Need to catch-up with the idea of Indigenous self-governance in Canada?

Maybe you've heard of the United Nations Declaration on Indigenous Peoples (UNDRIP). Maybe you've heard of the Truth and Reconciliation Commission (TRC). Maybe you've even heard about the concept of Indigenous self-government discussed in the news lately, especially in relation to UNDRIP or the TRC. Although the idea seems to be receiving a lot of attention recently, the idea of Indigenous self-government is not a new one. In fact, it is old. Really old. Older than Canada itself. Aboriginal Peoples have been exercising their own governance systems for millennia. This booklet documents the origins of barriers Indigenous People in Canada have struggled against to maintain their rights to self-determination.

Self-Determination vs Self-Government
The terms are closely related. The *Report of the Royal Commission on Aboriginal Peoples* (1996), describes the difference: "Self-determination refers to the right of an Aboriginal nation to choose how it will be governed… Self-government… is a natural outcome of the exercise of the right of self-determination and refers to the right of peoples to exercise political autonomy. Self-determination refers to the collective power of choice; self-government is one possible outcome of that choice."

Aboriginal Peoples consist of:

- **First Nations**, which consists of 634 communities, representing more than 50 different Nations and more than 50 different Indigenous languages.
- **Inuit**, who live throughout the northern regions of Canada in Inuvialuit, Nunavik, Nunatsiavut, and Nunavut.
- **Métis**, who live across Canada and represent 25% of the Aboriginal population in Canada.

These various groups had their own alliances, confederacies, powerful families, democracies, and empires prior to the arrival of European settlers.

Note: In this booklet you will often see the term "Indigenous" used instead of terms like "Aboriginal" and "Indian". The latter are terms used in the colonial laws imposed by the Government of Canada. The term "Indigenous" is more in line with international law like UNDRIP. Where possible, you will see names of the various Indigenous communities used in an attempt to reflect the diversity between various Indigenous groups in Canada.

Peace and Friendship Treaties (17th century to mid-18th century)

When Europeans first made contact with various Indigenous populations, starting in the Atlantic region of Canada, alliances were made, and the Europeans understood that Indigenous Peoples had their own military capacity. Eventually, both the British and the French sought to make peace and friendship treaties with Indigenous Peoples as a way to advance their interests. In these agreements, Indigenous Peoples did not surrender their territory to the British and French. These were not one-sided treaties either. Indigenous Peoples also had reasons to enter treaties, such as, for example, to gain allies against other Europeans or Indigenous Nations and to maintain and strengthen territorial and commercial relationships.

There are two historical documents you should know about

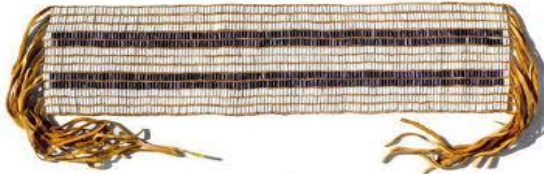
1. The Royal Proclamation of 1763 was not a treaty, but a declaration to help define the territorial boundaries between Indigenous Peoples and the Crown. The Proclamation illustrates the respect the British had for Indigenous Peoples' sovereignty. Part of the treaty read:

> *"...[T]he several Nations or Tribes of Indians with whom We are connected, and who live under our Protection should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds..."*

This is an important historical document because, on the one hand, it illustrates how the British recognized Indigenous groups as their own Nations deserving of political recognition. On the other hand, this document refers to "the several Nations or Tribes of Indians" as "under our Protection," hinting at the paternalistic relationship to come. For this reason, the next treaty is important because it explains the relationship slightly differently at that point in time.

Note: Keep in mind the language barriers and cultural differences that existed throughout early treaty negotiations and onward. Did both sides interpret the treaties in the same way?

2. The Treaty of Niagara, 1764, was negotiated between over 24 different Nations gathered from regions now located in Canada and the United States. Its significance today is in its understanding of Indigenous groups as sovereign Nations. A two-row wampum belt was created to reflect the outcome of the treaty.



