students who were themselves members of Plains Cree Bands. The 'leads' built until the researcher could randomly choose twelve respondents from a list of thirty-two individuals. Those selected for interview were contacted and gave their permission to be interviewed about the membership codes of their Band and their personal experience in reinstatement (See Appendix Three). A letter was presented to each participant outlining the need for his or her permission to participate in this study. The respondents were asked to provide their insights into how they felt their Band dealt with Band membership in a general sense. The respondents were then asked to provide an opinion about how they viewed the relationship between new Band members and existing Band

members. Finally, the respondents were asked to expound on the Band membership process as they would like to see it.

A second group of twelve people was asked to take part in a subsequent interview. Like the first group, they were asked to provide their opinions and insights about the issues of Band membership generally, and their insights into how contemporary Indian people should deal with Band membership specifically. The results of these interviews are presented in chapter four. Like the first group of interview participants, these participants are not all on-reserve Band members. To differentiate this group from the first group, they are referred to as Interview Participants Number Two. Unlike the first group, the second group was not randomly selected from a list; rather a specific number were contacted and it was those people who were interviewed. The participants from the first and the second interviews are members of Plains Cree Bands in Saskatchewan who have either been reinstated as Status Indians, and who have been granted Band membership, or are existing Band members. The interview method was selected because it offers more flexibility to the researcher. The interviews were based

upon open-ended questions, which allowed the researcher to probe participants when needed.

Interviews are a far more personal form of research than questionnaires. In the personal interview, the interviewer works directly with the respondent. Unlike with mail surveys, the interviewer has the opportunity to probe or ask follow-up questions. According to William Trochim:

The most effective way to encourage someone to elaborate is to do nothing at all - just pause and wait. This is referred to as the "silent" probe. It works (at least in certain cultures) because the respondent is uncomfortable with pauses or silence. It suggests to the respondent that you are waiting, listening for what they will say next (Trochim, 1998:8).

Moreover, interviews are generally easier for the respondent; especially if what is sought is opinions or impressions. This is the rationale used by the researcher for choosing this type of research methodology.

Anonymity and confidentiality were paramount to the participants because of the sensitive nature of some of the questions. This is addressed by Reece and Siegal in their work: Studying People A Primer in the Ethics of Social

Research, where they say: "the principle of privacy protects people from personal matters being revealed publicly" (Reece and Siegal, 1986:139).

The data collection technique used in this study is a qualitative technique which employs the use of the open-ended question format. The participant's answers were not audio-taped but were transcribed by the researcher and then the essence of the participant's responses along with some direct quotes were used in the interview analysis.

Ethics approval was obtained from Faculty of Graduate Studies and Research at the University of Regina. Informed consent was obtained from participants (See Appendix Two).

Limitations of the Study

This study does not attempt to address Band Membership among all Indian groups, but rather concentrates on Plains Cree Bands of Saskatchewan. To include other Cree Nations would be too vast an undertaking and beyond the scope and objective of this study. Also, different Indian nations, because of Band customs, cultural difference, geographical location, and needs, may have very different criteria for Band membership. In this study other plains Indian groups

are considered in terms of historical and cultural features in membership primarily because of their close relationship to the Plains Cree.

The literature revealed that much of what is available on Band membership codes is in the form of reports and government documents rather than analytical material. However, there is extensive literature on traditional membership in Indian societies, and this is addressed in Chapter two. Chapter three reviews legislation affecting membership and Indian status. Chapter four analyzes existing Band membership codes with reference to conducted interview material and provides recommendations for development of future Band membership codes. This study is intended to contribute to the limited body of knowledge in this area. Lastly, this study is of particular interest to the author as a Plains Cree person who has gained Indian status through 'Bill C-31', and who can empathize with other's concerns and needs as well as the need for a further effort in the development of effective and fair Band membership codes. Though the author strives for

objectivity, personal experience will necessarily lead to some subjective analysis.

Conclusion

The development of Band membership codes by Indian Bands reflects the intent to include or exclude reinstated Status Indians into their communities. The responsibility of deciding who is, and who is not, eligible to become a Band member is in the purview of Band governments. The decision to apply for Indian status does not oblige that Band to accept the applicant as a Band member. For some Indian people being Band members may be the most significant event in their lives. Acquiring membership through Band codes is important for the future of the individual and of the community.

Band membership among Plains Cree people changed with the Indian Act. Where Plains Cree people once had the authority to determine Band membership, the Indian Act gave this authority to the Superintendent General of Indian Affairs (later the Minister of Indian Affairs).

With the introduction of Bill C-31 in 1985, Indian Bands gained back the authority to determine Band membership

and to develop Band membership codes. Although this regained authority to decide membership is very different from the pre-Indian Act modes of membership determination, it is nevertheless an opportunity for Indian people to gain some control over their lives despite the constraints placed by the federal government on designing Band codes.

This study has involved Plains Cree Indian people by interviewing individuals who have regained their Indian status through Bill C-31, to garner their comments about Band membership and membership codes.

When comparing the issues surrounding contemporary Plains Cree Band membership with membership of an earlier time, problems arise. During pre-Indian Act times, Plains Cree were in control of the membership of their communities, and the criterion was largely based on the survival of the group. Modern Plains Cree Band membership is heavily influenced by the Indian Act, but is also affected by political and economic factors not seen earlier.

Finally, the introduction of the Indian Act of 1876 greatly affected Plains Cree Band membership. The Act gave the authority to the federal government to decide Band

membership. The government's interests in Plains Cree Band membership were not based on the betterment of Plains Cree people, but instead were based on political controls that usurped the power of the Plains Cree. Bill C-31 was an attempt to give authority over Band membership to Indian Bands. Consequently, Plains Cree find themselves in a dilemma in that they may have to balance the design of their Band membership criteria around the modern realities, or attempt to include as much of their traditional ways as possible. Either way, it is clear that Plains Cree people need to be part of the decision making process, and in order to be effective they may need to consider both traditional and legislated membership criteria in the development of Band membership codes.

Chapter II

Traditional Band Membership

Introduction

This chapter provides a review of the literature into Band Membership. The focus is on the Indian people and their membership practices on the Canadian plains with specific reference to Plains Cree. Some references are also made to tribal membership among peoples from other places in order to provide comparative information on traditional or customary aspects of membership for Band level societies.

Band Societies

A Band is a kin group. Each member of a Band is able to trace a near or distant kin relationship with every other member. According to Rogers (1969), Bands are groups composed of closely related families who are led by one of the elder males of the group. The aforementioned usage of the term Band would likely describe a social unit among Plains Cree Indian people before the 1876 Indian Act. Rogers is laying out the social formation of a Band in its rudimentary state. It is in this state that Plains Cree Indian people held their cultural view of who could be a

Band member. In attempting a contemporary definition of the term "Band", as it relates to Indians of Canada, Frideres says this: "A Band is a group of Indians who share a common interest in land and money and whose historical connection is defined by the federal government" (Frideres, 1988:149). He goes on to assert that: "the term "Band" is also a political label, and is often arbitrarily imposed on Indian groups for the Government's administrative purposes" (Frideres, 1988:14). The use of the term 'Band' in this context sets out the legal aspect of how the Indian Act defines the term Band and how it relates to the control of the federal government over Indian people. Understanding the different usages of the term Band is important in the study of Band membership because one is a legalized term set out by the Indian Act while the other is more descriptive of a Band as a social entity.

According to Service, (1966), Traditional Band organized societies are generally small and closely knit communities. The members have extensive knowledge of each other because they deal with each other on a daily basis in a number of different contexts. It may also be the case

that survival of the Band is dependent on a closeness of members that may not be necessary in other types of societies. Redfield (1956) writes that people who are Band members know each of the other members as parts of the community of which they also are a part. Silberbauer, who worked among bushmen in the Central Kalahari Reserve of Botswana, writes that among them:

There were no exclusive formal qualifications for membership, but such attributes as marriage or close kinship to existing members, or birth into the Band, are the basis of strong to absolute claims to membership (Silberbauer, 1982:24).

Pettipas (1994) also alludes to family and its role in Band membership when she intimates that the foundations of plains Cree society were the networks of related extended families who generally resided together. These encampments of families are often referred to as "Bands". Each group of families had a stable nucleus of close relatives associated with a headman (Pettipas, 1994:44).

According to a Government document, Impacts of the 1985 Amendments to the Indian Act (Bill C-31) the Indian Act defined an Indian Band as follows:

The term " Band" means any tribe, Band or body of Indians who own or are interested in reserve or in Indian lands in common of which the legal title is vested in the Crown, or who shared alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible; the term " the Band" means the Band to which the context relates; and the term " Band" , when action is being taken by the Band as such, means the Band in council (Government of Canada, 1990a:44).

The same government document goes on to distinguish between a Band and an " irregular Band" , which is defined as:

The term which means any tribe, Band or body of persons of *Indian blood* who own no interest in any reserve lands of which the legal title is vested in the Crown, who possess no common fund managed by the Government of Canada, or who have not had any treaty relations with the Crown (Government of Canada, 1990a:44).

Band Membership

For Plains Cree, there was a time when the control of who became members of their Bands was completely within their own purview. According to Milloy (1988), the Plains Cree population was grouped into a number of Bands that were, after the family, the basic social and political unit

of the tribe. Such was the situation of Band membership for the plains Cree until the late 19th century.

The Plains Cree had their own criteria for membership into societies within the community. David Mandelbaum (1979) addresses the issue of Band membership among the Crees. Membership into a Band was a simple matter. Any person who resided with a Band for some time and who hunted and traveled with the group came to be known as a member. Campbell (1975), who conducted research among the Plains Cree Bands in Saskatchewan, writes that membership within a Band was open and unstable. Mandelbaum (1979) goes on to say that, "... the numbers of each Band were constantly augmented by recruits from other Bands of Plains Cree, or from other nations (Mandelbaum, 1979:106).

Milloy asserts that: " Cree Bands were loose and shifting units, meaning that individuals and families were free to move from one Band to another" (Milloy, 1988:73).

According to Pettipas (1994):

The membership for any one Band was flexible, and its size varied. An individual became a member of the Band through birth, marriage, adoption, or simply by residing with a group of families for a period of time. Most members, however, were related through

consanguinal (blood) or affinal (marriage) ties. While Band size fluctuated, the core of families associated with any one headman remained relatively constant. Members from Ojibwa Bands either camped in close proximity to the plains Cree Bands or became members through marriage (Pettipas, 1994:45).

The flexibility of Band membership is evident in that:

The system of complete transferability of membership among the Bands gave the Cree social structure the elasticity to absorb, among other shocks, the blows of war and disease. As well, internal social pressures were given vent when a disaffected member could easily join another Band. The Band as an institution was stable, but membership, specific territory, leadership and the number of Bands within a territory fluctuated. Ray (1974) argues that because the Plains Cree were not sedentary, membership was not rigid. The flexible nature of Band membership was due to need and season (Milloy, 1988:75).

Pettipas (1994) contends that the search for food played a large part in Band membership. In the winter, when food was scarcer, individuals would be invited into the Band to improve the chances for obtaining food. Again, these individuals would be accepted as Band members as long as they contributed to the welfare of the Band.

As indicated by Ray (1974), Bands often split up in search for food that would have facilitated individual choice to remain with one group or go with another. From their arrival on the Plains, to the late 19th century, Cree membership in Bands was so fluid that members were not tied down to any one Band, but were free to come and go as they wished as movement between Bands was acceptable.

Plains Cree society was not rigidly stratified, but there was some degree of ranking among individuals and households. Mandelbaum (1979) indicates that European-Canadian fur trading companies favoured peaceful, industrious trappers over aggressive warriors and, in fact, may have encouraged a new type of leadership by according prestige, status, and preferential treatment to the former in trade negotiations.

Ray illuminates pre-treaty life styles and customs among the Plains Cree. Father Gabriel Marest is quoted in Ray:

they (the Cree) are always wanderers and vagabonds, in the summer they assemble near the lakes, where they remain two or three months; and afterward they go to gather wild oats which they claim in store (Ray, 1974:35).

Boldt says:

Traditionally, Indians had customs that obliged Band members to contribute. These customs served to seal bonds among members and mitigated against the development of divisive social-class disparities. The practices of redistribution and sharing were rooted in deeply held cultural and spiritual values and were deemed obligatory. Any Band members who consistently neglected to fulfill this obligation lost the right to share in the group's benefits and protection (Boldt, 1993:258).

The individual's welfare, rarely, if ever, took precedent over the group's welfare. Finally, according to Watetch (1959), the Plains Cree had no one, outside of themselves, on which to depend.

Indian life on the prairies, prior to the Numbered Treaties, was based on the pattern of bison movement. Small Bands consisting of a few families wintered in the shelter of the wooded parklands and valleys, then joined other Bands in summer for large encampments, and broke up into small Bands again during the autumn (Kehoe, 1992:311). They hunted bison both summer and winter and smaller Bands were a more effective means of hunting.

According to Kehoe:

Bands of twenty-five to one hundred people were the basic unit of plains society because this number could manage a bison drive, the most efficient method of securing food on the plains (Kehoe, 1992:311).

According to Milloy (1988), camps were moved several times a year. In the summer, several hunting groups congregated where large numbers of fish could be secured in nets or other traps. In September, the fish camps broke up as each hunting group set out to a locality it preferred for hunting large game. If a good kill was made, the whole group moved to the kill site rather than transporting the quantity of meat back to the camp. Again, when individuals prospered through a hunt, the whole Band shared the kill.

