

Indigenous Identity Fraud

A REPORT FOR THE UNIVERSITY OF SASKATCHEWAN

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Introduction

This is a report about individuals who falsely take on Indigenous identity with the intention of gaining material benefits at USask. The report was commissioned in June of 2022. The research and writing of this report took place during a time of tremendous change in the academy. Stories in the press about a famous writer, a film maker, a lawyer, and several academics, all with questionable Indigenous identities, were appearing regularly. Calls for action from Indigenous people had been mounting from all sectors, all demanding that institutions take steps to stem the tide of individuals who are claiming, with questionable or no evidence, an Indigenous identity in order to gain access to jobs, money, awards, and prestige.

Several universities across Canada were beginning to examine their hiring practices for individuals who claimed an Indigenous identity. The past practice of self-identification combined with an honour system characterized by an absence of verification was virtually gone at most universities by the time the report was in its early drafts. Universities across the country set up internal Indigenous advisory committees to determine best practices moving forward. First Nations University called a virtual gathering in March of 2022 and subsequently produced a *What Was Heard Report* (FNU, 2022). The FNU report contained important recommendations. Murray Sinclair, Chancellor of Queen's University, summed up the problem and urged inclusion of Indigenous people when looking for solutions.

It is clear that self-identification of Indigeneity no longer works. Self-declaration is an important part, but it is just the beginning. We must go beyond an honour system and include voices from Indigenous communities across Turtle Island. (Sinclair, FNU, 2022).

USask had already begun to take steps to address this issue. Among many other steps, that included retaining the author as an external and independent investigator to prepare this report. This report, then is presented while substantial positive changes are already in motion at USask. For example, on August 20, 2021, USask was gifted the first Indigenous strategy that was created exclusively “by Indigenous people at a Canadian U15 research institution.” The strategy was the culmination of work begun in 2018 and represents the collaborative work of the Office of the Vice-Provost Indigenous Engagement, and USask's Indigenous community of students, staff, faculty, and leaders, Elders, Traditional Knowledge Keepers, and Language Teachers. The strategy embeds principles into USask's University Plan 2025. (*Ohpahootan/Oopahootaan/Indigenous Strategy*, 2021)

So, what then is the point of this report when USask has already identified the problem and initiated policies and procedures to move forward? The report rests on the proposition that it is important to understand the history of this issue and that understanding the how and the why of this problematic pattern of behaviour will teach us how to learn from our mistakes. The report proposes that the Indigenous identity problem has arisen for two main reasons. First, because Canadians generally and the academy specifically, were ignorant about the complexities of Indigenous identity. Second, because the academy seriously underestimated the fact that so many individuals would seek to exploit that ignorance for their personal gain. As a consequence there were few checks and balances to detect or deter Indigenous identity fraud.

There are other issues that it is important to set out, including whether the current focus on ancestry and membership/citizenship are unproblematic with respect to determining whether an

applicant is Indigenous. The common reaction with respect to harm must also be addressed because many appear to believe the false assumption of Indigenous identity to be either a benign practice or a rare situation. Many also believe that excellence in performance of the job excuses the impersonation. For example, many Canadians dismiss Indigenous outrage at the dubious Indigenous identity claims of Joseph Boyden because he is a good writer. There is a general failure to recognize the serious harm caused when Indigenous identity is falsely assumed. These attitudes also mean that individuals will continue to assume an inappropriate Indigenous identity because there is meager deterrence or consequence, and much to gain.

So, it is helpful to examine the root causes of the problem, provide an analysis of why non-Indigenous people do it, and set out red flags that can help identify future questionable claimants. Those who falsely claim Indigenous identity for their own material advantage cause significant harm to the academy and Indigenous people. This is an undisputable fact. The report documents these harms. The report also investigates the complexities of Indigenous identity in Canada and seeks to aid USask in its quest to understand the issues. This is necessary so that future questionable claimants do not slip through the cracks. The report then looks specifically at USask policies and procedures with a view to making recommendations for the future.

One of the policies the report examines is the move to Indigenize USask. Since 2015 the University of Saskatchewan (USask) has made a great effort to Indigenize the university. The move to Indigenize the university provided incentives for Indigenous people to apply for student placements, scholarships and grants, faculty positions, and staff employment. Unfortunately, as we now know, some applicants seeking to take advantage of these opportunities were making false claims to Indigenous identity.

To put it bluntly, an individual who relies on deception to achieve a material advantage – who intentionally and falsely identifies as Indigenous to obtain a faculty or staff position, funding, or a student placement – is engaged in Indigenous identity fraud. There are two kinds of Indigenous identity fraud. The first kind – the fabricators – are individuals who fabricate an Indigenous identity out of thin air. The second kind – the embellishers – are individuals who embellish their connection to Indigeneity, either by exaggeration or misstatement, when they don an Indigenous identity based on illusive hearsay or rumors (family stories), or miniscule evidence (an ancestor from the 1600s, or a DNA test that reveals a small percentage of Native American ancestry). The advantage they gain is stolen, causes harm, and breaches our trust. These individuals are said to be “wannabees” or “pretendians.” They are donning “redface” or “playing Indian.” (Deloria, 1999) In this report these fabricators and embellishers are collectively called fraudsters.

USask’s Department of Community Health and Epidemiology released the following statement:

False claims to Indigenous identity are inextricable from the Indigenous-focused scholarship built on them. We cannot teach integrity to future generations of scholars and leaders if we do not also model this in our own work. We also cannot expect society to value the knowledge we produce if we cannot demonstrate it has been built on a foundation of integrity. (USask, *CH&E Statement*, 2021)

This is an excellent acknowledgment of the problem and the tentacles of harm that spread from the false claimant to scholarship and the integrity of USask. Fraud, like all societal violations, generates harm that spreads like poison. The poison taints the integrity of academy, the

scholarship built on the deception, and the Indigenous staff, students, and faculty of the university. The poison also spreads into the Indigenous community where, because of a pre-existing trust deficit, it multiplies exponentially. The residential school system attacked the foundations of Indigenous societies – families, communities, customs, laws, traditions, religions, and whole peoples. Residential school also destroyed Indigenous peoples trust in western education. USask has made great efforts to gain the trust of Indigenous peoples and build a new relationship. It is most unfortunate that Indigenous identity fraud undermines the very foundations of these newly built bridges.

USask also understands that whatever actions it takes with respect to Indigenous identity fraud must be done in partnership with the Indigenous community. Provost Airini released the following statement of USask’s commitment in this regard.

USask continues to be a part of larger conversations happening across Canada as they relate to Indigenous identity and hiring processes...We will continue to refine our own processes and work with applicants, and with Indigenous and community partners, to honour and support Indigenous sovereignty and self-determination. We remain firmly committed to building trust and relationships with Indigenous communities. (USask, *Airini Statement*, 2021)

There are many reasons why the Indigenous community must be a partner in any USask actions with respect to Indigenous identity fraud. The fundamental reason is that the right and responsibility to identify its Indigenous members vests in the distinct Indigenous nations. Each Indigenous nation determines its members according to its own customs, traditions, and laws. While there are basic similarities in most Indigenous membership customs, traditions, and laws, they are not all the same. Indigenous identity is also layered with centuries of ongoing colonialism, which includes legal Indigenous definitions determined by colonial governments and the courts according to their colonial laws, the most notable of which are the *Indian Act* and the Supreme Court of Canada’s 2016 decision in *Daniels*. Self-governing Indigenous nations have codified membership and beneficiary laws that are also Canadian law. There are many nuances to Indigenous identity and navigating this complex world is not easy.

Indigenous identity fraudsters take advantage of this complexity when they seek access to the academy. Until recently, they knew they could easily assume an Indigenous identity because the academy relied primarily on an honour system of self-identification, especially for faculty positions. This means that some individuals with questionable Indigenous identities continue to be embedded in the academy. They obtained their positions and funding by intentional dishonesty for their own material advantage – by fraud.

This report is generally divided into two sections. The first section addresses the issue of Indigenous identity fraud. It begins with a discussion about who Indigenous identity fraudsters are and how to identify them. The report looks at the harm caused by Indigenous identity fraud to the academy’s reputation, to the staff, faculty, and students, and to the Indigenous community. This section of the report is generic and while it is applicable to USask it is also applicable to all institutions who are hiring and engaging Indigenous people.

The second part of the report is specific to USask. There is a review of USask policies with respect to Indigenous identity fraud. Finally, there are recommendations about how USask, in

partnership with Indigenous communities, can move forward to solve this problem in a good way.

The author acknowledges that USask is moving forward on this issue. USask has embraced the need to work with Indigenous communities and is moving quickly to implement new policies and agreements. If this story has some good news, and it does, it is that this is not a problem in search of an unknowable solution. The solution is readily apparent – education about Indigenous peoples. This is good news because USask, as an educational institution that has demonstrated its desire to learn about and work with Indigenous communities, has in its hands all the tools needed to solve this problem.

Other than specifically named individuals nothing in this report is intended to be associated with a particular person. Though reference is made to other individuals whose stories were reported in the press, this report relies primarily on the stories of Michelle Latimer and Joseph Boyden to illustrate the issues. They are used as examples because they both published detailed public statements about their Indigenous identity claims.

In preparation for this report, the author conducted sixty interviews with Indigenous and non-Indigenous students, staff, and faculty at USask, experts in Indigenous identity, Indigenous professors at other universities, and elders who have experience with USask. I give my thanks and appreciation to all who so graciously gave of their time, thoughts, experiences, and wisdom. This report is richer because of their many contributions. The author also wishes to thank Nigel Baker-Grenier for his assistance with the interviews.

A. Terminology Used in this Report

The choice to use a specific term does not reflect the author’s intention to diminish or ignore the serious issues that may exist with the use of each term. The terms chosen are used in service of the greater theme of the report, which is Indigenous identity fraud.

“**Aboriginal**” and “**Indigenous**” are basket terms that refer to the Indigenous nations who lived in Canada before it became a state. Both terms are intended to include the “Indian (First Nations), Inuit, and Métis peoples of Canada.” This report uses Indigenous and Aboriginal interchangeably.

“**citizenship**” and “**membership**” are the terms used to describe an individual’s relationship to a collective. Many Indigenous peoples wish to emphasize their existence as nations. Those who emphasize their nationhood, generally prefer to use the term citizenship. That said, the *United Nations Declaration on the Rights of Indigenous Peoples* uses the term membership. This report uses both terms interchangeably.

“**community**” is a particularly confusing concept. In essence there are two uses of community: (1) communities that are bounded with a physical geographic location such as a settlement, village, or city; and (2) communities composed of associated people, which can include virtual communities, identity-based, or organizational communities. This report uses community in both senses as the context indicates.

“**Indian**” while a regrettable term, is virtually inescapable when referring to Canada’s laws and history. The term is used when necessary.

“**Métis**” means individuals who self-identify as Métis, are distinct from other Aboriginal peoples, are of Historic Métis Nation ancestry, and are accepted by, or eligible to be accepted by the Métis Nation. In this report “Métis” does not mean individuals who have mixed ancestry.

“**peoples**”, “**nations**” and “**polities**” are used interchangeably in this report. The author appreciates that they are different concepts, but in the context of this report they are used to convey the idea that Indigenous collectives are ethnic/cultural and political entities. These terms, as used in this report, are not intended to be equated with states.

“**race-shifting**” is a term applied to those who shift their identity from one race to another. Unless quoting another reference, this report does not use this term because the author takes the position that Indigenous peoples are not a race.

“**settler-colonial**” is used in this report to describe the dominant Canadian culture. That said, there are several quotes where the term “white” is used as a shorthand reference to the dominant culture. As with the misapplication of “race” to refer to the multiple cultures of Indigenous peoples, the use of “white” inappropriately uses a racial concept to apply to the dominant Canadian culture. The author does not agree that there is a “white” culture.

Section One: Indigenous Identity Fraud

A: What is Identity?

1) This is a report about identity, specifically about Indigenous identity and the assumption of that identity by those who are, by definition, not Indigenous. Before delving into the intricacies of Indigenous identity and the problems created by false claimants, it will be helpful to make some preliminary observations about identity.

2) Tallbear cautions us to think carefully about how we understand the term “identity”

Identity as a concept in popular usage does not necessarily imply ongoing relating. It might imply discrete, biological conjoinings within one’s genetic ancestry. Genetics can spur alliances but identity can also exist as a largely individualistic idea, as something considered to be held once and for all unchanging within one’s body. Whether through biological or social imprinting, identity is often considered as one’s body’s property. I don’t want us looking too much within our own persons, our own individual persons, including our genetics, for a definition of who we are. Rather, I want us to remember that we are always becoming in relation not only to genetic and cultural ancestors, but to one another, continuously and in relation to the geographies of political economies we inhabit whether by choice, or by circumstances we may have had little choice in. If we remember that we are what we become as much or more than we are who our biological properties determine us to be I suspect that will help us focus on more carefully with one another as beings in the world. (FNU, 2022)

3) Tallbear here is warning about popular misconceptions of identity, specifically that identity is usually understood only as the personal property of an individual who chooses that identity and that once chosen is fixed “once and for all.” She cautions us not to look too much at genetics for a definition of identity. She wants us to remember that identity must also be understood as having other levels of meaning. One level is indeed the individual’s relationship to “genetic and cultural ancestors.” But another level is an individual’s ongoing relationship with “the geographies of political economies.” Finally, Tallbear rings a loud bell about two facts – that identity is “always becoming” and that identity is always in relationship.

4) Identity has now become a contested term. Some propose that it is subjective and a social and psychological discussion which is distinct from the subject of Indigenous membership/citizenship. The author agrees that identity is subjective if understood only from a western liberal perspective as an individual’s chosen personal property. However, identity is not solely subjective if it is understood to be, as Indigenous peoples believe and as Tallbear reminds us, always “in relation to” others. Relationships necessarily imply recognition from both parties to the relationship. Indigenous identity exists only if it is in relation to cultural ancestors and to *existing Indigenous societies*. If Indigenous identity is understood as a relationship, it is not distinct from the subject of Indigenous membership/citizenship. Indeed, self-identification is *necessary* because no one individual is forced to identify as Indigenous. It is a choice, and it is the first step in confirming a connection to an Indigenous community, *but it is not sufficient*. The second step is for the community to acknowledge that individual as one of theirs.

5) This report uses the term “identity” because it is precisely the reliance on self-identification that has led to the problem with Indigenous identity fraud. The author does not believe that the solution to the problem of Indigenous identity fraud is to avoid using the term identity. The author also cautions against shifting from reliance on self-identification to reliance

on ancestral connection as the solution to Indigenous identity fraud. It is tenuous ancestral connections that embellishers rely on, which also leads to Indigenous identity fraud.

6) It is an understatement to say identity is complex and hard to define. We know that it is a social construct. We know that individuals have multiple ways of identifying. We know that collectives and groups have identities. Individuals and collectives construct and reconstruct their conscious identities, at least in part, by meeting with, and reacting to the different forms of other individual and collective identities. The roles we play throughout our lives shape many of our identities. The forms of identity include, but are certainly not limited to, gender, ethnic, cultural, and religious identities. These may change over an individual's lifetime.

7) With Tallbear's caution in mind, in this report identity is considered in multiple ways. An individual generally identifies at three different levels, which might be better seen as nesting inside each other, which can be broadly classified as individual, social, and collective. None of these levels of identity are constructed in isolation. *All identity is constructed in relationship with others.* An individual identity is constructed with others who are generally close – such as family. Individual gender identity is “the beginning of a self-definition in relation to others.” (Hoppers, 2009) Social identity can be a religion, for example. Collective identity can be one's association with a cultural/ethnic group and/or a political group, both of which may be local, regional, or national in nature. (Légaré, 2007) Collective identity requires more than merely claiming to be or self-identifying as a member. It requires recognition of the individual by the collective to establish the relationship. Absent that collective recognition, there is no relationship and thus no validated identity as a member of that collective.

8) Using the term identity may be confusing but at least some of the confusion arises because the term identity is often used in a manner that conflates one or more of these levels and because it is not generally understood that there is a relationship aspect for every level of identity. Many are confused about Indigenous identity because they mistakenly believe that it is solely defined by an individual choice to identify and miss the necessary ethnic and political relationships, which require acceptance or recognition by an Indigenous collective.

9) An individual's relationship to a collective can take, for example, two different forms – ethnic identity and political identity. The first, ethnic identity, refers to an individual's connection to a specific ethnic/cultural group, for example the Mohawks, the Inuit, or the Métis Nation. The second, political identity, refers to an individual's connection to a political unit. For Indigenous people in Canada this will be at the local or regional level. For example, the Manitoba Metis Federation is a political regional entity that represents members of a cultural and a larger political national entity – the Métis Nation. Or to give another example, the Tzeachten First Nation is a local political entity that represents members of a regional cultural/ethnic group – the Ts'elxwéyeqw tribe, which is in turn part of a larger cultural/ethnic group the Stó:lō. Both cultural and political collective Indigenous identities are founded on historical, cultural, and political characteristics at the local or regional level.

10) To some Indigenous individuals we must also add a legal identity. This is because a legal identity is externally imposed on some Indigenous individuals and local collectives by Canadian laws such as the *Indian Act*. The Act creates a legal identity for individuals called “Indians” and

it creates a local political collective called a “band”. For many years this state-created identity was not a self-chosen identity for the thousands of individuals who were registered as Indians. But this is patently not the case in the 21st century. Many First Nation individuals cherish their Indian identity. Others pursue state recognition of their identity with vigour, and some have gone to court to be re-*instated* as legal Indians. Band local identity for First Nations is also very important, as are tribal affiliations.

11) Indigenous collective identities are also continually redefined as the Canadian state negotiates treaties, land claim agreements, and self-government agreements. These agreements create new political units that are also legal identities. These agreements forge Indigenous groups into new political alignments but do not affect their cultural identities. For example, if six Stó:lō Bands elect to enter into a Treaty with Canada, that does not mean they are no longer Stó:lō. The Treaty would create a new political and legal identity for those six Stó:lō Bands. The Treaty may also establish new rules for membership of individuals in those Treaty Bands. So, the Treaty codifies the rules for individual memberships in the Treaty Bands and the collective’s political identity. It has no effect on their cultural collective or individual identities as Stó:lō.

12) How one individual identifies in relation to all three levels, for example, might be as a Poitras family member, a member of an Indigenous culture - the Métis Nation, and a member of a political entity - the Métis Nation-Saskatchewan. This is individual, cultural, and political identification.

13) It is worth repeating that *all levels of identity are about relationships*. This is especially so with respect to Indigenous identity. With two large exceptions (colonial court and government created Indigenous identities) there must be a reciprocal recognition by the relevant Indigenous collective of a relationship with an individual who self-identifies as an Indigenous member. Absent the collective’s recognition of the relationship, individual Indigenous self-identification is questionable. The reference here to the collective’s “recognition” of an individual claimant rather than “community acceptance” is deliberate. The Indigenous collective may recognize a connection with an individual but still may not confer membership to that individual.

14) Identity is a word tool. We use it to understand how humans see themselves and how they relate to each other. The word ‘identity’ can be used for many purposes, and as this report explores, some of its uses are unethical and harmful.

B: Indigenous Identity Fraudsters

15) What is an Indigenous identity fraudster? The term refers to individuals who make false claims to Indigenous identity, usually for personal material advantage. It has been called the “pernicious phenomenon of white scholars claiming an “Indigenous” identity.” (Leroux, 2019) Another name is “ethnic fraud.” (Cook-Lynn, 1993) It has also been called “inaccurate self-identification...by persons applying for faculty positions at mainstream colleges and universities, or for admissions into special programs, and for research consideration.” (Pewewardy, 2004)

16) Indigenous identity fraudsters do not merely make *claims* to Indigenous identity. This is not about “folks like your white uncle who tells you they think they are part Native while cooking the hotdogs on the grill.” (Keeler, 2020) This report is not concerned with mere claimants. The concern is with those who are *using* false claims to gain a material advantage. They don’t just claim Indigenous identity, they “dress up and act out their ideas, making them material and real, and shape new identities in the process...Pretendians build lives and careers on ethnic fraud.” (Deloria, 1999) Those lives, and careers, are gained at the expense of real Indigenous peoples.

17) The press has recently documented several high-profile cases of this ‘reverse passing’. Unfortunately, these Indigenous identity fraudsters are becoming more common and the numbers of those passing as Indigenous in Canada now number in the tens of thousands. Their numbers are growing quickly. (Leroux, *Distorted*, 2019) They are becoming so numerous that there is even a “Pretendian List” circulating on the internet that includes Canadians and Americans. This report takes no position on whether it was appropriate to publish such a list and no position on whether the individuals on the list should be on it. But the fact that there is such a list is an indication of the rising importance attached to the issue of Indigenous identity fraud. The list draws our attention to the personal profit to be gained by assuming an Indigenous identity. According to the author, “everyone on this list has made public claims through interviews, in books authored, documentaries, and even in Congressional testimony.” She insists that “these are people who have monetized the claim and personally profit from it.” (Keeler, 2020)

18) There is one important caveat to the following discussion about Indigenous identity fraud. There is no intention in this report to suggest that Indigenous people seeking reconnection with family and their nation should be included in the ranks of the fraudsters. The 60s scoop, *Indian Act* exclusions, the scrip system, Inuit relocations, and residential schools are just some of the colonial enterprises that intentionally uncoupled individuals from their lands, communities, families, nations, and their Indigenous identities. Disconnected individuals have a right to reconnect. USask faculty and staff have a history of aiding such disconnected students as they seek to better understand their Indigenous identity and to reconnect with their peoples. That aid should not be stopped. Nor should the issue of legitimate reconnection be confused with the false claims of Indigenous identity fraudsters.

1. Who Are the Fraudsters?

19) Who are these fraudsters? Overwhelmingly they are settlers. In the academy, they are mostly women. In the hunting and fishing rights realm, they are mostly men. While the phenomenon of Indigenous identity fraud is also rampant in the United States, this report focuses on the situation in Canada and will not deal with those who are claiming hunting and fishing

rights. The focus will be on USask, although much of it would be readily applicable to other universities and government.

2. Encouraging Indigenous Identity

20) Indigenous identity fraud was enabled for five reasons:

- (1) Recognition by the courts of Indigenous rights and the move to Indigenization created many new opportunities.
- (2) The academy did not anticipate and were not prepared for the fact that so many non-Indigenous individuals would try to, inappropriately, take advantage of these new opportunities.
- (3) There was an absence of verification processes and an over-reliance on the honour system and self-identification accompanied by a failure to ensure honesty in those who claimed an Indigenous identity.
- (4) There was a general failure to recognize the fraudsters.
- (5) There was a great deal of ignorance about how to identify Indigenous peoples.

