

Membership
Decision by the
Chiefs and Councils

DATE:

SUMMARY

The De-Amalgamation and Transition Working Group has considered the issue of Indian Registry and band membership should James Smith Cree Nation #370 de-amalgamation into the nations of James Smith, Chakastaypasin and Peter Chapman. We have relied on technical advice from Indigenous Services Canada, the band membership staff of each nation (and a legal review if needed?)

Three options were considered:

- 1) Members of James Smith Cree Nation select the nation they wish to belong to post de-amalgamation
- 2) Placement based on 21 Family Name Membership Law by a joint membership committee
- 3) Placement based on 21 Family Name Membership Law by a joint membership committee with an appeal mechanism/one time change option

RECOMMENDATION

Placement based on 21 Family Name Membership Law by a joint membership appeal committee with an appeal mechanism/one time change option in effect for 12 months after de-amalgamation.

Note: The DTWG has asked ISC to respond to three key questions on several occasions over the past 3 months. Those questions are:

- 1) Does everyone on the ISC Section 11 JSCN #370 Indian Registry need to end up in either James Smith, Peter Chapman or Chakastaypasin?***
- 2) If JSCN #370 is unable to contact a band member to make a decision on their band membership preference what are our options?***
- 3) May JSCN #370 place people based on their 21 Family Name Membership Law or does ISC insist that each member gets to choose which national they wish to be a member of?***

To date we have not been provided with either a verbal or written answer to these questions. It is therefore important to note that our recommendations may not meet the requirements of ISC

Chief James Smith Cree Nation

Councillor James Smith Cree Nation

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Councillor James Smith Cree Nation

Chief Chakastaypasin Band of the Cree Nation

Councillor CBCN

Councillor CBCN

Councillor CBCN

Councillor CBCN

Chief Peter Chapman Band

Councillor PCB

Councillor PCB

Councillor PCB

Councillor PCB

BACKGROUND

- Indian Register vs Band List – Definitions from the *Indian Act*

Indian Register means the register of persons that is maintained under section 5;

Indian Register

5 (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

Band List means a list of persons that is maintained under section 8 by a band or in the Department;

Band Lists

8 There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

- Under the *Indian Act*, First Nations in Canada by default use Section 11 to determine Band Membership and the Indian Register:

11 (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

(a) the name of that person was entered in the Band List for that band, or that person was entitled to have it entered in the Band List for that band, immediately prior to April 17, 1985;

(b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

(c) that person is entitled to be registered under paragraph 6(1)(a.1) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

- Under the *Indian Act*, First Nations in Canada may choose to adopt Section 10 of the *Indian Act*. This is often called a “band custom” membership code

Band control of membership

10 (1) A band may assume control of 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 the electors of the band gives its consent to the band’s control of its own membership.

Membership rules

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

- The JSCN #370 Indian Registry is maintained under Indian Act Section 11.
- We acknowledge that the re-instatement of Chakastaypasin Band of the Cree Nation and Peter Chapman Band under Section 17 of the Indian Act would allay the concerns of many of the members of James Smith Cree Nation #370 who are uncertain what “joining” a band not recognized by Canada might mean to their individual rights and entitlements.
- In 2019 when the Tripartite meetings were held, it was the consensus that JSCN #370 would continue to operate under Section 11 of the Indian Act until de-amalgamation. Post de-amalgamation, First Nations may individually choose to pursue Section 10 control of membership.
- Since the early 1900’s, JSCN #370 has also maintained a 21 Family Name Membership Law to identify people as members one of the three Nations. Since 2000 the 21 Family Name Membership Law has also been the basis for developing voters’ lists for elections (annex B). All Indians registered by Canada with JSCN #370 are placed in Chakastaypasin, James Smith or Peter Chapman based on genealogy and the 21 Family Name Membership Law.
 - Chakastaypasin members are Clarke, Duscharme, Godfrey, Opoonechow, Sanderson, Stonestand and Sanderson
 - Peter Chapman members are Brittain, Head and Whitehead
 - James Smith members are Burns, Constant, Daniels, Marion, McLeod, McLean, McKay, Moostoos, Turner, Twist, Walker
- Occasionally ISC adds people to the Indian Registry whose lineage and genealogy is not known to JSCN #370. Generally, these people were thought to have been adopted out to non-JSCN #370 families. More recently (2022-present) there have been persons registered by ISC as members of JSCN #370 whose lineage and genealogy James Smith Cree Nation #370 may choose to challenge.
- Decisions of the Indian Registrar may be appealed under the Indian Act. Should a First Nation disagree with the results of an appeal to the Indian Registrar, an appeal to the federal court is also an option.
- ISC has indicated that a required element of de-amalgamation is that all persons currently on the Indian Registry and Band List for JSCN #370 must be placed on the Indian Registry and Band List in either Chakastaypasin, James Smith or Peter Chapman.
- Any individuals who cannot be placed under the 21 Family Name Membership Law default to Chakastaypasin.
- Based on the 21 Family Name Membership Law the 4,391 Members of JSCN #370 on February 28, 2025 would be divided as follows:

