



## Setting Out Citizenship within a Constitution

**BC Assembly of First Nations**  
CITIZENSHIP FORUM - "Continuing the Conversation"  
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## Purpose of a Constitution

- Fundamental Law (rules) of the First Nation Government establishing core rules of government structure and operations [e.g.,: how laws are made, how the Nation is governed (core rules of government structure and operation and can include who is a Citizen etc.)].
- Speaks to Community Citizens, Government, public, business and other third parties.
- Provides certainty to First Nations' Governance (consistency, stability and accountability). Is the fundamental law (rules) of a First Nation.



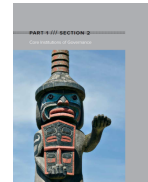
## Elements that might be included in a Constitution



1. Founding Provisions
2. Description of Lands
- 3. Citizenship**
4. Rights, Responsibilities and Freedoms of Citizens
5. Institutions of Government
6. Law Enactment
7. Meetings
8. Conflict of Interest
9. Financial Administration
10. Adjudicatory Bodies
11. Referendums
12. Transitional Provisions
13. Amendment



## Citizenship



- Establishes rules to determine who is a Citizen of the First Nation.
- Certain rights or benefits belong to Citizens, e.g., participating in government, being able to live in the community and to receive services.
- First Nations' citizenship rules do not affect determination of Indian status.



## Rights, Responsibilities and Freedoms of Citizens



- Can set the basic rights and freedoms of the citizens.
- These can clarify or expand upon the rights and freedoms all Canadians enjoy under the Canadian *Charter of Rights and Freedoms* and can speak to the unique nature of collective rights and their relationship to individual rights.
- The constitution can also set out what is expected of the individual as part of the collective.



## Development of a Community Constitution



- Need to ensure political legitimacy (community endorsement) and legal certainty to ensure the Constitution can and will be enforced.
- Today a Constitution can be developed as part of:
  - Comprehensive Self-government initiative,
  - Treaty Negotiations, or
  - Independent of negotiations with the Crown.



## The Challenge



- Many First Nations have considered, or are in the process of, or have actually made, a constitution. Many have also not been able to fully implement their Constitution. Why is this?
- Unless a First Nation's powers of self-government are recognized, including the authority to make a Constitution (either by a court or through agreement with Canada), the *Indian Act* still applies to "Indians", "members", "bands" and the governance of "lands reserved for Indians".
- Today there is no simple mechanism for a First Nation to make, ratify and then govern with certainty in accordance with a clearly legal and enforceable constitution.