

# Section 10 Voting Thresholds

The purpose of this sheet is to provide you with an understanding of the voting thresholds required for a First Nation to assume control of membership under section 10 of the *Indian Act*

## Background

In 1985, Bill C-31 introduced two options under Sections 10 and 11 of the *Indian Act* for the governance of First Nations' membership.

Some rights, programs, benefits, and services are available for registered individuals (for example, Non-Insured Health Benefits and tax exemptions, in specific circumstances), while others (for example, housing and voting rights) are primarily funded and delivered to the community based on First Nation membership.

When a person entitled to registration under the *Indian Act* submits an application for registration, the Department determines which First Nation the applicant will be affiliated to in the Indian Register, often based on their family history. Individuals may be affiliated to a First Nation governed under section 11, 10, or a self-governing agreement, and membership will be determined accordingly.

### Membership Controlled by Indigenous Services Canada



Section 11 First Nations' membership lists are maintained by Indigenous Services Canada. When a person is registered and affiliated to a section 11 First Nation under the *Indian Act*, they automatically become a member of that First Nation. By default, First Nations operate under section 11 of the *Indian Act*, unless they have a self-governing agreement or transitioned to section 10.

#### Section 11

350 (57%) First Nations

### Membership Controlled by the First Nation



Section 10 First Nations maintain control of their own membership lists and determine who is a member based on their own membership codes. When a person is registered and affiliated to a section 10 First Nation under the *Indian Act*, they must apply to their First Nation if they wish to be recognized as a member.

#### Section 10

229 (37%) First Nations



#### Self-Governing Agreements

40 (6%) First Nations

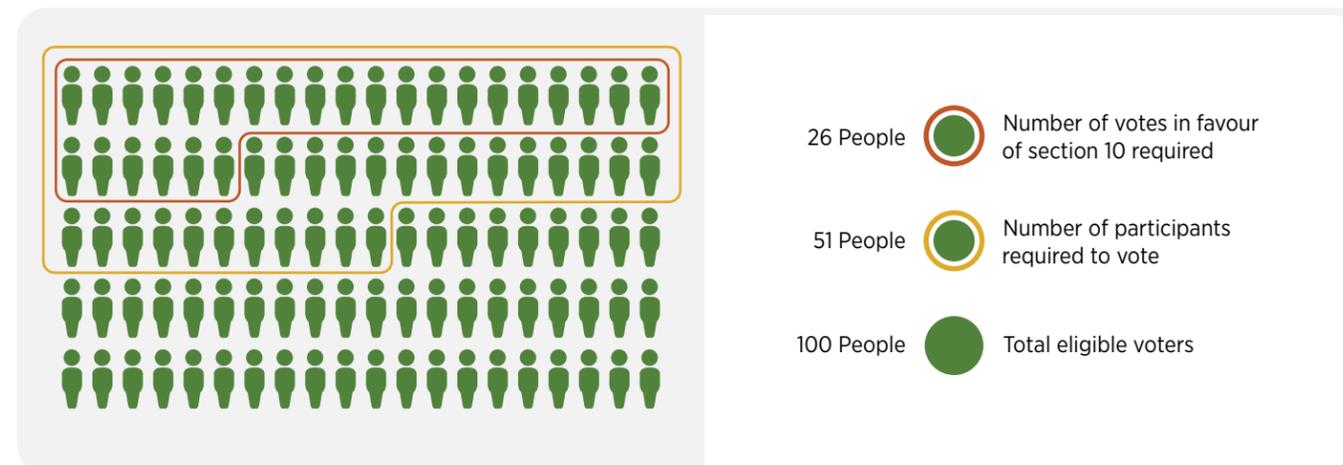
Similarly to Section 10 First Nations, self-governing First Nations control their own membership lists and codes. When a person is registered and affiliated to a self-governing First Nation, they do not automatically become a member and must apply to the First Nation to be recognized as a member. Compared to Section 10 First Nations, self-governing First Nations often govern other affairs beyond membership.

## Double Majority Voting Threshold

First Nations must achieve a double majority voting threshold to assume control of membership under section 10 and establish membership rules for themselves.

These voting thresholds have specific requirements to ensure:

- the majority of members are aware of and have participated in the vote, and
- a majority of those who vote, are in favour. This is known as the "double majority" voting threshold.



As seen in the figure above, if a First Nation has a population of 100 eligible electors:

To achieve the first majority, at least 51 of those eligible electors must participate in the vote (50%+1); and

To achieve the second majority, at least 26 out of those 51 votes must be in favour of the First Nation assuming control and writing their own membership rules (50%+1)

## Why Consult on the Double Majority Voting Threshold Now?

Many individuals who are non-entitled due to the impact of the second-generation cut-off may become newly entitled once a solution is introduced, which would increase the number of eligible electors in a First Nation. As the electorate grows, it may become challenging for section 11 First Nations to meet the double majority voting threshold when transitioning. It is important to assess how the legislative changes to the registration provisions may impact First Nations' ability to assume control of membership.

### Additional Information



To learn more, please visit:

[www.canada.ca/rights-holders-information-kit](http://www.canada.ca/rights-holders-information-kit)  
[www.canada.ca/second-generation-cut-off](http://www.canada.ca/second-generation-cut-off)

or contact the Registration Reform Team at  
[Reforme-de-linscription-Registration-Reform@sac-isc.gc.ca](mailto:Reforme-de-linscription-Registration-Reform@sac-isc.gc.ca)

## Barriers to Transitioning to Section 10

The double majority voting threshold may prevent some First Nations from assuming control over membership. Between 1985 and 1987, First Nations were only required to achieve a simple majority to transition to Section 10. In this time, 207 First Nations successfully transitioned to Section 10 out of 243 total applying First Nations, representing an 85% success rate. Since 1987, nearly 70 First Nations have initiated the process, with only 36 successfully transitioning, representing a 51% success rate. There are several reasons First Nations have difficulty in reaching these thresholds, including but not limited to:



A First Nation may have a **large off-reserve population** and/or may **not have up-to-date contact information** for all eligible electors, making it difficult to engage with community members.



**Online voting is not commonly used** for the purpose of the double majority threshold for the section 10 process, making it **difficult for eligible electors who reside off-reserve** to participate in the vote.



A majority-vote approach to decision-making **may not reflect a First Nation's traditional governance practices**, and participation in this process may not be preferred by members.

## How Does a First Nation Transition to Section 10?

To assume control of membership and successfully switch to section 10, a First Nation must complete four key steps:



**Notify** the eligible electors (aged 18 or older) of the First Nation's intention to assume control of membership and establish their own membership rules.



Obtain **consent** from eligible electors by reaching a **double majority voting threshold** for the First Nation to obtain control of membership through the proposed membership rules.



**Develop membership rules** that protect the acquired rights of persons who were on the membership list, and entitled to be on the membership list, prior to the First Nation's transition to section 10.



**Notify** the Minister and Indigenous Services Canada that the First Nation is assuming control over their membership and share a copy of membership rules for Ministerial approval once steps 1-3 have been achieved.