These five factors have encouraged “late-onset Indigenous identity claims” in the academy. (Andersen, 2021)

21) It is unfortunate but the academy is playing a major role in producing these Indigenous identity fraudsters. Leroux notes that they

have made headway in institutional settings ripe with post-TRC indigenization strategies. Hired as “Aboriginal” advisors at universities, colleges, and school and hospital boards; as “Indigenous” faculty hires in Sociology, History, Geography, Law, or English departments; and as “Aboriginal” consultants by a range of public, private, and non-profit boards and governing bodies, the[y]...are busy replacing actual Indigenous peoples and serving the interests of white society...In this context, it is conceivable that even well-meaning professors and teachers use work gleaned from ...studies in their classrooms, contributing to harm to actual Indigenous peoples. (Leroux, *Eastern Métis*, 2019)

22) Several people interviewed for this report stated that they had been told that if they just ticked off the Indigenous identity box, the placement, scholarship, or job would be theirs. Some fraudsters begin to construct their new Indigenous identities as students in university. They take an Indigenous Studies course, get intrigued, and over time begin to identify with the subject of their studies. Others do a genealogy, discover an ever-so-great Indigenous ancestor, and decide this entitles them to identify as Indigenous. Some start after a DNA test reveals a small percentage of Native American ancestry. Some see that there is an advantage to be gained if they identify as Indigenous and this encourages them to do that genealogy or DNA test or resurrect an old family story.

23) Over time the new identity is honed, and the performance of that identity is practiced. Meanwhile the fraudsters are provided with opportunity and funding because the academy believes that it is furthering the new social goal of Indigenizing.

24) Some of these Indigenous identity frauds don’t do it on their own. Some are encouraged to claim an Indigenous identity and then to polish it for the public. Joseph Boyden’s ex-wife provided some insight into the collusion that took place with his publisher to manufacture an Indigenous identity.

I actually don't believe that he was solely responsible for the mythology of the Great Joseph Boyden. Years and years ago, when the machine began spinning his myth-story for his dust jacket it included the word Metis, I asked him why he'd let them say that. He categorically didn't know that could be the case about his heritage but explained that the word Metis meant "mixed," and that he didn't fully know his genetic history. I called him out on the false advertising, but he ignored my advice. (Jackson, 2020)

3. It's an Old Story

25) The first step in understanding the assumption of Indigenous identity is to understand that the practice is not new. It began when Europeans arrived in North America and has continued ever since. Americans dressed up as Indians during the Boston Tea Party. (Deloria, 1999) That was in 1773. This has been going on for a very long time. Archibald Stansfield Belaney, aka Grey Owl (1888-1938), was an early Canadian practitioner of this artform. His falsified legacy lives on in many ways, including, ironically, as a "white" paint colour. (Benjamin Moore Paints, 2022)

26) When Europeans arrived in Canada, they wanted to shed their past histories and take on new identities. If the newcomers had a case of "identity indeterminacy," they could try on new Indigenous identities and shrug it off as fun, or at least benign. After all, they were confident that Indians would soon disappear one way or another – by the reserve system, outright slaughter, starvation, disease, or assimilation. This is the "logic of elimination." (Deloria, 1999)

27) It is not possible, and there is no intention here to recount the full history of the imposition of colonialism in Canada. But for the purposes of this report, it is important to emphasize that the ongoing colonial assault was not merely with respect to lands and resources. The assault was very much centred on Indigenous identity. Thus, we have the statement by Duncan Campbell Scott that,

I want to get rid of the Indian problem...Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department... (LAC)

28) Indigenous peoples in Canada fought long and hard against this assimilationist policy and to protect their identities. For a very long time it seemed that colonialism had been successful in gradually erasing them. The tide began to reverse in the 20th century after the second world war. Then the resistance of Indigenous people began to gather strength. (*RCAP Report*, 1996) Their resistance was deeply connected to a vigorous assertion of their own distinct identities. Indigenous peoples erected cultural walls to protect their collective existence and identities as peoples and nations—identities that could not be taken away by the state. They began to fight back in the courts, in the press, and on blockades. The assertion of their right to be distinct and their right of self-determination is, by definition, anathema to Canada's multiculturalism policy and the American melting pot. This was Indigenous "pushback to white appropriation" of the collective identities of Indigenous peoples. (Tallbear, *Colonial Theft*, 2021)

29) The Indigenous pushback continues, as does the colonial assault on Indigenous identity. So too continues the colonial willful ignorance about, and undermining of, Indigenous identity. It is a project that is aided and abetted by a parallel public perception that Indigenous peoples were,

by the 20th century, an anachronism. Jeffery Hewitt, an Indigenous professor at Osgoode Hall Law School, recounted his shock when his son returned from school with an announcement that the children were to dress in costumes of “fairies, elves, Indians, and other mythical creatures.” (Hewitt, circa 2002)

30) “Every generation seeks to both inherit and produce its own distinct ways of playing Indian, creating a long and unbroken chain of...performance.” (Deloria, 1999) And so it was when the New Agers arrived in the 1970s. Here was appropriation of Indigenous cultures and identities on a grand scale. New Agers commodified and romanticized Native American culture into something virtually unrecognizable but marketed as authentic and traditional. They promoted the individual right to construct one’s own identity in the absence of relationship and regardless of cultural boundaries. In the North American liberal culture that prioritizes individual rights, the right to construct a new identity, which was held to be the essence of individualism, could not be challenged. If one felt Indian or wanted to be an Indian, one could shift identities and real Indigenous people had no say in the matter.

31) Those who engage in Indigenous identity fraud freeride on individual rights and individual freedom. Their claim includes the assumption that they can get away with it and suggests that no one is morally or legally capable of objecting. The idea that Indigenous communities have the right to determine who is one of their members, or would object, is considered an attack on an individual’s right to their own personal and spiritual journey. (Gaudry, 2018) It is a claim that individual identity is a personal property right, which once proclaimed is unassailable. But the fraudulent Indigenous identity claims are squatters. Theirs are self-identification claims wedged into the gaps and misinterpretations of the law and the ignorance of Canadians.

4. Why do they do it?

32) Personal gain and material advantage are the most obvious answers to the question of why individuals falsely assume an Indigenous identity. They gain an education, funding, access to professional programs, jobs, prestige, and money, and there are a lot more of these opportunities available now than in the past. Tallbear says “greed and ambition are probably the simplest reasons why people commit Indigenous identity fraud. But those aren’t the only reasons.” (Tallbear, *Harmful*, 2021)

33) Smith offers a guilt-justifies-appropriation reason, which she wrote long before she was exposed for knowingly passing herself off as Cherokee for years.

When white ‘feminists’ see how white people have historically oppressed others and how they are coming very close to destroying the earth, they often want to disassociate themselves from their whiteness. They do this by opting to ‘become Indian.’ ... Of course, white ‘feminists’ want to become only partly Indian. They do not want to be a part of our struggles for survival against genocide. (Smith, 1991)

34) Tuck and Wang call these shifts in identity “settler moves to innocence” where colonizers position themselves as Indigenous and thereby absolve themselves of any complicity in colonialism’s relentless march. (Tuck and Wang, 2012)

35) Falsely assuming an Indigenous identity is a deeply colonial act. Those who do it are laying “claim to the cultural power of Indianness in the white imagination.” It is a relentless practice, this “logic of appropriation.” (Deloria, 1999)

36) Tallbear calls these false claims “a final act of theft in a long history of multiple layers and strategies of theft.” She illustrates this with a chart that sets out the “Eight Stages of White Settler-Colonial Denial.” In the chart “self-indigenization” is the 8th step in the colonial march. (Tallbear, *Colonial Theft*, 2021; Chart courtesy of @pazuzumycete)

Eight Stages of White Settler-Colonial Denial	
1. "They didn't exist"	(terra nullius)
Complete denial of Indigenous presence in a given area (country, province, etc). Includes denial of Indigeneity, e.g. "Indigenous Peoples are Settlers too".	
2. "If they did, they weren't here"	(terra nullius)
Denial that Indigenous People inhabit/travel/harvest/exist in a specific area. Often based on euro-centric definitions of evidence of occupation.	
3. "If they were, they didn't use the land"	(doctrine of discovery)
Denial that Indigenous People have a connection with the Land. Often based on euro-centric worldviews of the land as something to be owned and extracted.	
4. "If they did, they didn't deserve it"	(great chain of being)
Denial that Indigenous People have rights to their Lands. Often based on euro-centric value judgements of "primitive vs. civilized", "nomadic vs. sedentary".	
5. "If they did, they lost it"	(right of conquest)
Denial that Indigenous People retain their rights to their Lands. Often based on colonially imposed European systems of law / "might makes right" worldviews.	
6. "If they didn't, it doesn't matter any more"	(Westphalian sovereignty)
Denial that Indigenous Rights are still binding and take precedence. Often based on false claims of supremacy of colonial legal institutions and systems.	
7. "If it does, we need to move on"	(liberalism)
Denial that violations of Indigenous Rights requires redress. Often based on claims redress is "disruptive/unfair/reverse racism" & false calls for "equality".	
8. "If we can't, we are you"	(self-indigenization)
Denial of separateness of Indigenous Peoples and Rights. Often based on attempts to reduce Indigenous Rights to Human Rights, claim Indigeneity, etc.	

37) Huhndorf says that “going native, [is] an act that both articulates and denies white America’s history of conquest, [and] remains an integral performance of national identity.” (Huhndorf, 2013)

38) The “charitable explanation” for embellishers is that they begin by “genuinely believing – and repeating – romantic childhood stories.” They build a web of stories on this base and when their deception is uncovered, they are already trapped “in a false narrative that became increasingly difficult to deny without consequences” they are unwilling to pay. (Kimber, 2017)

39) In the settler colonial imagination Indigenous identity did not belong to Indigenous people. It was seen as common property and could be claimed by anyone for their own self-actualization. It was a free commodity readily available in the market. Self-identification became the means to an Indigenous identity and the agreement of the actual Indigenous people was not sought or required.

40) Canada’s official policy of multiculturalism aided and abetted this self-identification-as-a-right claim because under that policy state identity was distinguished from cultural identity. One didn’t have to be simply Canadian/non-Canadian. State identity was no longer binary. In Canada an individual can be a hyphenated Canadian – Ukrainian-Canadian or French-Canadian for example. No one verifies such identity claims. More recently the move to eradicate binary gender identification has added fuel to the claims of Indigenous identity fraudsters. Many are now asking why the Indigenous/non-Indigenous identity is strictly preserved as binary when gender is no longer binary.

41) Deloria writes that “playing Indian is simultaneously a swaggering assertion of power and a furtive admission of uncertainty.” He proposes that those who falsely acquired an Indigenous identity were “healing a wounded Self.” (Deloria, 1999) Tallbear agrees with this and points to the rhetoric and defenses in these fraudulent claims. (Tallbear, *Dead Ancestors*, 2021)

42) One might also add that there is an element of cunning that underlies such claims. These people construct and use their new identity *for their own benefit*. They take advantage of

affirmative action and DEI (diversity, equity, and inclusion) protections. If they presented as applicants who were simply Canadian, they might not be accepted into law school or medical school, perhaps could not beat the competition.

43) There should be no illusions that this is accidental. The people who falsely assume an Indigenous identity have agency. They make a choice to start down this path and they choose, again and again, often over decades, to continue the fraud. They choose to use their settler colonial privilege to seek personal gain when they take on and repeat their performances of an assumed Indigenous identity. This is so despite working with or for Indigenous communities.

44) Huhndorf notes that in the academy “white women” are the primary practitioners of this “culture crossing.” In her book, *Going Native*, she writes that it is through cross-cultural gender identification that these women participate in the process of conquest even as they deny their complicity.

The ability to journey into another culture for the purposes of redefining oneself and bettering one’s own position—is most certainly a privilege of whiteness...it is white women who benefit from these acts; it is they (rather than Native women, for example) who gain “mobility, more social prominence, and more economic participation” in their own cultures. Thus, this act itself comprises an act of dominance by inventing an “other” to serve one’s own needs. Such a compulsion to transcend social boundaries, “to coordinate the differentiations of the world into a single ideology,” in one critic’s words, “is intimately linked to its capacity to subordinate other peoples to its values.”

...

Not only do the European-American characters occupy center stage in the drama to “own” Indian culture, but they do so because of their superiority—stunningly, their superior knowledge of the Native world. (Huhndorf, 2013)

5. Why Don’t We Recognize Indigenous Identity Fraud?

45) All of this provokes us to ask, especially at this moment in time, why everyone accepts these impersonators so readily. Why didn’t we “notice what was going on under our noses all along?” (Deloria, 1999) Perhaps a few preliminary words on recognition are in order. Charles Taylor reminds us that,

identity is partly shaped by recognition or its absence, often by the misrecognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. (Taylor, 1992)

46) There are many layers of recognition at stake with these performances. The fraudsters enact stereotypes they know will be recognized by the non-Indigenous audience. There is often silent and resentful recognition by Indigenous people that the performance is a stereotyped image of themselves. And finally, there is an absence of recognition on the part of the settler colonial audience in that they do not recognize this as a performance or an act. They do not recognize the demeaning picture they are consuming. They do not recognize their own complicity in the performance.

47) There is grave danger in the combined effect of the recognition and misrecognition of and by these performances. This is because so many people read the fraudsters’ work, listen to them

teach, watch them online, or go to hear them speak. These fraud artists are at work creating a distortion they want the world to recognize as Indigenous reality. When the performance crashes out of the mirror, people become incapable of recognizing facts or the truth.

48) There are several reasons why Canadians *look* at these performances but don't *see* the performance. First, Canadians don't see the performance because they are ignorant. They have no idea what Indigenous people are like. They have no base of knowledge to work from. They accept what they see because they don't know enough to spot the fake.

49) Second, the performance feeds into pre-existing beliefs about Indigenous stereotypes. Some of these fraudsters play heavily on Indigenous stereotypes of family violence, racism, and poverty. Despite the audacity of their performance, "the success of ethnic impersonators depends in large part on their manipulation of others' essentialist beliefs about race and ethnicity." (Browder, 2000)

50) Third, Canadians see the success of an Indigenous person who made it – think Joseph Boyden – and they think of it as their success. After all, Boyden succeeded because of Canada's institutions and systems, because Canada gave him the opportunity. Their success also reinforces one of the myths we usually attach to the American dream – the belief in the power of the individual to rise above the circumstances of birth.

51) Fourth, the success gives Canadians some comfort. If Canada has a sad history in its treatment of Indigenous peoples, well here is proof that things have changed. We aren't so bad now, and this successful person proves it. The success allows Canadians to feel better about their past.

52) Fifth, the performance feeds into Canadian's saviour complex. Canada stepped up when it was needed and provided the opportunity for betterment. And look, the fact that this Indigenous person has risen to the top, this shows how good Canadians are for enabling such success. The success also shows Canadians that Indigenous people depend on colonial systems, such as the academy, for resurrection. The performance demonstrates the benefits of 'civilization' because it portrays an Indigenous success story as a beneficiary of civilization. These performances assure Canadian institutions of their necessary role in Canadian society.

53) Finally, Canadians don't see the performance because they are not very good at identifying the structure of colonialism. It is mistaken for a past event. But it is necessary to acknowledge and understand colonialism as a structure, in order to recognize the constant renovations required to maintain it and to recognize its cyclical nature.

Seize the continent from Indigenous people; find rituals to claim indigeneity for yourself. Move Native people to the margins; watch the margins resist and create anew. (Deloria, 1999)

54) Understanding why the performance has eluded detection for such a long time reveals a starting point – a place to begin combatting this fraud. If there is any comfort to be found, it is that the recent exposure of these impersonators across the country offers Canadians the possibility of being liberated from fixed ideas about the meaning of being Indigenous. Education, therefore, appears to be the best way to counter essentialist beliefs about Indigenous people. The

most effective way to combat fraud is to know who and what to look for, watching out for telltale signs or red flags, digging deeper to gather the facts when fraudulent activity is suspected, asking questions, and taking swift action when fraud is detected.

55) As an institution dedicated to learning and education, the academy is well situated to educate itself about Indigenous identity, tackle Indigenous identity fraud, and take a leadership role nationally.

6. Red Flags - How to Recognize Indigenous Identity Fraud

56) Having noted what this fraud is, we must acknowledge that the academy, as an institution, has been unable, and until recently has made no attempt to recognize it. As noted above, this is a performance. An examination of many such performances reveals certain behavioural patterns that can be recognized. If the academy knows there are red flags to look out for, that can help with the identification of future fraud.

57) There may be some worry about setting up identity police. This appears to be based on the belief that personal identity cannot be challenged. But it is “a particular form of individual based rights thinking to conclude ‘Who am I to tell another person who they are or not.’” (Shorter, 2018). This is also not consistent with Indigenous practices. Indigenous people believe they have a responsibility to inquire. “When someone says they are my relative, I have an obligation to find out how.” (FNU, 2022, p. 22)

58) This is not a proposal that the academy begin to police identity. It is a proposal that the academy educate itself about Indigenous identity fraud performance patterns and take steps to eliminate the fraudsters.

59) This section builds on a publication by Tallbear where she sets out some red flags to watch for. (Tallbear, *Red Flags*, 2021) Red flags are not automatic indicators of Indigenous identity fraud, but they mean questions should be asked and more information is required.

(a) *Shifting Indigenous Identities*

60) Many fraudsters shift their Indigenous identity claims over the years. Joseph Boyden, for example, claimed many different Indigenous identities from 2005-2016. He variously identified as Nipmuc, Ojibwe, Mi’kmaq, Métis, Woodland Métis, Cree, Anishinaabe, or Ojibway-Métis. (Barrera, 2016)

61) There may be justifiable reasons for shifts in Indigenous identity claims. For example, a 60s scoop survivor may know they are Indigenous, but may not know much or anything about where they come from. They may make inaccurate statements if they are beginning their journey to find their people. It may also be that newly acquired knowledge changes an identity claim. For example, an individual may be raised in a Cree community and belatedly learn that her birth mother was Algonquin. Not all changes to identity are indicative of a false Indigenous identity claim. But they should be explainable.

(b) Conflicting Facts and Stories

62) The fraudsters weave a web of stories that tend to become more elaborate over time. They also contain many contradictions. Joseph Boyden provides an example of contradictory statements. He claimed that he had knowledge of his Ojibway ancestry through his mother. In another statement he said that his mother and his father both had “sacred stories of who we are that they carried and still carry.” (Boyden, 2017) But his mother said, “I don’t know much myself...Joseph proved it and he got the papers.” (Barrera, 2016) Despite the obvious contradictions, no one seems to have questioned Boyden’s claims.

63) In the United States, a well-known artist, Lewis Anthony Rath, recently confessed to not being Indigenous, though he had previously identified as a member of the San Carlos Apache Tribe. He was well known for his wood carvings, especially his totem poles. Rath was charged with violating the *Indian Arts and Crafts Act* by selling “totem poles, in a manner that falsely suggests they were Indian produced, an Indian product, and the product of a particular Indian and Indian tribe.” (Agoyo, 2021) But with a little bit of attention to detail and some basic knowledge about Indigenous peoples, conflicting facts in his stories could have been identified. As Hayden Taylor noted, “the simple fact the Apache are not exactly known for their totem-pole work should have alerted somebody.” (Hayden Taylor, 2021)

64) Hayden Taylor’s wry comment is something of an understatement. Totem poles are the work of Indigenous peoples on the northwest coast. They are not Apache creations or pan-Indigenous items. But the non-Indigenous world is ignorant of this. Once again it points to the importance of education. Some basic knowledge about Indigenous peoples could go a long way towards identifying Indigenous identity fraud. Conflicting facts in any situation should be questioned. Indigenous identity claims are not an exception.

(c) Vague Claims

65) When Indigenous people introduce themselves in a traditional way, they state their identity in relationship to family and place. They usually begin by linking to named relatives. Métis Elder Maria Campbell reminds us of the importance of your relatives in Indigenous identity. “Who are your people and where do they come from?” (FNU, 2022)

66) One of the red flags that can indicate a false claim is the lack of specifics with respect to their people and where they come from. They often seem to be completely lacking in family relations. They claim a general place, but not family. The fraudsters have good reasons for being vague. If they name families or specific communities, Indigenous people from those families or communities ask questions. Michelle Latimer provides a good example. It was not until 2020 that she named Kitigan Zibi, an Anishinabeg community in Quebec. (NFB, 2020) Prior to that, for about twenty years, Latimer’s Indigenous identity claims were vague. When she named Kitigan Zibi, Elder Claudette Commanda demanded that Latimer answer the community’s questions – “Who are you? And prove to me who you are.” Commanda was angry about Latimer’s false claim to membership in her community, saying “it’s an insult and it’s an exploitation and an appropriation of our culture, identity, community... That is what Michelle is doing and she is one of many.” (Deer and Barrera, 2020)

67) If a claimant never names their Indigenous relatives or a specific community but vaguely claims to be from Treaty 4, or claims to be Algonquin, Anishinabeg, or says they have Cree ancestry, without more specificity, that is a red flag indicating that more questions should be asked. The absent identity markers here are their individual relationship to a named family and their relationship to place on the local level.

68) Many First Nation people will begin by referring to a regional place such as a treaty territory, but then will usually go on to name their relationship in more local terms, such as to their Band. One example comes from University of Victoria law professor, Dr. Val Napoleon, who introduces herself by stating that she is “from northeast British Columbia (Treaty 8) and a member of Saulneau First Nation.” (UVicLaw, 2022)

69) It is also a red flag to vaguely refer to membership in a clan without reference to the Indigenous culture associated with the clan. Many Indigenous peoples, like the Métis Nation, do not have clans. So, if someone says they are Métis from the Métis Nation and of the Eagle Clan, that is a red flag.

70) Improving the university’s knowledge about Indigenous cultures is necessary to identify false claims. That said, at a minimum, repeated vagueness with respect to family and home community is a red flag. Someone should ask some questions.

(d) Métis referring to Treaty as their home territory

71) It is highly unusual for a Métis person to refer to a Treaty territory when they link to place. Métis collectives are signatories to only two treaties – Treaty 3 in Ontario and the *Sahtu Dene and Métis Comprehensive Land Claims Agreement* in the NWT. Métis collectives were not signatories to Treaties 1-11. There are individual Métis who were treaty beneficiaries. But generally, Métis call their traditional territory their motherland or their homeland. When asked about their Métis background most Métis will refer to a Métis region (e.g.: Red River or the Qu’Appelle Valley) and then refer to a specific Métis community (e.g.: St. Norbert or Lebret).

72) That said, many Indigenous people claim both First Nation and Métis ancestry, and they may refer to a treaty territory. But usually, they are happy to explain their relationship to both peoples and provide details.

73) The failure to understand the relationship between the different Indigenous peoples and treaties is another indication of the need for education.

(e) Indigenous Organizations

74) Fraudsters often claim membership in an Indigenous organization as proof of their Indigenous identity. Joseph Boyden supplied a card from the Ontario Woodlands Métis Tribe, which he described as “a community thousands strong who recognize me as one of them.” (Boyden, 2017) This is not what Indigenous people mean when they refer to community. Indigenous people usually call their community the bounded geographic community they live in or come from - a settlement, village, city, band, or traditional territory. Boyden is referring to an organizational community composed of individuals from across Canada whose only commonality is their unverified claim to be either Métis, Inuit or Indian, who have paid a fee and

who have joined the organization. Such pan-Indigenous organizations are not Indigenous nations.

75) Some people reference a Métis local when asked about their home community. The reference to an organization as a home community is highly unusual because Indigenous people usually name the band, city, town, settlement or traditional territory that is the community their family is from, not an organization. This is another red flag.