Individual autonomy was thereby an asset to the groups, however individuality became secondary to group needs under certain conditions. Kehoe notes:

when the Band was moving through territory where enemy groups roamed, or was involved in bison hunts, the high values placed on personal autonomy were abrogated in favour of discipline that would protect the group and contribute to the effectiveness of the hunt. When discipline was required, shame and humiliation by fellow-band members served as effective deterrents. Formal organizations of men policed the camp and had the authority to prevent

individuals from breaking rules and to
humiliate any who tried to do so
(Kehoe, 1992:314).

Honour for the individual could be gained through success in
the hunt or in war. David Mandelbaum, as cited in Milloy
(1988), says:

Even ranking among chiefs was determined
by their war exploits. When a number of
chiefs met in council the status
accorded each 'did not depend on the
size of his following but hinged largely
on his war record.' This record was
composed of the history of the
individual's participation in military
campaigns or raids in which each of his
deeds was given a particular value on a
predetermined scale. The criterion in
ranking war exploits was the degree of
danger to which the man was exposed
while accomplishing the feat (Milloy,
1988:76).

Though it appears that only individuals prospered from their
exploits in war, the whole benefited from their deeds.

Retention of new members occurred as a consequence of war or
raids through capture, especially of women and children.

Band membership was thereby affected by war. As noted by
Milloy:

Aspiring warriors could fulfill their
leadership ambitions by forming a new
Band without having to disrupt the
existing political structure. Although
there is no evidence of "democracy,"

the Band members freedom of movement enforced a code of acceptable behaviour on the leadership, and made leaders seek consensus as the basis of decision making. The quality of leadership was a prime determinant in the cohesiveness and longevity of a Band (Milloy, 1988:75).

Leadership in Band Societies

There was no permanent authority in Plains Indian Band organized societies. Leaders were persons of influence, rather than persons with absolute decision making powers (Service, 1966). Service suggests that leadership was essentially an advisory role and that Band societies reject the authority of personal force or coercion. Authority and decision making was vested in the community at large. Individuals and families in a Band were held together by their willingness to follow their chosen leader. Many of the families were related, but some were attracted by the leader's reputation or by friendship with another family who perhaps was related to the leader or one of his close companions. Dissatisfaction with a leader or a quarrel between families caused persons to abandon one camp and join another (Patterson, 1972). In short, if a Band member was

not happy as a member of one group he was free to join any other Band that would accept him.

With the exception of headmen, men of rank and prestige in Plains Ojibwa societies, a title that Peers (1994) says was generally passed on from father to son among the Plains Ojibwa, other positions of status were earned rather than inherited. The headmen had the prerogative to call council meetings and to make final decisions on any number of matters. Like most decision-making processes, a headman usually made decisions after consultation with another headman in the Band. Elderly men, with impressive war records, were usually rewarded with the position of camp crier. The headmen and other leaders were responsible for the material needs of the camp crier. The elders held other positions of status in the absence of the headman. They oversaw public order, distribution of the headman's material possessions in times of need and during ceremonial celebrations and the announcement of public occasions of gift giving ceremonies (Peers, 1994).

According to Service, among the Utes and Western Shoshone of North America no formal chiefs existed, rather:

An important man might take the lead in an argument about what is to be done, but public consensus is required before any action is taken (Service, 1966:69).

Pettipas says that among the Plains Ojibwa; widespread in Saskatchewan and locally known as Seaulteaux:

The system of ranked leadership was not formalized to the point of precluding an individual's rise in the power structure, and the fact that some enjoyed more privileges associated with their status than others was at least tacitly acknowledged (Pettipas, 1994:50).

Arthur Ray discusses the idea of Cree leadership:

Traditionally, the authority of Band leaders was limited. A chief's ability to hold the allegiance of a group of Indians depended largely upon his success as a hunter and warrior. The virtue of kindness and generosity were also important (Ray, 1974:137).

According to Ray (1974), chiefs of Saskatchewan Plains Cree Bands were accorded respect commensurate with their ability to serve, rather than be served; with their ability to be altruistic, rather than their ability to accumulate wealth for their own use.

Menno Boldt (1993:120) discusses the idea of traditional Indian leadership when he says: " Traditionally

Indian leaders were servants of their people." This is consistent with other commentaries of traditional Indian leaders and their role within Band societies. Boldt says:

that Traditional Indian leadership grew out of social systems that were organized around extended kinship groups whose relationships and duties were defined by custom and whose cultures were essentially communal. The Band community performed all of the political, social, spiritual, and economic functions in an undifferentiated fashion. They reached decisions by a 'dialectic consensus' approach. No individual could unilaterally claim the Band's authority or power (Boldt, 1993:119-120).

Boldt corroborates Ray's (1974) notion of traditional Indian Band leadership among the Plains Cree when he notes:

In most traditional Indian societies, leaders achieved status and influence not by possession of wealth, but by the distribution of it. They shared generously because this was their obligation - the structure of beliefs, values, traditions, and customs required this of them. Also, any leader never knew when he would become dependent on another Band member in the future (Boldt, 1993:119).

According to Brizinski, leaders in traditional Indian societies were:

...those who show themselves to be leaders by personality, skill, knowledge, and initiative; every family within the Band also has an acknowledged leader (Brizinski, 1993:57)

One Indian writer describes authority this way:

In traditional societies, whether Band or clan, authority was a collective right that could be temporarily delegated to a leader, under restrictive conditions, to carry out essential activities. But the responsibility and authority always remained with the people. In situations where the collectivity temporarily delegated authority to a leader, that person had to have the respect of the entire tribe, not merely the support of a majority of voters. Obedience to the leader derived from the respect that the people had for him (Marule, 1984:6).

According to Peers, (1994), given the nature of leadership in Plains Indian societies, the process also worked the other way: since most members of a Band had some input into decisions affecting the group, the actions of leaders often expressed the thoughts and wishes of the followers. Indians may have joined Bands merely because they wished to follow a particular leader. However, once Indian reserves were established, such freedom of movement was curtailed.

Reserves

The 1870s marked the beginning of the reserve period in western Canada. While reserves acted as buffers between Indian people and the rest of society, they also isolated Indian people, and that caused many problems for Indian people. After their creation, Indians could only reside on reserves, and therefore, membership among Indian people was now relegated to these small tracts of land. According to Brizinski (1993), the British policy towards the protection of Indians was based on two principles. First, the Indians were considered incapable of adaptation and thus must be kept away from bad influences of the larger society. Second, the gradual integration and assimilation of Indian people through education and Christianization was to be encouraged. Thus, while Indians were to be protected from unscrupulous non-Indians, the intent was assimilation through education and isolation.

Indians were to settle on land reserved for them, apart from the rest of Canadian society, and, for Plains Indian communities, to adapt to Canada's changing social order by

learning to farm. Richard Bartlett, from an article in the book, Aboriginal Peoples And The Law, states that:

No common form or authority was employed in the establishment of Indian reserves. Each reserve possesses a distinct history and form of creation which entails distinct legal consequences, e.g., as to the nature of the provincial and the Indian interest. A general classification would indicate that reserves have been created by the Crown, by federal purchase of private lands, by executive action setting apart public lands, and by treaty and modern agreements. The establishment of reserves by treaty is only predominant on the Prairies and in Ontario (Bartlett, 1991:469).

According to Douglas Sanders (1972) the government gave four rationale for reserve creation. They are as follows:

(i) Indian people are, at this point in time, fairly conservative. Generally they resisted anything portrayed as change. Some will stress retention of federal status for these reasons alone.

(ii) special federal status is symbolic of the special historical role of Indian people in North America. Indians who speak of the treaties as having been entered into between themselves as nations and the English Crown see a shift to provincial jurisdiction as a denial of the original political status of their people.

(iii) federal jurisdiction enables Indian people to have certain rights and

exemptions which are prized for both symbolic and pragmatic reasons. Treaty protected hunting rights are protected against curtailment by provincial laws as a result of federal jurisdiction (Regina v. White and Bob (1966) 52 D.L.R. (2nd) 481). There are no real property taxes on Indian reserves. On-reserve property is exempt from Estate taxes and Succession Duties. Income earned on a reserve is exempt from Income tax.

(iv) federal jurisdiction makes Indian control of certain institutions and processes possible. Federal policies in relation to Indian communities have not stressed Indian control, but Federal jurisdiction makes Indian control possible in theory. Sanders goes on to say "Federal jurisdiction has meant, to date, corporate Indian control over reserve lands" (Sanders, 1972:14).

Removiing Indian people from their land was not just a Canadian Indian phenomenon, it happened in other parts of North America as well. Red Cloud, a famous American Lakota leader, was quoted in a book by Dee Brown as saying just before he died:

They made us many promises more than I can remember, but they never kept but one; they promised to take our land, and they took it (Brown, 1970:449).

Well before the numbered treaties of the 1870s some plains people, particularly the Cree and the Ojibwa, had

begun to raise small crops and to keep cattle to smooth out the seasonal scarcities that were increasing as the bison were in decline (Carter, 1990). They would need that adaptive capacity during the coming transition to reserve agriculture.

Carter (1990) implies that farming for Indians in the 1870s was also hampered because the implements and livestock promised in treaty four were inadequate. Ten families, for example, were to share one plough. Bands varied in size, numbering between seventeen and fifty families, but regardless of size, each was offered only one yoke of oxen, one bull, and four cows.

In the late 1870s, the earliest years of Indian reserve settlement in present-day Saskatchewan, farming for many Indians proved nearly impossible despite concerted efforts. For some Bands farming was never to be successful because of the nature of the reserve site itself. Other Bands, such as those in the Qu'Appelle River valley received high quality agricultural land and were more successful in the transition to farming.

For Indian people, reserves have been both a bane and a blessing. While reserves gave Indian people some access to hunting, they also made Indian people more dependent on the Canadian Government for their sustenance.

The Indian Act not only kept Indian people on reserves, it also presumed to define what a group of Indians was and who could become an Indian. The reserves also defined Indian by place and that place became part of their social identity.

While the legacy of reserves has been one of separation and segregation, according to Boldt, this does not mean that the only way to perpetuate and protect Indian culture is for Indians to be isolated from the rest of society. Boldt asserts that:

the survival of Indian culture does not hinge on whether economic development occurs on or off reserve. It hinges on whether individual participation in the economy occurs in a framework of traditional philosophies and principles (Boldt, 1993:242).

Indian people should not be required to renounce their place as members of Indian communities for the purpose of seeking employment in off reserve locations. Rather, Band

membership should be portable and flexible as it was in earlier times.

Conclusion

The structure and functions of Bands have changed much over the last century. Where once Bands served as a social unit and community for Plains Cree people, the Indian Act changed the Band into a land management unit with the introduction of the reserve system. The Band became subject to federal government control. No longer were Indian people free to move and interact. The reserve system controlled Plains Cree people by keeping them sedentary.

Before the early nineteenth century, Plains Cree people lived in social units called Bands. These Bands consisted of those members who were able to contribute to the collective. The survival of the group meant that the emphasis on individualism became secondary. Bands were designed to be portable - that is, if the people needed to move with the hunt, the Band structure was capable of responding to those needs.

With the introduction of the reserve system, the Band became a group of Indians who shared a common interest in

land and whose historical connection was defined by the federal government. The term then became a political label, and was often arbitrarily imposed on Indian groups for the Government's administrative purposes. With the introduction of the reserve system, the government could then control most every aspect of the Plains Cree's lives.

Whereas, the Plains Cree once decided how the Band was structured, who was the leader, what roles each of the members would play, the federal government would now have the authority to dictate these fundamental rights.

Modern Plains Cree Bands have many more considerations to make in the admittance to Band membership. No longer are they able to make their decision solely on an individual's contribution to the community. No longer are they able to determine the worth of an individual based on that individual helping the Band to overcome the hardships of survival through subsistence. Today, the structure of a Band is so much more complex in terms of leadership and membership.

The following chapter outlines the complexity of Band membership as a result of federal legislation.

Chapter III

Band Membership and the Indian Act

Introduction

As a result of the Treaties of the 1870s in the West, the government began to keep formal Band lists in order to control land use on reserves and to account for moneys paid out under the treaties and land sales agreements. As government control over Indian communities developed, the records on Indian population and Band membership became more detailed. Legislation was passed within the Indian Act to define who had legal status as an Indian. Also, in the first half of the twentieth century, provincial laws relating to public registration of births, marriages, and deaths began to be applied to Indians for the first time, adding an extra, though not always reliable, source of information (McCardle, 1983).

Legislation

McCardle's (1983) research handbook states that in 1951 the Department of Indian Affairs set up a central Indian Registry as it was required to do by the revised Indian Act of that year. The Register lists every person in Canada who

is legally an Indian under the Indian Act of 1876. It gives all formally reported information about every person's birthdate, date of death, marriage, children's names and their birthdates, transfers to other registration numbers or Bands, and any other status changes that have been formally registered with the Department of Indian Affairs.

Federal control over Band membership occurred with the implementation of the Indian Act and other legislation. In a book titled Indian Acts and Amendments, Sharon Venne (1981) discusses changes in treatment of Band membership through its various revisions. In 1886, the Superintendent General of Indian Affairs could determine, from time to time, who was or who was not a member of any Band of Indians; and the decision of the Superintendent General was final. In the 1906 and 1927 versions of the Act, the Superintendent General was still in charge of determining Band membership. In the 1951 version of the Indian Act the determination of Band membership began to become more complex. For example, sections and subsections of the Act were now being used to determine Band membership. (Government of Canada, 1990a). Also, rules and regulations

governing Band membership began to incorporate items such as: the double mother rule, whereby permanent Indian status was predicated upon the status of one's mother and grandmother as well as exclusion of illegitimate children (children born out of wedlock), and transfer of Band membership. The Indian Act then supplanted the power of the Superintendent General in determining Band membership. Below is a brief outline of selected major changes to the Indian Act dealing with changes to Band membership as drawn from Indian Acts and Amendments 1868 - 1975, An Indexed Collection (Venne, 1981).

