



Membership (and Status) Myths & Facts:

In this resource guide, we address some of the key myths around status and membership.

What is Membership?

Membership in a First Nation or Band refers to people who are named on a Band List or eligible to be named on a Band List. Under the *Indian Act*, membership is controlled by Indigenous Services Canada (“ISC”) and the Band List is held by Canada. First Nations can adopt their own membership codes to reflect their own understanding of membership, but they must meet certain requirements under the *Indian Act* and be informed by the *Canadian Charter of Rights and Freedoms*.

What is Indian status?

‘Indian status’ has its source in the *Indian Act*. It is a specific, legal identity that First Nations people in Canada may obtain under the *Indian Act*. Not everyone who is First Nations is a ‘status Indian.’

While it’s beyond scope of this resource guide to describe the full history and injustices caused by the *Indian Act*, for the purpose of this resource guide it’s important to understand that the *Indian Act* is colonial legislation that has played a key role in alienating First Nations people from their rights, history, and identity. Traditionally, the *Indian Act* made it very hard for certain people to obtain or maintain status and the provisions in the *Indian Act* were meant to reduce the number of people with Indian status over time. Throughout the history of the *Indian Act*, many people have not been eligible to receive “Indian Status” despite being from First Nations families and being raised in First Nations communities. Racist and sexist laws kept some individuals from obtaining status, while others were stripped of their status due to decisions such as marrying a non-status person, joining the military, obtaining a university degree, becoming a doctor or living overseas.

Recent changes in the law have made it easier for some First Nations people to obtain status, but it remains a complicated and evolving area of the law.



Indian status can afford certain rights, such as membership in a First Nations community and the resulting access to family and culture, the right to live on reserve, certain health benefits, and tax benefits. It can also be satisfying to reclaim something unjustly taken by a colonial government, namely one's right to 'status' for oneself and one's children. Whether or not a person would like to seek status is an individual choice. But certain pervasive myths may prevent people from seeking status.

MYTH #1: You can't get status if your parents don't have status.

FACT: For registration through your parents, at least one of them either needs to be registered or entitled to be registered. You may also be able to be registered based on the entitlement of your grandparents and other family connections, depending on the specific details of your situation.

MYTH #2: If you were adopted, you can't get status.

FACT: You cannot lose your entitlement because of adoption, you can only gain it. In other words, you can be entitled to status based on either your birth parents or your adoptive parents. Adopted children are treated the same as biological children for the purpose of status, whether you're adopted legally or through a customary adoption. This wasn't always the case, but the law now says that adopted children can be registered through their birth parents or their adoptive parents.

MYTH #3: You can't get status if your dad isn't listed on your birth certificate.

FACT: As the result of a change in policy in response to a court challenge in Ontario any relevant information can be submitted to show who your parents are, and you do not have to prove your parent's specific identity to have entitlement through him, only that it is more likely than not that they were someone who was entitled to status. Indigenous Services Canada (ISC) will decide whether it's "more probable than not" that the unknown parent (or grandparent or other ancestor) is entitled to registration, and they have to be generous towards applicants in this assessment.



MYTH #4: Indigenous Services Canada (ISC) makes the rules about membership.

FACT: ISC, through the *Indian Act*, makes the rules about who is eligible for status. Sometimes, ISC maintains the membership list for a Nation, in which case their membership rules are set out in the *Indian Act*. Nations can also choose to draft their own membership rules, then hold a vote in the community asking for consent to assume control of membership. If a majority of electors consent, they can assume control of their own membership. A Nation may also gain control of membership through self-government legislation. This might mean that some people are members of a Band but don't have status, which can get complicated!

MYTH #5: Women who marry someone without status lose their status.

FACT: This was true until 1985! Today, the law has changed, and women no longer lose their status if they marry someone without status. Children and grandchildren of women who had lost status because of this rule are now entitled to apply for Indian status because of amendments to the *Indian Act*.

MYTH #6: Someone who isn't eligible for status can't be a member of a Nation.

FACT: Many people who are Indigenous are not eligible for status because of the rules in the *Indian Act*, which operate over time to reduce the number of people eligible for Indian status. First Nations people who don't meet the specific criteria in the *Indian Act* are not eligible for status. Some First Nations people might not want to register for status because they don't agree with the *Indian Act's* rules and do not want to jump through all of the hoops to be registered. When Nations have their own membership rules, non-status people may still be eligible for membership.

It's important to keep in mind that 'Indian status' and 'Indigenous' are not the same thing. For example, Metis and Inuit are not eligible for status under the *Indian Act* but they are Indigenous.

Have questions?

This resource guide is not comprehensive and should not be considered as containing legal advice. The law around status is complex and evolving. And the process of applying for status can be confusing. If you have questions, please do not hesitate to contact us.

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