Gus-Wen-Tah (two-row Wampum belt)

Robert A Williams, Jr., an Indigenous legal academic explains the meaning of the Wampum belt:

> "There are two rows of purple and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect. These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs, and their ways. We shall travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel."

Territorial Land Treaties

In the mid-1800s, a new kind of treaty was created. As the Europeans began to further encroach on Indigenous territories, new treaties were negotiated. In these treaties, Indigenous communities gave up land in return for other benefits like security, annuities, clothing, schools, and medicine. Post-Confederation, in the 1870s, the Government of Canada (the "Crown") began to sign treaties known as the "numbered treaties." These treaties were very different from the peace and friendship treaties. The Crown wanted to make room for increased settlement, forestry, mining, agriculture, and other economic pursuits, which would take place on Indigenous Peoples' territory. For Indigenous Peoples, these treaties were a way to secure their way of life against increased encroachment by the Crown. In exchange for the sharing of land, Indigenous Peoples were again promised various benefits and were often promised the right to continue to hunt and fish on the surrendered lands. Unfortunately, Canada has often ignored its promises, and continued to develop the surrendered territories in a way that conflicted with Indigenous uses of the land. On top of breaking promises, the Crown has also passed legislation that conflicts with Indigenous governance systems, like the *Indian Act* that came into force in 1876.

How Has the *Indian Act* Harmed Aboriginal Governance?

To start, if you haven't had a chance to read the *Indian Act* yet, you should (https://laws-lois.justice.gc.ca/eng/acts/i-5/page-1.html). It is discussed frequently and you may have heard people say we should get rid of it. Once you take a look you'll understand why. The document is blatantly racist, yet it remains in force in Canada.

There are many versions of the *Indian Act.* Over time it has been modified, however, one thing stays the same: its shockingly oppressive nature. Since its creation, it has attempted to control every aspect of Indigenous Peoples' lives. It ignores agreements like the Treaty of Niagara and the recognition that

Indigenous People were perfectly capable of organizing and governing themselves. Here are a couple examples of oppressive laws under old versions of the *Indian Act*:

- It prevented groups from assembling for celebrations and festivals, or performing traditional ceremonies.
- It prohibited Indigenous People from bringing legal claims (so when the Crown violated treaty agreements, Indigenous People could not take the government to court).

Inherent Right to Self-Govern

"This right stems from the original status of Aboriginal peoples as independent and sovereign nations in the territories they occupied. This status was recognized and recast in the numerous treaties, alliances and other relations maintained with the incoming French and British Crowns" (*Report of the Royal Commission on Aboriginal peoples: Restructuring the Relationship*, 1996).

The present *Indian Act* remains particularly damaging to Indigenous communities because it prescribes how Indigenous People should structure their local government and elect their chiefs (check out section 93 of the 1906 version). Most bands have had their governance structure forcibly removed (for an example, look up what happened to the Haudenosaunee at Six Nations). While some have blended the two forms of government structures, others have tried to keep them separate. Overall, the *Indian Act* ignores the fact that Indigenous Peoples have an inherent right to self-govern, and had sophisticated self-government structures (see the note above on "Inherent Right to Self-Govern").

"Self-Governance" Provisions in the *Indian Act*

So, is every aspect of the *Indian Act* bad news? It depends how you look at it. The *Indian Act* delegates *some* power to Indigenous communities. For example:

- Section 81(1) of the *Indian Act* includes 22 areas of bylaw-making powers delegated to Indigenous communities. Some areas include health, traffic, law and order, trespassing on reserve, public games, animal control, public works, land allotment, zoning and building standards, agriculture, wildlife management, commercial activities on reserve, and residency and trespass on reserve.
- Section 83 provides some provisions about "money bylaws" and "taxation."
- Section 85 allows the band council to make laws about prohibition and provision of "intoxicants" on reserve.

Positive Amendments?

