

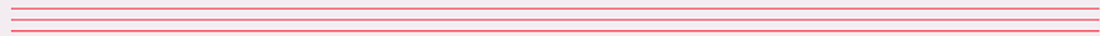


INDIGENOUS



SELF

GOVERNMENT



An overview of what it is,
why it matters, plus some examples
of Indigenous self-government



INDIGENOUS CORPORATE TRAINING INC.

About the author



Hi there, I'm **Bob Joseph**, a certified Master Trainer and founder of **Indigenous Corporate Training Inc.** Through my 20 years of training I have been helping individuals and organizations work more effectively with Indigenous Peoples.

I believe that by sharing knowledge and information through training, and free resources, such as this ebook and our **blog**, that we can make the world a better place for Indigenous and non-Indigenous people.

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Indigenous self-government

While reading this ebook, published in 2017, please keep in mind that the struggle for self-government has been ongoing for a long time. Prior to 1973, the Government of Canada refused to even entertain the concept of Indigenous self-government. It was the Supreme Court of Canada's ruling in **Calder** that caused a shift in policy. Even then, however, the federal government sought to narrow the interpretation and restrict the scope of Indigenous self-government to a *legislatively* based approach: that is, to ensure that any form of self-government that might result from negotiations would come into existence as a *legislative grant* by the Parliament of Canada, and therefore, would operate "at the pleasure of Parliament" and be subject to Parliament amendment. Of course Indigenous Peoples believe that they have an inherent right to self-government, meaning it was given to them by the Creator and is not granted by any government.

Also note, we use Indigenous People throughout this book. If you want to learn more about terminology grab a copy of our Guide to Terminology eBook on the next page.

Download our eBook Indigenous Peoples: A Guide to Terminology



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Bands & the *Indian Act*

When we take a look at the day-to-day operations of a band we see that all the actions of the band are directed in accordance with the *Indian Act*. This is a huge problem for bands, and their politicians, because it means that while they are elected by their people they are accountable to the department of Crown-Indigenous Relations and Northern Affairs Canada.

Their preference would be to change to a system where the governing leaders are selected in a manner appropriate to their peoples and accountable to their peoples. Such models do exist and the communities with self-government agreements have done well in terms of the nation building process. This eBook includes summaries of four Indigenous self-government agreements.

Indigenous self-government

The term "Indigenous self-government" is used in Canada - and perhaps misunderstood. Mention the term "Indigenous self-government" and people often wonder if it means "sovereignty" and "separation". In this eBook, we will explain the range of self-government.

Is it the same as separation?

Indigenous self-government is about the creation of Indigenous orders of government that will operate within the Canadian federation:

"...as political entities through Aboriginal people can express their distinctive identity within the context of their Canadian citizenship. Aboriginal people do not have to surrender their identity to accomplish those goals. Non-Aboriginal Canadians cherish their identity as Newfoundlanders or Albertans, for instance, and still remain strongly committed to Canada." [1]

[1] *Report of the Royal Commission on Aboriginal Peoples*

Is it the same as sovereignty?

The federal government's firm position is that all self-government structures already in place in Canada and to be negotiated in the future will operate within the Canadian Constitution and be subject to Canadian sovereignty. [1]

"The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal Peoples in the Canadian federation, and ensure that Aboriginal Peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society." [2]

[1] *ABORIGINAL SELF-GOVERNMENT: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*

[2] *Supra*

What about rights and powers?

Indigenous self-government is about restoring rights and powers that Indigenous Peoples in Canada enjoyed and exercised for thousands of years prior to European contact. It's about "the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown" [1]

So, the mind-set required of government negotiators, of federal and provincial politicians, and of non-Indigenous citizens, is that the negotiation of Indigenous self-government entails the restructuring of current forms of government to achieve the recognition and restoration of pre-existing Indigenous rights - including the inherent right to self-government.

[1] *Delgamuukw v. British Columbia* [1997]

Why does it matter?

Why does Indigenous self-government matter? It matters because it is one of the key building blocks for strengthening and supporting Indigenous governments thereby promoting and supporting a greater self-reliance. Communities that negotiate self-government agreements assume the power to govern their internal affairs and make the decisions that affect their community.

The final volume of the *Report of the Royal Commission on Aboriginal Peoples* opened with a sketch of the social, health, economic and governance problems that confront many Indigenous communities - in their internal management, and in their efforts to transform their relationships with other Canadian governments. The discussion then spelled out the single theme that dominates the hundreds of recommendations running through the Report's five volumes:

"Aboriginal Peoples must have room to exercise their autonomy and structure their own solutions. The pattern of debilitating and discriminatory paternalism that has characterized federal policy for the past 150 years must end. Aboriginal people cannot flourish if they are treated as wards, incapable of controlling their own destiny ..." [1]

[1] *Report of the Royal Commission on Aboriginal Peoples*

Why does it matter? cont'd

"At the heart of our recommendations is recognition that Aboriginal Peoples are peoples, that they form collectivities of unique character, and that they have a right of governmental autonomy. Aboriginal Peoples have preserved their identities under adverse conditions. They have safeguarded their traditions during many decades when non-Aboriginal officials attempted to regulate every aspect of their lives. They are entitled to control matters important to their nations without intrusive interference. This autonomy is not something bestowed by other governments. It is inherent in their identity as peoples. But to be fully effective, their authority must be recognized by other governments." [1] (emphasis added)

Self-government agreements can cover the structure and accountability of Indigenous governments, their law-making powers, financial arrangements, and their responsibilities for providing programs and services to community members.