76) The Supreme Court of Canada in *Powley* made an important observation with respect to membership in an organization, noting that membership “may be relevant to the question of community acceptance, *but it is not sufficient in the absence of a contextual understanding of the membership requirements of the organization* and its role in the Métis community.” (*Powley*, par. 33, emphasis added)

77) There is now a substantial body of case law in eastern Canada that reinforces the need to exercise caution with respect to organizations that purport to represent Indigenous people and the need to look at their context. (Eastern Métis cases, 2002-2018) There are dozens of Indigenous organizations in Canada that represent or provide services to Indigenous peoples. They are formed for a myriad of reasons, and many provide cards. Parsing out which cards can be reliably used to verify Indigenous identity can be very confusing.

78) Admittance, hiring personal, and search committee members at the University must become familiar with the many kinds of organizations, and/or they must seek advice and guidance from the Indigenous community. Some basic guidelines are provided here to assist in the assessment of organizations. The guiding principle is that the organization must require objectively verifiable evidence for identifying its members.

i. Pan-Indigenous Organizations

79) Cards should not be accepted if issued by a pan-Indigenous organization, a program and service entity, or a sectoral organization. Pan-Indigenous means that they accept First Nations, Métis, and Inuit into their organization. Examples of national pan-Indigenous organizations include Friendship Centres and the Native Women’s Association of Canada. These organizations do not purport to identify their members, require objectively verifiable evidence of Indigenous identity, or distinguish which Indigenous people they provide services to.

80) But there are pan-Indigenous organizations that do provide identity cards. An example of one such national body is the Congress of Aboriginal Peoples, which was previously known as the Native Council of Canada and the Confederation of Aboriginal People of Canada. An example of a provincial pan-Indigenous organization is the OMAA-Woodland Métis Tribe in Ontario Boyden referred to. This organization does not require objectively verifiable evidence to support a member’s claim of Indigenous identity. A quick look at the OMAA-Woodland Métis Tribe’s application for membership form reveals that it is based on self-declaration. The applicant declares their Aboriginal ancestry, their Aboriginal status, and pays an annual fee. Applicants that are eligible for full membership are “any person of Aboriginal descent within the meaning of s. 35(2) of the Canada Act, 1982 but NOT a band member residing on a reservation.” [emphasis in original] (OMAA, 2022)

81) A few things stand out in the OMAA-Woodland Métis Tribe’s application form. First, there is no evidence required to verify the information. Second, despite calling itself a “Métis Tribe”, applicants can be Métis, Inuit, status, or non-status Indians. It appears that they are taking the word “Métis” to mean any Indigenous person with mixed ancestry. Third, because the applicants can be from any of the different Indigenous nations in Canada, the “Woodlands Métis Tribe” appears to be an organization untethered to any specific grounded Indigenous community or traditional territory. It purports to create an association of Indigenous individuals from anywhere in Canada. It is in this sense that Boyden referred to it as a community. Fourth, it is clearly not a tribe, at least not in the common understanding of what a tribe is. A tribe is usually considered to be a social collective consisting of families or communities that are linked by common social, blood, cultural, language, economic, or religious ties.

82) The common feature of these organizations is that they do not require objectively verifiable evidence of their members’ Indigenous identity claims. That being so, they cannot be relied on as verification of any individual’s Indigenous identity. Indeed, the Friendship Centres and the Native Women’s Association do not purport to do so. However, individuals belonging to the Congress of Aboriginal Peoples have been known to claim that membership in their organizations is proof of Indigenous identity. This is what happened in one of the many cases brought by the Castonguay family in New Brunswick.

Mr. Castonguay, in his closing remarks, said he is not asking the Court to recognize him as an aboriginal member of the Grand Falls community, but to acquit him because he is an aboriginal according to the card issued by the Confederation of Aboriginal People of Canada that attests to his status. (*R. v. Stanley, R. Castonguay*, 2012 NBPC 19 (CanLII), para 67 – Selected Eastern Métis Cases – 2002-2018)

83) Pan-Indigenous organization cards are not proof of Indigenous identity.

ii. Unassociated Métis Organizations

84) Some Métis organizations, specifically on the prairies, call themselves locals. The use of the term ‘local’ began back in the 1930s when Jim Brady and Malcolm Norris were organizing the Métis in Alberta. They borrowed the tactics and organizing methods of labour unions. Hence the name that is still used on the Prairies to describe the local Métis organization.

85) Prior to the establishment of province-wide registries after 2003, many Métis Nation locals issued their own identification cards. Their rules varied and often cards were issued to non-Métis friends. Many of these people are still members of a Métis local, many are active participants.

86) It is exactly these old practices that the Métis Nation wanted to change when it adopted its national definition and provincial registries. They wanted to establish credible registries based on objectively verifiable evidence that could be reliably used to identify Métis citizens. There are still some of those old Métis locals that continue to issue membership without verification and have members, sometimes many members, who are not Métis. These are the reasons why unassociated locals are not affiliated with the Métis Nation-Saskatchewan. This is not to say that many of the members of these unassociated locals are not Métis, because many are. In fact, many

of these individuals are also registered under the Métis Nation-Saskatchewan. But not all members are Métis.

87) Caution must be exercised with all cards issued by Métis locals. These cards cannot be accepted at face value. They would require additional evidence to support the Indigenous identity claim.

iii. Eastern “Métis” Organizations

88) Self-declared organizations are appearing almost daily. Their existence does not, by itself, provide proof of community or Indigenous identity. One might be tempted to suggest that their very establishment, and their members claims that the organization is important to them, may be taken as an indication of a coherent Indigenous collective. That said, we face the same issue here as with individual self-identification claims. Without more, we simply cannot place undue reliance on the authority of the self-declarant.

89) As we have seen, putting too much stock into self-declaration encourages questionable claims. Many of these organizations come into existence to take advantage of what they perceive to be Aboriginal rights. This is exactly what happened in Nova Scotia after the Supreme Court of Canada recognized a Mi’kmaq treaty right to trade in the products of its traditional fishing. (*Marshall*, 1999) Almost immediately, organizations sprang up that issued cards granting membership. The new groups included the Acadian Métis-Indian Nation, the East Coast First People Alliance, and the Rising Sun Community Restigouche West/Communauté Soleil Levant.

90) Individual members of these groups were usually able to provide evidence of their recent Aboriginal self-identification. Many had a distant Aboriginal ancestor. They all relied on community acceptance by the card-granting organization. Numerous court cases denied their claims to Aboriginal rights because they could not prove the existence of an historic or a modern Métis community. (Selected Eastern Métis Cases, 2002-2018) This was a clear statement by the courts that the mere establishment of an organization will not be taken as evidence of an Indigenous community.

91) Many of these new organizations were relatively candid about the reason for their existence, which was often about exploiting resources. These organizations were asserting Indigenous identity because they saw it as an access key that would allow them to hunt, fish or engage in forestry activities in locations or at times where they would not be ordinarily allowed access. The fact that dozens of courts have denied their claims

hasn’t stopped groups from popping up to claim Native ancestry and identity in misguided attempts to board this mythical gravy train. The Mikinaks are one such group—a self-proclaimed Aboriginal community based in Quebec’s Montérégie region, it requires \$80 and proof of any Indigenous ancestry in order to bestow membership. In exchange, recipients [are] given a photo ID that looks similar to government-issued Indian Status cards. Mikinak “Chief” Lise Brisebois has said that even if a member’s Native ancestor is “eight generations back, that’s okay. The most important thing is that you feel it inside you.” This method of ascertaining tribal citizenship relies on romanticized stereotypes and emotions in place of actual acceptance by an Indigenous community. (Lefebvre and Elliott, 2022)

92) In one court case in New Brunswick, the court expressed its scepticism about the organization the defendant claimed represented a Métis community.

The only tangible expression of self identification apart from his assertion is his membership in Soleil Levant Community...It would seem that Soleil Levant came into being in the year 1999. They did gain some type of official status by filing a Certificate of Business Name and Style with the Department of Justice of the Province of new [sic] Brunswick on September 8th, 2000. Curiously, in Box 2 of this application where it requires the Applicant to identify the Business Activity or service to be carried on, in or identified by the Registered Name, the following appears: "Exploitation forestière et pêche". There is a complete absence of any mention of any Métis connection, which I find to be significant. (*Castonguay J-D*, 2002, Selected Eastern Métis Cases, 2002-2018)

93) Andersen has argued that court decisions should not be taken as “objective sources of validation...somehow free of the racialized/colonial logics that shaped previous official documentation, historical analysis, or even ethnohistory.” (Andersen, 2015) This is a valid point and the case law referred to in this report is not provided as proof of Indigenous personal or community identification. The cases are included to show that other institutions – the courts – have raised legitimate concerns. Everyone should have similar concerns.

94) With Andersen’s caveat in mind, the purpose for creating these organizations is very relevant to their credibility. Leroux draws our attention to the catalysts relevant to the creation of the Communauté métisse du Domaine-du-Roy et de la Seigneurie de Mingan (CMDRSM) in 2005.

The organization’s incorporation, and the subsequent creation of the regional “métis” community, was directly tied to white, French-Québécois opposition to the negotiation of a comprehensive land claim in the area between the federal and provincial governments and an organization representing a few of the Innu communities in the region. The opposition came together in the four years immediately prior to the Powley decision (from 2000 to 2003), after which time much of the leadership of the anti-Indigenous, white rights movement shifted into a nascent “métis” identity. (Leroux, 2019)

95) The opportunistic claim of Indigenous identity combined with the deliberate manipulation of the *Powley* decision and the revelation that these organizations were established to subvert Indigenous land claims is deeply troubling. It is also troubling to see the blatantly racist members of some of these new organizations.

Another of the founding board members and the “chief” of one of the “métis clans” associated with the CMDRSM was adamant that Powley was a turning point in the region: Before his sudden transformation into a “métis” leader after Powley, this board member was the founder, president, and spokesman for a white rights organization called l’Association pour le droit des blancs (Association for White Rights), which was created in 2002 to oppose land claim negotiations with the Innu. A newspaper article in January of the same year described him as “the first defender of white rights” in the region. (Leroux, 2019)

96) Leroux has a website that may be of some assistance as a starting point when there is a need to verify a claimant from one of the organizations in eastern Canada. The *Raceshifting* website describes itself as,

a resource for people who are concerned with or want to find out more about the rise of the so-called “Eastern Métis” in the eastern provinces (Ontario, Québec, New Brunswick, and Nova Scotia) and in New England (Vermont, New Hampshire, Maine). The actual Métis are a western-based Indigenous people whose culture grew out of kinship relations with the Plains Cree, Saulteaux, Assiniboine, and Dene. The so-called “Eastern Métis” are instead an example of what is referred to as race-shifting or self-indigenization, a process that, in the case of this research project, involves white French-descendants inventing and claiming an “Indigenous” identity, often in opposition to actual Indigenous peoples.

97) The website lists 93+ organizations in eastern Canada and provides some information about the origins of each organization, its membership rules, its stated purpose, whether it is active or not, court cases it has been involved in, and other information. A page on the Eastern Woodlands Métis Nation Nova Scotia from Leroux’s *Raceshifting* website is provided here as an example of how these organizations can be understood. Each organization page contains multiple links to further information.

98) The *Raceshifting* website is a valuable source that can be accessed for information on these Eastern Métis organizations. One further note, while Leroux calls them “Métis” organizations, some call themselves Abenaki, Algonquin, or Anishinabek.

99) The confusion and concerns about the many questionable Indigenous organizations provide strong reasons for inquiring fully into Indigenous organizations when verifying the honesty of Indigenous identity claims.

(f) Reliance on Past Institutional Recognition

100) Some of the fraudsters have moved through many academic institutions over their careers. They use previous acceptance of their Indigenous identity by another institution as verification of their Indigenous identity. Institutions have assumed that some other institution along the line must have verified the applicant’s claim to be Indigenous. The combination of the assumption of previous verification and the acceptance of self-identification created a gap that the fraudsters exploited. But each institution is responsible to do its own verification of Indigenous identity and should never assume that a previous institution has verified the applicant.

EASTERN WOODLANDS MÉTIS NATION NOVA SCOTIA	
May 27, 2019 Andrea Eldinger	
Location:	• Located in Yarmouth, NS
Origins:	
Status:	• Active
Registration:	<ul style="list-style-type: none"> • Any ancestry will do. • "There is NO blood quantum required. We do not see ourselves as a percentage of our Native heritage, but as being 100% Metis Aboriginals and nothing else. Our members come from all walks of life and heritage - Mi'kmaq, Cree, Ojibwa, Blackfoot, Sioux or any other Native peoples. What joins our Metis people together is our commonalities, our inability to walk in either Indian or White worlds comfortably, our non-acceptance within either world and our wish to simply be who we are." Source: http://easternwoodlandmetisnation.ca
Cost:	<ul style="list-style-type: none"> • \$30 registration • \$30 annual fee (including year 1).
History:	• Encourages members to use their membership cards for point-of-sale tax exemptions, university scholarships and bursaries, employment opportunities, etc.
# of Members:	<ul style="list-style-type: none"> • 5 founding members in 2000 • Claims to have over 16,500 members in 2014 newsletter and 30,000 in 2018 CBC article.
Connections:	
Contact:	• http://easternwoodlandmetisnation.ca
Supporting Docs	<ul style="list-style-type: none"> • Bundale, Brett. "The Controversial Rise of the Eastern Metis: Where Were These People All This Time?" CBC. May 27, 2018. • "Mary Lou Parker, Grand Chief, Eastern Woodland Metis Nation - Yarmouth, Nova Scotia, CAN." <i>NationTalk</i>. December 23, 2014.
Court Cases	<ul style="list-style-type: none"> • Catholic Children's Aid Society of Hamilton v. G.H., TV. and Eastern Woodlands Métis of Nova Scotia • R. v. Williams • Windsor-Essex Children's Aid Society v. E.W. • Children's Aid Society of Toronto v. B.B. • R. v. Power

Nova Scotia/Nouvelle Écosse

(g) Repeated References to Ceremony

101) Many fraudsters make repeated reference to their participation in ceremony. They believe this makes them appear more authentic. Joseph Boyden, when questioned about his Indigenous identity, and wanting to authenticate his claims, stated he that had “participated in many ceremonies performed by traditional elders and healers across the country.” (Barrera, 2016) Wheeler calls this “using ceremony as a club” to beat others into accepting their Indigenous identity. (Wheeler Interview, 2021) Tallbear notes that constant referral to ceremony is a red flag.

Do they...brag or make a huge to-do about the ceremonies they say they've been privy to? Do they speak with much authority and little humility or discretion on ceremonial matters? In general, making ceremony-talk into dinner-party conversation is not viewed as appropriate, especially in mixed Indigenous/non-Indigenous company. (Tallbear, *Red Flags*, 2021)

102) Be wary of individuals who make repeated references to ceremony or references that make ceremony sound overly mystical, romantic, or magical.

(h) Family Stories and Family Secrets

103) Embellishers use family stories to justify their Indigenous identity claim. They relate family stories about a long-ago ancestor who was “native” or an ever-so-great Indian or Native granny. Formerly a curator at Simon Fraser University, cheyanne turions resigned after being accused of misrepresenting herself as having Indigenous ancestry. She justified her claim on family stories. (Chan, 2021) Michelle Latimer rested her claim in the “oral history” of her maternal grandfather. (Deer and Barrera, 2020) The founding president of the Communauté métisse du Domaine-du-Roy et de la Seigneurie de Mingan justified his Métis identity by saying “my mother would say that there was Indian [blood] in our family.” (Leroux, 2019)

104) Boyden’s family stories surround his uncle. Erl Boyden, aka “Injun Joe” freely admitted that he was playing Indian, and that “as far as he knows he hasn’t a drop of Indian blood.” Erl was equally frank about why he was playing Indian – to make a profit. He delighted in scamming tourists who came to Algonquin Park.

They come here and buy armfuls of stuff marked ‘Algonquin Park,’ they take pictures of what they idiotically believe to be a real live Canadian Indian and away they go into the wide blue yonder, happy as larks. Who am I to spoil their fun? (Sangster, 1956)

105) Boyden, somewhat ironically, fabricated his Indigenous identity, at least in part, based on an uncle who also fabricated an Indigenous identity. Though it does not make the claim in either case excusable, at least the uncle admitted that he fabricated his Indigenous identity.

106) Keeler dismisses family stories when she says the problem with Indigenous identity claimants does not lie in “folks like your white uncle who tells you they think they are part Native while cooking the hotdogs on the grill.” (Keeler, 2020) Idle statements like this may not cause immediate harm. But these are the family stories that Boyden, Latimer and turions claim they heard as children. These are exactly the kind of family stories embellishers hold on to and

later use to justify their Indigenous identity claim. The truth is that these are not idle stories, nor are they “oral histories.” (Kimber, 2017) They do have consequences.

107) Embellishers can also be fabricators. Latimer claimed that her ancestry from the 1600s was enriched by intermarriage over subsequent generations. But an examination of her genealogy reveals no intermarriage in any generation. (Leroux, 2021) In the *Corneau* interviews, the founding president of the Communauté métisse du Domaine-du-Roy et de la Seigneurie de Mingan claimed that one of his ancestors was a “pure” Innu and went on to add that he had at least thirty Indigenous root ancestors. His genealogy in fact revealed only one Abenaki ancestor from the 1600s. (Leroux, 2019)

108) Stories are not proof of Indigenous identity. Even if these stories have some small basis in fact, they cannot be taken as evidence of Indigenous identity. In fact, they are evidence of no living connection to an Indigenous people or to a community. They are stories and as Salutin says,

The basis of community isn't storytelling. The basis of community is community in which stories make sense – not the reverse. Any claim that stories are the basis of it all, is just self-promotion. (Salutin, 2017)

109) Another disturbing trend is for fraudsters to claim their mother or grandmother had an affair with a “native” man and that this accounts for their Indigeneity. It is surely suspicious when anyone is so ready to slander their mother or grandmother's reputation and integrity, especially when there is no evidentiary basis for such claims. Sometimes other family members hotly dispute such stories. In the absence of any proof, there should be no automatic acceptance of alleged “family secrets.”

110) Reliance on family stories or secrets as evidence of Indigenous identity is another red flag.

(i) Lateral Genealogical Claims

111) Some Indigenous identity fraudsters claim their Indigenous identity via lateral descent, which involves

mobilizing a long-ago ancestor as the sole basis of one's Indigenous identity, in addition to inventing indigeneity in the past. The practice of lateral descent varies, though, in that it entails moving into an “Indigenous” identity on the strength of sharing a family name (patronym) or relationship with an actual Indigenous person. (Leroux, 2019)

112) Indigenous identity does not vest in lateral claims to an ancestral aunt or uncle who married someone who was Indigenous. Indigenous identity does not vest in the mere fact of having an ancestor who shares a well-known Indigenous name. For example, there are many Riels in Quebec who are not Indigenous.

(j) *Reliance on DNA*

113) Both Elizabeth Warren and Joseph Boyden eventually resorted to DNA tests that they offered as proof of their Indigenous ancestry. There are several problems with DNA tests being used in this regard.

114) First, the concept that one can locate a claim to Indigenous identity in a DNA marker inherited from a long-ago ancestor is a settler-colonial racial understanding of what it is to be Indigenous. (McMaster, 2018) Indigenous peoples' own definitions of legitimate Indigenous identity do not focus on long-ago ancestors identified through a test. Indigenous identity is based on a living community made up of one's relations – one's family, community, and nation. The companies that do these DNA tests are marketing a manufactured racial identity for their clients. (Marks, 2006)

115) Second, while a DNA test may be technologically sophisticated it is epistemologically very primitive. (Kramer, 2015) Such a test purports to affirm some Indigenous ancestry, but it does not reveal a specific Indigenous people. Tests generally state that one has a certain percentage of "Native American ancestry." This could mean one is Inuit, Hopi, or Tlingit. Just as it does not distinguish Native American ancestry from a specific Indigenous people, it also does not separate ancestry from identity.

116) Third, even if one has a DNA test that confirms "Native American ancestry", the data must be read and understood correctly. There are three types of DNA tests. One test uses markers inherited from both parents. The second kind of test, samples only mitochondrial DNA, which means they sequence your mother's, mother's, mother's line. The third test samples the paternal Y-chromosome test. The second and third tests are the most common ones and follow the DNA of only one ancestor in each generation. They examine less than 1% of the DNA. So, if the test says you have 15% Native American ancestry, it means that you have 15% of less than 1% Native American ancestry. This is a thin needle to rest an Indigenous identity on. (Tallbear, *DNA*, 2013; Leroux, *Distorted*, 2019; Kramer, 2015)

117) Fourth, DNA testing can only infer ancestry based on its sample database. This means that the statement about your percentage of Native American ancestry is only relevant to the ancestry of others who have taken the test. It has little or no relevance to a currently existing Indigenous people.

118) Fifth, the use of DNA testing rests on an assumption that there was a moment in time that can be used to pinpoint a pure Native American. (Tallbear, 2013) But such concepts of purity have long haunted science which purports to be neutral and value-free. (Leroux, 2019)

119) Finally, resorting to DNA to prove Indigenous ancestry means one is relying on "a material-semiotic object" and giving it the "power to influence Indigenous livelihoods and sovereignties." (Tallbear, 2015)

120) Resorting to a DNA test to prove Indigenous identity is a last-ditch effort to confirm a pre-existing belief by means of the "technology of belonging." (Kramer, 2015) The use of these

genetic tests is grasping at a last straw to try to achieve an identity that was lacking. (Marks, 2006) This is exactly what Elizabeth Warren and Joseph Boyden did.

121) To paraphrase Jago, one won't find Indigenous identity in a test tube of spit. (Jago, 2017)

(k) Stereotypes

122) Indigenous identity fraudsters often play heavily on stereotypes of alienation from their culture and heritage, intergenerational trauma, family violence, addictions, racism, and poverty. The fraudsters doing this are “marketing trauma” using “stolen trauma and stolen valour.” (Farrell Racette, 2021)

123) Why do Indigenous identity fraudsters use these stereotypes? It is an attempt to take on the role of the victim, which is how they understand Indigenous people's lives. They are eager to show that they are not the colonizer, the oppressor. They use pain to do this because “pain is the token for oppression, claims to pain then equate to claims of being an innocent non-oppressor.” (Tuck and Wang, 2012)

124) Andersen also notes that Indigenous identity fraudsters “dine on Indigenous trauma” and draws our attention to the way in which they narrate their false identity by relying on “people's stereotypical understandings of the ways in which trauma informs our lives as Indigenous peoples”. They know which buttons to press “in terms of white people's liberal guilt and they get away with it”. In Andersen's opinion these fraudsters know exactly what they are doing. He suggests that this is one of the ways in which this kind of “below the water line racism” buoys their identity. It is a fact, Andersen says, that “white people [are] all too willing to believe that our identity is ineffably and always tied into these trauma narratives.” (Andersen Interview, 2022)

125) Repeated references in public settings to life experiences of Indigenous trauma are a red flag.