Nation	2000 Population Percentage%	Feb 28, 2025 Population	January 17, 2025 Percentage of Population
James Smith	46%	1,953	44.5%
Chakastaypasin	33%	1,593	36.3%
Peter Chapman	21%	837	19.1%
Total		4,391	

Options Considered

Note: In all scenarios, membership would only be permitted in one Nation. "Citizenship" in future Section 10 Membership codes may be considered by each Nation. For example a "member" of Peter Chapman Band could be a "citizen" of Chakastaypasin under a future membership and citizenship act

Option 1 – Members' Select Their Nation

Every person 18 years or older on the JSCN #370 Indian Registry list would be asked to select which nation, Chakastaypasin, James Smith or Peter Chapman they wish to be a member of.

- Parents/guardians with dependant children would be required to make that decision on behalf of their children.
- Persons who do not notify JSCN #370 of their decision would be placed in a Nation based on the 21 Family Name Membership Law.
- Persons who did not notify James Smith Cree Nation #370 of their decision would be allowed a "one time decision" to change their membership for 12 months after de-amalgamation. That change may be dependant on the Nation that they wish to join accepting their membership application.
- Post de-amalgamation members could also request a change to the membership based on like event changes while nations remain under Section 11 of the Indian Act and

Option 2 – Placement based on 21 Family Name Membership Law by a joint membership committee

- James Smith Cree Nation #370 would place individuals in either Chakastaypasin, James Smith or Peter Chapman based upon the 21 Family Name Membership model.
- Dependant children would be placed based on the same basis. When the parents' children are both members of different JSCN #370 Nations, the children will be placed in a Nation in consultation with their parents/care givers and with a formal, signed declarations.
- If parents/guardians do not indicate a preference, they will be placed in their care givers Nation
- If there are any members that JSCN #370 are uncertain where they might belong they will be placed in accordance with the best information available to James Smith Cree Nation

Option 3 Placement based on 21 Family Name Membership Law with an appeal mechanism/one time change option

- James Smith Cree Nation #370 would place individuals in either Chakastaypasin, James Smith or Peter Chapman based upon the 21 Family Name Membership model.
- Dependant children would be placed based on the same basis. When the parents' children are both members of different JSCN #370 Nations, the children will be placed in a Nation in consultation with their parents/guardians.

- If parents do not indicate a preference, they will be placed in their care givers Nation
- Members would be afforded an appeal mechanism which would allow them a one-time option to change their membership to another Nation for one year from the date of de-amalgamation
- If there are any members that JSCN #370 are uncertain where they might belong they will be placed in accordance with the best information available

NEXT STEPS

- Formalize the establishment of a Joint Membership Committee charged with placing all band members in either James Smith, Peter Chapman or Chakastaypasin in accordance with the 21 Family Name Membership Law.
- Develop a formal process for notifying membership of the Nation they have been placed with and a database that can be kept current and accurate of the likely Post Amalgamation membership of all current members of JSCN #370.
- The Joint Membership Committee should also develop a formal appeal process for members who wish to challenge the Nation they were placed with. The committee and appeal process will need to be maintained for the one-year appeal period immediately following de-amalgamation and for any additional time it may take to decide on any appeals.

ANNEXES

- Annex A: Indian Act Membership and Registry Sections
 Annex B: James Smith Cree Nation election Law excerpt