Chapter 18, Section 86 (1) of the Indian Act of 1876 states an Indian may become enfranchised for these reasons:

Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law as an Advocate or as a Barrister or Counselor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel, shall ipso facto become and be enfranchised under this Act.

1886 Chapter 43, Section 140 stipulates:

When by a majority vote of a Band, or the council of a Band, an Indian of one Band is admitted into membership in another Band, and his admission thereunto is assented to by the Superintendent General ... may cause to be deducted from the capital of the Band of which such Indian was formerly a member his per capita share of such capital and place the same to the credit of the capital of the Band into membership in which he has been admitted in the manner aforesaid (Government of Canada, 1990).

Chapter 33, Section 1 of the Indian Act of 1887 gives final authority to the Superintendent General who will determine who or who is not a member of any Band. His decision is final.

Chapter 81, Section 18 of the Indian Act of 1906 still gave the Superintendent General jurisdictional powers, except now, appeals to the Governor in Council may be made (Government of Canada, 1990).

Though this is not an exhaustive account of how the Indian Act has historically dealt with Band membership, it provides a glimpse into the powers that the Indian Act had over Plains Cree people's lives in particular and Indian peoples lives, their status, their identity, and over their membership in Indian Bands.

In 1985, the issue of Band membership greatly changed for Indian people with the introduction of '*Bill C-31.*' The amendment to the Indian Act known as '*Bill C-31*' of 1985 did allow Indian Bands more latitude in determining Band membership. Section 10 (10) of the Indian Act states, a Band may assume control over its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the Band has given appropriate notice of its intention to assume control of its own membership, a majority of electors of the Band gives its consent to the Band's control of its membership (Government of Canada, 1989).

In 1985, Bands were given two years to formulate their membership codes. If they failed to do so during this period, the provisions of the 1985 Indian Act stipulated that until such time as a Band develops its own membership code in accordance with section 10 of the Indian Act, all those who are reinstated under '*Bill C-31*' would be eligible for Band membership and that Band membership would continue to follow automatically from Indian status. In other words, all Indian Bands that have not developed membership codes

are obliged by default to accept as members all reinstatementees under 'Bill C-31' until such time as they develop their own codes. In addition, Band powers with respect to membership determination are only 'forward looking' from the time they develop their own membership codes; that is, they cannot remove from Band membership anyone who acquired the right of membership by virtue of achieving Indian status before the Band developed its membership code.

Indian cultural integrity and viability may be best served when Band membership is defined by cultural criteria. Representations of such criterion were proposed by Ernest Benedict, spokesman for the standing committee, when he says: "accept the idea of communality, learn the language, respect the customs, have reverence for the spiritual goals, be of good character and be committed to the betterment of the community" (Government of Canada, 1982:25). One does not need to be a 'biological Indian' to uphold these values. Such a culturally based system of membership determination would eliminate the confusing and factionalizing system that classifies Indians into 'regular Indians' by blood quantum or descent only.

Ironically, while the amendments to the Indian Act were designed to correct past injustices, they have imposed a new rule that limits an Indian from marrying a non-Indian without jeopardizing Indian status for future generations. As previously stated, after 1985, the children of reinstated women could only acquire conditional entitlement to Band membership. According to Tingley:

The amendments to the Indian Act do not give status to second generation descendants unless both parents have Indian status in accordance with Section 6(2) of the Indian Act, or at least one parent has Indian status under Section 6(1) of the amended Act. It is argued that residual discrimination still exists because of this second generation cut-off ... [and] there are strong concerns among Indian people that in eliminating forms of discrimination, the amendments [to the Indian Act] had introduced others, including residual sex discrimination (Tingley, 1993:3).

Because of sections 6(1) and 6(2), and the fact that there are so many rules in regards to marriage, it is conceivable that Bill C-31 may culminate in the termination of Status Indians under the Indian Act.

Boldt says:

According to traditional practice, ancestral legacy, including tangibles

such as, use of land and intangibles such as Self-government, is a communal birthright that is willed to all Indians, including future generations. Status Indians have a legal claim to ancestral legacy because the Canadian government has so decreed through the Indian Act, and section of the Canada Act. According to ancient custom, all Indians have a moral and spiritual claim to their ancestral legacy. The intent of the chiefs who marked the treaties was not to benefit a select group of Indian Act Indians, but to fulfill their obligation by negotiating an arrangement that would ensure the survival and well-being of Indians for all time to come (Boldt, 1993:41).

Some Indians feel that Band membership is more important than any other element of their lives. This is illustrated in a study of 'Bill C-31' (Desjarlais, 1995), which found that many Indian women, who lost Indian status through enfranchisement, felt that regaining Band membership would confirm their worth as Indian people. Perhaps some Indian people look at Band membership as the basis of their identity; others may see the economic benefits of becoming Band members. A supposition can be made that for many Indian people, Band membership means the right to identify with a particular community and the right to share that

community's way of life, its resources and its future. Membership, then, is essential to these individuals, as it means the right to participate in the collective decisions of a Band, decisions that can affect their daily lives.

In the most contemporary work on Band membership, Entitlement to Indian Status and Membership Codes in Canada Larry Gilbert (1996) provides insight on entitlement from the perspective of Canadian law. He also deals with the question of who is entitled to be granted Aboriginal status and who can be registered under the Indian Act as an Indian. The implications and ramifications of registration under the Indian Act as well as the issue of Band membership are explored in this chapter.

Though Gilbert's book is useful from a legal perspective, it fails to address the issues of Band membership at a grass roots level. However, it does illuminate the complexities of Band membership. Gilbert does so when he says:

In the eleven years since the 1985 amendments were enacted, there have been few court decisions about the membership rules themselves... whether the quantum of settlement moneys could be increased to reflect an increase in First nation members through the operation of Bill C-

31; whether persons who obtained First Nation membership pursuant to Bill C-31 are entitled to First Nation per capita revenue distributions; whether certain sections of the Indian Act and the Indian Act Band Election Regulations contravene sections 15, 2(d) and 7 of the Canadian Charter of Rights and Freedoms because they allow only those First Nation members who are ordinarily resident on the reserve to vote in First nation elections; whether the children of reinstated members are entitled to attend First Nation-operated school; whether a First Nation discriminates against Indian women on the basis of sex contrary to sections 3 and 5 of the Canadian Human Rights Act because the women who were reinstated to First Nation membership pursuant to the 1985 amendments were denied hunting permits, the right to sit on the Membership Code Committee, housing and language courses based on a moratorium on the provision of services to any persons reinstated or added to the list pursuant to the 1985 amendments (Gilbert, 1996:205-206).

Gilbert also points out inherent dangers of Band membership as it relates to the Indian Act and those bands that are not ready to implement Band membership codes that deal fairly with membership.

Women and the Indian Act

An issue, which was not addressed in the 1951 version of the Indian Act, was the inequity between Indian men and

Indian women. The Act, according to some, was responsible for the beginning of this inequity. Joyce Green suggests that the Indian Act is in need of change when she says, "That the Indian Act is discriminatory is incontestable" (Green, 1985:83). Others argue that changes would become necessary because of the pressure being put on the federal government. In a presentation given to the Standing Committee on Aboriginal Affairs the following was stated:

An Indian woman lost her Indian status in 1953 when she married a non-Indian. In 1956 her brother married a non-Indian as well but his status was not taken. This Indian woman had two children. Both of her children married non-Indians. This Indian woman has six grandchildren, none of who have Indian status or who are eligible for Indian status. This woman's brother's children have married non-Indians. The brother has nine grandchildren, all of whom have Indian status (Government of Canada, 1982:36).

The restricted ability of Indian women to pass on Indian status and Band membership to their children and grandchildren was seen to be overtly discriminatory by this women's group. A change was coming to the Indian Act that would have a profound effect on all Indian people.

An amendment to the Indian Act (Bill C-31) was introduced in 1985. The Bill's purpose was to attempt to eliminate past injustices to Indian people, primarily Indian women. It sought to rectify instances where status Indian people were enfranchised by giving people the opportunity to re-apply for status and to invite the first generation offspring of those people to also apply for Indian status.

As has been mentioned, prior to 1985 status Indian women who married non-status men lost their Indian status, while status Indian men who married non-status women retained their status.

In the Indian Act of 1869 an Indian woman who married a non-Indian now lost status on marriage, and the children of that marriage were not entitled to status. Upon marriage to an Indian man, an Indian woman became a member of her husband's Band. In the Indian Act of 1951, when the name of an Indian male was added or deleted from a Band or the General list, the names of his wife and minor children were also added or deleted. Illegitimate children of Indian males could be registered as status Indians. The illegitimate child of an Indian woman was registered as an

Indian unless it was established that the father was not an Indian.

In more recent times, disenfranchised Indian women have struggled for their recognition as members of the Indian community. This is evidenced through the legal case of Sandra Lovelace. This court case, along with The Charter of Rights and Freedoms 1987, has been instrumental in forcing the Canadian Government to introduce 'Bill C-31.' This is addressed in the following article:

In her court case Lovelace, a Maliseet Indian, charged that Canada was in violation of sections of the Canadian Covenant of Civil and Political Rights, and Economic, Social and Cultural Rights, insofar as Section 12(1) (b) of the Indian Act discriminated against her as an Indian woman. It discriminated against Indian women because a man who marries a non-Indian woman does not lose his status; she therefore claimed that the Act discriminates on the basis of sex and is thus contrary to the Covenant. Because Lovelace's marriage had preceded Canada's ratification of the Covenant, International law is not deemed to be retroactive against her on the basis of her marriage. However, it was deemed entirely possible for a status woman who married subsequent to ratification to take the case to the United Nations Human Rights Commission, and to succeed on those grounds (Canadian Native Law Reporter, 1982:1-15).

The article goes on to say:

Under Article 2 of the Covenant, Canada undertook the responsibility to ensure rights recognized in that document would protect all individuals within its jurisdiction, without distinction of any kind, including distinction on the basis of sex (Canadian Native Law Reporter, 1982:14).

The United Nations Human Rights Committee considered that Sandra Lovelace's loss of Indian status and denial to her of a residence on her former reserve was in violation of her human rights. The Committee found that,

Though she is not an Indian under the Indian Act, Sandra Lovelace is ethnically an Indian and entitled to be regarded as belonging to a minority within Article 27 of the Covenant. It found further, that her right to access to her native culture and language in community with other members of her group had been interfered with by the loss of her right to live on the Tobique Reserve, since there is no other place where such a community exists (Canadian Native Law Reporter, 1982:2).

Legal enactments within the Indian Act from 1869 to 1951 provided that an Indian woman who married a non-Indian man would lose her Indian status. That justification was

not something that Sandra Lovelace was going to accept, and therefore, she launched her court action. She used the Canadian Charter of Rights and Freedoms in her case to challenge the Indian Act. This action was a major impetus for the development of 'Bill C-31' as an attempt to end sexual discrimination in the Indian Act.

The article goes on to say:

A Government Commission supported Sandra Lovelace and held that Canada had violated Section 27 of the Covenant on Civil and Political Rights, in that she was denied the right, in community with other members of her ethnic and religious group, to enjoy her culture, profess and practice her religion, and use her language. Because Sandra Lovelace's marriage had preceded Canada's ratification of the Covenant, and because International law is not deemed retroactive, the Commission could not consider whether Section 12 (10) (b) discriminated against her based on her marriage. However, it was deemed entirely possible for a status woman who marries subsequent to ratification of take the case to the United Nations Human Rights Commission, and to succeed on those grounds (Canadian Native Law Reporter, 1982:7).

Sandra Lovelace contended that not only did she lose her Indian status, but also her right to reside among her

people. The following gives more background to Sandra Lovelace's residence on her home reserve:

Since her marriage and following her divorce, Mrs. Lovelace has, from time to time, lived on the reserve in the home of her parents, and the Band Council has made no move to prevent her from doing so. However, Mrs. Lovelace wishes to live permanently on the reserve and to obtain a new house. To do so, she has to apply to the Band Council. Housing on reserves is provided with money set aside by Parliament for the benefit of registered Indians. The Council has not agreed to provide Mrs. Lovelace with a new home. It considers that in the provision of such housing priority is to be given to registered Indians (Canadian Native Law Reporter, 1982:9).

Lovelace's pursuits in court have been instrumental in the subsequent change to the Indian Act (Bill C-31).

Bill C-31 also allowed Indian communities to set their own membership criteria and has raised one of the most significant and problematic issues in Indians' experience of dealing with their own identity: how to define the criteria of membership within their own communities.

Under Bill C-31 Indian Band membership eligibility comes from one of the following groups:

A person on the membership list immediately prior to the passing of Bill C-31 April 17, 1985

A person entitled to be on the membership list immediately prior to April 17, 1985.

A person born on or after April 17, 1985 of natural parents who were or are both existing members of the Band.

A person born on or after April 17, 1985 whose mother is registered on the Band membership list prior to April 17, 1985 and whose father is a member of another tribe indigenous to North America.

An adopted child is entitled to apply for Band membership in this Band. It does not specify if the child has to be Indian or not to be eligible (Government of Canada, 1989: 5-12).

Those who may apply for membership include the following:

1. A person born of a parent who was or is entered on the membership list of the Band.

2. A woman who was originally a Band member but whose name was removed from the membership list because of marriage to a member of another Band indigenous to North America and who subsequently divorces the male person and provides satisfactory proof thereof to the membership committee.

3. A woman of another Band who marries a person who is registered on the Band list or is entitled to be registered (Government of Canada 1985: 5-12).