(l) Grooming Elders

126) One of the more troubling patterns revealed in Indigenous identity fraudsters' behaviour is their use of Indigenous elders. One Métis trauma counsellor noted that some fraudsters are predators and that they groom elders to accept them. (Pruden, 2022)

127) Maria Campbell agreed and stated that this happens a great deal. She noted that elders are carefully chosen and can be knowledge keepers that have standing in the community. Often these elders are poor, and the fraudsters pay them, take them to conferences and ensure they receive attention. (Campbell, 2022)

128) Fraudsters spend a great deal of time cultivating a relationship with respected elders. The names of elders are dropped into casual conversation. They assume that these elders prove their authenticity and belonging. But this is elder abuse, and many elders do feel abused by this behaviour. They are grateful and relieved when the fraudster is finally exposed. (Farrell Racette, 2021)

129) It is one thing to quote an elder as a reference. It is quite different to drop repeated references to elders in public statements, especially to illustrate a close relationship. This is another red flag.

130) Another troubling trend that has emerged has to do with questionable “elders.” Some of the “elders” used by Indigenous identity fraudsters to bolster their authenticity are just as inauthentic as the fraudsters. Some are unknown to the Indigenous community until shown off by the fraudsters. Others are New Agers who pass themselves off as Indigenous “elders”.

131) Questions should be asked if elders are used in this way, especially with a view to protecting vulnerable elders from abuse.

(m) The Adoption Passport Fantasy

132) Indigenous identity fraudsters often resort to adoption to justify their Indigenous identity. These claims come in two main patterns. The first is to claim that one of their parents or grandparents was Indigenous by birth and subsequently adopted into their Euro-Canadian family. The second is a claim that they were adopted by an Indigenous individual or family. The resort to adoption as a means of justifying an Indigenous identity claim is so common that it has been called out as one of the “settler adoption fantasies.” (Tuck and Wang, 2012) Under this fantasy, adoption is a passport into a new Indigenous identity. Boyden and many other Indigenous identity claimants have pulled out their adoption passports. (Andrew-Gee, 2017)

133) Before diving into the adoption fantasy, there are three important distinctions to be made. First, we need to distinguish adoption by a *family* from being granted membership/citizenship in an Indigenous *nation*. Second, there is a distinction between adoption pursuant to Canadian law and adoption pursuant to Indigenous customary law. Finally, some Indigenous peoples with land claims or self-government agreements have codified their adoption practices.

134) The Inuit of northern Quebec and Labrador, and the Inuvialuit have codified adoption under their land claims and self-government agreements. The *James Bay and Northern Quebec Agreement* states that the adopted child of a beneficiary of the agreement is eligible for enrolment. (*JBNQA*, Eligibility, s. 3.2.4(c)) The *Nunatsiavut Agreement* deems an individual who was adopted as a minor by a beneficiary to be “a lineal descendant of his or her adoptive parents and to have the same ancestry that he or she would have had if he or she were a natural child of the adoptive parents.” (*LILCA*, Eligibility and Enrolment, s. 3.3.5) The *Inuvialuit Final Agreement* includes as a beneficiary, the children adopted “under the laws of any jurisdiction or according to Inuvialuit custom” of people qualified for enrolment under the agreement. (*Inuvialuit Final Agreement*, s. 5(2)(d))

135) Adoption into an Indigenous family does not mean that the adoptee is a member of the Indigenous community. This is illustrated by the case of Josiah Wilson, a young boy from Bella Bella, BC. Josiah is black, born in Haiti, and adopted as a baby into a Heiltsuk family. (Trumpener, 2017; CBC DOCS, 2022) He was subsequently made a member of the Heiltsuk nation under Heiltsuk law according to their ancient *ǵvīlās*. But it was not Josiah’s adoption that made him a member of the Heiltsuk First Nation. It was the fact that the Heiltsuk First Nation took the additional step to make him a member of their nation pursuant to their traditional law.

136) Does membership in the Heiltsuk First Nation make Josiah Indigenous? The issue arose when Josiah wanted to play basketball with the All Native Basketball organization. The organization had a 1/8th First Nation blood quantum requirement. But this was contrary to the Heiltsuk *ǵvǐlás* which accepted him as a member despite having no First Nation blood.

137) This story raises the question of whether being Indigenous requires any quotient of Indigenous blood or whether one becomes Indigenous when granted membership in an Indigenous nation. Josiah's story does not resolve the question because the All Native Basketball organization subsequently scrapped its blood quantum rule and now relies on First Nation membership. (Trumpener, 2017; CBC DOCS, 2022)

138) But the question is very relevant to our discussion. Clearly one does not have to be Indigenous to be a member of an Indigenous community. This is evident from the membership of many "white" women who married First Nation men prior to 1985. They hold status Indian cards and are members of many First Nations. But are they Indigenous by virtue of their membership? According to the experts, no. The experts were emphatic and unanimous on three points:

- a) Adoption by a family or an individual does not turn a non-Indigenous individual into an Indigenous person.
- b) Adoption by a family or an individual does not turn a non-Indigenous individual into a member an Indigenous nation.
- c) Being granted membership/citizenship in an Indigenous nation does not turn a non-Indigenous individual into an Indigenous person.

139) Membership/citizenship is political identification and being Indigenous is ethnic/cultural identification. They are two different things. As Métis Nation elder, Norm Fleury put it, "you cannot take a pill tonight and tomorrow morning you'll be a Métis." (Fleury, 2021)

140) Adoption as an adult by an individual or a family is common in First Nation communities. The adult may be Indigenous or non-Indigenous. McDougall stated that adult familial adoption for the Métis Nation was a traditional practice originating in the fur trade and that,

it's one of the ways we built alliances...That means that that person is that family's person...It doesn't mean that you have gained nationality inside, or citizenship within the collective. But it does mean you have a kinship relationship and obligation to those other people in that family...This is one of the things that white people say all the time when they get brought in. You know, Boyden has done it, Latimer did it...like somehow that gives you a pass for your behaviour...[But you] don't get to speak on behalf of all Métis people because [this Métis] family likes me. (McDougall, 2021)

141) Farrell Racette noted that when Métis Nation families adopt adults it does not equate to citizenship.

I'm not aware...of any kind of formal adoption of adults that would give someone citizenship...you know, you bring someone in...they become part of your family. But that doesn't mean they can go and vote in the next election. You bring them into your family...It's not citizenship. There is no

formal process for doing that. I've never come across it. I've never seen anything like it...I'm not aware of a single case. (Farrell Racette, 2021)

142) According to Coburn, adoption by an Algonquin family is an honorific, like an honorary doctorate, and honorifics do not make one a member or a citizen.

It has to be the nation itself that recognizes the adoption...if I was to adopt somebody, I would have to have it approved through the nation...It shows a disrespect to Indigenous nationhood, sovereignty, whenever they want to sidestep it through their...secret ceremonies...They don't acquire that political membership which entails a set of political rights...Individuals who do it unilaterally do not have the legitimacy of the polity, of the demos, of the people. (Coburn, 2021)

143) Wheeler stated that for the Cree, adult adoption is “about making family...you become a member of that family. But that doesn't make you a member of the Nation.” (Wheeler Interview, 2021)

144) Campbell stated that “adoption has nothing to do with blood. It has nothing to do with kinship. It has to do with making a place for somebody in your family.” (Campbell Interviews, 2022)

145) Adult adoption by the Métis Nation, which is distinguished from familial adoption, is unknown. Elder, Norman Fleury stated unequivocally that in the Métis Nation adult adoption *by the nation* is not the practice.

We've never ever had that adult adoption...I'd be breaking my laws. There's no such thing as adult adoption. It's not a Métis custom. (Fleury, 2021)

146) Sinclair agreed stating that “people can be customarily adopted, usually into families but it doesn't change their ethnicity.” (Sinclair, 2021)

147) Tallbear, a citizen of the Sisseton-Wahpeton Oyate in South Dakota, said that adult adoption means that,

they're in a familial relation. It formalizes your obligations for life to one another. But it would not be appropriate for them to say they are Sisseton-Wahpeton Oyate. The tribal nation does not adopt people. Families adopt people or individuals adopt people...It's got nothing to do with the tribe itself. (Tallbear Interview, 2021)

148) All experts agree that there is an accepted protocol with respect to acknowledging the adoption. In other words, if a non-Indigenous individual has been adopted as an adult by an individual or a family, they would never say they are Indigenous or a citizen/member of the community or nation. That is because adult adoption by an individual or family does not equate to citizenship in the Indigenous nation. Only if a person has been granted membership in a formal ceremony *by the nation* would they be able to say that they are a member of that nation.

149) When Métis experts were asked if they could recall this ever happening in the Métis Nation, some recalled that there was only one instance where an individual had been brought into the Métis Nation. None called it an adoption, but they recall that the late historian Lawrence Barkwell was made an honorary member of the Manitoba Metis Federation in recognition of his

long years of service to the Métis Nation. While Barkwell was made an honorary member, the Métis never considered him to be Métis and he did not consider himself to be Métis. (McDougall, 2021; Farrell Racette, 2021)

150) The Métis Nation has strict membership rules. Only those who are ancestrally connected to the Métis Nation and accepted by the Métis Nation are considered Métis and granted membership in the Métis Nation. There is no opportunity for a non-Indigenous individual to become a member of the Métis Nation. This is quite different from many First Nations who have members who are not ancestrally connected with some who are non-Indigenous.

151) Several experts noted that there is a common misunderstanding by non-Indigenous people that adult adoption by an Indigenous family equates to Indigenous identity and that this is an indication of their ignorance about Indigenous history and traditions. The experts and elders stated that adoption into an Indigenous family was a private matter and usually would not be stated publicly.

152) There is some difference of opinion as to whether a non-Indigenous individual who has been made a member of a First Nation *by the nation* should always publicly state that they are not Indigenous. Several experts stated that the adult adoptee should acknowledge first who they are before saying that they have been adopted into the nation. For example, “I’m a settler and I’m adopted by or a member of the x First Nation.” But not everyone agreed, referring to the fact that Indigenous peoples are nations with the inherent right to determine their own membership according to their own traditions. Under this analysis, if adopted or made a member *by the nation* these individuals should not have to show the route by which they became a member. It also suggests that the question that should be asked is not whether one is Indigenous, but whether one is a member/citizen of an Indigenous nation.

153) All the experts agreed that one cannot claim Indigenous identity on the basis of adult adoption by individuals or families, membership in a First Nation, DNA tests, or work done for Indigenous communities. Boyden’s final plea was,

If I have been traditionally adopted by a number of people in Indigenous communities, if my DNA test shows I have Indigenous blood, if I have engaged my whole career in publicly defending Indigenous rights, am I not, in some way, Indigenous? (Boyden, 2017)

154) The answer to Joseph Boyden’s query is no. He may be an ally. His DNA test may show that he has some Indigenous ancestry, and he has in fact defended Indigenous rights. But none of this converts him into a member of an Indigenous nation or into an Indigenous person.

(n) “Native” Names

155) Many Indigenous identity fraudsters adopt what non-Indigenous people think sounds like a native name. It is not unknown for fraudsters to look up words in an Indigenous dictionary and fashion themselves a name. Such names are usually easy for Indigenous language speakers to identify because while the words may be from their language, the way they are put together is profoundly wrong.

156) If the name sounds like a Hollywood romanticized name, it's probably an invention. This is a red flag.

157) It is also a red flag when the individual tells an elaborate story about how they got their name. Most Indigenous people will simply say their name. For example, the cultural advisor to the Stó:lō Xwexwilmexw treaty negotiations introduces himself by saying “my name is *Naxaxalhts'i*. I am also known as Sonny McHalsie.”

(o) Recent Identification

158) Recent identification claims should give rise to questions. That said, it cannot be categorically stated that all recent identification claims are illegitimate. Those who are seeking to reconnect because, for example, they were part of the 60s scoop, should not be penalized because their Indigenous identity is of recent vintage.

159) Unfortunately, many recent Indigenous identity claims are far from benign and are instead opportunistic. Many of these new claims arose after the *Powley* decision was handed down by the Supreme Court of Canada in 2003. Some of the recent claimants were interviewed for the *Corneau* case and were quite candid about their recent conversion and the catalyst that began it. Leroux has provided this evidence along with a pertinent observation that these newbies are operating “in conjunction with larger social and political trends, including legal ones, that occur outside the actual region in question.” Here is what some of the *Corneau* litigants said.

“Powley opened doors, and it closed others. Of course, it provided recognition for the East, now, Powley helps us here. Powley told us, ‘defend your rights, demand them, ok, recognize yourselves as Métis, those who are Métis, defend your rights, demand them!’ And that’s what we’re doing.”

“We quickly understood that [Powley] was the way to have your Aboriginal identity recognized, get with it, let’s go, things are going by the Métis route, there’s no other way to play it, don’t try to play another hand, you lose from the outset, that’s why we decided to create the [CMDRSM].”

“Powley was like lightning in a blue sky, it was, those people, we have to, us Métis should put up a monument to them, it was really Powley that started everything. What the ‘Ontario Métis Nation’ [sic] just won is huge, they won [rights] for all of Ontario . . . and Quebec is next. It’ll happen fast now, we’ll also experience the same lightning [here].”

“They woke us up in 2003 with Powley when they told us: ‘Well, self-identify as métis’, you know, they didn’t say, ‘self-identify as Indians or off-reserve Aboriginal or this or that.’ They said, ‘if you’re Aboriginal, you’re one of these three categories.’ We didn’t have much of a choice, they forced our hand, and said, ‘identify yourselves.’ So, today if you’re Aboriginal and you feel Aboriginal, that’s my case, well I’m necessarily métis.”

“So, we looked at what happened in the Powley decision, which was in Ontario I think, we were saying that Métis have the same rights as Indians [sic], so we went to see what rights we could have because like I explained, we knew we had Indian ancestry but we weren’t using it.” (Leroux, 2019)

160) These are shockingly manipulative. Leroux goes on to note that,

With only a few exceptions, interview participants explained that prior to events in the early 2000s, they simply did not identify as “métis.” In fact, the majority of interview participants were not even aware of their Indigenous ancestry prior to undertaking genealogical research on the matter for the purpose of joining the CMDRSM as members. Again, Powley provides the legal

environment for the mobilization of a long-ago ancestor by French descendants in these regions of Quebec. Whether aware of their ancestry or not prior to the SCC's Powley decision, interview participants "used" their ancestry, as the last participant explained, to claim a "métis" identity that mirrored the Powley test. (Leroux, 2019)

161) It is with good reason that the courts in eastern Canada are rejecting these recent vintage Indigenous identity claims. Recent identity is one of the red flags.

162) The above are patterns of behaviour that raise red flags. They are generally not the kind of behaviour Indigenous people exhibit. There may be other patterns not mentioned here.

163) The reason for illustrating these behaviours is to answer the question asked above – why didn't we see what was right under our noses? Joseph Boyden's uncle, known as Injun Joe, gleefully admitted he was taking advantage of people who "idiotically believe [me] to be a real live Canadian Indian." (Sangster, 1956) Why, when presented with a parody of Indigenous culture, is it so readily consumed as the real deal? The answer is ignorance, many stereotypes about Indians, and perhaps an eagerness to romanticize Indigenous people.

C. Harm Caused by Indigenous Identity Fraud

164) Indigenous identity fraud causes harm. This is uncontested. Every expert from the academy spoke about the harm it causes. Every expert insisted that misrepresentation matters, a lot.

165) David Shorter, a professor at the University of California at Los Angeles, wrote about doing work on and with Native Americans while not being one. Shorter is a fan of an American Cherokee identity fabricator Andrea Smith's scholarship, but still takes the position that misrepresentation matters.

She has done incredible theoretical work in the academic field of indigenous studies and has even been recognized internationally for her broad and groundbreaking antiviolenace coalition building. So does it matter that she did all of that in redface? Yes, it does. Andy Smith did not just appear out of an egg, as a fully formed 'woman of color' advocate, validated as an indigenous scholar, and a Nobel Peace Prize nominee. She got there by grabbing the microphone, keeping others away from it and deciding to speak both 'as' and 'for' a group of people. (Jaschik, 2015)

166) Indigenous identity fraudsters spend years cultivating relationships with powerful Indigenous leaders and elders to obtain and retain an insider status. Once secured inside, they push others out of their way, not only by playing insider, but also by playing gatekeeper which allows them to take up Indigenous space.

For every scholarship she [Andrea Smith] received as a Native person, for every honorarium she has received as an Indigenous speaker, for her book sales that a publisher sold as coming from a "Cherokee" author, those recognitions came at the expense of some student who wasn't funded, some speaker who wasn't invited, or some book by an Indigenous author that wasn't bought. (Shorter, 2018)

For every fraudster holding a university position, acquiring Indigenous grants and scholarships, there are Indigenous scholars, students and staff who are shut out. (Wheeler Interview, 2021)

167) Several experts drew attention to the harm caused by the fraudster practice of claiming intergenerational trauma, family violence, abuse, and addictions. Wheeler calls it their “heinous strategy of stealing the experiences we have lived through and claiming them as their own for the purposes of self-authentication.” (Wheeler, 2021) This theft of Indigenous trauma leaves emotional turmoil in the Indigenous community. People feel embarrassed and ashamed that they were so taken in by the fraud. The last thing Indigenous communities need is additional emotional turmoil.

168) Palmater calls it “ethnicity shopping,” and notes that

it's the height of white superiority to think that you have the ability to shop from other peoples' ethnicity and take what you want, and get the opportunities from it, and deny them the opportunities from their own ethnicity...It's exploitative, opportunistic, manipulative, and extractive. It's dispossession and appropriation founded in the racism and entitlement that goes with white supremacy. It's another wave of colonization...We took everything else so we're going to ensure we get the rest by saying we're you. (Palmater, 2021)

169) This is all far from harmless. When fraudsters conflate their situation with the trauma of Indigenous people, when they use the situation of Indigenous people who were scooped from their communities or otherwise disconnected, they are cynical and self-serving.

Identity fraud traffics in narratives of violence and dispossession that create insecurity and confusion among those who've been scooped, stolen, or disconnected by assimilationist federal government policies. (Wheeler, 2021)

170) The harm Indigenous identity fraud perpetuates on the academy is serious and extensive. It affects the university's reputation and its Indigenous members. Ultimately it attacks and undermines academic integrity. The University, rightly, has high ethical standards. But if Indigenous identity fraudsters on faculty are permitted to fabricate their identity, teaching, and scholarship, then it makes a mockery of academic and ethical standards.

171) When an Indigenous identity fraudster is outed in a university, professors from other universities shy away from recommending that school to their students. They are wary of universities that had the kind of processes that permitted the fraudster admission and of how the University handled the exposure of the fraudster. They are sceptical that these universities can nurture and protect Indigenous students.

172) Indigenous students are also making choices to avoid campuses where Indigenous identity fraud has been exposed. Some students are so disturbed by these events that they transfer to another university.

173) Students who studied with a known Indigenous identity fraudster feel particularly manipulated.

When a fraudster is finally exposed the impact on Indigenous students is absolutely painful. Students question everything they learned in class, feel duped and manipulated, and experience tremendous emotional turmoil. (Wheeler, 2021)

174) Imagine also what it means to a student who had a fraudster as their thesis supervisor. They will be “not only reeling emotionally but are also dependent on research assistantships, financial support, their committees, and supervisors.” (Wheeler, 2021) Interviews with students revealed enormous fear, anger, shame, and confusion. There were tears and worries. They questioned everything they had learned. They worried about their academic careers. Some have their name associated with a fraudster and said they felt exposed and vulnerable. Some worried because they had published papers with a known fraudster. They worried that all their scholarship and any papers they write in future will be questioned for validity. They question *their* validity! They wondered whether to start over or quit in despair. (Student Interviews, 2022) This is an untenable position to put a young scholar in.

175) Indigenous identity fraudsters also spread their poisonous harm to scholarship built on Indigenous fraud.

These are self-identifying “Indigenous” individuals without connection to our Nations and communities and who continue to silence our voices. They reproduce the settler-centric research without being accountable to our Nations while scoring lucrative research grants. This trend is seen elsewhere, among those self-Indigenizing individuals—with very tenuous and often no discernible Indigenous ancestry—are laying claim to the title of unceded Indigenous territory as well as many other inherent Indigenous rights. (Lawford and Coburn, 2019)

176) The conclusion on harm is undisputed – being dishonest about one’s identity and one’s connections to Indigenous communities damages the integrity of the academy and is harmful to Indigenous peoples. (NAISA, 2015)

177) Tallbear has summed up the harm well. She notes that there is great risk to Indigenous well-being with,

the structural trickle-down of having non-Indigenous people with non-Indigenous community standpoints rising through the ranks to represent us and theorize Indigenous peoplehood, sovereignty, and (anti-)colonialism. These people become “thought leaders,” institutional decision-makers, and policy advisors to governmental leaders with regulatory and economic power over our peoples. They then shape academic and public discourse about who we allegedly are, what our lives allegedly look like, and what they think should be done about and to us. (Tallbear, *Colonial Theft*, 2021)

178) The exposure of Indigenous identity fraud raises questions about the validity of scholarship produced by the fraudsters but also makes the rest of the academy suspicious of *all* Indigenous scholarship. They question its validity, but often privately or silently. They do not want to be seen to be racist by questioning Indigenous scholarship.

D: Self-Identification and Ancestry

1. Self-Identification

179) Following the release by the Truth and Reconciliation Commission of its Calls to Action in 2015, the academy began to “Indigenize.” Indigenization in the academy takes three separate forms – inclusion, reconciliation, and decolonization. (Gaudry and Lorenz, 2018) The academy’s focus to date has been on inclusion – increasing the numbers of Indigenous students and hiring more Indigenous faculty and staff. Indigenization-by-inclusion is what USask announced in 2018 when the College of Arts and Science made a commitment to hire thirty Indigenous scholars over the next ten years. (Putnam, 2018) It is noted that USask is moving beyond Indigenization-by-inclusion with the implementation of its *Ohpahootan/Oopahootaan/Indigenous Strategy* in 2021.

180) Some scholars have criticized Indigenization-by-inclusion noting that it is predicated on a belief that the academy was and would remain a neutral space. These scholars suggest that Indigenization was never intended to make the academy more Indigenous. The intention, they say, was more modest, to increase the number of Indigenous people in the academy. (Battiste and Findlay, 2002)

181) The academy, intent on Indigenizing as rapidly as possible, relied for years on applicants self-identifying. Applicants were asked how they identified, or they were asked to state their ancestry. Most universities did not ask for any verification of Indigenous identity for faculty positions. Professors interviewed for this report confirmed the reliance on self-identification without verification by Ryerson (now Toronto Metropolitan University), St. Mary’s University, First Nations University, Athabasca University, USask, the Gabriel Dumont Institute, the University of Regina, Concordia, the University of Manitoba, the University of Alberta, and the University of Ottawa. (Palmater, Sinclair, Wheeler, Farrell Racette, Tallbear, and McDougall Interviews, 2021-2022)

182) Cook, the vice-president, Indigenous at the University of Manitoba, claims that the reason the academy moved to reliance on self-identification is rooted in “good intentions.” She says it was an attempt to move away from the federal government control over identification and place it with Indigenous communities. (Coutts, 2022) This assertion is difficult to align with the fact that no institution placed identification with Indigenous communities. Institutions placed identification firmly with individuals. Cook’s theory is also difficult to align with the fact that the academy has never actually moved away from federal government control over Indigenous identification. The academy still accepts government issued status cards as evidence of Indigenous identity.