In 2014, the Harper Government amended the *Indian Act* through the *Indian Act Amendment and Replacement Act*. This amendment removed section 82 from the *Indian Act*. Prior to 2014, every bylaw created under section 81 was sent to the Minister of INAC for approval (often the Minister denied bylaws). Now, Indigenous communities may pass bylaws without seeking the Minster's approval. The significance being that Indigenous communities have more control are over a wider range of local matters affecting their communities. Note: Section 83 still requires Ministerial approval.

So, although the *Indian Act* seems to provide room for governance over some areas, there are major problems with it. First, even if this seems like a lot of lawmaking power, it is not. In fact, it is very limited compared to provincial and municipal governments. Second, the *Indian Act* remains premised on assimilation and racist notions. It does not allow Indigenous communities to fully govern, if at all, through traditional (and more than adequate) governance structures. Finally, similar to the last point, it undermines inherent, pre-existing sources of power.

The White Paper: An Attempt to Eradicate the *Indian Act* in 1969

The solution to enhance Indigenous self-governance seems obvious: abolish the *Indian Act* once and for all. Prime Minister Pierre Elliot Trudeau tried to do just this in 1969 through the "White Paper". A good idea? Maybe not. The pur-

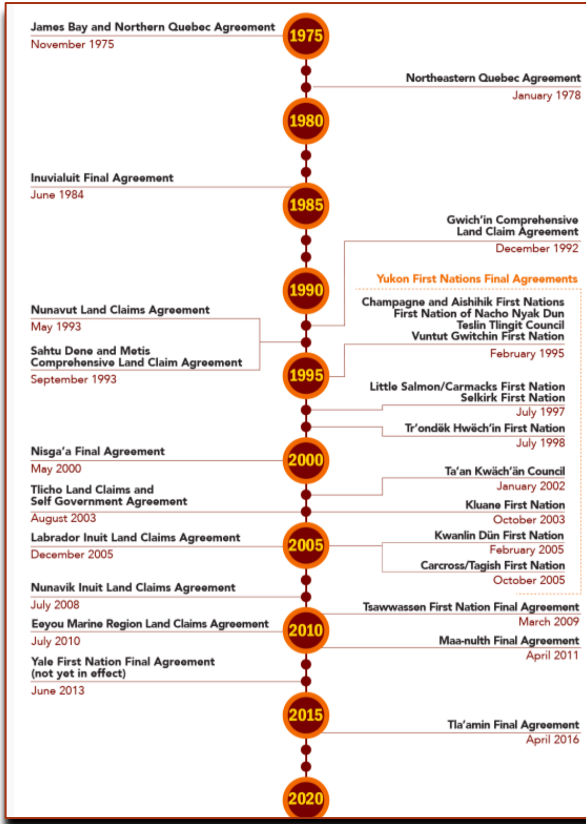
pose of the White Paper was to create a Canada, and more importantly, an Indigenous population, free from the constraints of the *Indian Act*. Unfortunately, the White Paper would've done this by assimilating Indigenous Peoples into mainstream Canadian society. The White Paper would have eliminated the recognition of Indian status, abolished Indian reserves, and have dismantled treaty obligations, among other objectives. Ultimately, Canada was trying to rid itself of its obligations towards Indigenous Peoples and its treaty promises, all the while ignoring historical injustices against Indigenous Peoples.

Many First Nations believed it was better to keep the *Indian Act* even if it was oppressive, because at least some of their rights would continue to be recognized. The White Paper of 1969 did not reflect a path towards self-determination.

Today, the *Indian Act* lives on.

> "The Indian Act still grinds its assimilative ways and threatens the entire fabric of First Nations' life. Only a few communities have escaped its racist grasp through negotiated self-government agreements. For most of Canada's 634 bands, though, the Indian Act retains its disturbing and twisted hold. Furthermore, Metis people and their governance have been virtually ignored throughout the entire period" (Borrows and Rotman, 2018).

Do Modern Land Claim Agreements Offer a Path Towards Self-Determination?