Those who are not eligible to apply for Band membership include the following:

1. A woman who is a member of another Band or otherwise marries
2. A person who is not registered on the Band membership list nor is entitled to be registered as such.
3. A person who is a member of the Band but voluntarily transfers his membership to another Band or who otherwise renounces his membership in the Band.
4. A person who is a child of a person who is defined above and who was born after the events referred to above (Government of Canada, 1985:5-12).

Because of 'Bill C-31,' Indian Bands can now choose to, at least with regard to membership, begin to build the kind of communities they want within some constraints. For example, Bands can use their new authority to create membership criteria that may be inclusive or exclusive. This development places some Indian communities in a position to be very careful about who they allow into Band membership.

Conclusion

For Plains Cree Indians in Saskatchewan specifically, and Canada generally, the Indian Act has been the determinant when it comes to issues such as: legal Indian identity, Band membership, and residence. Since its inception, the Indian Act has gone through many changes. Perhaps, the two most profound changes occurred in 1951 and 1985. Before 1951, Status Indian people were automatically Band members by birth, or for women, by marriage into an Indian Band. After 1951, it was no longer the case that a status Indian was automatically a Band member. In 1985, the introduction of Bill C-31 marked a great change in Indian women being able to apply for reinstatement upon losing their Indian Status through the 'enfranchisement' process. Indian Bands were also given the option of developing Band membership codes which put the responsibility of determining Band membership in their hands.

Since its inception in 1876, the Indian Act has been a mechanism of control used by the federal government on Indian people. It was arbitrarily imposed on Indian people

without any input from those people. It has undergone many changes since 1876.

Though it has had a profound impact on Plains Cree people in all areas, three areas have been most affected. First, the Indian Act has sought to control the residence of the Plains Cree. With its unilateral power, the Indian Act could keep Plains Cree people on reserves, and because it could keep them on reserves, it could have much more of an influence on them. Second, it began to impact the Plains Cree people in their spiritual practices. Section 27 of the Indian Act outlawed the spiritual ceremonial practices of the Plains Cree people, making it illegal to be involved in their own religious beliefs and removing spiritual leaders who were often political leaders in their societies. Third, the Indian Act has been successful in deciding membership among the Plains Cree. It has taken the decision making from the Plains Cree and has put it into the hands of the government - a government who have not had the survival of Indian people as its primary objective. It has even gone as far as removing some Indian people's right to call themselves Status Indians and has separated those people

from their communities that it decided were not Indians any more. However, with Bill C-31 Indian people are gaining control over Band membership and therefore more control over their communities.

The following chapter deals with Band membership Codes and information gathered from Band community profiles and interviews of status Indian people who have gained their status through the Amended Indian Act of 1985 in order to gather some concerns and opinions of individuals who have had their Indian status reinstated, and who have applied for membership into Indian Bands.

An analysis of membership codes of four Plains Cree Indian Bands is presented to juxtapose modern contemporary Band membership codes with that of more traditional Plains Cree membership.

Chapter IV

Band Membership Codes

Introduction

This chapter analyzes four Band Membership Codes of four Cree Indian Bands in Saskatchewan and reports on the results of the interviews. A discussion of strengths and weaknesses of these four Band codes is presented with reference to conditions within these four communities as shown in the community profiles (Appendix Two). Comparative analysis of these four Band codes is carried out to determine differences and similarities between codes and to see how they address membership and integration of new members into the community.

The four Band codes (see Table One) were analyzed in reference to the following questions:

1. What is the male and female breakdown of the Band's population?
2. What percentage of the Band members reside on-reserve?
3. How is the Band membership committee selected?
4. Is there a procedure to test new Band member's cultural knowledge?

5. What appeal procedures are in place to applicants denied membership?
6. Is Blood or Descent used as a criterion of Band membership?
7. Do applicants for Band membership have a probation period before becoming full Band members?
8. Are new Band members allowed to participate in the Band's elections?
9. Are new Band members allowed to share in any Band monetary or business investments?
10. Are there residency and housing provisions within the codes?

These questions were selected because of their direct relationship to Band membership. For instance, Band membership, as it involves residence, might provide the individual with the opportunity to participate in the community political events including voting in Band elections, and participating in the social fabric of the community.

Those Band codes selected for analysis are found in Appendix One and are numbered one through four. The information in the four Community Profiles was gathered through research of government statistics and existing Band membership information. Table One provides a synthesis of

membership criteria for the four membership codes found in Appendix One and information garnered from profiling the four communities. Finally, Table One provides some data on Band Codes and Community Profiles for the purpose of presenting some statistical information of the communities in this study.

Table One: Band Codes/ Community Profiles

	Band #1		Band #2		Band #3		Band #4	
Population	M 51%	F 49%	M 47%	F 53%	M 46%	F 54%	M 50%	F 50%
Reserve Residence	On 66%	Off 34%	On 36%	Off 64%	On 49%	Off 51%	On 72%	Off 28%
Committee	Appointed		Elected		Appointed		Unclear	
Cultural Knowledge Testing	Yes		Yes		Unclear		Unclear	
Appeal Process	No		Yes		No		Unclear	
Blood/ Descent Criterion	Yes		Unclear		Unclear		Unclear	
Probation Period	No		Yes		No		Unclear	

Band Membership Codes

There are strengths and weaknesses in the four sample Band membership codes. Some of the existing Band codes use government documents to point out the right for Indian people to determine their own membership. The historical documents are effectively used by some of these Bands, and the interpretation of these documents is a strong indication that these Bands have had input in developing their membership codes. However, they have been developed following the guidelines and criteria as set out by the Department of Indian and Northern Affairs Canada (Government of Canada, 1990b).

Blood and Residence

There is one Band membership code that uses blood quantum as membership criteria. By using blood quantum as a membership criterion, these Bands have followed criteria found in the Indian Act in defining Indian status. The consequence has been a denial of Band membership for some applicants based on biological inheritance. For others, the criterion fails to take into consideration those people who live in urban centres. In traditional societies Band

membership was not contingent on geographical location, but was contingent upon consanguinal and affinal ties as well as acceptance into membership no matter where a person resided.

Committees

Bands developing their membership codes formed membership committees. The way the Membership Committees were chosen in some Bands appears to be on the traditional consensus model in which input from the community residents is considered. However, in some cases the membership committee also functioned as the appeal committee. The potential for a successful appeal by a rejected applicant is remote as it is unlikely that these people would reverse their own decisions in the appeal process.

Housing and Benefits

On-reserve housing was not addressed in any of the codes. Being granted Band membership does not guarantee access to on-reserve housing. Even those members who have been viewed as being marginal for membership by the Chief and Council, may be denied housing accorded those members deemed to be in good standing. In some cases availability

of services and housing or the lack thereof, was the primary impetus in approving or denying membership.

Education

Another area not covered in any of the codes is educational funding. Those status Indians deemed not to be eligible for Band membership would not be funded by the Band to attend an educational institution. Rather, as status Indians without Band affiliation, their educational support is under the control of the Department of Indian Affairs. Hence, if Indian Affairs refused to fund these individuals due to a cap on educational funding, then those individuals would not have any access to educational support. Yet, it may be argued that funding for education for status Indians was promised in the treaties through the "schoolhouse" provision. This provision is found in Treaty Six where it states:

And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it (Duhamel, 1964:3).

Bill C-31' registrants first began to apply for post-secondary education funding in 1987. At that time, the funding was in place for pre-existing Band members. However, a separate application for funding had to be submitted by new Band members. A consequence was that funding for original Band members and for new Band members was kept separately. Today, however, Bands, or education authorities, are given a lump sum of money to finance both new Band members via 'Bill C-31' and original Band members (Government of Canada, 1991). The problems reported by Indian Bands to INAC were primarily related to the administration of the post-secondary program rather than from a lack of funding (Government of Canada, 1990b).

Monies and Investments

Community One Profile does not specifically mention whether new Band members will derive benefit from the existing business enterprises. Community Two Profile also does not specifically address whether new Band members will share in the fruits of the present businesses. Community Three Profile also fails to deal with the rights of new Band members to share in the Band's economic prosperity. This

profile reveals no mention of how new Band members may or may not share in the economic interests of the Band.

Land Claims

None of the Community Profiles specifically mention the status of outstanding land claims.

Funding

Finally, none of the Community Profiles specifically mentions the access to, and the spending of, government funding in their codes.

Appeals

The majority of the Band membership codes examined are exclusive in nature. It would seem that these codes fail to take into consideration that traditionally, Indian Bands were inclusive in their rules for membership. Some of the Band codes address the notion that an individual should be able to contribute to the betterment of the Band. However, they do not indicate what this criterion means. Such a subjective criterion may lead to arbitrary rulings on application for membership or on appeal. Furthermore, the appeal mechanisms in the codes that include such a non-defined criterion may fail to provide proper recourse for

those new applicants who feel that they are excluded in an unfair manner from attaining Band membership.

Discussion

Indian leaders and Band Councils may feel obliged to provide security to their people under conditions of limited resources by limiting membership. The determination of who are Indian people appears to be a challenging question. Those people who are applying for Indian status need a system of fairness and equity; yet, Indian governments might be able to determine membership without interference from other jurisdictions. An equitable membership code may be one that considers the rights; privileges and obligations of Indian citizens as Band members as coexisting with their rights as Canadian citizens, and where applicable as treaty Indians.

Equitable membership codes may also consider that the rights that are found in the treaties are not restricted to the reservations, but are portable and could be recognized by all Indian governments. Thus, the individual and collective rights found in the treaties may be accorded to Indian people regardless of where they reside. Aboriginal

and treaty rights are collective and are applicable among all Treaty Indian people; thus, membership might consider both Aboriginal and Treaty rights for Treaty Indians.

It is within the right of Indian Bands, under Bill C-31, to admit into membership even those not recognized as being Indian according to the Indian Act. Indian leaders may recognize that historically the Indian Act was not implemented for the betterment of Indian people, thus, to use its dictums against their own people is self-defeating. Because Bands do not need to define 'Indianess' based on the criteria of the Indian Act, they are free to consider all those who lost Indian status unfairly, and those who want to live in reserve communities. The political thoughts and aspirations of Indian leaders might be to protect the rights of their members. If Band codes are designed to entrench the rights of their members, the result may be stronger and self-sufficient Indian nations. If Band codes are designed by the precepts of the Indian Act, than Indian people will not have realized their potential as those who possess a strong past and can possess a strong future based on

inclusion. These issues may be best addressed when Indian people are directly consulted.

Interviews

As described in Chapter Two, two sets of interviews were conducted, the first regarding respondents' views on codes developed by their Bands, the second regarding respondents' own experience with Band membership codes. Table Two: Interview One is a summary of 12 interviews with individuals who have been re-instated as status Indians under Bill C-31 and who have applied for Band membership and existing Band members. Table Two: Interview One from each respondent, gender and residence as on/off reserve. The third column refers to whether a Band code is in place on their reserve. The fourth column indicates the respondent's subjective response to the degree of fairness of the code. The fifth column indicates whether there is a level of community involvement in screening Band membership applications. The sixth column indicates how aware the community members are of their Band membership code. The seventh column reports the feelings of the respondents on acceptance and relationships. Two separate interviews were

conducted of individuals who had applied and acquired Band membership under Bill C-31. The second round (see Interview Two) interviews was modified according to the results of the first interviews.

Table Two: Interview One

Respon- dent	Gender (M/F)	Residence (On/Off)	Membership Code (Yes/No)	Criteria (Rigid, Fair, Lax)	Community Involvement (Yes, No, Maybe)	Community Awareness (Fully, Some- what, Not Aware)	Old/New Relations (Good, Strained)
#1	F	On	Yes	Lax	Yes	Somewhat	Good
#2	F	Off	Yes	Fair Lax	Yes	Not Aware	Good
#3	M	On	Yes	Fair	Maybe	Not Aware	Good
#4	M	Off	Yes	Lax	Maybe	Not Aware	Strained
#5	M	On	Yes	Lax	No	Not Aware	Strained
#6	F	Off	No	Fair	Yes	Fully	Good
#7	F	On	Yes	N/A	Maybe	N/A	N/A
#8	M	On	No	N/A	N/A	N/A	Strained
#9	F	On	Yes	Lax	No	Somewhat	Good
#10	F	On	Yes	Fair	Yes	Somewhat	Good
#11	M	Off	Yes	Fair	Maybe	N/A	Good
#12	F	On	Yes	Rigid	No	Not Aware	Strained

Of those people who took part in the study's interviews two of the respondents indicated that their Bands had not developed their own membership code. One felt that her Band was receptive to new Band members, while the other respondent speculated that the reason that his Band did not have its own Band membership codes is because, "New Band members are not welcome on our Band and I don't see that changing in the near future." The following gives a breakdown of Interview information:

<u>Male</u>		<u>Female</u>	—
Five		Seven	
<u>On-reserve</u>		<u>Off-reserve</u>	
Nine		Three	
<u>On-reserve Females</u>		<u>Off-reserve Females</u>	
Five		Two	
<u>On-reserve Males</u>		<u>Off-reserve Males</u>	
Three		Two	
<u>On-reserve Females</u>		<u>Off-reserve Females</u>	
Ages - 20-30	Zero	Ages - 20-30	One
- 30-40	Four	- 30-40	One
- 40-50	One	- 40-50	Zero

On-reserve Males

Ages - 20-30 Three
 - 30-40 Zero
 - 40-50 Zero

Off-reserve Males

Ages - 20-30 One
 - 30-40 Zero
 - 40-50 One

Those Individuals In Favour Of Admitting New Band

Members

Seven

Those Individuals Not In Favour Of Admitting New Band

Members

Five

The second set of interviews (Table Three: Interview Two) dealt with Indian people who had discussed their own experiences in the area of Band membership and how this had affected their lives. It is not so much an analysis of how their Bands deal with Band membership, as were the Community Profiles and the first set of interviews, but rather deals with their own private experiences with membership.

