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IN BRIEF

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ABORIGINAL SELF-GOVERNMENT

In 1995, the federal government fulfilled a pre-election commitment in a policy statement recognizing the inherent right of Aboriginal self-government as an existing right within section 35 of the *Constitution Act, 1982* and setting out an approach for negotiating self-government agreements. Aboriginal groups and governments continue to hold different views on the scope and nature of self-government powers.

The Progress of Self-Government Negotiations

Many years of negotiations have, to date, produced relatively few self-government agreements. They include those for the Cree, Naskapi and Inuit of Northern Quebec under the 1975 *James Bay and Northern Québec Agreement* and the 1978 *Northeastern Québec Agreement*; the Sechelt Indian Band of British Columbia under the 1986 *Sechelt Indian Band Self-Government Act*; and seven Yukon First Nations, pursuant to a 1993 Umbrella Final Agreement. None of these pre-1995 self-government arrangements is explicitly “covered” by section 35 of the *Constitution Act, 1982*.

Other comprehensive land claim agreements within the meaning of section 35 that were concluded prior to 1995 (the 1993 *Nunavut Land Claims Agreement*, the 1992 *Gwich'in Comprehensive Land Claim Agreement* and the 1994 *Sahtu Dene and Metis Comprehensive Land Claim Agreement*) do not include any self-government provisions. Self-government agreements have not yet been concluded with the two last groups. Under the *Nunavut Land Claims Agreement* and federal legislation establishing the new territory, Nunavut has a public rather than an Inuit-exclusive government structure, which does not benefit from section 35 protection.

The 1995 inherent right policy, which asserts that self-government rights may be provided under section 35

in new treaties, as part of comprehensive land agreements or as additions to existing treaties, was directly implemented for the first time in the 1998 *Nisga'a Final Agreement*. This Agreement, now ratified by the Nisga'a, the B.C. Legislative Assembly and Parliament, came into effect on 11 May 2000. Critics of the Agreement argue primarily that its self-government provisions establish an unconstitutional third order of government. A challenge to the constitutionality of the *Nisga'a Final Agreement* that was dismissed by the B.C. Supreme Court on 24 July 2000 is being appealed.

The extension of section 35 protection to self-government and the nature of certain self-government measures that may be provided for in modern treaties are thus proving to be controversial issues.

The following developments are also relevant to the self-government context:

- In June 1998, the United Anishnaabeg Councils and the Minister of Indian Affairs signed an Agreement-in-Principle on Anishnaabe Government, the first of its kind to be signed in Ontario under the current policy. Under the AIP, the eventual Final Agreement will not have treaty status.
- In October 1998, the Deline Land/Financial Corporation Ltd. and the Deline Dene Band, the Northwest Territories government and the federal government signed an agreement on process and schedule for self-government negotiations.
- In November 1998, representatives of the federal government and the Anishinabek Nation, a separate political coalition of numerous Ontario First Nations, signed a framework agreement to negotiate Aboriginal governance. This agreement

concludes the first stage of negotiations and as such does not definitively address section 35 issues.

- In April 1999, the federal and B.C. governments and the Sechelt Indian Band signed the first Agreement-in-Principle under the B.C. Treaty Commission process. It maintains the delegated form of self-government practised by the Sechelt since 1986. In May 2000, the AIP's status became uncertain when the Sechelt announced they might withdraw from negotiations and pursue their land claim in court.
- The Labrador Inuit Land Claims Agreement-in-Principle was initialled by the parties in May 1999 and approved by Labrador Inuit in July 1999. The AIP, which includes a self-government component, provides for the constitutional status of the eventual Final Agreement.
- In May 1999, the Mi'kmaq Nation of Gespeg, the Quebec and federal governments signed a framework agreement for negotiating self-government.
- In November 1999, the Innu Nation, Canada and Newfoundland and Labrador reached an Agreement-in-Principle on interim measures that included putting in place the legal arrangements for Innu governance, pending conclusion of an Innu land claim and self-government agreement.
- In January 2000, the Government of the Northwest Territories, the federal government and the Dogrib First Nation signed the Dogrib Agreement-in-Principle, the first joint land claim and self-government package north of 60°. This AIP also provides that the Agreement will be a land claims agreement under section 35.
- In May 2000, Canada, Saskatchewan and the Federation of Saskatchewan Indian Nations signed the Framework for Governance of Treaty First Nations to guide formal negotiations toward a self-government arrangement for the province's Treaty First Nations.
- In July 2000, negotiators for Canada and the B.C. Westbank First Nation initialled the Westbank First Nation Self-Government Agreement, the first "stand-alone" self-government agreement to be concluded under the current inherent right policy. While this agreement is not a treaty protected

under section 35 of the *Constitution Act, 1982*, tripartite treaty negotiations under the B.C. Treaty Commission process are ongoing.

- In July 2000, Canada, Quebec and three of nine Innu communities in Quebec agreed on a "Common Approach" that establishes guidelines for future negotiations aimed at developing an Agreement-In-Principle that would include self-government rights. The remaining Innu communities maintain that the "Common Approach" process fails to address core issues adequately.

In addition to the foregoing, sectoral agreements provide many First Nations with limited self-government authority over, for example, education, land management, and child and family services. As of mid-2000, over 80 self-government negotiations, comprehensive and sectoral, are in progress.

Other subjects worthy of note include:

- The 1994 Manitoba Framework Agreement, which provided for a 10-year process to dismantle the Department's Manitoba region and to restore jurisdiction to the province's First Nations, was reviewed in 1999. Progress is reportedly slower than anticipated owing to the complexity of issues under negotiation.
- Various approaches to self-government for Aboriginal people off-reserve and in urban areas have been proposed; they include forms of public government or links to land-based Aboriginal governments. The issue is complicated by questions relating to federal/provincial responsibility for Aboriginal people.

Report of the Royal Commission on Aboriginal Peoples and Government Response

In its November 1996 report, the RCAP set out an approach to self-government built on the recognition of Aboriginal governments as one of three orders of government in Canada. The Report recommended, *inter alia*:

- a new Royal Proclamation to set out the principles for a new relationship and outline new laws and institutions that would be established;
- passage of an Aboriginal Nations Recognition and Government Act;

- elimination of the Department of Indian Affairs and the position of Minister of Indian Affairs, and establishment of a new Cabinet position, the Minister for Aboriginal Relations, and a new Department of Aboriginal Relations to negotiate and manage agreements with Aboriginal nations. A new Indian and Inuit services department would deliver services at the federal level;
- passage of an Aboriginal Parliament Act to establish a representative body of Aboriginal peoples that would evolve into a House of First Peoples and become part of Parliament.

In January 1998, the federal government's response in *Gathering Strength – Canada's Aboriginal Action Plan* centred on four objectives, including strengthening Aboriginal governance. The government stated that it

- was “open to further discussions on the departmental and institutional arrangements that could improve existing systems”;
- would “consult with Aboriginal organizations and the provinces and territories on appropriate instruments to recognize Aboriginal governments”;

- would focus on improving the capacity of First Nations to negotiate and implement self-government;
- would work with Treaty First Nations to achieve self-government within the context of the treaty relationship.

In its January 1999 and July 2000 Progress Reports on *Gathering Strength*, several of the developments mentioned above were among initiatives listed by the Department under the governance heading. Currently, virtually all developments or agreements between Aboriginal groups and the Department are routinely announced as coming within the *Gathering Strength* framework.

SELECTED REFERENCE

Wherrett, Jill. *Aboriginal Self-Government*. CIR 96-2E. Parliamentary Research Branch, Library of Parliament, Ottawa.