183) In relying on self-identification and/or ancestry with no verification, the academy created an honour system. It feared taking on the role of deciding whether an applicant was Indigenous. The academy correctly understood that this was inappropriate. Unfortunately, in creating an honour system the academy failed to take on the role it should have taken on – to ensure that an Indigenous applicant’s claim was honest.

184) Asking for verification evidence is not determining whether an applicant is Indigenous. It is putting in place a process to ensure honesty. This is similar to the system for verifying

academic credentials. When the academy asks for documentary verification of academic credentials, the verification ensures that applicants' claims are honest and accurate. Nowadays, to ensure that accuracy, it is common practice for transcripts to move between the granting university to the institution that is verifying an applicant's credentials. This removes any possibility of tampering with grades on the transcripts. The verification of academic credentials does not delve into the details of the courses, or why the student got a specific mark. The process is designed to ensure that the student accurately portrays the marks she received. Evidence supporting an Indigenous identity claim fulfills the same purpose.

185) In relying on self-identification, the academy abdicated its responsibility to ensure that applicants were being honest about their claimed Indigenous identity. It could be argued that the academy naïvely believed no one would take advantage of the self-identification system to gain access to the university. But this seems to be an inadequate assessment of an institution ripe with techniques it regularly uses to ensure accuracy and honesty in its scholars. Exams are invigilated. Many educational strategies are evidence-based, meaning that they are informed by objective evidence. The academy checks academic credentials and references. Peer reviews evaluate academic publications. It seems that in most, if not all other aspects of the academy, it is standard operating procedure to ensure honesty and accuracy. It is most unfortunate and worthy of some institutional self-reflection to examine why an exception was made for Indigenous identity.

186) When the academy avoided its responsibility for validating the honesty of Indigenous identity claims, it opened itself up to fraudulent claims and vastly underestimated the extent to which people would go to access places in the academy. It failed to account for,

the way in which white possessiveness means that people make possessive claims to identity because they feel like it, because they want to, because they think they deserve it...this is what we're seeing, what we've been seeing for generations in the academy. (Andersen, 2022)

187) This is the essence of the ongoing colonial project, "become the Indian to kill the Indian/kill the Indian and then become the Indian." (Deloria, 1999) One of the central aims of colonization in Canada is to assimilate and eradicate Indigenous identity. Note that this process is not placed in the past tense. This is because colonization is a many-headed beast that is alive and well and capable of continuous adaptation. This understanding must be applied to the academy's reliance on self-identification. Relying on self-identification as the access key suggests that the academy may not fully understand itself to be the agent of colonization that it is. It is in this light that we must recognize that when the academy relied on self-identification it permitted its application processes to operate as "a tool of de-indigenization." (Gaudry and Lorenz, 2018)

188) The academy has justified its use of self-identification by claiming that:

- a) It was our policy to accept self-identification and/or declarations as to Indigenous ancestry. This is circular. It is a simple statement that the academy relied on self-identification because it had either an explicit or a tacit policy that used self-identification.
- b) It is not our place to question Indigenous identity. We don't ask out of respect for Indigenous cultures. Even if we asked for evidence, we have no way of knowing if the proof offered is valid. It is worth asking why the academy thought it disrespectful

- to ask for verification of Indigenous identity and why it thought it was helpless to validate proof. The admission that the academy itself did not possess the needed information and could not even seek information from Indigenous peoples tells us a great deal about the academy's impoverished relationship with and paucity of knowledge about Indigenous peoples. This is also a statement of the academy's abdication of responsibility to ensure honesty.
- c) It is a violation of their legal rights, specifically their individual right to identify and their right to privacy.
 - d) The *United Nations Declaration on the Rights of Indigenous Peoples* provides for a right of self-determination

189) The academy, by and large, has now acknowledged that self-identification, in and of itself, is insufficient and many institutions in the academy have resolved to move forward on solutions to deal with Indigenous identity fraud and most importantly, to undertake this important work in partnership with Indigenous communities. Jacqueline Ottmann, president of First Nations University of Canada, acknowledged this important shift with a recommendation that the academy “end the practice of self-identification when hiring new scholars.” (Cyca, *Macleans*, 2022)

Self-identification no longer has a place in these spaces...The focus is now on citizenship, membership and relationality to community and lived experiences. (Ottmann, *Macleans*, 2022)

190) There now appears to be a consensus in the academy that moves us beyond the excuses in (a) and (b) above. There remains a need to address the rights issues raised (c) and (d) as both indicate that the academy may be confused about who has the right to determine Indigenous identity and the relationship between individual rights, self-identification, and self-determination. These issues are dealt with later in this report.

2. Ancestry

191) Despite Ottmann's statement that the focus is now on “citizenship, membership, relationship to community and lived experiences,” there appears to still be reliance on ancestry. In place of self-identification, some universities are still asking an applicant to declare ancestry. According to Andersen, the University of Alberta continues to ask applicants to state their ancestry. (Andersen Interview, 2022) USask, in the past, also asked for ancestry. Provost Airini stated that the University is committed to participate in the ongoing national discussion about “hiring processes for positions specifically recruiting those with Indigenous ancestry.” (USask, *Airini Statement*, 2021) This indicates the need to articulate how ancestry relates to Indigenous identity and citizenship/membership.

192) It seems fair to say that most Indigenous people do not agree that ancestry alone provides validity for Indigenous identity, especially if the connection is ancient, minimal, or tenuous. Many state emphatically that one is not Indigenous if the only evidence of Indigenous ancestry is an ever-so-great Indian grandmother from hundreds of years ago. When Indigenous people ask, “who are your people?” they are not asking you to produce a genealogy that shows an Indigenous ancestor 400 years ago. They are asking who your relatives are *today* and where your family lives *now*.

193) All Indigenous experts consulted agreed that the traditional means of Indigenous identity is based on family connections and with an Indigenous people that pre-existed Canada's creation and *is still in existence today*. In other words, there should be someone alive in the Indigenous community who, at the very least, knows of the claimant's family. In the absence of that living relationship and knowledge, the claim is one based solely on some "long-ago ancestral essence." Such claims act to disregard the living Indigenous people and relocate their existence solely in ancestry, genealogy, blood memory, and lineal descent - what Gaudry calls "communing with the dead" rather than with living Indigenous communities. (Gaudry, 2018)

194) It is also highly questionable to re-label as Indigenous an ancient ancestor who may never have thought of or called themselves Indigenous. Yet this is what some who claim Indigenous identity via an ancient ancestor claim.

This ancestor need not have thought of themselves as an Indigenous person either, or have belonged to an identifiable Indigenous group; they merely need to have been someone who was placed into some category of Indigeneity by outside observers. (Gaudry and Andersen, 2016)

195) Such tenuous genealogical ancestry is not sufficient evidence to support a claim to Indigenous identity or to a connection to a contemporary Indigenous community. It may be an interesting genealogical fact of the claimant's ancestry. But that does not make that person Indigenous today. *Ancestry is not identity*.

196) Michelle Latimer is a perfect example of a "long-ago ancestral essence" claim. Latimer claimed to be "a non-status Algonquin of mixed blood, Métis, French Canadian heritage." (Barrera, 2021) Her evidence is two women ancestors born around 1605 and 1647. (Leroux, 2021) Just to be clear, Latimer's claim rests on two ancestors from about 417 years ago and 375 years ago. If one counts a generation as approximately thirty years, (Devine, 2005) her ancestor from 1605 is almost 14 generations ago. There is no biological "blood" basis for such tenuous ancestral Indigenous claims. After seven generations one has 0.78% of your ancestor's genes. The rapidly diminishing percentage of ancestral genes as you go back in your pedigree is just one reason why it's so biologically insignificant to have distant Indigenous ancestors. (dmgweb.net) Yet Latimer is far from alone in claiming that an Indigenous ancestor from 400 years ago is sufficient to support an Indigenous identity claim. According to Leroux approximately ten million people in Canada have the same ancestry Latimer has.

197) The courts have commented on these distant ancestor claims and concluded that this kind of tenuous evidence "falls far short of the type of evidence that would be necessary to sustain the position" of a claimant that they are Métis. While the following was made in the context of a s.35 harvesting claim, it is a valid observation about these opportunistic ancestral claims.

When examining the evidence of an ancestral family connection to the Métis community, I have the [genealogical] evidence of Donald Morrisson and the assertion by Castonguay that he is a Métis...I query whether the ancestral link is sufficient...the family tree of Jean-Denis Castonguay contains persons of native ancestry namely; Edmee Lejeune who was born in 1625 and who died in 1687; Rade gone Lambert who was born in 1621 and died in 1686...It would seem reasonable to conclude that evidence of more recent ancestral aboriginal connection would be required... Given the totality of the evidence surrounding Jean-Denis Castonguay's claim to Métis status, I find it to be more opportunistic than factual. (*Castonguay (J-D)*, 2002, paras. 55-60)

198) These types of claims reflect what is known as the “one-drop” rule. The claim is that one drop of Indigenous ancestry from long ago is sufficient evidence that one is Indigenous. This is what is called the logic of hypodescent. It is “a type of racial homeopathy at work,” such that a tiny fraction of blood has the power to reshape one’s ancestral claim. That one drop comes to the forefront despite how miniscule it is in the vast numbers of ancestors. (Sturm, 2011)

199) Tallbear refers to such claims as “a person fabricating an identity out of two Indian needles deep in the 19th, 18th, or 17th centuries of their ancestral haystack.” (Tallbear, *Dead Ancestors*, 2021)

200) It may be helpful to think of these ancient ancestry claims as strategic self-making. They reflect the claimant’s desire to have an interesting origin story and to lift themselves out of the greater Canadian public and transform into an exotic other. They are a creative act of revisionist life writing. One judge in Quebec, somewhat sarcastically commented that, “what emerges from this defence...is its remarkable creativity.” The judge went on to say that “it would be easier to nail Jell-o to a wall than to locate the ins and outs of the remarkably vague and elusive allegations...” (*Sequin*, 2017, translation, para. 158, Selected Eastern Métis Cases, 2002-2018)

201) And indeed, recent court cases show claims that reach back twelve or more generations for an Indigenous ancestor. They repurpose any historical figure with mixed ancestry, and some who have no mixed ancestry, as Métis. They then claim that their culture remained hidden for three hundred years.

Of the 2,011 individual genealogies the CMAM [Communauté Métis autochtone de Maniwaki] submitted for its case (from their six thousand members), an incredible 75 percent registered a root ancestor born in the 1600s...[and] about 25 percent listed an “Indigenous” root ancestor who, by scholarly consensus, wasn’t even Indigenous. At least five hundred members without any actual Indigenous ancestry have been granted membership. (Leroux, 2018)

202) These claims are the performance of Indigenous identity wrapped up in the guise of a claim of ancestry. Despite all courts (over fifty) denying their claims outright, membership in these Eastern Métis organizations continue to grow at astonishing rates.

203) Those who rest their Indigenous identity claim in an ancient ancestor may have an insignificant ancestral racial link, but Coburn reminds us that Indigenous nations do not “determine citizenship on the basis of biological determinism” (Coburn, 2021)

204) Another aspect of identity claims that are solely based in ancestry is that such claims confuse ancestry with identity on all levels – individual, social, and political. Recall that these identity levels are all based in living relationships. Ancestry without more does not provide evidence of identity on any of these levels.

205) No culture is pure. Most individuals have multiple ancestral lines. These multiple ancestral lines do not entitle them, without more, to citizenship or membership in an Indigenous nation. Ultimately, as Tallbear notes, reliance on “ancestry alone is not a robust claim.” (Tallbear, *Dead Ancestors*, 2021)

3. Indigenous Peoples are not a Race

206) Using ancestry to identify Indigenous applicants is a way of asking for a personal identity using genealogical proof. It emphasizes the individual and not the Indigenous people. It negates the idea of collectives, peoples, nations, or polities in its search for a mere genealogical connection to an Indigenous ancestor. It treats Indigenous identity as a matter of race.

207) Chartrand notes that there is a “widespread failure” to appreciate the fact that rights, including the right to identify as an Indigenous person, do not arise merely because one has Indigenous ancestors. He points out the erroneous but common reference in Canada to persons of Indigenous ancestry.

This terminology fails to acknowledge that it is not personal antecedents per se which determine the present identity of any particular individual...One of the most pervasive notions in Canada is that Aboriginal peoples comprise a racial minority, and that they are not distinct peoples entitled to political liberty and equality with other peoples...Aboriginal peoples are not arguing in favour of maintaining biological purity, but in favour of maintaining cultures. (Chartrand, 1995)

208) To be fair, the idea that Indigenous peoples are a race is widely shared both within and outside the academy. Race is a contested concept. Some argue that it is an invented social construct made real by humans. Others argue that race is merely a shorthand that enables us to consider genetic differences. Without commenting further on this debate, we can observe that racial boundaries and even the definition of race have shifted conceptually over time and place. Thus, whether race is used for cultural, political, or scientific purposes the concept is unreliable because it is “inherently unstable” and a “blunt and dull instrument.” (Goodman, 2006) The enduring power of a concept like race retains much of its power from its institutionalization. The better it is embedded in institutions the less likely it is to be questioned as to its origins or veracity.

209) It would be nice to categorically say that the racial theory of Indigenous identity is simply wrong. It would be possible to do that if Indigenous peoples were in control of their own membership/citizenship and the sole question to be answered was whether an individual had membership in an Indigenous nation. But Indigenous nations are not solely in control of their membership. While Inuit, the Métis Nation, and some First Nations have control over their membership, the federal government and the courts have interfered in First Nation identity, and they have, most unfortunately, embedded the concept that First Nation identity is race-based in their institutions – the *Indian Act* and its registry, and in the common law. The colonial regime continues to affirm that “Indians” are a race. This can be seen in a 2008 case where the Supreme Court accepted that an ameliorative program for a First Nation fishery amounted to differential treatment on the basis of race. (Kapp, 2008) This is a conclusion that is ill-informed as to the nature of Aboriginal collectives.

210) Because this race-based theory informs the law of this country, it cannot be ignored entirely. The academy is forced to use race-based claims when it relies on *Indian Act* registration, which unfortunately further embeds an inappropriate racial theory. The academy will have to take a position on whether it will recognize other race-based Indigenous identity claims, and if so, on what terms.

E: Indigenous Identity

211) The following discussion will focus first on traditional Indigenous identity and the ways Indigenous people identify their members when formal systems are in their control. The discussion will then turn to Indigenous identity that owes its legitimacy to the race-based theory set out by the federal government and the courts in law.

1. Indigenous Ways of Knowing Indigenous Identity

(a) *First Nations Traditional Identification*

212) Indigenous peoples are not a race. They are cultures and nations. First Nations have traditional ways of understanding Indigenous identity, which they see in terms of an individual's relationship: (1) to family; (2) to ethnicity/culture; and (3) to polities – bands, tribes, and nations. This layered and nested identity is then placed in a geographic territory. For example: a woman is a member of the Lightning family, she is Cree, she is a member of the Sampson Cree Nation, and she lives in Treaty 8 territory. We should note that family relations often (usually) cross political affiliations and spill over established boundaries. This is but one meaning of the term 'all my relations.'

213) It may be helpful to recall the previous discussion on adult adoption, which distinguished the family from the Indigenous nation. Setting aside, for the moment, the relationship to place, traditional theories of First Nation identity can be understood as familial, ethnic, and political. The fact that there are different layers of identity is often not understood. When First Nations people ask an individual about identity, they usually want to hear the political, ethnic, and family relationship which establishes the individual's identity. As noted above, this is what they are asking when they ask, "who are your people, who is your grandmother, where are you from?" (Campbell, 2021)

214) Note that most First Nations don't ask "who are you?" That's because their emphasis is not on the individual, but on that individual's relationship with the group – familial, cultural, and political. If an individual simply says they have Mohawk *ancestry*, that is a statement that they are solely relying on a racial theory of identity. First Nation traditional theories of identity do not support claims based solely in ancestry. This is because one is First Nations *only* by virtue of one's ongoing connection or membership in an Indigenous family, an Indigenous culture, and a First Nation polity.

215) To be clear, an acknowledgment of familial or ancestral connection does not necessarily equate to community acceptance as a member. A First Nation individual who was removed from her Indigenous community in the 60s scoop may have re-established a close relationship with her family on the reserve. The Band may recognize her relationship as one of their member families. It may even consider her eligible for membership/citizenship in the Band, but for multiple reasons may not have accepted her as a member/citizen of the Band. The decision as to whether the Band wishes to make these kind of distinctions rests with the Band. But the failure to appreciate the possibility of this distinction (recognition as a relative vs. acceptance in the polity) resonated through the recent Supreme Court of Canada decision in *Daniels*.

216) In Canadian common law, Aboriginal rights are acknowledged as collective rights that do not belong to individuals. One fundamental Aboriginal right is the collective right of Indigenous

peoples to determine their members according to their own customs, laws, and traditions. Given that collective right, it does *not* follow that there is an individual right to identify or claim a connection to an Indigenous collective in the absence of a reciprocal recognition or acceptance of relationship (whether that is recognition of familial relationship or acceptance as a member/citizen) from the relevant Indigenous nation.

(b) The Métis Nation Identification System

217) The Métis Nation has five regional/provincial members – Métis Nation-BC; Métis Nation of Alberta; Métis Nation-Saskatchewan, the Manitoba Metis Federation, and Métis Nation of Ontario (MNO). Each of these provincial organizations have a reliable registry that the University of Saskatchewan can utilize. Because these registries require objective evidence for citizenship to be granted, cards that are up to date and issued by them can be accepted with no further quest for information.

218) The Manitoba Metis Federation (MMF) recently left the Métis National Council (though not the Métis Nation). That said, the MMF has a verifiable registry that can be relied on. In addition to Métis Nation members who live within the geographic boundaries of Manitoba, the MMF also registers members who meet its requirements regardless of their current residency.

219) The Métis Nation does not accept local collectives as the appropriate entities to issue cards or register their citizens. The MMF does seek the local community's acknowledgment as part of its multi-step registration process. But the registry and final approval rests with the provincial registry. The entities that enrol or register members are at the provincial/regional level for the Métis Nation.

220) The Métis Settlements in Alberta are also registered in a legislated system, which can be relied on by the academy.

(c) Inuit Identification Systems

221) Inuit in Canada now have codified identity definitions in each of their land claims and self-government agreements. For example, Nunatsiavut defines "Inuit" as,

3.2.4 ...all those members of the aboriginal people of Labrador, sometimes known as Eskimos, that has traditionally used and occupied and currently uses and occupies the lands, waters and sea ice of the Labrador Inuit Land Claims Area, or any Region. "Inuit" does not include beneficiaries of:

- (a) the "James Bay and Northern Québec Agreement";
- (b) the "Inuvialuit Final Agreement"; or
- (c) the "Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada"

222) *The James Bay and Northern Quebec Agreement* defines Inuit or Inuk as:

3.2.5 A person shall be entitled to be enrolled as a beneficiary under the Agreement and be entitled to benefit therefrom if on November 15, 1974 he or she was:

- a) person of Inuit ancestry who was born in Quebec or is ordinarily resident in Quebec or, if not ordinarily resident in the Territory, is recognized as a member thereof, by one of the Inuit communities, or

b) a person of Inuit ancestry who is recognized by one of the Inuit communities as having been on such date a member thereof

223) In s. 3.2.1 of the *James Bay and Northern Quebec Agreement*, the Inuit include the lawful spouse of a person who is eligible to be a beneficiary, though the Cree do not. Inquiries would be necessary to establish whether the Inuit would consider such a spouse to be Inuit or simply a beneficiary.

224) The Inuit have formed regional identities around their land claims and self-government agreements. The codification of their enrolment requirements and the description of their territories in these agreements makes the academy's quest for verification relatively simple. Applicants should identify which Inuit region they claim, for example: Inuvialuit, Nunavut, Northern Quebec, or Labrador. Each of these groups have registries that can validate a claim.

(d) Identifying Indigenous peoples from outside Canada

225) The many customs and practices of Indigenous people from geographic territories other than Canada are far too numerous to mention or analyze for the purposes of this report. That said, it is unlikely that the University of Saskatchewan has expertise in-house to determine the validity of Indigenous identity claims that originate in another country. The guiding principle will have to be to seek assistance from the Indigenous group in the other country that will hopefully provide some verification of the claim.

F. Government Theory of Indigenous Identity

226) In a perfect world where there was no legacy of interference by colonial governments and laws, the foundational principle that Indigenous peoples are nations with the right to determine their own membership, would be the rule. Canada, however, is far from a perfect world, and there is a long history of government and court interference in Indigenous identity.

227) Government interference has been myopically focused on the identity of Indians, which has left the Métis Nation and the Inuit with space to set their own rules for membership.

228) The federal government largely ignored the Inuit until forced by the courts to acknowledge jurisdiction for them in 1939. (*Re Eskimo*, 1939) When it did begin to try to identify Inuit, the government found it hard. One factor played an important role in the government's struggle to identify Inuit, the fact that the government made no effort to learn or understand Inuit language (*Inuktitut*), familial systems, or even their names. According to Zebedee Nungak, traditionally Inuit names didn't use patriarchal surnames. They followed a "system of specific references to family relationships" known as *tuqsurausiit*. (Manoukian, 2021) Canadian administrators were unwilling to learn how to pronounce Inuit names – they were too long and too hard to pronounce. (Roberts, 1975) Unwilling to make any effort in this regard, government resorted to fingerprinting individual Inuit, a method that the Inuit strenuously objected to.

229) Suggestions were made as early as 1935 that Inuit be given an identity disc with a number. The system began in 1941, but it was not until the *Family Allowance Regulations* began

in 1945 that an “effective registration program” was devised. It is in these regulations that “Eskimo” was defined as,

a person who is listed as an Eskimo on the roll or records of, and to whom an identification disc has been issued by, the Bureau of Northwest Territories and Yukon Affairs of the Department of Mines and Resources. (Roberts, 1975)

230) Inuit were required to keep their discs (*ujamiit* or *ujamik*) on their person at all times. The number was their legal identity. The numbers replaced their Inuit names and became their legal names. The numbered disc identification system continued into the 1970s-1980s. In 1970 the government implemented Project Surname, which allowed Inuit to choose their own surname. This replaced the number system as a legal identity with a western patriarchal surname system previously unknown to the Inuit. Most Inuit have a last name now and are members of land claims and self-government agreements that define their beneficiaries.

231) The government took a different approach with respect to the Métis Nation. Until the *Powley* decision came down in 2003, the federal government denied that the Métis Nation existed *as a people*, and instead treated the Métis as individuals with a derivative rights claim. A derivative claim to Indigenous rights was a theory that any Métis claim to Indigenous rights arose solely because of their ancestral connection to Indians. Here again we see the western liberal individual rights paradigm and race-based analysis at work.

232) Government identified Métis as “half-breeds” in the *Manitoba Act, 1870* and under its scrip system. Both relied on self-identification and ancestry. This too is consistent with its race-based analysis and individual rights paradigm, under which the government designated any individual with mixed ancestry as a half-breed.

233) Government denial of the Métis Nation, as an Indigenous collective, greatly affected the Métis Nation in many important ways but never interfered directly in the way the Métis Nation determined its own citizenship. The main way government affected Métis Nation citizenship traditions was indirect, via its changes to the *Indian Act*.