The first of the modern land claim agreements came into force in 1975. Since then the Government of Canada and various Indigenous groups have negotiated 22 modern land claim agreements. At this time, more than 70 Indigenous groups are negotiating agreements with the government, but they may take decades to fully negotiate.

Nisga'a Final Agreement

The Nisga'a Final Agreement is but one example of a modern land claim agreement. The treaty blends the Nisga'a People's ancient legal code, the *ayuukhl,* that has guided their social, economic and political relationships since time immemorial, with Canadian laws.

Under the treaty, the Nisga'a People collectively own 2 000 square kilometres of land.

Chief Gosnell of the Nisga'a Nation called the treaty, "A triumph" for many reasons (December 1998)

"A triumph because, under the Treaty, we will no longer be wards of the state, no longer beggars in our own lands."

"A triumph … because the Treaty proves, beyond all doubt, that negotiations – not lawsuits, not blockades, not violence – are the most effective, most honorable way to resolve aboriginal issues in this country."

"A triumph that signals the end of the *Indian Act* – the end of more than a century of humiliation, degradation and despair."

Modern Land Claims Agreements Are Not Perfect Solutions

Even if modern treaties offer more self-government provisions, reconciliation is hampered because the government refuses to recognize non-delegated, inherent, or nation-based forms of self-government.

Instead, self-governance rights are carefully negotiated and delegated to Indigenous groups by the Canadian government. These provisions don't allow Indigenous communities to thrive. Even worse, the federal government is allowed to infringe those carefully negotiated rights in some cases.

In fact, the federal government has at times refused to fully implement many modern treaties and their overall objectives. This has been reported by the Standing Senate Committee on Aboriginal Peoples (May 2008) and the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples (Mission to Canada, 2004).

Canadian Case-law on Self-Governance: What Do the Courts Have to Say About It?

The struggle Indigenous groups face to self-govern and to control their local affairs is best documented through court cases. The government has a long history of infringing Aboriginal rights and breaking treaty promises. Sometimes Indigenous People have taken the Crown to court (recall this wasn't always possible because of the barriers imposed by the *Indian Act*). It is important to understand that because the Government of Canada has not acknowledged Indigenous Peoples' inherent right to self-govern, judges have hesitated to acknowledge the right to self-government in their judgements.

Here is a list of some important cases about self-governance. Most of them are decisions made by the Supreme Court of Canada or from the Privy Council in England (going back to when we let England have the final say on legal disputes in Canada). And finally, a couple of recent decisions from British Columbia that reflect current attitudes towards Indigenous self-government.

Connolly v Woolrich (1867): The question in this court case was whether a "marriage union" under Cree law formed through mutual consent, was legally enforceable in Canada. The judge said that it was. This judgment is important because it recognized Indigenous People, in this case, the Cree, as autonomous nations, separate from Canada. Although the Court saw them as living "within the protection of the Crown" they retained their territorial rights, political organizations and laws (i.e. they had self-determination!).

St. Catherine's Milling & Lumber Co v R (1888): This case involved a licence to cut timber on lands within the area of Treaty 3, signed between the Ojibbeway and Canada. The Court's final judgement did not recognize the existence of the Ojibbeway's inherent rights, like self-determination. Instead the court said that the Ojibbeway's rights were extinguished because Section 109 of the *British North American Act* (BNA, 1867) says

that all the land within the territory of a province belongs to the province, leaving no room for Aboriginal ownership of land.

> ***Section 91(24) of the BNA, 1867***
> Section 91(24) places "Indians and lands reserved for Indians" under the control of the federal Government of Canada.