[1] *Report of the Royal Commission on Aboriginal Peoples*

Why do Indigenous Peoples want self-government?

Perhaps a more accurate question would be "Why do Indigenous Peoples want self-government **back**?" Long, long before European contact, Indigenous Peoples had their own established political systems and institutions - they were self-governing. And Indigenous Peoples have been trying to get back the right to govern themselves and preserve their cultural identities since the *British North America Act* in 1867. Now known as the *Constitution Act*, it gave the federal government the authority to make laws about "Indians and lands reserved for the Indians" [1] - or, in other words, apply Euro-Canadian ideals, policies, and laws on Indigenous societies.

In **1887**, Nisga'a and Tsimshian chiefs journeyed to Victoria to request treaties and self-government - it would not be until 2000 that the Nisga'a Treaty was signed.

[1] Section 91(24) The *British North America Act*

Why do Indigenous Peoples want self-government? *cont'd*

For Indigenous Peoples, the return to self-government is seen as foundational to nation building. Agreements are critical to communities that want to contribute to and participate in the decisions that affect their lives.

Generally speaking, a return to self-government shapes social and economic well-being and can include provisions for:

- Education
- Health care and social services
- Police services
- Housing
- Property rights
- Child welfare
- Agreements

An Inherent Right

Self-government is often referred to as an "inherent" right, pre-existing in Indigenous occupation and government of the land prior to European settlement.

Some Indigenous people balk at the concept of Canadian governments granting them with self-government because they believe the Creator gave them the responsibilities of self-government and that right has never been surrendered - it was simply taken by government legislation. In this light, self-government does not have to be recognized by federal or provincial governments because the right continues to exist.

Recognition of the Inherent Right

In August 1995, the Government of Canada formally recognized the inherent right of self-government for Indigenous Peoples in Canada by releasing its Federal Policy Guide: Aboriginal Self-Government - The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government (shorthand title is the "Policy Guide"), which provides, in part:

"The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the Constitution Act, 1982. It recognizes, as well, that the inherent right may find expression in treaties, and in the context of the Crown's relationship with treaty First Nations. Recognition of the inherent right is based on the view that the Aboriginal Peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resource"[1] (emphasis added)

[1] Federal Policy Guide: Aboriginal Self-Government - The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government

Time and Templates

Attaining a self-government agreement is not readily done, as the Nisga'a can attest. The Nisga'a Final Agreement was 27 years in the making.

There is not a "one-size fits all" template either. There was an attempt in the 41st Parliament session (June 2011 - September 2013) to introduce a First Nations Self-Government Recognition Act (Bill S-212) but it died on the vine.

While self-government is not a quick fix for the deeply rooted social, health, and economic issues that plague Indigenous communities, it is a step towards empowering communities to rebuild and heal from the intergenerational effects of residential schools.

Community healing and self-government

Most Indigenous Peoples recognize that self-government cannot serve as a panacea or "silver bullet" for the deep-rooted social, health, and economic problems that plague the majority of Indigenous communities in Canada.

The Royal Commission on Aboriginal Peoples heard considerable testimony from Canada's Indigenous women, many of whom stressed the need for healing in their communities:

"Most women supported fully the move toward self-government and yet had many concerns and fears about the fulfilment of that right for Aboriginal Peoples. Why? Why do women feel such ambivalence towards the idea of self-government? The answer is clear to women ... We have to change our priorities. We must have personal and community healing." [1]

[1] *Report of the Royal Commission on Aboriginal Peoples*

Link to Residential Schools

The emphasis on personal and community healing is important because so many communities and their members suffer from the **intergenerational effects** of **residential schools**. The two go hand-in-hand, however, there is a strong need for individuals to go through a personal healing process and then work together with other members to bring the whole community into the process.

So extremely important is this work that some communities, when offered jobs and business development opportunities from companies, have refused those opportunities and instead asked companies for help in building healing centres. There is an growing trend to believe that the first steps in the treaty negotiation process should be personal and community healing followed by self-government discussion and implementation with land issues following later.