234) Prior to 1951 the *Indian Act* permitted some Métis to be registered as “Indians.” They fit into the definition of “Indian” and “non-treaty Indian” because they had “Indian blood” or were the child of or married to a person with “Indian blood”.

2(f) “Indian” means (i) any male person of Indian blood reputed to belong to a particular band, (ii) any child of such person, (iii) any woman who is or was lawfully married to such person;

(g) “non-treaty Indian” means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even if such person is only a temporary resident in Canada (*Indian Act, 1906*).

235) Whether they were entitled to be registered as an “Indian” generally arose when they married a band member. This is what “reputed to belong to a particular band” usually meant. Registration of Métis under the *Indian Act* was thus dependent on the Chief recommending to the Indian agent that a particular individual be included on the band list and thus become registered

under the Act. Sometimes the Chief wanted to do this, sometimes he didn't. Even if he wanted to, sometimes he was successful, sometimes not.

236) Over time, as the definition of "Indian" in the *Indian Act* changed, many individuals who were previously entitled to registration lost their status. Because the Métis Nation has always lived near and is closely related to First Nations on the Prairies, when individuals lost their *Indian Act* status, many were welcomed into nearby Métis Nation communities and families. Some of these "non-status Indians" married into Métis families and some began to identify as Métis. Thus, there was a long period of time where the government, by means of its focus on the gradual enfranchisement of Indians, indirectly affected the membership of the Métis Nation by *increasing* its numbers and blending non-status Indians into Métis communities.

237) This began to change in 1985 with Bill C-31 when the *Indian Act* rules became more inclusive. Many non-status Indians regained their status and rejoined their First Nation communities. Many ceased to identify as Métis. Thus, after 1985, the government indirectly affected the membership of the Métis Nation by *decreasing* its numbers. Many who eagerly sought their re-instatement as Indians were later disillusioned about the results. Some were not welcomed into First Nation communities and received few benefits. Some would willingly remove themselves from their newly acquired status as Indians, but there is no mechanism in the *Indian Act* that permits an individual to voluntarily withdraw.

238) The situation on the Métis Settlements in Alberta is also confusing as a series of cases has sought to ensure that the Settlements are populated by Métis, not Indians. The story of the Settlements is much too complicated to describe in this report but suffice it to say that the ability to be a member of the Settlements is set out in provincial legislation which defines Métis "as a person of aboriginal ancestry who identifies with Metis history and culture." (*MSA, SA, 2000, ch. M-14, s. 1(j)*) There are also status Indians who are members of the Métis Settlements. (*Cunningham, 2010*) Many members of the Métis settlements are also members of the Métis Nation Alberta.

239) Nothing about Indigenous identity is black and white, it is mostly shades of gray. But it is worth noting that one other important effect of the government's ongoing interference, both federal and provincial, is that it greatly confuses everyone's understanding of Métis identity. (Teillet, 2017) Indigenous identity fraudsters take advantage of the ongoing confusion to falsely claim they are Métis. Many claim to be Métis because it seems to them to be the easiest onramp into Indigenous identity. If everyone is confused about Métis identity, and they are, then no one will likely be able to question a fraudster's claim.

240) If government ignored the Inuit for decades and denied the existence of the Métis Nation as a people, it had its eye firmly fixed on Indians. The Canadian government began to appropriate the task of identifying and registering Indians in the early 1800s. The current *Indian Act* is quite literally Victorian legislation in concept. The first *Indian Act* was passed in 1876, but its legislative precursors go back to 1839. Through a series of amendments, the Act acquired its present conceptual form by the 1880s. The dead hand of the pre-Confederation years of Canadian Indian policy development continues to affect the Act today.

The central philosophical assumptions and policies of modern Canadian Indian administration were shaped in the Canadas during the four decades prior to Confederation. Instrumental in this process were six government commissions of inquiry which devised, evaluated, and modified a programme for Indian advancement and civilization based on treaties, reserves, religious conversion, and agricultural instruction. Though not apparent at the time, the series of investigative reports created a corporate memory for the Indian department and established a policy framework for dealing with Native peoples and issues. The approach became entrenched, like the department itself, and remained virtually unchanged and unchallenged until 1969, when the federal government issued its white paper on Indian policy. (Leslie, 1985)

241) It is this Victorian relic, the *Indian Act*, that still allows “a minister and some bureaucrats to tell people who they are.” (Mercredi and Turpel, 1994) In addition to the *Indian Act*, there are different understandings of the definition of “Indian” for the purposes of s. 91(24), under the *Natural Resource Transfer Agreements, 1930*, and under s. 35 of the *Constitution Act, 1982*.

242) The *Indian Act*'s fundamental purposes are paradoxical – protection and assimilation. All systems imposed on First Nations – band councils, reserves, and the registry – were designed to, among other things, eradicate any collective Indian identity by emphasizing individual Indian identity. The enfranchisement system, which de-registered individuals who sought, among other things, education, was designed to accomplish the Act's purpose of assimilation.

243) But the systems meant to assimilate First Nations into Canadian society have also had an interesting and very forceful counter effect. They have reinforced a traditional orientation to family, clan, extended kinship, or other groupings. This familial orientation cuts across the band communities created by the reserve system. Instead of emphasizing the individual, these traditional systems emphasize connection to the people. The result is that there are three distinct ways of claiming First Nation identity:

- (a) the legislated system whereby one is an Indian with a card issued by the government;
- (b) the court-determined identity, which refers to one who identifies as an Indian but is ineligible for registration under the *Indian Act* (non-status Indians); and
- (c) identity that is determined by connection to and/or acceptance by the traditions and customs of the Indigenous nation, which usually require a familial connection.

G. First Nation Women and Self-Identification

244) Under the colonial patriarchal system, a non-Indigenous woman who married an Indian was registered as an Indian under the *Indian Act*, and an Indian woman who married a settler, Métis, or Inuit man was deregistered. Part of the battle to reclaim the right to be registered as a legal Indian was fought by First Nation women who had been deregistered because they married non-Indigenous men. Jeannette Lavell and Yvonne Bédard took the battle to regain their *Indian Act* status to the domestic courts. (Lavell, 1974) In upholding the federal government's legislative right to determine that these women could not be band members, the Supreme Court of Canada went so far as to find that,

equality before the law under the *Bill of Rights* means equality of treatment in the enforcement and application of the laws of Canada before the law enforcement authorities and the ordinary courts of the land, and no such inequality is necessarily entailed in the construction and application of s. 12(1)(b) [of the *Indian Act*]. (Lavell, 1974)

245) Sandra Lovelace took her case to the United Nations, which ultimately held that Canada discriminated against women in the *Indian Act* and was in breach of the *International Covenant on Civil and Political Rights*. (Lovelace, 1977) In 1985, in response to the decision of the United Nations Human Rights Committee in *Lovelace*, the federal government amended the *Indian Act* with Bill C-31. Under Bill C-31, the government kept control of Indian registration, set up a second-generation cut-off for entitlement to registration, and established the opportunity for First Nations to take control of their band membership by developing their own membership codes.

246) Bill C-31 separated Indian status from band membership. The result of this separation is that one individual may be registered on a band list and on the *Indian Act* registry, while another individual may be registered on a band list but not be eligible for registration on the *Indian Act* registry, while yet another individual may be registered under the *Indian Act* and not be on any band list. After 1995 First Nations with land claims and self-government agreements also took control of their membership lists.

247) In 1985, with the new Bill C-31, Canada entered a new era where the numbers of Indians registered under the *Indian Act* began to grow. Bill C-31 granted status to 174,500 individuals. Another 37,000 were added after a 2011 amendment known as Bill C-3, and that same year nearly 24,000 individuals were added with the establishment of the new Qalipu Mi'kmaq First Nation. A 2016 Bill S-3 amendment is expected to entitle another 28,970 individuals to be registered. One further amendment in Bill S-3, which came into effect in 2019, removed the 1951 cut-off date from the *Indian Act*. This applies to all descendants born prior to April 17, 1985, or of marriages that occurred prior to 1985 of women who were removed from band lists or not considered Indians because of their marriage to a non-Indian man prior to 1951. They will be entitled to status and will have the ability to further transmit entitlement to their children. It is expected that 747,045 additional individuals will be entitled to registration. It is possible that up to 250,740 individuals may actually register as Indians between 2017/2019 and 2041. (Statistics Canada, Projections) Obviously, the numbers of those registered under the *Indian Act* will continue to grow for the foreseeable future.

248) One effect of these cases and amendments to the *Indian Act*, is that the right to be registered as an Indian under the *Indian Act* has become an individual right in the sense that if one meets the requirements of the Act one is entitled to be registered. Indeed, the very definition of "Indian" in the *Indian Act* is "a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian." *Indian Act*, 1985) Registration under the Act does not require the acknowledgment of a connection by the Indigenous collective.

249) Registration under the *Indian Act* is race-based. This racial analysis was amplified when the 1951 cut-off date was removed, and individuals became eligible to register if they traced their ancestry to someone who was enfranchised back to 1869. This means that individuals who have been separated from their bands for 7+ generations will be entitled to register as Indians. When considered in light of the objection to Indigenous identity being based on an ever-so-great ancestor, it is clear that the distinction between the ancestral requirements to be registered as an Indian under the *Indian Act* and the living familial connections required by First Nations for band membership will continue to widen as the generations go by.

250) Because *Indian Act* registration is disconnected from membership in an Indigenous collective the right to status is cemented in the western liberal paradigm that adopts an essentially individualistic approach to identity. In fact, the entire *Indian Act* reflects western concepts of individualism. A “band” under the Act is defined as a “body of Indians” (*Indian Act*, 1985) That is a body of individual Indians, certainly not the “Nations or Tribes of Indians” described in the *Royal Proclamation of 1763*. This is also very different from the American approach which focuses on tribal membership and descent from tribal members with little focus on the individual. (Leslie, 1985) Note that in the *Indian Reorganization Act*, the term Indian includes,

all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation and shall further include all other persons of one-half or more Indian blood. (*Indian Reorganization Act*, s. 19 [25 U.S.C. 5125])

251) Nothing in the recent changes to the Canadian *Indian Act* has fundamentally shifted the priority it has always given to the western perspective that Indians are a racial category and to its own paradigm that privileges individualism. Under the Act, the cultural collective, the nation, or the tribe, is relegated to second place, which is in keeping with western values.

252) Another thing to note about the litigation instigated by First Nations women is that, in addition to an ancestral connection, it eschewed community acceptance or recognition. Indigenous women claimed the right to be Indians without the need for recognition or acceptance by, and often in defiance of band governments.

253) Remember that Bill C-31 separated registration as an Indian under the *Indian Act* from band membership, except in one respect. Individuals registered on a band list who are status Indians cannot be unilaterally removed by the band. So, control of band membership means control of who can be added to the band list, which can include status and non-status individuals. Band control of membership also means it can only unilaterally remove members who are not registered under the *Indian Act*.

254) The right to be registered as an Indian on the *Indian Act* registry is determined by the rules set out in the Act. If an applicant meets the current requirements, she is entitled to be registered. But that does not mean that her family’s band must accept her as a member. A band that has control of its membership can determine its own rules with respect to enrolment. This means it can add non-status Indians or other individuals who are not entitled to be registered under the *Indian Act*.

255) For example, in 2017, Fort William First Nation added four people to its band-controlled membership list. (Galloway, 2017) Three of the new members are Indigenous individuals who are not registered under the *Indian Act*, and one is non-Indigenous. All four were adopted by band members as children. Fort William First Nation is one of some 230 First Nations who now control their own membership lists.

256) Non-status Indians are individuals “who identify themselves as Indians but who are not entitled to registration on the Indian Register pursuant to the *Indian Act*.” (Canada, 2022) It is

almost impossible to estimate the numbers of those who now identify as non-status Indians. This difficulty arises largely because non-status Indians rely on ancestry and self-identification and because no one is keeping track of their numbers. One consequence of Bill C-31, C-3, and S-3 is that the numbers of non-status Indians might seem to be diminishing because many have become entitled to registration. But to offset this, there are a growing number of newly identifying non-status Indians. Note that the definition of non-status Indians, is individuals who self-identify as Indians but who are not eligible to be registered. The definition is about ineligibility. To further complicate matters, non-status Indians may not be Indians within the meaning of the *Indian Act*, but they are Indians for the purposes of federal jurisdiction within the meaning of s. 91(24). (Daniels, 2016)

257) The upshot is that individuals have a “right” to self-identify as Indians if they are eligible to be registered under the *Indian Act*. Indigenous collectives—bands, nations, treaty groups, self-governing nations, or tribes—claim the “right” to determine their own members according to their own customs, laws, and traditions under UNDRIP. The federal government asserts its “right” to determine who is an Indian for its purposes. These “rights” are not reconcilable, but they do form part of the existing paradigm with respect to who has the right to identify as Indians or First Nations.

258) This is not meant to be a full analysis of the vast changes affecting First Nation and Métis Nation identity that have resulted from amendments to the *Indian Act* over the years. It is included to briefly illustrate the fact that Indigenous identity in Canada is not solely in the control of Indigenous peoples and that self-identification has a history. It is included to emphasize that, until 2016, the individual rights paradigm was exclusive to the *Indian Act*. And that the individual rights paradigm does not apply to membership in Indigenous nations under their own customs, laws, and traditions. Finally, this brief analysis of the *Indian Act* is included to show that the federal government, in continuing to define Indians for the purpose of the *Indian Act*, retains a large role in determining Indigenous identity in Canada.

259) The federal government also interferes in Indigenous identity with its census. This is because the census works on a self-identification basis and without the benefit of any definitions. Andersen calls this “discursive violence which shears ‘Métis’ of any national or even historical political roots and supplements these with a simple emphasis on mixed ancestry.” (Andersen, 2015) Statistics Canada, to date, has refused to add to the census a Métis category that distinguishes those identifying with the Métis Nation. In so doing it ensures that the Métis category includes fraudsters who have taken on Métis identity. It means the numbers of Métis in the census cannot be relied on. The proof is readily apparent in the numbers. According to the 2016 census, the Métis population increased by a whopping 51.2% from 2006 to 2016. (StatsCan, Rapid Growth)

H. The Court’s Theory of Métis and Non-status Indian Identity

260) The courts have also affected Métis and non-status Indian identity in *Powley* and *Daniels*.

261) The Supreme Court of Canada handed down its reasons for judgment in *Powley* in 2003. *Powley* affirmed that the Métis are a distinct Indigenous people, and that a Métis community can be a rights-bearing community for the purposes of s. 35 of the *Constitution Act, 1982*.

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

262) This court recognition of Métis as a distinct Indigenous people with their own rights, customs, and traditions, appeared to signal a significant shift in thinking. Until then government and the courts had treated Métis as individuals and there was no recognition of the Métis Nation as a distinct Indigenous people. The change in attitude was extremely important and at the time seemed to put to rest the “Métis-as-mixed” logic, which had been dominant up until then, and indeed had been argued by the Crown at all levels of court. (Gaudry and Andersen, 2016)

263) The 2016 decision of the Supreme Court of Canada in *Daniels* has muddied the waters considerably. The helpful part of the decision is that it confirmed that non-status Indians and Métis are within federal jurisdiction under s. 91(24) of the *Constitution Act, 1867*, ironically as “Indians.” This finding uses “Indians” as a legal identity only. It does not define their familial, cultural, or political identities. And since the federal government does not legislate or keep a registry of who is Inuit or Métis, the mere confirmation of federal jurisdiction is not intrusive.

264) Unfortunately, the Court in *Daniels* did not stop with a declaration that Métis and non-status Indians are within federal jurisdiction under s. 91(24). It went on to define the Métis for the purposes of that federal jurisdiction. This was ill-considered and unnecessary. When it determined in 1939 that Inuit were within federal jurisdiction for the purposes of s. 91(24), the Court did not define who qualifies as Inuit. (*Re Eskimos*, 1939) The Court has never attempted to define First Nations who qualify as Indians for the purposes of s. 91(24). While the *Indian Act* defines who is an Indian for the purposes of that Act, this is not determinative of who is an Indian for the purposes of federal jurisdiction under s. 91(24). The Court in *Daniels* agreed that non-status Indians are within 91(24). Despite acknowledging that “the definitional contours of ‘non-status Indian’ are also imprecise,” which is quite the understatement, the Court made no attempt to define non-status Indians. (*Daniels*, 2016, para. 18-20) But it had no hesitation to wade in with respect to the Métis.

265) Before we delve into the problems created by the Supreme Court of Canada with respect to Métis identity it will be helpful to understand how the Métis Nation defines its citizens and how the Court defined the Métis in previous cases.

266) The Métis Nation took action to define its citizens as the *Powley* case was moving through the lower courts (1998-2001). In the interests of full disclosure, the author of this report was legal counsel for the Powleys at all levels of court. The Métis Nation took the position that, as a nation, it had the right to determine its own members. It did not want the Supreme Court of Canada to define the members of the Métis Nation or set terms it did not agree with. This was especially so because the case arose in Ontario and the Métis Nation has internal disputes about the exact edge of its eastern boundary.

267) The Métis National Council (MNC) established a Métis Rights Panel and charged them with creating a national definition of Métis for the Métis Nation. Again, in the interests of full

disclosure, the author of this report was a member of the MNC Métis Rights Panel and held the pen on the draft definition throughout most of the consultation period.

268) The Métis Rights Panel took up the task and began a two-year process of consultation with the provincial governing members. Dozens of assemblies were held across the five provinces. Hundreds, if not thousands of Métis Nation citizens of the provincial organizations attended these consultation sessions. The definition was drafted and redrafted in response to the consultations. Every word was reviewed, debated, and often argued over. The plan was that the MNC, as an intervenor in the *Powley* case, would go to the Supreme Court of Canada and emphasize that the Métis Nation had a definition of Métis, which they did not want the court to interfere with. The hope was that the Court would adopt the fundamental principles of the MNC definition and not invent another definition out of whole cloth.

269) The final definition was adopted in 2002 by the Métis National Council General Assembly and subsequently by each of the five governing members.

“Métis” means an individual who self-identifies as Métis, is of historic Métis Nation ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation.

Powley was argued at the Supreme Court of Canada in March of 2003 and the reasons for judgment were handed down in September of 2003.

270) It is important to set out this history because some have misstated the historical facts about how the Métis Nation arrived at its definition. The Supreme Court of Canada did not determine the Métis Nation definition of Métis. In fact, it was the opposite.

271) *Powley* went to trial in 1998. It was about the Métis community in Sault Ste Marie, Ontario. It was argued on the basis of the findings of the *Report of the Royal Commission on Aboriginal Peoples*, which came out in 1996. The *RCAP Report* recognized the Métis Nation as a distinct Indigenous nation, and recognized groups it referred to as the “other Métis” (*RCAP Report*, 1996). One of those “other Métis” communities the Commission recognized was in Sault Ste. Marie. The Powleys did not ask the court to make findings that the community in Sault Ste Marie was part of the Métis Nation and the Court made no such finding.

272) That said, the Powleys proposed three broad factors as indicia of Métis identity for the purpose of claiming Métis rights under s. 35: self-identification, ancestral connection, and community acceptance. The three indicia, which the Supreme Court of Canada called guidelines, were endorsed by all levels of court in *Powley*. Because legal counsel for the Powleys was working closely with the Métis National Council it is no accident that the three indicia are consistent with the MNC definition. The difference between the three indicia in *Powley* and the Métis Nation definition is in the specificity. The test for s. 35 Aboriginal rights at the time the *Powley* case was going through the courts was at the local community or regional level, which the court described as “Sault Ste Marie and environs.” So, the indicia in *Powley*, particularly with respect to ancestral connection and the community acceptance, were determined for the local community in Sault Ste Marie and environs. The Métis Nation specifies that the ancestral connection and community acceptance required are to the historic Métis Nation.

273) The Court in *Powley* articulated the three indicia as follows:

Self-identification – the claimant must self-identify, not just as Métis, but as a member of a Métis community, that the self-identification should not be of “recent vintage”, and not “made belatedly in order to benefit from a s. 35 right.” (*Powley*, 2003, par. 31)

Ancestral connection – there must be evidence of an ancestral connection to an historic community. The Court emphasized that this was an “objective requirement” to ensure that the beneficiaries of s. 35 rights have “a real link to the historic community whose practices ground the right being claimed.” It is not a blood quantum requirement, but a matter of proof. In other words, there must be some evidence that “the claimant’s ancestors belonged to the historic Métis community by birth, adoption, or other means.” (*Powley*, 2003, par. 32)

Community acceptance – requires demonstrable proof by the modern community whose “continuity with the historic community provides the legal foundation for the right being claimed.” The core of community acceptance is past and ongoing participation in a shared culture, in the customs and traditions that constitute a Métis community’s identity and distinguish it from other groups. The requirement is for “an objective demonstration of a solid bond of past and present mutual identification and recognition of common belonging between the claimant and other members of the rights-bearing community.” (*Powley*, 2003, par. 33)

274) The Court in *Powley* also emphasized that,

The term “Métis” in s. 35 does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and recognizable group identity separate from their Indian or Inuit and European forebears. (*Powley*, 2003, par. 10)

...determining membership in the Métis community might not be as simple as verifying membership in, for example, an Indian band...The inquiry must take into account both the value of community self-definition, and the need for the process of identification to be objectively verifiable. (*Powley*, 2003, par. 29)

275) Finally, the *Powley* court stated that membership in a Métis organization

may be relevant to the question of community acceptance, but it is not sufficient in the absence of a contextual understanding of the membership requirements of the organization and its role in the Métis community. (*Powley*, 2003, par. 33)

276) The *Powley* case was a product of its time – 1998-2003. The Métis Nation has since been recognized by the Supreme Court of Canada as a distinct Indigenous people in three separate cases. (*Cunningham*, 2011; *Manitoba Métis Federation*, 2013; and *Daniels*, 2016). These cases now need to be understood in the context of the *United Nations Declaration on the Rights of Indigenous Peoples*, which states that each Indigenous people has a right of self-determination (UNDRIP, s. 3) and the right to determine its own members pursuant to its customs and traditions (UNDRIP, s. 33). Although it has not been a question put before the Supreme Court of Canada, it is reasonable to argue that the right to determine its members is also a right protected

by s. 35 of the *Constitution Act, 1982*. It is also reasonable to argue that, absent a pressing and urgent concern, the courts cannot remove one of the criteria by which the Métis Nation determines its members. It is in this context that the Supreme Court of Canada's decision in *Daniels* should be now reconsidered.

277) As noted above, while the *Indian Act* has indirectly affected the numbers of Métis, the Court in *Powley* appeared to be correctly endorsing self-determination with respect to the Métis Nation's authority to define its members. It is most unfortunate that the Court in *Daniels* removed one of the criteria by which the Métis Nation determines its members when it uncoupled the community from the individual with respect to Indigenous identity. And it did it by making a factual error in the application of the evidence.

278) The *Daniels* Court erroneously applied the evidence about non-status Indians to Métis when it accepted, as a fact, that Métis included "people who may no longer be accepted by their communities because they were separated from them as a result, for example, of government policies such as Indian Residential Schools." (*Daniels*, 2016, par. 49) This is a factual error. Métis communities do not now, and never have rejected any individual who was separated from their Métis community by government policies or for any other reason. Such rejections have occurred in some First Nation Band communities. But this has never happened in Métis communities. As a result of this misapplication of the evidence about the experiences of non-status Indians to the Métis, the Court rejected any Métis definition that included "community acceptance" as a criterion for determining federal jurisdiction.