Logan v Styres (1959): This court case was brought by a member of the Six Nations Indian Band which is made up of people from the Mohawk, the Oneida, the Onondaga, the Cayuga, the Seneca, and the Tuscarora. The purpose of this court case was to acknowledge that the Six Nations are independent from Canada. The Six Nations stated they were faithful allies of the British Crown before Confederation in 1867 and continued to be faithful allies of Canada, but the Six Nations were never under the Crown's control. The Six Nations wanted to prove that the power the Crown derives from section 91(24) of the *BNA*, 1867 (see the note above) and the *Indian Act* were illegitimate sources of power. The Six Nations said they do not recognize the imposed voting system in the *Indian Act* that tells them how to elect Councilors and how to surrender their land. Even though the Six Nations never agreed to being ruled by the Crown, the Court said that the Six Nations had indeed become the Crown's subjects, so now Canadian laws applied to them.

R v Pamajewon (1996): This is the only case that speaks directly to Indigenous Peoples' inherent right to self-govern. In this court case, a member of the Shawanaga First Nation, Mr. Pamajewon, tried to claim that his Nation has the right to self-government. The case is important because it demonstrates the Court's failure to recognize inherent rights to self-govern. The Court used a legal test to determine that Indigenous People must prove their right to self-govern on a case-by-case basis and only towards very specific things. Indigenous People are not permitted to bring claims of self-government that are "excessively general". In this case, the court switched the "excessively general" claim to self-govern, to instead a claim to govern gambling activities on reserve, which the Court then found was not within the power of Shawanaga First Nation.

This decision blatantly ignores the governance structures that were in place prior to European settlement and which Indigenous Peoples have since struggled to have recognized by the Crown.

R v Delgamuukw (1997): In this case the Gitksan First Nation Chief, Delta Uukw, challenged the government in court over a right to self-govern their traditional territory. Unfortunately, the Court repeated what it said in *R v Pamajewon,* that claims for self-government cannot be "excessively broad". The court decided that self-governance claims must be more specific – that something as broad as "territory" cannot be claimed as a self-governance right. Yet again, the inherent right to self-governance was ignored.

Campbell v British Columbia (Attorney General) (2000): In this case, a treaty negotiated between the Government of Canada and the Nisga'a, the Nisga'a Final Agreement (mentioned on page 8) was challenged by three members of the provincial government as unconstitutional. The challenge was based on sections 91 and 92 of our Constitution Act. These sections divide legislative power between the provincial and federal governments. Legislative power is not granted to Aboriginal sources of government. The members of government argued that there is no room left for Aboriginal governance in the Canadian constitution. The Court disagreed and acknowledged that the Nisga'a had a legal system prior to European settlement. Although the Court said that the Nisga'a legal systems continued after settlement, their traditional legal system was diminished. The Court concluded, that even though Aboriginal government is not recognized like provincial governments in section 92, they do have rights to self-government through section 35(1) of the *Constitution Act* that "constitutionally guarantees, among other things, the limited form of self-government which remained with the Nisga'a after the assertion of sovereignty."

Sections 91 and 92 of the Constitution Act, 1982

Sections 91 and 92 distributes classes of power exclusively to the federal government and provincial government. Aboriginal governments are not recognized as having "exclusive power".

Mitchell v MNR (2001): In this case the Chief from the Mohawk of Akwesasne tried to enforce the Jay Treaty (1793), which would allow him to freely cross the border from the United States without paying duty taxes on customary gifts he brought home. The gifts were intended "to seal a trade agreement with Tyendinaga and to signify renewed trading relations, in accordance with customary practice". The Court did not force Canada to recognize the Treaty. Instead the Court described the sovereignty of both Canada and the Mohawk as having "merged." The idea of "merged sovereignty" contradicts the Treaty of Niagara (discussed on page 3). The Court went on to reinterpret the two-row Wanpum belt. The Court concluded that Indigenous and non-Indigenous Canadians form one sovereign entity "with a measure of common purpose and united effort" to form a "partnership without assimilation". The Court affirmed Canada's border sovereignty as superior to the Mohawk's own sovereignty in traditional territories. Little regard was given to the fact that the US upholds the Jay Treaty.