Cost of change

Everyone seems to understand that very significant investment will be required to make Indigenous self-government a widespread and successful reality in Canada. Less clearly understood however are the enormous and increasing costs of leaving things as they are. Volume 5 of the *Report of the Royal Commission on Aboriginal Peoples* set out a detailed analysis of those costs, concluding that:

"...[T]he political, social and economic conditions facing Aboriginal people impose a cost of [1996] &7.5 billion per year on them and on all Canadians; this cost is likely to rise in future, reaching \$11 billion per year [by 2016]. This cost of the status quo includes losses flowing from failure to develop and use the full economic potential of Aboriginal people and the cost of remedial action to deal with the effects of social disintegration" [1]

The Commission also laid out a detailed strategy to address those conditions calling for increased federal and provincial investment of between \$1.5 billion and \$2 billion per year, to be sustained for 10 - 15 years - at which point an annual net gain of \$9.8 billion per year over the status quo is projected. [2]

[1] *Report of the Royal Commission on Aboriginal Peoples*

[2] *supra*

Examples of self-government agreements

Over the next few pages we provide four examples of self-government agreements. Each one is unique. If you are interested in learning more details about each Agreement I suggest you visit the website of the community. For example, the Nisga'a Lisims Government website has quite extensive information about the Nisga's Final Agreement.

1. The Sechelt Indian Band Self-Government Act

In 1986, B.C.'s Legislature passed The *Sechelt Indian Band Self-Government Act*, [1] providing the Sechelt Band with limited powers of self-government, including the power to enact its own Constitution and to make laws in the areas of education, health, land use planning, local taxation and zoning.

The Sechelt Band holds fee simple title to its land, subject to limitations and conditions contained in the *Sechelt Indian Band Self-Government Act* (sections 23-25). One of the conditions is that the Band holds the lands for the use and benefit of the Band and its members. It should also be noted that the enabling legislation is subject to Parliamentary amendment, meaning that the Sechelt has only as much authority as Parliament delegates, which some communities regard as a relatively weak version of self-government.

[1] *Sechelt Indian Band Self-Government Act*, S.C. 1986, c. 27

2. The Nunavut Act and Nunavut Land Claims Agreement Act

In 1990, the government of the Northwest Territories and the Tungavik Federation of Nunavut signed an agreement-in-principle that confirmed their joint commitment to the division of the Northwest Territories and the creation of Nunavut. The formation a new territory in the eastern Northwest Territories (N.W.T) resulted from a double-tracked Inuit strategy: to negotiate the broadest possible comprehensive land claims agreements with the federal government, and to participate actively in available political forums.

Inuit Members of the Legislative Assembly of the Northwest Territories collaborated with other MLAs in the preparation of the 1982 plebiscite asking residents of the N.W.T. whether they would support the creation of the new territory of Nunavut in the eastern Northwest Territories. Fifty seven per cent of voters agreed.

The Nunavut Land Claims Agreement:

"... recognizes Inuit title to 350,000 square kilometres of land and provides compensation of \$580 million and a \$13 million training trust fund; it also includes provisions for joint management and resource revenue sharing... Pursuant to the Nunavut Act, the Nunavut Implementation Commission (NIC) was established in December, 1993... The mandate of NIC [was] to advise the three parties (federal, territorial and Inuit) on implementation questions..." [1]

[1] *Report of the Royal Commission on Aboriginal Peoples*

3. The Nisga'a Final Agreement

The **Nisga'a** Nation's Nisga'a Final Agreement [1] was signed in 1998 and came into force in April 2000 conveying fee simple title to 2,000 square kilometres of the Nass Valley; creating separate jurisdictions within that territory for the 'Nisga'a Nation' and the Nisga'a villages; and giving the Nisga'a Nation defined powers to co-manage hunting, fishing and trapping rights in a much larger area (called the Nass Wildlife Area).

The Nisga'a Final Agreement and the two orders of government created by that agreement are subject to the Canada's Charter of Rights and Freedoms - the Nisga'a Nation has no jurisdiction to make criminal laws.

[1] Nisga'a Final Agreement Act, S.C. 2000, c. 7

4. The Westbank First Nation Self-Government Act

With the signing of the *Westbank First Nation Self-Government Act* in 2005, the Westbank First Nation became a true nation with the right to govern its own affairs, and the responsibility to make decisions affecting the well-being of the community, while being held accountable to its electorate.

The Westbank First Nation Government (WFNG) provides services for approximately 9000 residents living on Westbank First Nation lands, 8500 of whom are non-Band members with residential leases on Westbank lands. The WFNG is one of the most progressive First Nation governments in Canada with a comprehensive set of laws that cover items such as land use, zoning and animal control. It provides local government services that mirror municipal services for its residents, including law enforcement, snow removal, recreation, utilities and public works. The Agreement covers matrimonial and property rights, language and culture, resource management and the environment, land management and taxes.

The *Westbank First Nation Self-Government Act* also contains a provision confirming the application of the Canadian Human Rights Act to Westbank First Nation Lands and Members; the First Nation takes all necessary measures to ensure compliance of its laws and actions with Canada's international legal obligations.



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