279) What a mess this has left throughout Canada! The Court basically accepted that Métis has two meanings – the Métis Nation which it recognized as a distinct Indigenous people, and a new category we might call the "Daniels Métis", which includes "anyone with mixed European and Aboriginal heritage." (*Daniels*, 2016, par. 17)

280) It may be some excuse, albeit a poor one, that the Court brought down its reasons for judgment in *Daniels* on April 14, 2016, and Canada adhered to the *United Nations Declaration on the Rights of Indigenous Peoples* one short month later, on May 10, 2016.

281) The *Daniels* Court endorsed the impoverished idea that community acceptance is relevant only to the protection of collectively held s. 35 rights such as hunting and fishing, but irrelevant to the most basic collective right of an Indigenous people – the right to determine its own membership, which is clearly stated in the *Declaration*.

33. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.

282) Neither *Powley* nor *Daniels* rely solely on self-identification and neither eliminate a requirement of ancestral connection. But because the court endorsed the "Métis as mixed" theory and because there is no required connection with a community, the Court left us with individuals who can self-identify as Métis relying only on mixed ancestry. We now have three groups of Indigenous individuals who are free-range, race-based, and anointed by Canadian law – Status Indians who are not members of a Band, Daniels Métis, and non-status Indians. While we can determine the non-Band Status Indians by the *Indian Act* Registry, no one knows who the

Daniels Métis and non-status Indians are, how many there are, or where they are. This problem is one that will only grow worse with time.

I. The Disconnected

283) The academy has indicated that it intends to shift away from self-identification and move to reliance on ancestry and community connection via citizenship/membership. Multiple questions arise when the focus shifts from self-identification to ancestry and citizenship/membership, especially with respect to Indigenous individuals who are disconnected from their nations and communities. These are serious consideration that need to be examined.

284) One issue is with respect to those whose adoption records have been sealed. Many individuals know, from information revealed by officials at government agencies, that they are Indigenous. But they have no additional information to connect them to a specific community or nation and it is likely that they will never be able to acquire that information. Some policy decisions will have to be made for the disconnected, who through no fault of their own, cannot access information that connects them with a specific Indigenous community.

285) Another issue arises with respect to the many Indians on the *Indian Act* general registry. These people are not members of Bands. Since 2019 registration under the *Indian Act* can be obtained with proof of Indian ancestry as far back as 1869. If the connection is over 150 years old, it will be tenuous at best. Will the academy recognize Indian status cards (and therefore prioritize ancestral connection) in the absence of, or perhaps over the objections of the Band?

286) If the academy does take a policy decision to prioritize ancestral connection by recognizing *all* status cards, regardless of how tenuous the connection to the Band may be, how will that support a “partnership” with Bands? Especially if the Band has taken over control of its membership. Does it not undermine the Band’s self-determination if the University acknowledges a connection to the Band that the Band itself does not recognize?

287) A move to rely on ancestry and community connection via citizenship/membership will have to grapple with these issues. Which of these – ancestry or community connection via citizenship/membership is to be prioritized? Can there be reliance on one to the exclusion of the other? Do we need both ancestry and community connection? The University will have to make some policy decisions in this regard.

288) With respect to status cards, the University can agree to work with the Band and support its self-determination and its right to determine its own members, including when it is considering accepting an applicant solely based on a status card. Or the University can take the position that it will always accept applicants with a status card regardless of a Band’s wishes. Locating a principled position will be difficult under these circumstances. That said, there is no law or rule that the University must accept status cards at face value. If the University takes the position that the primary requirement is connection via membership/citizenship and that ancestry is a secondary consideration, then mere registration on the *Indian Act* registry would not necessarily preclude an additional requirement of contemporary connection to a Band.

289) With respect to non-status Indians, the question of community connection is extremely relevant. Unless the Band has taken control of its membership, these individuals are, by definition, excluded from membership/citizenship. If the question is not membership/citizenship but instead one of connection, what amount of connection will suffice?

290) Finally, we come to the Daniels Métis. What are the rules with respect to these individuals? The Supreme Court of Canada stated that they are recognized as “Indians” for the purposes of federal jurisdiction. This ruling does not apply to the academy, which is not within federal jurisdiction. But the academy will have to make decisions about whether it will ever, and if so under what circumstances, accept applications from individuals whose only recommendation is that they have Indigenous ancestry, choose to call themselves Métis, and may or may not belong to newly created “Métis organizations.”

291) The question of where the priority is – with ancestral connection or community connection via citizenship/membership – will have to be decided. If we harken back to the earlier discussion about the right of self-determination that inheres in Indigenous peoples and the right to determine their own members, then ancestral connection should logically take a second seat to community connection via citizenship/membership.

J. United Nations Declaration on the Rights of Indigenous Peoples

292) UNDRIP states, in Article 3, that “Indigenous peoples have the right to self-determination.” Self-determination means “the sovereign right and power of the Indigenous group to decide who belongs to them, without external interference.” (UN, *Prevention of Discrimination*, 1986) Self-determination is not an individual right. It is a collective right belonging to every Indigenous peoples.

293) As noted above, Article 33 of UNDRIP affirms the right of Indigenous peoples to determine their own identity or membership. With respect to individuals, Article 9 states that “Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.”

294) Note that both articles 33 and 9 require the rights to be determined “in accordance with the traditions and customs of the community or nation concerned.” It is worth emphasizing that nowhere in UNDRIP is there a free-standing individual right to claim Indigenous identity that is separate and distinct from the traditions and customs of the Indigenous collective.

295) It is important to emphasize the distinction between self-determination, which is a right that vests in the collective and self-identification, which is an individual right. UNDRIP clearly distinguishes between the rights of Indigenous peoples and the rights of Indigenous individuals. For example, Article 2 states that “Indigenous peoples and individuals are free and equal to all other peoples and individuals.” Article 3 specifically states that “Indigenous peoples have the right to self-determination.” Article 9 of the Declaration states that “Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.” Article 3 vests the right to self-determination in Indigenous peoples not in Indigenous individuals. Article 9 is a collective and an individual right. But the language is important. In Article 9 *both individuals and peoples*

must be Indigenous to have the right to belong. Also note that the right to belong is to be realized according to the traditions and customs of the Indigenous collective.

296) What are the membership traditions and customs of Indigenous peoples? Most Indigenous nations have membership customs and traditions that are basically composed of three required elements: (1) self-identification, (2) an ancestral connection to the group; and (3) acceptance by the group.

297) It should be noted that the *Report of the Royal Commission on Aboriginal Peoples* did not include a requirement for an ancestral connection. The omission of an ancestral connection follows on their findings that Aboriginal peoples are nations not a race.

Aboriginal peoples (in the plural) refers to organic political and cultural entities that stem historically from the original peoples of North America (not collections of individuals united by so-called racial characteristics). (*RCAP Report*, 1996, p. 104)

298) Olthius criticizes the ancestral connection requirement in *Powley* as

a court-imposed requirement that Aboriginal rights descend by way of the individual members, rather than by way of the communities themselves. It also suggests that Aboriginal groupness has an inherent genetic component. (Olthius, 2009)

299) Despite the Commission's omission of a requirement for an ancestral connection and the Olthius critique, the Indigenous peoples across Canada have not generally agreed. By and large they remain deeply committed to a requirement for an ancestral connection to the people involved. While some are prepared to make the occasional exception, as demonstrated by the Fort William example referred to above, for the most part Band controlled membership codes and the Métis Nation definition have continued to insist that their membership requirements include an ancestral connection to the people.

300) Why do Indigenous peoples insist on an ancestral connection as a requirement of membership? Instead of denouncing it as a default to a race-based requirement, it may be more reasonable to suggest that this is the way Indigenous people establish an individual's relationship to their core group, the people, the *us*, as distinguished from *them* or the *other*. When an Indigenous nation requires an ancestral connection to the community it is an inquiry along the lines of "who are your relatives, who is your grandmother, and where are you from?" It is about connection, a relationship, to that place and those people. It is not a stand-alone requirement, and it is not used to prove the individual is Indigenous. In addition, this rule does not preclude the Indigenous nation from establishing rules that allow the core group to accept others on different terms.

301) The better view is to understand that Indigenous nations use of the ancestral requirement for membership is quite different from reliance solely on an untethered Indigenous ancestor used to prove Indigenous identity.

302) Regardless of whether an ancestral connection is included, the requirements established by the nation cannot be bypassed by a sub-group such as a local organization, a family, or an individual. Ceremonies, adoption, local organizations, and families do not provide an onramp

into Indigenous identity or the nation in the absence of the agreement of the nation. Only the nation can choose to make exceptions to its membership customs and traditions.

303) On June 21, 2021, Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act* came into force. The purposes of this Act are set out in s. 4 and are to:

- (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and
- (b) provide a framework for the Government of Canada's implementation of the Declaration.

304) This is an important move forward in Canadian law and brings UNDRIP squarely within the law. It also affirms that Canadian laws are intended to be consistent with UNDRIP. While we have seen little evidence of this to date, this Act will have influence and effect in the future Canadian legal landscape. With respect to Indigenous identification, it will hopefully help to reinforce Indigenous ways of identity.

K. The Charter of Rights and Freedoms

305) Some have argued that Indigenous self-identification is an individual right protected by s. 15 of the *Charter of Rights and Freedoms*.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

306) The claim that s. 15 of the *Charter* protects Indigenous self-identification arises from the idea that individuals cannot be discriminated against on the basis of "race, national or ethnic origin". Proponents of this claim argue that self-identification is sufficient evidence to prove their Indigenous identity and that they should not be required to adhere to "colonial requirements" to provide documentary evidence in support of their claim. (Warrick, 2022) It is suggested that it is neither helpful nor is it reasonable to expect the academy, a product of the colonial regime, to abandon "colonial requirements" such as evidence to verify a claim of Indigenous identity. The question is whether a requirement for "colonial requirements," such as documentary evidence to support an Indigenous identity assertion in the academy violates s. 15 of the *Charter*.

307) It is suggested that such a requirement would not violate s. 15. First, because the *Charter* applies to government action. The Supreme Court of Canada held in *McKinney* that universities are autonomous bodies and not part of government, which means that the *Charter* does not apply their policies or actions. (*McKinney*, 1990; *Douglas/Kwantlen*, 1990) But this is a legal argument that dodges the underlying claim of discrimination, which should indeed be addressed.

308) Is it discriminatory for the academy to require objective evidence to support an Indigenous identity claim? This is an ironic claim for a s. 15 *Charter* case because the court has insisted on the need for evidence to support s. 15 claims. The easiest evidence is documentary but evidence to support an Indigenous identity claim does not necessarily have to be in the form of documentation. It could take the form of community support. The take-home point for the academy is not whether it can require evidence to support an Indigenous identity claim, but

whether such a policy requirement is onerous. The Supreme Court of Canada has stated that it is not onerous to insist that supporting evidence “must amount to more than a web of instinct.” (*Kahkewistahaw*, 2015, par. 34)

309) If the *Charter* does not apply to USask, the *Human Rights Code of Saskatchewan* does. It contains a list of prohibited grounds that includes “nationality” and “race or perceived race.”

Every person and every class of persons has the right to engage in and carry on any occupation, business or enterprise under the law without discrimination on the basis of a prohibited ground (*Sask Human Rights Code*, 2018).

310) It is possible that someone could bring a claim that USask’s requirement for evidence to support Indigenous identity is discriminatory based on nationality or race. It is suggested that no evidence would equate to the “web of instinct” the Supreme Court dismissed. If USask is offering a material advantage, then it would not be unreasonable to require evidence to support an Indigenous identity claim. Again, it would seem logical that a requirement for supporting evidence that does not create undue hardship would not be found to be particularly onerous and would not violate the Code.

Section Two: University of Saskatchewan Policies and Procedures

A. Indigenization & USask Culture

311) USask began to Indigenize after the release of the Truth and Reconciliation Commission's Calls to Action. USask's 2015 *Indigenization Announcement* included the intention to develop a "strategic set of changes to policies, procedures and practices that increase inclusion, break down barriers and realign institutional, college and school outcomes without harm to previously established goals." (USask, *Indigenization Announcement*, 2015)

312) Since then, USask has done internal work to realize Indigenization. In 2021 the *ohpahotân/oohpaahotaan/Indigenization Strategy*, University Plan 2025 was released.

The University Plan 2025 weaves together commitments, goals, principles and values that aspire to advance Indigenization and support transformative decolonization leading to reconciliation. Through this commitment, the University of Saskatchewan seeks to embrace and embody the essence of the Indigenous name bestowed upon its strategy: nīkānītān manāchitowinihk (Cree) | ni manachītoonaan (Michif), which means "Let us lead with respect". (*ohpahotân/oohpaahotaan/Indigenization Strategy*, 2021)

313) The goals, commitments, principles, and values in *ohpahotân/oohpaahotaan/Indigenization Strategy* are indeed laudable. It is an ambitious and inspirational document to read.

314) Unfortunately, interviews with Indigenous students, staff, and faculty at USask revealed that the *ohpahotân/oohpaahotaan/Indigenization Strategy*, begun with the best of intentions and enthusiasm, may not be progressing as well as expected, at least from the Indigenous participants' perspective. It is noted that the Strategy is very new, and implementation has only just begun. That said, there appears to be a gap between the *ohpahotân/oohpaahotaan/Indigenization Strategy's* aspirations and the experiences of Indigenous staff, students, and faculty at USask. In this respect the interviews are consistent with the findings of the USask Senior Leadership Consultations with Indigenous Faculty and Staff November-December 2020. These consultations revealed that Indigenous faculty and staff at USask reported experiences of overt and covert racism, exhaustion and burn-out, frustration, feelings of being undermined, consultation fatigue, and a general "disbelief that any form of change will happen." (*Truth-Telling Report*, July 29, 2021).

315) Some of the difficulty with respect to the early implementation of the *Indigenization Strategy* may lie in the culture of the academy. The USask situation strongly echoes the 1970s and 80s when women were trying to break the glass ceiling in the workforce. Many workplaces elevated one or two women into a senior management position only to have them flee after a short time. Their flight was seen as failure and reinforced existing opinions held by the men who were the dominant culture in the workplace. The culture was created by men, reinforced daily by men, and a hostile environment for women. Men ignored the women, insulted, or ridiculed them, undermined them, and made them so miserable that many of these women resigned. Men then said 'we told you! Women can't cut it, they are not capable, they shouldn't be in these positions.' The strategy was to insert women at the higher levels of the workplace, but the culture was all male. And as Conrad Prince, Director Indigenous and Canadian Programs at Save the Children Canada says, "culture eats strategy for dinner." (Prince, 2022)

316) This may be what is happening with the implementation of the *ohpahotân/oohpaahotaan/Indigenization Strategy*. It may be undermined by USask's pre-existing, settler-colonial culture. That said, if we look at the increasing presence of women in top positions in the academy today, we can see that it is possible to change the culture of institutions.

317) USask's culture is essentially invisible to the members who are the dominant and majority participants. It has long-standing traditions that are thoroughly anchored in its colonial structure. It is driven by the dominant culture's belief system, which is accompanied by the security of knowing itself to be a good, wise, and benevolent institution. USask is secure in knowing that it holds an important role in Canadian society. Indeed, USask may not see this as culture at all and may simply understand their culture as the "normal" way, the "reality" of the academy. (Bopp, Brown, and Robb, 2017) These beliefs make institutions such as USask highly resistant to change.

The University is a dominant culture institution run by dominant culture people. The culture has hidden rules, and standards of thinking and behaviour that are simply assumed. Those running the system are in what is often an unconscious, but nevertheless privileged power position. (Bopp, Brown, and Robb, 2017)

318) But when looked at from the perspective of Indigenous people who, responding to the *ohpahotân/oohpaahotaan/Indigenization Strategy*, and living within the USask culture, we see that,

when Indigenous people encounter this unconscious culture of superiority, it can be extremely frustrating and demeaning. Many report experiencing continuous assumptions of inferiority, ignorance, deviance or incompetence on the part of those in authority within the system. Some declare this as "racism". It's not surprising that these encounters can lead to anger, misunderstanding and conflict. Nor is it surprising that when Indigenous people share their perspectives on how to move forward with processes that could more effectively serve Indigenous learners and communities, their contributions are quite often not heard, dismissed as impracticable, or ignored. (Bopp, Brown, and Robb, 2017)

319) Although the following statement was made with respect to feminism, the insertion of [Indigenous people] into the statement adapts it appropriately to the USask culture, which they see as their

struggle against victimization that arises from being *different* in the first instance; against marginalization that comes from being *unequally located* in the scheme of things in the second instance; but most of all, it is a mobilization towards a total rejection of any system of relations in which [Indigenous people are] ... *systematically restrained, subordinated, oppressed, used, and abused*. (Hoppers, 2009, emphasis in original)

320) This recognition of the load placed on Indigenous people in the university is acknowledged in the *ohpahotân/oohpaahotaan/Indigenization Strategy*

Everyone who is here [at the University] has a responsibility to learn [about indigenization], and they have a responsibility to use this knowledge. [NonIndigenous people] put a big weight on our shoulders as Indigenous people to teach...[the] Indigenization movement is often placed on our shoulders as Indigenous people, but that's not ours to carry.

321) USask has made several strong statements that it is prepared to take action to combat racism and oppression, and that it will call out unacceptable behaviour and attitudes. President Stoicheff has stated that acting

calls for the dismantling of institutional structures, policies and processes that contribute to inequalities faced by marginalized groups...It means challenging the status quo and changing our opinions. (*Truth-Telling Report*, July 2021)

322) This report, in multiple spots, emphasizes the need for USask to educate itself with respect to Indigenous peoples. It is acknowledged that the implementation of the *ohpahotân/oohpaahotaan/Indigenization Strategy* intends to do just that. What is suggested here is that, in addition to implementing the *ohpahotân/oohpaahotaan/Indigenization Strategy*, USask may also wish to examine its workplace culture with a critical lens to determine how that culture may be undermining or non-supportive of its *ohpahotân/oohpaahotaan/Indigenization Strategy*. Workplace culture is not merely reflected in policies, procedures, philosophies, and statements of mission, vision, and values. These are indeed important and crucial to defining the workplace culture and USask has worked hard in recent years to establish these important cornerstones. But USask culture is also a combination of leadership, management style, workplace practices, people hired and retained, the work environment, and communications. An evaluation of these aspects of USask culture, may be helpful. Absent better self-knowledge about its own culture, the *ohpahotân/oohpaahotaan/Indigenization Strategy* may be difficult to implement as currently envisioned because USask's culture may be undermining the strategy in both small and large ways.

323) This internal cultural self-examination is also a necessary step in forming partnerships with Indigenous peoples. For all the same reasons that the *ohpahotân/oohpaahotaan/Indigenization Strategy* may be endangered by USask's culture, the same will apply to partnerships between USask and Indigenous peoples.

324) Yet, as the *ohpahotân/oohpaahotaan/Indigenization Strategy* clearly recognizes, it is crucial for USask to create more meaningful and close relationships with Indigenous peoples, and not just with respect to the partnerships necessary for identity verification. Indigenous identity fraudsters have exposed the ignorance of USask with respect to Indigenous peoples. USask simply must become better educated about the Indigenous peoples in Canada. This is necessary if USask is serious about wanting to put a stop to Indigenous identity fraud. The need for USask to learn more about Indigenous peoples is acknowledged in the *ohpahotân/oohpaahotaan/Indigenization Strategy* when it states that

We all have a responsibility—both individually and collectively—to support the work of reconciliation, redress past wrongs, mend and heal broken relationships between Indigenous peoples and Canadian educational institutions, and lay the foundation for our shared future. This responsibility is rooted in acknowledging and understanding the sophistication and complexity of Indigenous histories, knowledges, cultures, teachings, practices, and philosophies, and ensuring that this richness and diversity remains interwoven within the fabric of the University's and broader community's research, learning and engagement efforts.

We are all responsible to the seven generations that came before us and the seven generations yet to come; to all our relations; and to sharing the truths that are embedded within our stories.

Rooted in the principles of respect, responsibility, reciprocity and sustainability, we look forward to working hand-in-hand with the University of Saskatchewan to build on its commitment and aspiration for Indigenization and its Wise Practices in order to bring this strategy to life.

325) Indigenous identity fraudsters could not intrude into Indigenous space in USask if the University and Indigenous communities were more engaged with each other, worked together, and were true partners in education. It is the responsibility of USask, a responsibility it has acknowledged, to actively change in this regard. It must continue to take up the challenge.

326) If there is responsibility on USask to change, there is also a corresponding responsibility in Indigenous communities. Many in the Indigenous community are aware of Indigenous identity fraudsters in their midst, often many years before the University finds out. They know and can identify Indigenous identity fraudsters. But they do not act on their knowledge. Partly this is because of the historical barriers that exist to distance USask and Indigenous communities. Partly it is because they feel unheard when they do speak up. But it is also because, to date, Indigenous communities have not understood that they must play a role in discouraging Indigenous identity fraud at USask. But this too must change.

We have to speak out more. We have to be prepared to stand up if we know that it's not the truth. We can't afford to not do that...The community needs to get involved and the University has to go to the community...The University has to reach out to them. We have to have serious conversations and make it possible to have those conversations. (Campbell, 2022)

327) A better relationship between Indigenous communities and USask could act to encourage those communities to work with the University to stop Indigenous identity fraud.

328) The MOUs USask entered into with the Métis Nation-Saskatchewan on education and citizenship are a good start. USask has indicated its intention to continue this practice with First Nations and Inuit. Indeed, an “increase in the number of Métis, First Nations, and Inuit agreements driven by Indigenous communities” is noted as a marker in the *ohpahotân/oohpaahotaan/Indigenization Strategy*.

329) Working in partnership with Indigenous communities includes the creation of one or more Indigenous Advisory Committees that focus on specific issues the partners wish to work on together. It is understood that USask has established a Task Force specifically focused on Indigenous identity.

330) The Calls to Action in the *ohpahotân/oohpaahotaan/Indigenization Strategy* are a good start. It will be important to remember that these necessary changes are not going to be quick. As we have seen from the women's movement, there are major successes in some fields (the academy and government) and almost no progress in others (the RCMP, police, and the military). The road ahead for Indigenization is likely to be bumpy and lengthy, but that work must continue.

B. Policy & Process Amendments

331) USask has acknowledged that it needs to take action to deal with Indigenous identity fraud. This section of the report examines opportunities where USask can implement specific actions by reviewing and amending some of its policies and procedures.

332) It is hoped that attention to policies and processes will act as a deterrent to individuals contemplating an entrance into USask based on false Indigenous identity. If the fraudsters begin to understand that USask is on the lookout for them and that they must now provide evidence to support their claims that will send a loud signal. It is also hoped that the actions USask undertakes at opportune moments will enable it to have a means of reviewing the Indigenous identity of those already embedded inside. Finally, there are opportunities where USask can gather evidence of fraud about Indigenous identity should it encounter false claims in the future.