The Jay Treaty, 1793

The Jay Treaty was made between the British and the US. It recognized that the border, which is now the Canada-US border, bisected the traditional territory of Indigenous people. The Treaty exempted Indigenous people from paying fees on personal belongings brought across the US-Canada border. Canada does not recognize the Treaty, but the US does.

Sga'Nism Sim'Augit (Chief Mountain) v Canada (Attorney General (2013): In this case, the Nisga'a themselves challenged the constitutionality of the Nisga'a Final Agreement. The court chose not to address the question of whether section 35(1) of the *Constitution Act* and rights to self-government within the Nisga'a Final Agreement derived from an inherent Aboriginal right to self-government. Instead, the Court stated that it is sufficient for Parliament to delegate this right to Indigenous communities. The Court adopted the approach taken in *R v Pamajewon* almost two decades earlier. The Court then said they had no evidence available to them to prove the Nisga'a had any inherent right to self-government (even though the Nisga'a have a traditional legal code, discussed on page 8).

Final Comments on the Case Law

The most recent case, Sga'Nism Sim'Augit (Chief Mountain) (2013), shows that little progress has been made, even though Indigenous Peoples' inherent rights to self-govern and been discussed for decades in court! Until the government of Canada formally acknowledges Indigenous Peoples' inherent rights to self-government and to self-determination in the constitution, our courts will continue to sweep the issue under the rug.

Canada fully supports two international legal texts that recognize inherent rights to self-govern and self-determination and even this isn't enough!

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is a resolution, adopted by the United Nations General Assembly on Thursday, September 13, 2007. Its purpose is to establish a universal framework of minimum standards countries should adopt to allow the survival, dignity and well-being of indigenous peoples around the world. At first, Canada did not support UNDRIP, but later endorsed it in 2016.

This declaration outlines many rights that will improve Indigenous peoples lives. The parts related to self-determination and self-government state:

Article 3: Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous Peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous Peoples have the right to maintain and strengthen their distinct political, legal economic,

social, and cultural institutions, which retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 8.1: Indigenous Peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

International Covenant on Civil and Political Rights, ratified by Canada on May 19, 1976

Decades before UNDRIP existed, Canada had already promised to enhance self-determination under the International Covenant on Civil and Political Rights.

Article 1: All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

International law, like UNDRIP and the International Covenant on Civil and Political Rights, can be used by Canadian judges to assess whether Canada's actions are consistent with international law. Even though UNDRIP is not legally binding in Canada at this time, judges are supposed to presume that the Government of Canada does not act contrary to international law principles. Which then raises the question, why have our courts not used these international law principles in their decisions? If judges did this, they could strengthen Indigenous self-governance and self-determination rights in Canada.

Canada Finally Takes Action

In November 2017, our former Minister of Justice announced that Canada would pass legislation to implement UNDRIP (Bill C-262). The Bill is called "*An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*". However, until it becomes formal legislation in Canada, it is not legally binding. This means that the judges and the governmental officials do not have to follow the minimum standards set out in UNDRIP.

> ***Important Bill C-262 Provisions***
>
> **3** The United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007, and that is set out in the schedule, is hereby affirmed as a universal international human rights instrument with application in Canadian law.
>
> **4** The Government of Canada, in consultation and cooperation with indigenous peoples in Canada, must take all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

Long before UNDRIP existed, special committees and commissions have recommended ways for Canada to enhance Indigenous self-governance. Here is a short list of some recommendations and initiatives over the years:

Indian Self Government In Canada: Report of the Special Committee (1983) (the "Penner Report")

Although the federal and provincial governments never endorsed the approaches from the Penner Report, some of its recommendations are noteworthy:

- First Nations receive immediate recognition as distinct constitutionally protected order of government within Canada.
- First Nations be provided the same governmental status as provinces. The significance is that First Nations would be

immune from other governments' law-making power, just like one province's laws cannot affect another province's law.

- Abolish the *Indian Act.*

The Royal Commission on Aboriginal Peoples (RCAP): Aboriginal Nations Recognition and Government Act (early 1991)

Under this proposed piece of legislation, the federal government would've explicitly recognized and supported Indigenous governments.