The following data is a breakdown on the second set of interviews:

Table Three: Interview Two

When Applied For Indian Status	1985 - Two 1988 - Two 1989 - Two Status From Birth - Six
When Accepted into Band Membership	Immediately - Five Several Months Later - One Not Applicable - Six
Applied For Housing	Yes - Five No - One Not Applicable - Six
Received Housing	Yes - Three No - Two Not Applicable - Seven
Children Attend School	Yes - Five No - Seven
Children Attend Band School	Yes - Five Not Applicable - Seven
Last Voted in Band Elections	Last Election - Seven Several Years Ago - One Does Not Vote - Four
Who Should Determine New Band Membership	Indian People - Six Indian Leaders - Two Refrained - Two Indian People and Indian Leaders - One Independent Committee - One
What Should new Band Members Be Entitled To	Same As Existing Band Members - Four Not Sure - One Refrained - Seven
How Should Band Membership Codes Be Constructed	Simple and Straight Forward - Three Follow Canada's Human Rights Code - One Reflect Band Elder's Philosophy - One Reflect Will Of Existing Band Members - One Refrained - Six
Who Should Develop Future Band Membership Codes?	Indian Community and Indian Leaders - Two Indian Community - Two Existing Band Members and Committee - One Existing Band Members and Indian Politicians - One Refrained - Six

Interview Two Discussion

The second round of interviews revealed that for the six that applied for Indian status, five were accepted into Band membership immediately while the remaining one was admitted into membership several months later. For those who were accepted into Band membership immediately, they felt very much a part of their community and got involved in community activities. The respondent who was admitted after a delay was reluctant to get involved in community activities because he/she felt slighted by the waiting period. One had this to say about having to apply for membership:

Indian leaders need only look at history to see that membership, whether in a Band or not, is precious; only those of us who were stripped of our Indian status and Band membership can truly know the pain of being outside of our communities.

In the case of respondent five he saw his Band letting in too many new members which is expressed in this quote, "These people have never lived here before, have never wanted to live here, and now they are coming out of the wood work". Respondent five is not alone in his assertion, five out of twelve respondents evidenced the problems with the

admission of new Band members. Perhaps, they can only see the negative aspects of additional Band members. Respondent Eight asserts that his Band is against the admission of new Band membership when he says: " My Band is absolutely against the admission of new Band members." The reason he cites is that his Band is economically prosperous and therefore, does not want to share that prosperity with new members. Another respondent says: " My Band will let anyone become a Band member; all they have to do is apply." Her rationale for being opposed to the admission of new Band membership was based on the belief that community needs should come before individual needs. That belief is not unlike traditional Band membership that puts the community ahead of the individual. Respondent Ten believes that not all of the existing Band membership is in favour of admitting new Band members because of economic reasons. She cites that they fear that outstanding land claims may be jeopardized if new Band members are allowed into the Band.

Of the five who applied for on reserve housing, three received it, while two did not. One of those who was denied on reserve housing was not concerned because he resided in

an off reserve community, and would continue off reserve residence whether he was granted on reserve housing or not. One respondent who had resided on the reserve since birth could not relate to those who felt on the outside of their community. However, she did acknowledge that:

Those who are admitted into Band membership should also be entitled to all benefits accorded to existing Band membership... Otherwise, they are not Band members in the true sense.

Five respondents had children attending school: of those four children attending a Band school. While the majority of respondents did not see attending an on reserve school as having significance, one respondent said this:

I feel that children who do attend the on reserve school are well grounded in their community's tradition and culture... those who are well grounded in their community's tradition and culture will make a tremendous contribution to the community. That way, everyone benefits.

In the area of voting in Band elections specifically and the political arena in general, there were some strong opinions among the respondent. One such respondent had this to say about new Band members being involved in the Band elections:

Those new Band members that are unwilling to participate in the community, including political involvement, should be asked to commit themselves to the community. If they do not, they should be asked to leave.

Perhaps, the surprising aspect of this comment is that this individual has regained his Indian status and subsequent Band membership through Bill C-31.

When asked about who should be responsible for determining Band membership, six of the respondents felt that Indian people should ultimately be responsible for membership. Two thought that the responsibility of determining Band membership should be in the hands of Indian leaders. One felt that a committee comprised of Indians and non-Indians should be struck to decide Band membership. One respondent felt that, "It is the Indian leaders who must go through a testing period rather than potential Band members". Another respondent said that, "Band membership should be decided by an independent committee that has nothing to lose or gain from the admission of new Band members". One respondent mentioned that: "For our Bands to be strong the new Band members must be encouraged to

participate in the political and social process of their Band".

Opinions varied from respondent to respondent on how the Band membership codes should be structured and to what new Band members should be entitled. A respondent who was in favour of new Band members having the same access to benefits as existing Band members, had the following to say:

Those new Band members, who show commitment, should be entitled to a house, entitled to vote, and entitled to and land that the Band may procure in the future.

Another respondent said: "New Band members should have access to housing, the right to vote, and should be given the opportunity to be active participants in the community". Yet another respondent said: "They have to be accorded all rights and benefits, otherwise they are not Band members in the true sense". Seven of the twelve respondents refrained from expressing a view on this issue. One respondent was not sure as to what rights and benefits should be accorded to new Band members.

Perhaps, more than any other aspect of the interviews, the questions of who should develop future Band membership

codes, and how should Band membership codes be structured, should have produced the quite varied positions among the participants. That is because this issue is the most significant because it is the final determinant of Band membership. Yet, six refrained from answering these questions. This may be indicative of these Band members being ignorant of the Band membership process. It may also mean that those Bands who want to adopt their own Band membership codes are not considering the input of Band members.

Among those who did not respond, one participant said:

Those codes are only legal jargon; it is the spiritual ways of Indians that will allow us to be a community again.

Another respondent said:

Indian leaders need only look at our history to see that membership, whether in a Band or not, is precious.

Still another stated:

Band elders should be consulted as to how to design future Band membership codes, but I also believe that their political roles should be very limited.

Another respondent believed that,

Future Band membership codes must include the will of those existing Band members, otherwise the codes become dictatorial... 'Indian people have had quite enough of that.'

It becomes apparent that these respondents, at least, have very strong views on the subject of Band membership codes. Also, it would appear that there exists among some a desire to see Band membership codes that are consistent with values displayed by traditional membership practices. To be sure, there are many components of membership codes that contemporary Band members must consider, yet, according to some respondents in this study, the desire appears to be to return to adopt values that give a voice to all in terms of membership.

Finally, it must be said that issues of Band membership will continue into the future. Band membership is not necessarily completed upon a person gaining Band membership into a particular community. Ideally, Band membership carries with it a person having access to the rights and benefits to membership. Surely, the rights of Band membership may include voting privileges, rights to voting, community access, and even housing. The latter is dealt

with in a recent decision involving a woman seeking housing and a Band who is trying to refuse her access to housing.

On July 24, 1995 a hearing was held under the Human Rights Tribunal in Regina, Saskatchewan. The case involved Sarah Laslo (the complainant) and The Gordon Band Council (the respondent) in a dispute about housing. Mrs. Laslo married a man who was considered non-Indian according to the Indian Act and subsequently lost her Indian status. Mrs. Laslo applied for reinstatement in 1985 and was reinstated as a member of the Gordon Band that year. She then applied for housing in writing and was denied housing by the Band. She then applied for housing again in writing and was refused for the second time. After receiving the second refusal Mrs. Laslo took her case to the Canadian Human Rights. The following is the decision passed down by that Tribunal.

Under the section FINDINGS AND DECISION the Human Rights Tribunal handed down their findings and the subsequent overturning of their decision by the Human Rights Commission:

As noted in our "Conclusions on the Question of a Prima Facie Case against the Respondent" we found that Gordon

Band Council discriminated against Mrs. Laslo by denying her residential accommodation on grounds prohibited by the Canadian Human Rights Act s. 6, that is, because of her sex, her marital status and the race of her husband. However, with respect to the "Jurisdiction of the Tribunal", we have found that decisions made by the Gordon Band Council not to allot housing on the reserve to Mrs. Laslo are provided for by s. 20 of the Indian Act. That is, they were made pursuant to that section, and accordingly are sufficient to invoke s. 67 of the Canadian Human Rights Act, thereby excluding application of the latter Act to those decisions. As a result, s. 67 of the Canadian Human Rights Act precludes this Tribunal from applying to those decisions, the requirements for non-discrimination set out in s. 6 of the Act (Canadian Human Rights Reporter, 1996:16).

The cultural impacts of Bill C-31 are an important concern to some Indian people. Evidence heard by the Standing Committee on Aboriginal Affairs (Oneil, 1988) suggests that some of the socio-economic impacts related to Bill C-31 are already apparent. These impacts are in the areas of post-secondary education funding, housing, health benefits, and land. Impacts are only beginning to be felt on elementary education and community health and social services. As the number of applicants for reinstatement and

Band membership increase, the demands of Band governments and funding support will increase.

The report of the Standing Committee on Aboriginal Affairs indicated other expressed concerns from some Indian Band leaders. Some Indian groups indicated that the reinstated Indians are exerting additional pressure on an already under-funded system of health care services and benefits. Also, some Indian groups said that the reinstated population had also increased the demands on Community Health Representatives, while requests for additional Representatives were denied. The committee also heard from one Indian group that the Indian Affairs budget for medical transportation needs to be augmented to allow for the population increase. Finally, the committee was told that the Amended Indian Act was detrimental to Indian people (Oneil, 1988). It is detrimental because it increases the number of Indian people to look after while the increase of funding is not commensurate. Yet, these points of view were not the only ones present at this hearing Indian women spoke as well.

The last issue in the report came in the area of housing. There were also two sides to this issue. Some Indian women's groups indicated to the committee that it was their understanding that those women who were reinstated, and planned to move back to their reserve, were promised separate housing funds; funds that many Indian women argued were never spent on their intended purpose. However, other Bands have welcomed reinstated women and their families and have even, in some cases, incurred additional deficits in their attempt to provide housing for these women. The committee was also told that the fact that the government has not provided additional land for the implementation of the amendment has caused some First Nations to turn away reinstated women and their families (Desjarlais, 1995).

Another opinion expressed was that the increase in the population of reserves associated with the return of reinstates and their families has created great pressure on reserve housing and land. Consequently, it was argued that, even though there did not exist sufficient funds to care for existing Indian people, the government was coercing them

into looking after this new group as well (Desjarlais, 1995).

Conclusion

Current membership criteria have been complicated by factors such as: private and community business, outstanding land claims, available housing, and government funding. These factors may affect the way particular Bands develop membership codes. Those Bands that have economic constraints may not want to add to their membership. Bands that do not have available housing may find it difficult to add to their numbers. Outstanding land claims and the subsequent uncertainty may further complicate membership decisions. Also, it is clear that some existing Band members and Band councils do not want to add new Band members because of social issues.

Many of the reinstated Indians are women. When the Indian Act forced women to enfranchise when marrying non-status men, many of these women chose to marry despite the resulting loss of status. It may not be the case that they were walking away from their Indian heritage so much as they were forced to choose between their prospective husbands and

their Indian communities. It may be, that in some cases, it was not the Indian women turning their back on the Indian community, but the Indian community turning its back on the Indian women.

Of those who were in favour of the admission of new Band members the following are some of the rationale for their opinions. One respondent thought that the admission of new Band members was good, but he doubted the federal government's commitment to the process. Another respondent, who advocated the admission of new Band members, viewed the injection of new Band members as being healthy for the community as a whole. One person viewed the admission of new Band members as a way of welcoming them back into the communities. Respondent Seven thought that by allowing new Band members, " We will only get stronger... we will only get more powerful when we increase our numbers."

One respondent who thought that her Band was opposed to the admission of new Band members said her Band was not rigorous enough when it comes to letting in new Band members: "Our Band will let anyone in who claims to be someone's relative." Still another thought that her Band

was too lenient when it came to admitting new Band members. She said: " My Band will let anyone become a Band member; all they have to do is apply." One respondent expressed disappointment that many new Band members only wanted to gain Band membership for their own selfish motives. Respondent Eight alluded to his Band being against the admission of new Band membership and went on to say:

People who are waiting to receive Band membership on their reserve should not hold their breath; they would be better off starting their own reserve in the city.

The interviews suggest that some Indian people and Indian communities differ in their views on Band membership. Some cite economic reasons for not admitting new Band members, while others believe that Indian communities will be strengthened by the admission of new Band members. Some Indian people and communities are opposed to the admission of new Band members while others are very emotional in their advocacy of new Band members. If the community profiles and interviews are reflective of attitudes of Plains Cree people in general, they imply divisions on the subject of the admission of new Band members.

Chapter V

Band Membership - Full Circle

There is evidence that Plains Cree people once had the authority to determine where they lived and where they hunted while respecting other Indian people's territory. They had control over who would be considered members of a Band.

With the Indian Act, the Canadian government asserted control over status Indian people. The Indian Act introduced its own measure of control and had many negative impacts on the Plains Cree. The Indian Act took away the Plains Cree's ability to govern their everyday lives. This included their authority to determine leadership, where they could reside, the ability to express their religious beliefs through ceremonies, and their ability to determine their own Band membership.