1. *deybwewin* | *taapwaywin* | *tapwewin*: Indigenous Truth Policy

333) USask is implementing the *deybwewin* | *taapwaywin* | *tapwewin*: *Indigenous Truth Policy*. The stated purpose of the policy is to provide “a framework for the implementation of Indigenous membership/citizenship verification with documentation at the University of Saskatchewan.”

334) When implementing the *deybwewin* | *taapwaywin* | *tapwewin*: *Indigenous Truth Policy* there will be a need to articulate specific processes that put more detail into the principles and large purpose statements in the *Indigenous Truth Policy*. The following are offered as comments that those implementing the *Indigenous Truth Policy* may wish to consider.

335) The procedures put in place to implement the *Indigenous Truth Policy* may wish to use the word “evidence” instead of “documentation.” Documents may be the most common form of evidence. But even in the courts oral evidence is valued and accepted. Also, not all Indigenous groups have robust membership criteria. They may have no way of providing a document as evidence. The point here is to distinguish between an individual the group may acknowledge as family but not have accepted as a member. There may not always be documentation, but there may be good evidence. This is not meant to let the candidate use self-identification. It is meant to facilitate oral evidence from the relevant Indigenous community. What oral evidence is acceptable can be set out in the accompanying implementation procedures.

336) Caution must be exercised on all evidence, whether testimonial or documentary in nature. Who provides the evidence will be a crucial factor in determining validity. Note the cautions above about adoption by individuals or families, rogue or illegitimate organizations, and so-called “elders”. The kind of evidence is also important. The University should not rely on DNA evidence, family stories, and genealogies that show an ancient Indigenous ancestor. How far back an ancestral connection can go is a question that each distinct Indigenous community will have to determine.

337) In the Principles section of the *Indigenous Truth Policy*, there is a statement that “The university is committed to achieving reconciliation which requires, and is not limited to, a recognition of Indigenous self-government, law, perspectives, and rights as critical components

of relationships.” When the procedural implementation is being put into place, USask may wish to put emphasis on the basic right of self-determination, which is a larger concept than self-government. As noted above, self-determination means “the sovereign right and power of the Indigenous group to decide who belongs to them, without external interference.” (UN, *Prevention of Discrimination*, 1986) UNDRIP, at s. 33, states that Indigenous peoples have the right to determine their own membership.

338) In the Compliance section of the *Indigenous Truth Policy*, there is a statement that “Formal complaints under this policy will be directed to the Vice-Provost Indigenous Engagement for resolution.” It is recommended that implementation of compliance should include a specific complaints process for Indigenous identity fraud.

339) In the Associated Documents and Knowledges section, there is reference to UNDRIP, but no reference is made to the *United Nations Declaration on the Rights of Indigenous Peoples Act*, which is the federal legislation that commits Canada to making its laws consistent with the *Declaration*. The implementers of the *Indigenous Truth Policy* will wish to familiarize themselves with how federal laws are being amended to comply with the *Declaration*, which will be an ongoing task.

340) The draft *deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy* does not directly address Indigenous identity fraud. But its implementation will likely need to consider ways of doing so. This is suggested because there appears to be a need to send a loud message to potential applicants that USask’s objective is to stop the practice of Indigenous identity fraud. It will be helpful for USask to clearly communicate a statement of intent in this regard. A strong statement could be published on its website, in student applications, in any job advertising and anywhere else that the University feels appropriate. This will assist with the implementation of the *Indigenous Truth Policy*.

341) Indigenous identity fraudsters need to know that USask will ask for evidence to support an Indigenous identity claim and that USask will verify that evidence. To date fraudsters have been slipping into the academy because they could, because no one checked, and because no one thought they should check Indigenous identity claims. Sending a clear signal that those days are over will act as a strong deterrent.

2. Application Processes

342) USask has draft *Admission Guidelines for Verifying Indigenous Self-Declaration Documentation*. The draft *Admission Guidelines* are for students and set out the objective, which is to provide guidance to Admission Officers when they receive, request, or review documents provided by students in support of their Indigenous self-declaration to access an equity seat. The draft *Admission Guidelines* show that USask is moving beyond self-identification and setting up processes to verify the evidence offered by students to prove their Indigenous identity.

343) If USask is not already implementing these draft *Admission Guidelines*, it should consider doing so. Consideration should be given as to how these *Admission Guidelines* would work with the implementation of the *deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy*.

344) If these draft *Admission Guidelines* would not apply to the hiring process for faculty and staff, USask may also wish to consider drafting a similar set of guidelines to use in their hiring processes. It may be that the implementation procedures accompanying the *deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy* are intended to replace or supplement the draft *Admission Guidelines*. In any event, the language should be consistent in all documents.

345) It is commendable that USask is now requiring evidence to support Indigenous identity claims.

346) The same evidentiary concerns set out above apply to any evidence submitted under the draft *Admission Guidelines*. There is guidance to the Admission Officer to engage the Indigenous Admissions Advisory Committee when in doubt about the evidence, or lack of evidence provided by a student. The Advisory Committee will review the documents and provide a recommendation to the Admissions Officer. There is also the following statement:

Applicants and students who knowingly misrepresent themselves to the university to gain a benefit not intended for them are subject to the university's Regulations on Student Academic Misconduct policy.

347) The draft *Admission Guidelines* and the *deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy* both set out the responsibilities of USask with respect to verification. But some onus can be put on the applicant claiming Indigenous identity as well. It is in this spirit that the University may wish to consider applicant declarations.

3. Applicant Declarations

348) USask may wish to draft an *Indigenous Identity Declaration Form*, which could include:

- i) A declaration from the applicant about their Indigenous identity, which could include:
 - (a) when they began to identify as Indigenous;
 - (b) which, if any, Indigenous nation/community they claim a connection to;
 - (c) whether they have been acknowledged or accepted by the Indigenous nation/community they claim a connection to;
 - (d) whether they are qualified to speak or teach about Indigenous people;
 - (e) an explanation if their claim is of recent vintage;
 - (f) an explanation if their community identity has changed;
 - (g) a statement that acknowledges that they are required to provide some evidence to support their claim of Indigenous identity and what form their evidence takes;
 - (h) if there is no legitimate card, Indigenous references with contact information; and
 - (i) an invitation to provide any additional information about their Indigenous identity they may wish to include.
- ii) The purpose for which the information is being collected, how it will be used, and how it will be protected;
- iii) Notice that USask may review the applicant's publicly available records, including their online and social media presence;

- iv) Notice that USask may request updated information from time to time and upon request the applicant agrees to provide it;
- v) Permission to USask to inquire further into the details of the information provided,
- vi) A warning about possible results for providing false or misleading information, including dismissal;
- vii) An acknowledgement that the applicant understands that they are required to substantiate their Indigenous identity claim with evidence; and
- viii) A statement that the applicant attests to all of the above accompanied by their signature and date.

USask's legal counsel will wish to consider whether this *Indigenous Identity Declaration Form* should be in the form of a statutory declaration and will likely have advice about how to draft such a form.

349) Another means of ensuring that an applicant student, staff, or faculty is aware of USask's expectations is to include, on hiring documents, or student placement offers, a signed statement that the applicants have read and agreed to follow USask policies, guidelines, and mission statements. USask has several such policies that apply to its employees and students including *Guidelines for Academic Conduct* and the *Statement of Mission, Vision, and Values of the University of Saskatchewan*. Colleges/Departments with their own mission statements or guidelines (for example, the College of Medicine has its own *Statement of the Vision, Mission, Values and Goals*). These should be referenced if applicable to the applicant.

350) These mission statements and guidelines contain high standards for ethical behaviour expected by everyone at USask. For example, the *Guidelines for Academic Conduct* describe a set of expectations for ethical behaviour in the teacher-student learning environment at USask. They were approved by University Council on June 17, 1999. The Guidelines are described under three general principles: (1) learning and growth, (2) honesty and integrity, and (3) respect for the dignity of others. The Guidelines were designed to apply to both teachers and students and state that "all members of the academic community are expected to engage in scholarly activities with honesty and integrity...Trust depends on academic honesty, and honesty is fundamental to the integrity of the learning environment at the University." The Guidelines also note that "a teacher should foster honest academic conduct and discourage all forms of academic dishonesty."

351) The *Statement of Mission, Vision, and Values of the University of Saskatchewan* declares the university's goal of being "an outstanding institution of research, learning, knowledge-keeping, reconciliation, and inclusion with and by Indigenous peoples and communities. The statement includes a belief in the principle of "openness, transparency, and accountability" and "reconciliation". The statement also includes a commitment to "acting in accordance with the following values...integrity, honesty, and ethical behaviour".

352) The *Statement of the Vision, Mission, Values and Goals of the College of Medicine*, USask declares its commitment to professionalism which is articulated as a commitment to "abide by high ethical standards of behaviour" that "requires an on-going personal commitment

to integrity.” The statement goes on to say that “we know and apply ethical and professional standards of conduct.”

353) It does no harm to emphasize the honesty, integrity and high ethical standards of behaviour expected by USask. In fact, this can encourage USask members to strive for excellence because it knows the high standards of expectation. That said, this emphasis should not be applied only to Indigenous applicants. Indigenous identity fraudsters have thrived in the academy because they had the support of the administration and non-Indigenous academics, some of whom knew or ought to have known that the Indigenous identity fraudsters gained and maintained the space on false pretenses. All applicants should be made aware of USask’s ethical standards and its expectations for its staff, students, and faculty with respect to Indigenous identity fraud.

4. Embedded Indigenous Identity Fraudsters in Faculty and Staff

354) What about the Indigenous identity fraudsters who are already embedded in USask as faculty or staff? It does not seem advisable to start a search among all Indigenous staff and faculty and demand that they verify their identity evidence after the fact. It would smell of a witch hunt, would likely be inappropriate and possibly violate the law for many reasons.

355) The *deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy* contains the following statement:

For Indigenous membership/citizenship assertions that have occurred before this Policy came into effect, verification will also be required where there is reason to question the authenticity of that claim and where that prior assertion has resulted in material advantage, or where the absence of verification would be otherwise contrary to the principles recognized in this policy.

356) It is noted that this statement provides the opportunity to require verification “where there is reason to question the authenticity of that claim *and* where that prior assertion has resulted in material advantage.” The implementation processes of the *Indigenous Truth Policy* will wish to consider some questions - What is the basis to question the authenticity of the claim? Does it require a formal complaint to be filed? Is it mere suspicion? Is it based on rumours? This should be clarified in the implementation process information. Also, it is coupled with past “material advantage.” Does this include the fact that they were awarded admission or a faculty/staff position? If this is intended to be the meaning, then it should be stated more clearly.

357) If the applicant came to USask using self-identification and is seeking a new material advantage, it is an opportunity to have them sign the *Indigenous Identity Declaration Form* and provide supporting evidence or references. It may also be an opportunity to deny any new material advantage in the absence of verification evidence of Indigenous identity.

358) The *Indigenous Truth Policy* should be finalized and adopted by the University *prior* to any steps being taken in this regard.

5. Indigenous Identity Fraud Complaints Process

359) If it has not already done so, USask may wish to consider adding a new complaints process that is specific to Indigenous identity fraud. Such a process is referenced in the *deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy*, which states that

Formal complaints under this policy will be directed to the Vice-Provost Indigenous Engagement for resolution.

360) For implementation of this part of the *Indigenous Truth Policy*, the Vice-Provost Indigenous Engagement will require the establishment of an *Indigenous Identity Fraud Complaints Process*. Members of USask need to know that there is a process where they can raise this issue.

361) This *Indigenous Identity Fraud Complaints Process* should include a description of the process including how to initiate an Indigenous identity fraud complaint, what information is required to substantiate the complaint, a clear indication of who oversees the process, who makes the decision, and possible consequences. The process must be fair and equitable and must provide clear guidance for the accused. Consider an appeal process as well.

362) Establishing an *Indigenous Identity Fraud Complaints Process* provides another opportunity for an Indigenous identity scan. USask should make the complainant aware of the appropriate complaint process and ensure that process assistance is available to the complainant and also to the person who is the object of the complaint.

363) It is important that the decision-maker be someone who has adequate knowledge to make an informed decision. It will likely not be possible for a non-Indigenous person, such as the Dean of a faculty, to understand the nuances at issue, so Indigenous identity fraud complaints should be heard and decided by an Indigenous person or committee. This may require amendments to the Collective Agreement.

6. Collective Agreement

364) The Collective Agreement between USask and the USask Faculty Association (USFA) has been extended to June 30, 2023. The current Agreement refers to “Indigenous or Aboriginal Peoples” in s. 7 which includes important language with respect to non-discrimination.

7.1 The parties recognize the value of diversity, equity and inclusion in the University community and are committed to ensuring equal opportunities for all employees. The parties are also committed to ensuring that there are no barriers or systemic discrimination to the full participation of all employees including women, Indigenous or Aboriginal Peoples (First Nations, Métis, and Inuit), persons with disabilities, persons of a particular race, colour, descent, or national or ethnic origin, persons of disadvantaged groups, or persons of any sexual orientation or gender identity (LGBT+).

7.3 Consistent with the principles of employment equity, diversity and inclusion, the parties are committed to eliminating or modifying those employment policies, practices, and systems, whether formal or informal, shown to have an unfavorable effect on the hiring, retention and promotion of members of designated groups.

365) In the next round of Collective Agreement negotiations, it might be helpful to negotiate new language that commits the parties to review and revise employment policies, practices, and systems, including in the Collective Agreement, that enabled Indigenous identity fraud. This should include an acknowledgment that it is in the best interests of both parties to stop Indigenous identity fraud and to implement policies, practices, and systems to do so.

366) It will also be important to ensure that there is a separation of powers. The Dean, for example, should not initiate a process and be the decision-maker. The Dean should not be the decision-maker on a complaint, later initiate a separate complaint against a participant in the first complaint, and sit as decision-maker again. This is not a suggestion of bias on the part of the Dean, but the multiple roles do give an appearance of bias. Because some of these roles are set out in the Collective Agreement, the University may wish to consider bringing these issues to the negotiation table in this round of negotiations.

7. Safe Disclosure Policy

1) In 2015, USask President, Peter Stoicheff, stated that,

We cannot deem [our] role a success unless we become a force of change for aboriginal education. None of it matters unless we achieve this. The educational gap is too great, the moral imperative is too strong, for us not to play our part. (Indigenization, 2015).

2) In light of this statement, it is most unfortunate that it has fallen to Indigenous faculty to take on the role of identity police in the academy. Hopefully this will end when USask implements more policies, practices, and systems to prevent Indigenous identity fraud.

3) USask has a *Safe Disclosure Policy*, with the stated intention of providing a mechanism through which university members can confidentially and anonymously disclose, among other things, “unethical conduct or other wrongdoing that they have witnessed, or have otherwise obtained information about or evidence of...” The principle behind the policy is that “all university employees, Board of Governors, and all other individuals and parties acting on behalf of the university, consistently act with integrity, honesty, accountability and transparency, in order to protect the university’s assets, reputation, and the public funds that have been entrusted to the university.”

4) USask may wish to consider amending the *Safe Disclosure Policy* to ensure that, without amending the existing principles, thought is given to specifically stating that the policy applies to those who disclose Indigenous identity fraud. It is further recommended that additional thought is given to adding a new principle about protecting USask’s Indigenous community partners and Indigenous members of USask from harm.

8. Privacy

5) Some have raised the issue of privacy with respect to Indigenous identity. This is especially relevant with respect to employment records and personal information held by USask.

6) The need to protect this information sometimes places USask in an awkward situation and makes it impossible to respond in public. This is a serious concern. It can be mitigated somewhat if USask and the Indigenous individual have an agreement in advance that the very

fact that the individual applied for a publicly advertised Indigenous placement means that USask can share at least some basic information with respect to their Indigenous identity. Remember that, especially for staff and faculty, this is a contract relationship, and the University can contract out of some aspects of privacy with respect to personal information.

7) There are several reasons USask may wish to gather this data in an agreement with the individual Indigenous person. First, because USask uses the fact that the individual is Indigenous for its DEI purposes, although granted this is in its aggregate form. Still, students, faculty and staff should know that USask uses their Indigenous identity for its own purposes.

8) Second, it is presumed that USask is serious about entering into partnerships with Indigenous communities. In furtherance of this objective, USask should gather data with respect to which communities its members are from. Information on this level would likely need to be more than aggregate.

9) Third, USask needs to know if an Indigenous person is qualified to teach or even speak to Indigenous issues. Some who come with cards have never lived in an Indigenous community and have only recently identified. They have no background or experience to speak with respect to Indigenous issues. This may not matter in some situations, for example, if the Indigenous person is a chemistry professor and does not wish to ever teach about Indigenous people. But it will matter in other situations a great deal.

10) Fourth, a contract with respect to Indigenous identity information allows USask to become more educated about exactly which Indigenous people it is in a relationship with. This enables USask to work with those Indigenous communities to better facilitate their working partnership.

11) The Indigenous information privacy contract should stipulate exactly what information could be made public. For example, the name, Indigenous community, treaty membership, etc. The parties should consider entering into such contracts when the Indigenous individual is entering the academy. USask can always ask to contract with existing members, but this will likely be more difficult.

9. Educating Human Resource Staff & Faculty Search Committees

12) USask should consider an education program about Indigenous identity fraud for its human resources staff and for faculty. This is because they play an important role in the hiring processes, and it is through them, and their lack of knowledge, that Indigenous identity fraudsters slip into the academy. They are important gatekeepers, but they can only function to keep such fraudsters out of the academy if they are educated enough to spot them in the first place.

Section Three: Recommendations

A. What Was Heard Report Recommendations

13) Early in June of 2022 First Nations University released a report called *Indigenous Voices on Indigenous Identity: What was Heard Report* (FNU, 2022). The report captured the discussions from a National Forum held on March 9-10, 2022. The event was virtual but brought together many Indigenous voices to discuss “wise practices for validating Indigenous identity” within the academy.

14) This report covers some of the same ground contained in the *What was Heard Report* although this report considers some of the issues in greater detail. The *What was Heard Report* contains the following list of proposed actions.

- Define identity. There are many definitions of identity. This is hard, uncomfortable work, but is an articulation of Indigenous laws and requires capacity on part of Nations to fully engage.
- Terms matter. There may be a more relevant word than identity. Citizenship, relationship, and kinship speak to who claims a person, not who the person claims. Look for the markers of identity – a name or clan, responsibilities, the ability to give gifts, and accountability.
- Move beyond self-identification. Request community references. Build questions into the interview and selection process that focus on Indigenous knowledge and traditions.
- Build relationships with communities. Rather than relying on self-identification as the only basis to understand claims to Indigeneity, work with local community leaders to build strong relationships.
- Focus on service. Understand how Indigenous faculty, staff, and students are impact the community. The connection to community is fundamental to understanding what is meant by Indigenous identity.
- Recognize Elders and Traditional Knowledge Holders. Traditionally, these were the people who would validate a newcomer’s claim to identity. Change collective agreements to recognize Elders as full faculty members for their deep wisdom, teachings, and knowledge.
- Establish Indigenous Expert Panels. This creates a safe space for Indigenous academics to engage in meaningful discussion, sharing, and collaboration. Indigenous panels are an important resource for post-secondary institutions.
- Enact vetting policies. Establish policies and procedures to assess the identity of all Indigenous candidates applying for academic or research positions. These processes must be Indigenous led, provide a safe space, and truly work for and with Indigenous peoples.
- Create Committees to validate applications. Include distinguished and respected local Indigenous community members, students, researchers, scholars, and faculty to examine applications and validate claims of Indigenous identity.
- Clearly outline consequences for fraudulent claims. Ensure that policies include possible reprisals for fraudulent claims of identity, which may include a spectrum of redress, reparation, or in extreme cases criminal charges.
- Identify legitimate and fake organizations. Create lists of legitimate Indigenous organizations. If people cannot meet the identity requirements of these organizations, then they have not met the

bar.

- Provide training. It is unrealistic to expect Indigenous faculty to engage in every identity issue. Hiring committees and boards need to be trained so that they know who Indigenous people are, how we define ourselves, what legitimate documents look like, and how stories and connection to community inform processes.
- Validate claims of Indigenous identity. Verify claims of connection to a community through the Nation or organization that holds the registry of members. Request advance consent and include a notice to applicant that their identity will be verified with the Nation to which they claim attachment.
- Align collective agreements. Establish Indigenizing principles for collective agreements and mobilize an understanding of what an Indigenous scholar is, how Indigenous peoples are recruited, and reciprocal relationships and engagements with Indigenous communities.

15) USask will wish to consider these recommendations.

16) Conversations are taking place across Canada as the academy is attempting to come to grips with the issue of Indigenous identity fraud. USask is currently participating in this national conversation. That participation should continue.

17) This report adds the following recommendations, which are grouped into categories: caring for the members of USask, partnerships with Indigenous peoples, education, policy and process amendments, the collective agreement, and communications.

B. Ongoing Care for USask's Indigenous Members

Elders

1. USask should initiate a conversation with Indigenous Elders about Indigenous identity fraud with a view to protecting them from abuse and assisting them to protect themselves.

Indigenous Students

2. USask should make inquiries of all students who, through no fault of their own, may have been adversely affected by Indigenous identity fraud with the goal of ensuring their personal well-being, to understand if their academic careers suffered harm, and investigate possible mitigation measures.

Indigenous Faculty & Staff

3. USask should make inquiries of all Indigenous faculty and staff who, through no fault of their own, may have been adversely affected by Indigenous identity fraud with the goal of ensuring their personal well-being, to understand if their academic careers suffered harm, and investigate possible mitigation measures.
4. USask may wish to consider asking the Elders and Indigenous students, faculty, and staff, if a ceremony would be helpful to enable all USask members to move forward on Indigenous identity fraud in a good way. Such a ceremony might help to heal hurt feelings, provide comfort, and allow people to move forward in a good way. Apologies

have been made in some circumstances but there are still hurt feelings in USask. A ceremony can bring people back together and provide some hope for the future.

C. Partnerships with Indigenous Communities

5. USask should continue to work with Indigenous communities to establish partnerships and nurture existing partnerships.

D. Education

6. USask, with special attention paid to human resources staff and faculty who sit on search committees, should take steps to educate staff and faculty about:
 - a. the colonial enterprises that separate Indigenous individuals from their Indigenous identities,
 - b. Indigenous identity fraud,
 - c. Indigenous organizations,
 - d. intergenerational Indigenous trauma,
 - e. USask's ongoing role in colonialism,
 - f. Indigenous identity,
 - g. race and ancestry in relation to Indigenous identity, and
 - h. the membership rules of Indigenous peoples, including the rules of First Nations with control of their own membership lists, Métis Nation citizenship rules, and those set out in Inuit and First Nation land claims and self-government agreements.
7. USask should take steps to identify and understand its own culture and learn how that culture may be acting to undermine or be non-supportive of its Indigenization Strategy and its Indigenous members.

E. Policy Amendments

8. USask should review its policies and procedures, create new policies, or amend its policies as necessary, to deal with Indigenous identity fraud.

F. Collective Agreement

9. USask should negotiate new language in the Collective Agreement that commits the parties to review and revise policies and practices in the Collective Agreement that enable and fail to adequately deal with Indigenous identity fraud.

G. Communications

10. USask should review how it handles Indigenous identity fraud, how it communicates with the public, the Indigenous communities, and its Indigenous members, with a view to taking steps to ensure better communications in future.

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