The federal government could have transferred its control of "Indians and lands reserved for Indians" under section 91(24) of the *Constitution Act,* directly to Aboriginal Peoples.

Report of the Royal Commission on Aboriginal Peoples: Restructuring the Relationship (1996)

Three key points from the Royal Commission:

- Indigenous Peoples need recognition of the inherent right to self-determination vested in all Aboriginal Peoples (Inuit, First Nations, and Métis).
- Indigenous Peoples need recognition that self-determination should be vested in larger Aboriginal Nations, not delegated to smaller communities and reserves by the government (like the by-law making powers under the *Indian Act*).
- The inherent right to self-determination exists independent of the federal or provincial governments' recognition of the right.

National Centre for First Nations (2005-2013)

This initiative was started and funded by the Paul Martin Liberal government. The National Centre for First Nations allowed academics and lawyers to conduct research to help support governance work in First Nation communities and conduct workshops related to self-governance in First Nation communities. In 2012, the new Harper Conservative government discontinued the project's funding.

Charlottetown Accord (1992)

This was a failed negotiation between the federal, provincial, territorial and Indigenous governments, but would have contributed positively to Indigenous self-governance. Significant aspects of the Charlottetown Accord included:

- Recognition of Aboriginal Peoples' inherent right to self-government.
- Implementation of historical and modern treaties.
- Recognition of a third order of government in the *Constitution Act* for Aboriginal government.

Auditor General Report: "Programs for First nations on reserves" (2011)

This report highlighted many problems that stem from the federal government's exclusive authority to legislate on matters under section 91(24) of the *Constitution Act* ("Indians and lands reserved for Indians"):

- Lack of clarity about service levels (highlights the federal government's failure to provide Indigenous Peoples with comparable services to other provinces and municipalities).
- Lack of legislative base (highlights the need for legislation to hold the government accountable if it doesn't adequately provide services).
- Lack of appropriate funding mechanism (highlights the need for better funding mechanism in order for Indigenous communities to adequately resource the services they provide).
- Lack of organization to support local service delivery (highlights need for more expertise to better deliver services in very small communities).

Truth and Reconciliation Commission (2015)

The Final Report emphasized the need for Indigenous self-government to achieve reconciliation. The Report recommended

that UNDRIP should be the framework for reconciliation because it focuses on the right to self-determination.

Carolyn Bennett (Minister of Crown-Indigenous Relations and Northern Affairs) announced Canada's commitment to the UNDRIP (May 2016)

"[T]hrough section 35 of its Constitution, Canada has a robust framework for the protection of Indigenous rights… We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution. … By adopting and implementing the declaration, we are excited that we are breathing life into section 35 and recognizing it as a full box of rights for Indigenous Peoples in Canada."

Canada's ten principles it intends to honour in respect of its relationship with Indigenous Peoples (July 2017)

Among the ten principles, the two most relevant to self-government are:

Principle 1: The Government of Canada recognizes that all relations with Indigenous Peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.

Principle 4: The Government of Canada recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.

What Do Indigenous Nations Living in Canada Need?

According to the recommendations by national commissions and committees over the years, Indigenous Peoples need a space carved into the *Constitution Act,* like what was attempted in the Charlottetown Accord, 1992. Doing this would recognize their right to self-determination and from that the right to self-govern. Although this right is inherent and exists independent of Canadian Sovereignty, Indigenous people will

continue to struggle against our colonial government if this right is not recognized at the highest level, the constitution.

The Timeline: Tracking Colonial Attitudes Towards Indigenous Self-Government

How to Interpret the Timeline

The purpose of the timeline is to track colonial attitudes towards Indigenous self-determination from the time when peace and friendship treaties were signed until the present times.