With the introduction of 'Bill C-31,' and the subsequent clause that allowed Bands to apply for their own Band membership codes, Plains Cree Indian Bands were again given the control over their own Band membership. These membership codes, though directed by the Department of

Indian and Northern Affairs Canada, are potentially a support for Plains Cree self-determination. The success or failure of Plains Cree Band membership codes may depend on a Band's readiness to implement membership codes that are inclusive and fair. The Bands are saddled with a tremendous responsibility complicated by the years of being subject to the dictates of the Indian Act and the Department of Indian Affairs.

Without exception, the Band Codes were replete with legal jargon and terminology that many Plains Cree Indian people might not comprehend. The majority of those interviewed would have preferred the Band membership codes of their Band to be as simple and as free of complicated language as possible.

Band Codes and interviewed participants were very similar in their ideas of responsibility of new Band members and to what new Band members should be entitled. Both sought to be fair towards new Band members while trying to balance fairness and availability of services such as housing.

Perhaps the most glaring difference between the Band Codes and the results of those interviewed was that of the involvement of INAC. It was clear that INAC was instrumental in either developing or assisting those Bands in developing their Band membership codes. Whereas, it was clear from those Plains Cree people interviewed that INAC's involvement in the development and subsequent administration of future Band membership codes was unwelcome. This gives insight into the schism that exists between Indian people and those in authority in Ottawa.

Contemporary Band membership is replete with complexities. Issues such as land claims, housing, education support, and other social programs have come to the fore. Some Indian communities do not want to add to their numbers for fear of overtaxing their community's infrastructure and budgets and thereby current quality of life. Yet, Bands who chose to avail themselves of the right to determine Band membership are restricted by INAC's membership criteria.

Some Indian communities resist admitting new Band members because they fear they will not be able to sustain

services, especially if there is a shortage of government funds. There is competition for government funding and consequently there is competition for housing in some Indian communities. However, Bands could increase their funding by increasing their number of members if funding were tied to membership.

Indian people have a measure of control over their future through the authority under the Amended Indian Act to control Band membership. In the past, Band membership was in the purview of the people. There was, of course, the obligation of new members to contribute to and integrate into the community. Up until the time of reserves, Bands were free to move within their territory according to their needs. Bands were able to make decisions about how they wanted to live, and they availed themselves of the power to control their membership.

When considering the interviews, it seems that those Plains Cree Indian people who were interviewed have things to say about Band membership. Though the participants did not necessarily agree with each other, it appears that some Plains Cree Indian people want to participate in the

development of future Band membership codes. If future Band membership codes neglect the input from those Plains Cree Band members who want to participate, they will perpetuate the belief that only Indian leaders and government officials know what is best for Plains Cree people. If that happens, then the past has taught us nothing.

Indian people have the opportunity to welcome people who need a community to care about them and to accept them into their lives. With the assumption of membership control, comes great authority and responsibility, and Indian people have the opportunity to create an avenue of membership that is equitable and inclusive, for to exclude without proper rationale, is tantamount to returning to the dictums of those federal government agents who's policy interests took precedence over the interest of all Indian people. This must never happen again.

Finally, Band membership has come full circle for Plains Cree people. Before the powerful control mechanism known as the Indian Act, Plains Cree people in this study were able to decide their own membership. While many factors for these Plains Cree people were considered as

membership criterion, it is equally true that their criterion was based on culture and circumstance. Simply put, if a person was able to contribute to the community and fit into the cultural framework of the community, he or she was admitted into membership. Again, this was not an exercise in measuring how much Indian blood that a person possessed. This was not an exercise as to how dark the person's skin colour was and how they could become darker to meet the criteria of physical appearance. Also, that person was not admitted into membership because he/she was necessarily Cree.

If Plains Cree and other status Indian people are to regain their autonomy and the authority to decide Band membership, it is incumbent upon them to implement a culturally appropriate membership code. However, this study also shows that no longer can these decisions be made by the few in positions of authority with little or no input from the people. To try to recapture the traditions of the past does not necessitate living in the past; it does mean that Plains Cree people would be wise to look to the past ways of

determining membership so that they can move into the future with equitable and inclusive membership codes.

In the end, the only ones who can determine membership for Plains Cree people are Plains Cree people. To accomplish this task, it would be prudent for their leaders to work with the people towards the support of all. If they do not at least attempt to engage in this exercise, the federal government, and its policies, will continue to make the choices for them.

Finally, the findings of this study reveal that further work in the area of Band membership among Plains Cree people needs to be done. Ideally, Plains Cree leaders and those they lead need to take an active role in pursuing future studies on this most important subject. By presenting the findings of this study, the author seeks to lay a foundation for future studies about Plains Cree Band membership.

For those Plains Cree Bands who are seeking to develop their own Band membership codes, the author implores them to consider input from all the people in their Bands. It is imperative that Plains Cree leaders and those that they lead collaborate on future Band membership direction. Clearly,

it has been shown that Plains Cree people want to have a voice in their future. They need to have that voice. This is but a beginning of providing that opportunity and right.

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APPENDIX ONE

BAND CODES

(Band One)

WHEREAS, we the people of the Tribe have enjoyed the exclusive use and possession of this land since time immemorial,

AND WHEREAS, our forefathers entered into treaty with the Crown to share the use of the topsoil of this land,

AND WHEREAS, our aboriginal title and rights and treaty rights have been recognized by the Royal Proclamation, 1763, Rupert's Land Act, 1870, Constitution Act, 1982, and in other national and international covenants, documents, agreements, correspondence and understandings both written and unwritten,

AND WHEREAS, our aboriginal title and treaty rights continue to coexist, AND WHEREAS, the special relationship between the Tribe and the Crown is to last for as long as the sun shines, the grass grows and the rivers flow,

AND WHEREAS, the Constitution Act, 1982, guarantees us that the Charter of Rights and Freedoms shall not apply to abrogate or derogate from our aboriginal title and treaty rights,

AND WHEREAS, the Tribe from time to time, enters into reciprocal agreements with other Indian First Nations for financial and other matters arising out of and relating to inter-tribal marriages, transfers, residence and other matters,

AND WHEREAS, the Tribe has maintained its self-determination since time immemorial which includes the authority to determine its citizenship without external interference from other tribes and other governments,

AND WHEREAS, the Tribe continues to observe and apply its customary, natural, and spiritual laws as interpreted from time to time by the Tribe,

AND WHEREAS, the Tribe hereby wishes to establish a Code to govern the membership in the said Tribe.

NOW THEREFORE, the Tribe does hereby ordain and establish this Code.

Article 1- Statements of Federal Relationship

The special relationship between the Tribe and the Crown shall continue in perpetuity, and pursuant to this relationship the Crown shall fulfill its obligations to the Tribe and without limiting the generality of the foregoing,

more specifically, the areas of health, medicine, education, finance and all other areas and matters contemplated by or pursuant to the spirit and terms of Treaty 6 and in accordance with all the aboriginal title and rights of the Tribe.

Article 11- Jurisdiction, Territory and Authorization

Jurisdiction and Territory

The jurisdiction of the Tribe in respect of its membership as set out in this Code shall extend to and be enforceable on all lands within the boundaries of the tribe Band Reservations and within all the boundaries of any obtained by the Tribe through fulfillment of a land entitlement pursuant to treaty; the return of improperly surrendered lands; any additional lands acquired in any manner whatsoever by the Tribe or by the Crown for or on behalf of the Tribe.

Authorization

Pursuant to the provisions of the Indian Act, R.S.C. 1970, Chapter 1-6, as amended, the Tribe hereby assumes control of its membership and delegates to such person or persons as are defined herein, the authority to make such regulations

as are deemed necessary by such person or persons from time to time in the implementation and enforcement of this Code and to do all such things and execute all such documentation or instruments as may be reasonably necessary or desirable to give effect to the purposes of this Code and the carrying out of all of its provisions.

Article III- Definition and Terms

In this Code:

"Council" means the Chief and Council chosen according to the customary law of the Tribe.

"Elders' Committee" means a committee established by the Council to review decisions on membership as determined by the Council, the members of the said Elders' Committee, for purposes of this Code, shall be as determined by the Chief and Council from time to time

"Eligible voter" means a person whose name appears on the Tribe list prior to and as of April 17, 1985, and has attained the age of majority as set out in Tribal regulations.

"Existing Member" shall mean a member of the Tribe as set out in Section 5.1 (a) of this Code.

"Indian" means a person who has at least fifty (50%) percent Cree blood quantum or fifty (50%) percent blood quantum of another tribe indigenous to North America. For purposes of determining the blood quantum herein, everyone, except as otherwise stated, who is a member of the Tribe as of April 17, 1985, shall be deemed to have one hundred (100%) percent Indian blood quantum.

"Indian Child" shall mean any person as defined in the tribal regulations

"Membership Committee" means a committee appointed by the Council to process membership applications, and to make recommendations to the Chief and Council relating thereto and to act in an advisory capacity as may be requested by the Council from time to time.

Article 1V- Authority

2.1 Membership Committee:

The Council shall appoint five (5) existing members of the Tribe who shall form the membership committee to advise the Council on membership matters as defined herein.

Persons appointed to the Membership Committee shall not serve concurrently as Chief or on Council.

Members of the Committee shall serve for such terms as the Council shall determine - from time to time.

2.2 Procedures of the Membership Committee

All applications for membership shall be submitted to the Membership Committee in writing in the form prescribed by the regulations.

The Membership Committee shall in considering any membership applications submitted to it be governed by this Code and the regulations made hereto.

A quorum for any meeting of the Membership Committee shall be four (4) duly appointed members who are present at all times.

The persons appointed to the Membership Committee shall appoint one of their number to act as Chairperson. All recommendations made by the Membership Committee to the Chief and Council regarding any membership application shall be the result of a majority vote. The Chairperson shall not have a second or casting vote in the event of a tied vote.

The Membership Committee shall evaluate every application for membership submitted and shall, within (30) days of receipt of such application, submit that application to the

Chief and Council along with a recommendation that the Chief and Council accept or reject the application and if so required by Chief and Council submit written reasons in support of the acceptance or rejection.

3.1 Procedures of the Chief and Council

The Council shall meet within thirty (30) days of the receipt of a recommendation from the membership committee to review membership applications and recommendations submitted to them.

The applicant or any member of the Tribe or both the applicant and any member of the Tribe shall have the right to make oral or written submissions to the Council in regard to each membership application in accordance with the rules and regulations referred to herein.

The Council may approve or reject a membership application by way of a majority vote at a meeting of the Council. A quorum shall be a majority of the Council who do not disqualify themselves, but shall not under any circumstances be fewer than three (3) members. Further, all decisions shall be by a majority vote of the quorum as so determined. In the event that no quorum can be formed in accordance with

these provisions then the matter will be referred to the band membership upon written notice to all eligible voters. A Council member or members shall be disqualified from voting in all circumstances and cases where such member has a direct or indirect interest in a particular application. The council shall provide ten (10) clear days written notice of any meeting called for the purpose of hearing and deciding membership applications. Such notice shall contain information as provided by the Membership Committee including the Membership Committee's recommendations. The proceedings before the Council shall be held in camera. A reporter shall be present to maintain a record of all evidence and all proceedings before the Council (hereinafter referred to as "the Record".)

The Council shall provide written reasons for any decision rendered to the applicant and to the Chairperson of the Membership Committee within thirty (30) days of the hearing. Subject to the right of review by the Elders' Committee, as contained herein, any finding or decision of the Council shall be final and binding in all respects.

4.1 Elders' Committee

The Council shall appoint five (5) members of the Tribe who are regarded as Elders' of the Tribe according to the custom of the said Tribe and who shall form the Elders' Committee to review Council decisions and to make such recommendations to Council as they shall deem just and proper under the circumstances.

Persons appointed to the Elders' Committee shall not serve concurrently of the Membership Committee nor on Council.

Persons appointed to the Elders' Committee shall serve for such term as the Council may, by Band Council Resolution , determine from time to time. Any vacancy shall be filled by an appointee as determined.

The persons appointed to the Elders' Committee shall appoint one of their number to act: as Chairperson. All directions made by the Elders' Committee to the Council regarding any membership application shall be the result of a majority vote. The Chairperson shall not have a second or casting vote in the event of a tied vote.

Quorum for any meeting of the Elders' Committee shall be three (3) duly appointed members who are present at all times.

The Elders' Committee shall be governed in all matters relating to such appeal by this Code and the regulations made hereto. The Elders' Committee shall recognize the right to life, liberty and the security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice and due process of law.

4.2 Procedures of the Elders' Committee

A person denied membership may make written application for a review to the Elders' Committee.

Written notice of the Council decision in the form prescribed by the regulations and shall contain the reasons for the Appeal.

The hearing before the Elders' Committee shall be in camera. The applicant or any member of the Tribe shall have the right to make oral or written submission regarding the membership application under Appeal.

The Elders' Committee shall within forty-five (45) days of the hearing of the Appeal render its decision. The Elders' Committee shall either dismiss the Appeal or direct a review or refer an issue to the Council as set out in paragraph (f) below.

If the Elders confirm the decision of Council, the decision of the Council shall be final.

Should the Elders' Committee refer the matter back to Council for review or for a decision on a specific issue or issues then the decision of the Council shall be final in those respects subject to a further right of Appeal to the Elders' Committee on the issue of whether the Council followed the instructions of the Elders' Committee.

4.3 The Council, Membership Committee, and the Elders' Committee shall in the determination of entitlement to membership, be governed by its customary, natural and spiritual laws as interpreted from time to time by the Tribe and by the rules and canons as set out herein.

5.1 Membership:

The following persons are entitled to membership in the Tribe provided they do not renounce such membership or join another tribe:

Existing Members

(i) A person on the Membership List of the Tribe immediately prior to April 17th, 1985.

(ii) A person entitled to be on the Membership list of the Tribe immediately prior to April 17th, 1985.

(iii) A person born on or after April 17th, 1985 of natural parents who were or are both existing members of the Tribe.

(iv) A person born on or after April 17th, 1985 whose mother is registered on the Band membership list prior to April 17th, 1985 and whose father is a member of another tribe indigenous to North America.

Restored Members: A person entitled to have his name entered on the Band list immediately prior to the establishment of the Membership Code by virtue of the amendments to the Indian Act given Royal Assent of June 28th, 1985.

Others:

(i) A woman from another tribe indigenous to North America who marries a member of the Tribe and who provides to Council satisfactory evidence that she has first renounced membership in such other tribe.

(ii) A child born of such a marriage set out in (I) above.

6.1 The following persons may apply for membership in the Tribe:

Descendant Members: a person born of a parent who was or is entered on the membership list of the Tribe and is from Canada or, the United States of America.

Adopted Members: an adopted Indian child.

A woman who was originally a member of the Tribe but whose name was removed from the membership list because of marriage to a member of another Tribe indigenous to North America and who subsequently divorces the said male person and provides satisfactory proof thereof to the membership committee.

A woman of another Tribe who marries a person who is registered on the Band membership list or is entitled to be registered.

7.1 The following persons are not entitled to membership in the Tribe

Unless otherwise provided for herein, a woman who is a member of another Tribe or otherwise marries a person who is not registered on the Band membership list nor is entitled to be registered as such.

The person is a member of the Tribe but voluntarily transfers his membership to the Tribe or another tribe or otherwise renounces his membership in the Tribe.

The person is a woman and pursuant to the operation of Section 11 (1) (f) of the Indian Act as it read prior to April 17th, 1985 became a member of the Tribe by virtue of marrying a member of the Tribe and subsequently divorced that member

The person is a child of a person defined in (a), (b) and (c) above and who was born after the events referred to therein.

Application Process and Membership Criteria for Descendant and Adopted Membership

8.1 (a) All applicants for membership as descendant and adopted members must satisfy the condition set out in section 1.1 (e).

A person who was registered under paragraph 11 (1) (f) of the Indian Act, 1970, as it read immediately prior to April 17th, 1985 or other former provisions of the said Act relating to the same subject matter as that paragraph, shall for purposes of determining the blood quantum set out in (a), be deemed to have zero (0%) per cent Indian blood quantum.

9.1 The Membership Committee shall also consider:

if the applicant is an adult,

(i) whether the applicant is knowledgeable, loyal, and follows a way of life consistent with the community of the Tribe, and has evidenced such ties to the community by his familiarity of the language, customs and history of the Nation, and,

(ii) the performance of the applicant during a five (5) year probation to acquire knowledge of the way of life of the community and such other matters as required by the Tribe. the degree of Indian blood of the applicant.

10.1 A person cannot be enrolled on the Tribe membership list if he is also enrolled as a member of another tribe in North America.

11.1 Membership List

The Membership Committee shall maintain the Membership List in accordance with this Code.

12.1 Orders and Regulations

The Council may pass, from time to time as determined by it in its sole discretion, rules and regulations relating to all aspects of the Membership Code as contained herein.

13.1 Amendment

The Membership code may be amended by the majority vote of at least sixty (60%) per cent of the eligible electors present at a duly constituted meeting called for that purpose, of which one month's written notice is given.

14.1 Validity

In the event that any provision or provisions contained herein shall be deemed to be unenforceable or void in law then this Code shall be read and construed as if it did not contain the particular provision or provisions and the remainder of this Code shall not be affected thereby.

15.1 Number and Gender

Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

16.1 This Code shall be deemed to have come into force on the 5th day of June, 1987.

(Band Two)

RULES OF MEMBERSHIP IN THE Band DATED THIS 25TH DAY OF JUNE,
A.D. 1987

BEING A BY- LAW TO ESTABLISH a code for determination of
Band.

Whereas the Indian Act being R.S.C. 1920, a 1-6 and
amendments thereto provides for the assumption of control of
band membership by the Band itself;

AND WHEREAS the Band wishes and desires to assume control of
its membership as of and from this date and desires to
provide rules for admission into membership of the Band;

NOW THEREFORE the Council of the Band enact as a by-law
therefore as follows:

TITLE

This by-law shall be known as the Band Membership Code.

DEFINITIONS

2(a) "Chief " and "Council" means the Chief and Council duly
elected pursuant to the provisions of the Indian Act by the
members of the Band if Indians;

"Membership Committee" means the committee appointed by
traditional manner of custom, through a majority vote of

electors present at a meeting made for such purpose, and approved by the Chief and Council, authorized to act in such capacities, as the membership code may provide or the Chief and Council may establish from time to time;

"Membership Appeal Committee" means the appeal committee established in accordance with the provisions of this membership code.

MEMBERSHIP COMMITTEE

3. (1) A majority vote of the Band electors who are present at a meeting made for such purpose, with the approval of Chief and Council, shall appoint a membership committee which shall consist of five (5) members of the Band, each member to be a "elector" within the meaning of the Indian Act.

(2) The members of the membership committee shall hold office for such terms as the Chief and Council may determine from time to time.

(3) The committee shall undertake such activities as may be assigned by the Chief and Council from time to time.

MEMBERSHIP

4. The following persons are members or entitled to be members of the Band and to have their names entered on the Band List maintained by that Band.

A person who was registered or entitled to be registered on the Indian Band List immediately prior to April 17, 1985;

A person both of whose parents are or if no longer living, were at the time of death registered or entitled to be registered on the Indian Band List;

A person who was immediately prior to the passages of this by-law entitled to have his or her name entered on the Band List by virtue of the amendments to the Indian Act, as amended by the S.C.1985 C.27;

A person determined to be eligible for membership by the Band in Council, subject to the approval of his or her application for membership by a simple majority vote of the electors of the Band at a meeting called for that purpose.

5. Subject to the application and voting procedure outlined in this by-law the following person are eligible for membership in the Band.

any person at least one of whose parents is, or if deceased, was, registered on the Band List of the Band;

any child under the age of eighteen (18) years who is adopted by a Band member according to law or application custom or tradition of the Band;

any person who is a registered and is married by law or applicable custom or tradition of the Band to a Band member, subject to any restriction in this Code on membership in more than one Indian Band.

6. In reviewing any application for membership, the Membership Committee and the Chief and Council shall consider; for all applicants

whether the applicant has ties to the Band community and for applicants who are adults;

whether the applicant maintains a way of life consistent with the Band community;

whether the applicant identified himself or herself with the Indian community and with the Band, and evidences such identification in such matters as knowledge of the language, custom and history of the Band; however, no person shall be excluded from membership solely on the basis of lack of such

identification or evidence thereof, where, given consideration of the person's life circumstances, they have not had a reasonable opportunity to maintain such identity.

7. In reviewing any application for membership, the Chief and Council may impose a period of probationary membership not to exceed five (5) years, in order that the applicant may have the opportunity to establish or re-establish social and cultural ties with the Band, to learn Band custom, tradition and history, and otherwise to adopt the way of life of the Band community. At the end of such probationary period or sooner if agreed by the applicant and the Chief and Council, the vote required by section 4(d) shall be conducted.

8. No member of the Band shall be a member of any other band.

where a member of the Band obtains membership in any other Indian Band, he or she shall have renounced membership in the Band, and his or her name shall be removed from the Band List;

where an applicant for membership in the Band is a member of another Indian Band, he or she shall be required as a

condition of membership to renounce such other Band membership, and membership in the Band shall not be effective until the date of removal of such person's name from the List of any other Band.

where a child who is eligible for membership pursuant to Section 5(a) or (b) is also a member of or eligible for membership in another Band, such child may be admitted to the Band until he or she reaches his or her eighteenth (18th) birthday, at which time the said person shall have thirty (30) days in which to renounce such other membership. At the end of such thirty (30) day period, if such renunciation is not made subsection(a) of this section shall apply.

RENUNCIATION OF MEMBERSHIP

9. Any member of the Band who is over the age of eighteen (18) years may give up membership in the Band by statement in writing to the Chief and Council. Upon receipt of such statement, the Chief and Council shall remove the person's name from the Band List.

10. No person may give up membership on behalf of another person and in particular, no one may give up membership of

behalf of his or her spouse, child or other family member, and any request to remove another's name from the Band List shall be of no effect.

11. A child under the age of eighteen (18) whose parents give up Band Membership shall not be deemed to have given up Band Membership, but shall remain on the Band list until he or she reaches the age of eighteen (18), at which time he or she shall have thirty (30) days within which to request in writing that his or her name remain on the Band list. At the expiry of the thirty (30) day period, if no such request is made, the name of such person shall be removed from the Band list.

APPLICATION FOR MEMBERSHIP

12. Any person eligible for membership in the Band shall make application in writing to the Chief and Council for membership.

13. The membership committee shall review all applications, including all documentation and other supporting material submitted to them. The said committee shall have in addition to any powers given them by the Chief and Council the power to:

receive information given orally relating to the application;

make inquiries in the community and otherwise relating to the application;

require the applicant to produce documentation, or to attend before the Committee to provide information.

14. The Committee shall report at all regular Council meetings on the status of any applications before it.

15. The Committee shall within a reasonable time after receiving an application make recommendations in writing to the Chief and Council as to such application.

16. The Chief and Council shall within thirty (30) days of receiving a recommendation of the Membership Committee determine the disposition of the application, and shall advise the applicant in writing of their decision and the reasons there for.

17. Pursuant to the requirements of paragraph 4(a), the Chief and Council shall call a minimum of one meeting in each calendar year for the purpose of a vote of the electors on the application for membership of those persons whom the Chief and Council have determined are eligible for

membership and those persons who have completed a period of probationary membership, and all such applications accepted or probationary memberships completed since the preceding meeting shall be voted upon at such meeting. Upon completion of a meeting called pursuant to this paragraph, the names of those accepted by the vote of the electors shall be placed on the Band List.

APPEAL PROCEDURE

18. Any person whose application is turned down either by Chief and Council pursuant to paragraph 16 or by the vote of electors pursuant to paragraph 17 shall have the right to reapply within two (2) years from the date of the decision or vote, and such application shall be treated as a new application.

19. Any person whose second application is turned down by Chief and Council or by vote of electors may apply to Chief and Council within one (1) year of the decision or vote for a Tribunal of Elders.

20. Upon a request for a Tribunal of Elders the Chief and Council shall designate one man and one woman who are:

Band members ;

Elders;

not the Chief or members of the Council or the Membership committee and the applicant shall designate one person who is:

a band member:

an elder;

not the Chief, a member of Council or the Membership Committee and such three persons shall constitute the Tribunal of Elders.

21. The Tribunal of Elders shall review the application and all documents relating to it, including all previous decisions and the reasons for them, and may;

receive orally or in writing any information relating to the application;

make inquiries within the Band community and elsewhere relating to the application;

request the applicant or any other Band member to appear before it to provide information;

request the applicant, the Chief and Council, the Membership Committee or any other Band member to provide documents relating to the application;

consult with other elders of the Band in relation to Band custom, tradition or history.

22. The Tribunal shall within ninety (90) days of the date it is established determine the disposition of the application by whatever means they shall determine appropriate, or, should the members not be agreed as to a method of decision-making by simple majority vote of the members.

23. The Tribunal shall advise the Chief and Council and the applicant of their decision and such decision shall be binding on the Chief and Council, the Applicant and the Band.

24. If the Tribunal of Elders rejects the application for membership, the applicant has no further right to apply for membership in the Band.

25. If the Tribunal of Elders approves the application for membership, the name of the applicant shall be entered on the Band List, and no vote of electors shall be required.

26. The Chief and Council have power to confirm membership of a child born to parents both with former membership in the Band, if born after April 17, 1985 and before June 28, 1987.

(Band Three)

WHEREAS THE Indian Band is desirous of assuming control of its own membership, the following provisions shall constitute a membership code for the establishment and maintenance of the Band list.

Unless otherwise specified, the definitions contained in the Indian Act, 1970, c. 1-6 as amended, apply to this code.

Council means the organization incorporated pursuant to the laws of Saskatchewan to represent 10 Member Bands.

The Membership code may be amended or repealed by a majority of the electors upon one month's notice to the electors.

The Chief and Council shall determine membership pursuant to the provisions of this Code.

The Chief and Council may appoint persons to assist in the administration of the Code and the recording and keeping of the Band List.

Decisions on membership within the Band shall be subject to review by a Membership Tribunal to be established by the Council. The Membership Tribunal shall consist of not more than five persons who may be appointed from time to time.

The Membership Tribunal shall consist of not less than three

persons who have been entered in one or other of the Band Lists of the Member Bands represented by the - Tribal Council who are knowledgeable of the customs and values of all the member Bands. The Membership Tribunal shall have the power to investigate and confirm, suspend or reverse decisions on membership.

An application for the review of a decision on membership by the Membership Tribunal may be made by the council of the Band, any member of the Band, or the person in respect of whose name the application for review is made or his representative within one month of a determination being made pursuant to Section 3.

Commencing on the date this Code comes into force, a person is entitled to have his name entered in the Band List if: that person was entered in the Band List or was entitled to be entered in the Band List immediately prior to this Code coming into force;

both of that person's parents are entered or were or are entitled to be entered in the Band List; or,

one of that person's parents is or was entered in the Band List and the other parent is or was entered in the Band List of another Band;

A person who is entered in the Band List shall not be a member of another Band.

A person who is already a member of another Band but who wishes to change membership is entitled to apply to the Chief and Council for the purposes of being entered in the Band List.

THIS MEMBERSHIP CODE consented to on the 17th day of June 1987 by the Indian Band.

(Band Four)

These rules shall come into force on the day on which the Band gives notice to the Minister pursuant to subsection 10 (6) of the Act.

On and after the day these rules come into force the Band List of the Band shall be maintained by the Band under the direction and supervision of the Band Council and only those persons whose names entered therein, or who have rights to have their names entered therein, pursuant to these rules shall be members of the Band.

Each of the following persons shall have the right to have his or her name entered in the Band List:

any person who, but for the establishment of these rules, would be entitled pursuant to subsection 11 (1) of the Act to have his or her name entered in the Department and who, at any time after these rules come into force, either:

- (i) is lawfully resident on the reserve; or
- (ii) has applied for membership in the Band and, in the judgement of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and

lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

a natural child of parents both of whose names are entered on the Band List

with the consent of the Band Council, any person who;

(I) has applied for membership in the Band;

(II) is entitled to be registered in the Indian Register pursuant to the Act;

(III) is the spouse of a member of the Band; and

(IV) is not a member of another Band;

with the consent of the Band Council, any person who:

(i) has applied for membership in the Band;

(ii) was born after the date these Rules came into force;

and

(iii) is the natural child of a member of the Band; and

any member of another band admitted into membership of the Band with the consent of the Council of both bands and who thereupon ceases to be a member of the other band.

For the purpose of section 3(a)(i) and section 6 the question whether a person is lawfully resident on the reserve shall

be determined exclusively by reference to by-laws made by the Band Council pursuant to section 8 of the Act except that, at any time when there are no such applicable by-laws in force, no person shall be considered to be lawfully resident at the reserve for the purpose of section 3(a)(i) and section 6 unless the residence of such person on the reserve has been approved or ratified by a resolution of the Band Council that is expressed to be made for the purpose of these Rules.

In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

The Band Council may at any time delete from the Band List the name of any person who has applied to the Band Council to have his or her name deleted from the Band List or the name of any person who is not then lawfully resident in the reserve and who, in the judgement of the Band Council, either does not have a significant commitment to the history, customs or lifestyle that would cause his or her

continued membership in the Band to be seriously detrimental to the future welfare or advancement of the Band; provided that, before a decision to delete the name of any person from the Band List is made under this section , otherwise than pursuant to an application by such person, the Band Council shall give fifteen days notice to such person who shall then be entitled to make representations to the Band Council in writing, in person or through an agent or counsel within such period of fifteen days.

Where the name of a person is deleted from the Band List pursuant to section 6, the names of his or her children may, in the discretion of the Band Council, also be deleted from the Band List.

Notwithstanding section 6 the Band Council shall delete from the Band List the name of any person who has been admitted into membership another Band with the consent of both the Band Council and the Band council of the admitting Band. Except as otherwise expressly provided in these Rules, no application shall be required before the Band Council may enter in the Band List the name of any person who has a

right to have his or her name entered in the Band List pursuant to these Rules.

Where, pursuant to section 3 of these Rules, an application is required before a person has the right to have his or her name entered in the Band List, such application may be made in such manner and form as the Band Council may determine from time to time and, for greater certainty, the Band Council may permit applications to be made under section 3 (d) by a parent or guardian of a natural child referred to therein who is an infant at the time the application is made.

The Band Council may consider and deal with applications made pursuant to section of these Rules according to such procedure and at such time as it shall determine in its discretion and, without detracting from the generality of the forgoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion.

Any person whose application for membership in the Band pursuant to section 3 of these Rules has been denied, or

whose name has been deleted from the Band List pursuant to section 6 by the Band Council may appeal such decision to the electors of the Band by delivering notice in writing to the Band Council at the office of the Band within 15 days after communication to him or her of the decision of the Band Council.

Within 60 days after receipt of a notice of appeal pursuant to section 12 of these Rules the Band Council shall convene a meeting of the electors of the Band for the purpose of disposing of the appeal and the applicant shall be entitled to be present at such meeting and make representations thereto in person or through an agent or counsel. The decision of a majority of the electors of the Band is final and conclusive.

Each discretionary power conferred upon the Band Council under these Rules shall be exercised by the Band Council, in good faith, without discrimination on the basis of sex and in accordance with its judgement of the best interests and welfare of the Band.

NO person shall have a right to have his or her name entered in the Band List except as provided in section 3 of these Rules.

APPENDIX TWO
COMMUNITY PROFILES

Community Profile; Band One

The first Band presented as a community profile is a Cree nation in southeast Saskatchewan. There are six hundred and thirty three members in the Band and, the Band population consists of fifty one percent males and forty nine percent females. On reserve Band members numbered four hundred and twenty one, while the rest resided off reserve. The Band owns an Arts and Crafts Store, a Farm Ranch, Feedlots, and several off reserve town houses. Also, there are several privately owned business ventures on the reserve. There is a school on the reserve and goes from kindergarten to grade eight.

Community Profile: Band Two

According to Cree Band Two community profile, the total number of Band members is one thousand six hundred and fifteen, with five hundred and seventy six members residing on the reserve, and one thousand and thirty nine living off reserve. Forty seven percent of the membership of the Band is male and fifty three percent is female. The Band owns a warehouse, school, a medical centre, a pumphouse and other businesses. The Band has in access of two hundred students attending their school. Much of the economic effort of the Band comes from working a substantial piece of farmland.

Community Profile: Band Three

Cree Band Three community profile indicates that the total membership is seven hundred and thirty two. Females make up fifty four percent of the membership and forty six percent of the Band membership consists of males. Of the total Band membership, three hundred and sixty three live on the reserve and three hundred and sixty nine resides off reserve. Approximately six and one half percent of Band Three Band members are considered non-Indian, while sixty one members from other Bands reside on the reserve. The Band owns a cultural centre, a workshop, a water treatment plant, a fire hall, as well as a senior's drop in centre.

Community Profile: Band Four

Band Four has a total of two thousand six hundred and nineteen Band members. The Band consists of approximately fifty percent female and male members. Almost seventy two percent of the Band members reside on the reserve, while the off-reserve Band members consists of approximately twenty eight percent. Band Four has a large number of on reserve businesses which include: a grocery store, a post office, a beauty salon, a cafeteria, a clothing store, a restaurant, and a pharmacy. They also have an elementary school. Band Four also derives income from a large parcel of land, which the Band farms.

APPENDIX THREE
RESEARCH APPROVAL



DATE: March 23, 1998

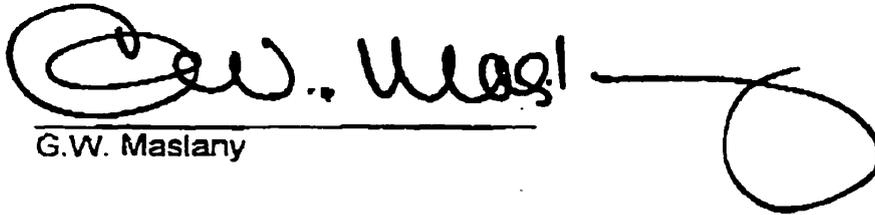
TO: Clayton Desjarlais
SIFC

FROM: G.W. Maslany, Chair
Research Ethics Review Committee

Re: **From the Past to the Present: An Analysis of Band Membership
Among the Plains Cree**

Please be advised that the committee has considered this proposal and has agreed that it is:

1. **Acceptable as submitted.**
(Note: Only those applications designated in this way have ethical approval for the research on which they are based to proceed.)
2. **Acceptable subject to the following changes and precautions (see attached):**
Note: These changes must be resubmitted to the Committee and deemed acceptable by it prior to the initiation of the research. Once the changes are regarded as acceptable a new approval form will be sent out indicating it is acceptable as submitted.
Please address the concerns raised by the reviewer(s) by means of a supplementary memo.
3. **Unacceptable to the Committee as submitted. Please contact the Chair for advise on whether or how the project proposal might be revised to become acceptable (ext. 4161/5186.)**



G.W. Maslany

cc: W. Heber, supervisor

GM/ab/ethics2.dot



DATE: March 10, 1998

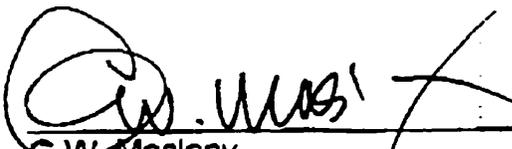
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G.W. Maslany

cc: W. Heber, supervisor

- 08/09/99 FAX 10.20 FAX 500 505 4020 CCRK GRADSTUDIES 2003
1. A properly designed consent form must be developed. The form should meet the established guidelines.
 2. Signed consent, by a signature or "X", should be obtained from all participants. I note "should" as cultural norms may not always require "signed" forms.

Dear Participant:

Thank you for your participation in this research project. As has been mentioned, you are being asked to participate in Case Study research. The name of the research project is: "From the past to the Present: An Analysis of Band Membership Among the Plains Cree." It is my intention to use all or part of your responses in my research. If you request a copy of the final report, I will mail you a copy. Because of the researcher's commitment to confidentiality and anonymity, subjects will be asked not to reveal their names on the questionnaire. I assure you that apart from myself, no one will be aware of the names of those subjects in this study. The only person who will review the subject's answers will be the researcher and after the completion of the research, the subject's answers will be kept in a location known only to the researcher. Subjects are under no obligation to complete these case studies, and may withdraw at any time without jeopardizing their status as students or workers. Also, the subjects are under no obligation to participate in this study, and refusal to participate in this study will not result in any negative effects for the subject who does refuse. The expected time commitments of the subjects will be no more than a few hours. However, the researcher, to clarify their responses once the case studies are completed, may contact the subjects. The researcher offers the subjects the opportunity to ask questions regarding the procedures and goals of this study. This project was approved by the Human Ethics Committee, University of Regina. Any subject who has questions or concerns about their rights or treatment as research participants may contact the Chair of the Research Ethics Committee at 585-4461. Also, the only investigator of these Case Studies will be Clayton Desjarlais and the following is his address and phone number:

Clayton Desjarlais

90 Forsyth Crescent

Regina, Saskatchewan

S4S 0A9

With acceptance and understanding of the above I, _____ agree
to participate in this research project.

Human Subject Research Ethics Review Committee

Application for Approval of Research Procedures

Section I: Identification and Purposes

- 1. Date: February 18, 1998**

Name of Applicant(s): Clayton Desjarlais

Address: 90 Forsyth Crescent

Title of Research: From the Past to the Present: An Analysis Of Band Membership Among the Plains Cree

- 2. If the project will be part of a thesis, or class requirement, give the name of the supervisor: Dr. Wesley Heber**

Department or Faculty: Indian Studies

- 3. Purposes. Give a brief outline of the main features and variables of the research problem. Include a brief statement which describes the significance and potential benefits of the study.**

The study brings forward Band membership issues from the time of pre-Indian Act to how the Indian Act has impacted Band membership among the plains Cree. The introduction of Bill C-31 in 1985 is also discussed in the study. By incorporating the research from these paradigms, the study seeks to develop a Band membership code that is inclusive of the plains Cree world view and community values. Through case study the work will also seek to incorporate the views of some current plains Cree Band members for the purpose of providing an avenue for plains Cree people's input into Band membership codes. The benefits will be to provide future plains Cree bands a foundation for Band membership.

Section II: Subjects

- 1. Briefly describe the number and kind of subjects required for data collection.**

The only criteria for subjects is that they be Band members of a plains Cree Band, and that they be willing to participate in cast studies. The numbers of participants will be between 12 – 15.

- 2. What information about the research problem and their role in the project will potential subjects be given?**

The subjects will be apprised of the purpose of the study and they will also be apprised of the importance of their participation in the cast studies. They will be told orally and in writing that their participation will be confidential.

- 3. How will the consent of the subjects to participate be obtained? Please indicate whether a consent form will be used and how consent will be obtained (c.g., who will approach the subject? How will the name/addresses/phone numbers of potential participants be obtained? What will potential participants be told when they are presented with a consent form?)**

A verbal request will be given to potential participants seeking their agreement to participate in the study. A consent form will be developed and offered to those participants who require written documentation about confidentiality. The information on subjects will be obtained through discussions with those people who have provided a list of potential participants. The potential participants will be told that their names were obtained through acquaintances and that they will be asked to voluntarily participate as case study subjects for a study. They will be told that their participation will be absolutely voluntary and that they are under no obligation to participate.

- 4. What will the subjects be required to do in the course of the project?**

The subjects will be required to address three general questions that relate to Band membership. These questions will pertain to their own Band's membership and Band membership in general.

5. **What assurances will the subjects be given and what precautions will be taken regarding the confidentiality of the data or information which they provide in the study?**

Again, a verbal commitment to confidentiality will be given along with a written consent form outlining the researcher's commitment to confidentiality. Only the researcher will be privy to the answers given by the subjects. The only time that this information will be used is in this study. After the required period of time, the information will be destroyed.

6. **Will children be used as a source of data?**

Yes No

The answer is no.

7. **Will the researcher or any member of the research team be in a position of power or authority in relation to the subjects? (For example: A teacher doing research and using a class as subjects or a counselor collecting research data from clients).**

Yes No

The answer is no.

8. **Will deception of any kind be necessary in the project?**

Yes No

The answer is no.

Section III: Access to Data Findings

1. **Who will have access to the original data of the study?**

The researcher

The Thesis Supervisor or Thesis Committee (If Requested)

2. **Will subjects have some access to the findings of the study?**

Yes, they will be given the opportunity to request a copy of the final report. Also, because the study will be put into the university library, it will be available to be viewed by those who request to see it.

3. **What will be the final disposition of the original data after the study is completed? (data must be archived for a minimum of 3 years)**

The original data will be stored in a safe place for the required three years.

Signature of Applicant (s):

Clayton Resnik

Signature of Advisor or Instructor

[Signature]