The Canadian laws, cases, political statements, initiatives, reports and international law in this booklet have been placed along a timeline, using coloured dots to organize them into their respective categories:

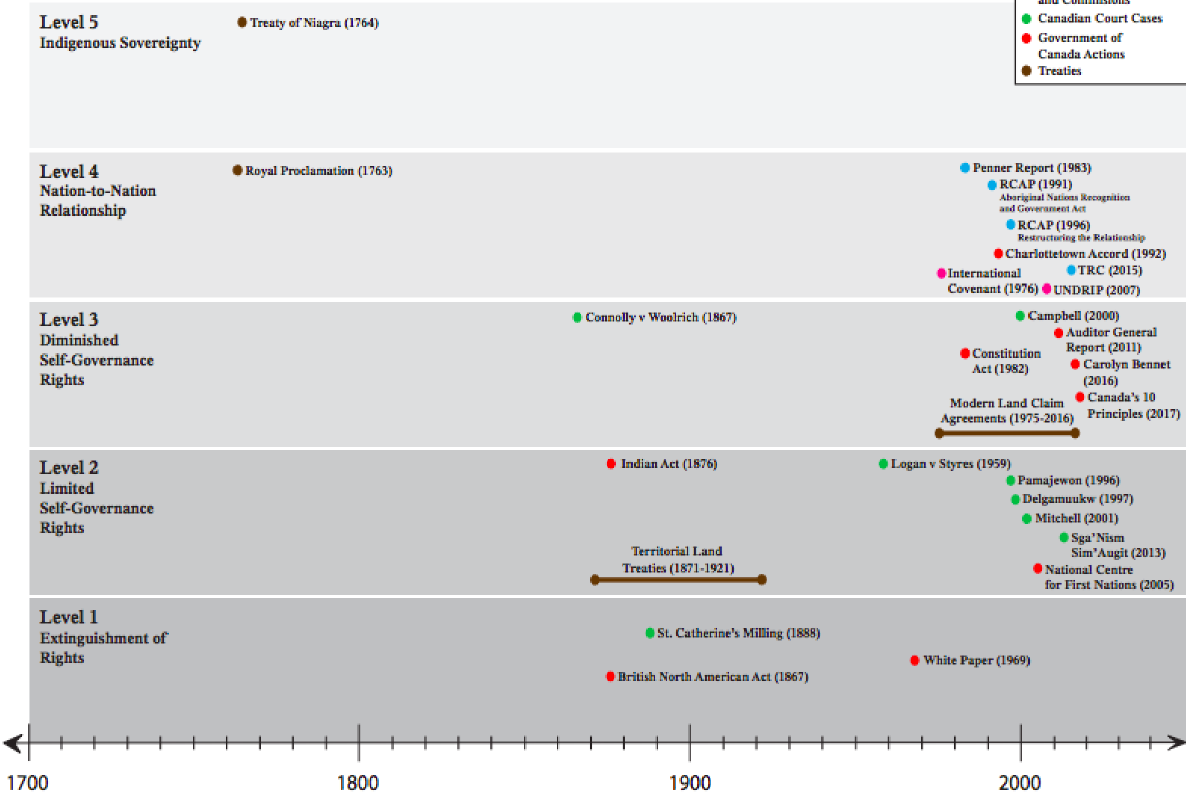
- International Law
- National Committees and Commissions
- Canadian Court Cases
- Government of Canada Initiatives
- Treaties

Each one has been scored on a scale from one to five, according to the prominent sentiment expressed towards Indigenous self-government.

Grading System

Levels	Criteria
Level 5 Indigenous Sovereignty	To receive this grade the event must recognize that Indigenous People do not fall under the laws of another sovereign nation.
Level 4 Nation-to-Nation Relationship	To receive this grade, the event must respect inherent rights to Indigenous self-determination. These events may also recognize the need to create space in our *Constitution Act* for Aboriginal government (like sections 91 and 92 do).
Level 3 Diminished Self-Governance Rights	To receive this grade, the event recognizes that Indigenous People have pre-existing governance systems, but their right to self-government has been diminished. In such cases, the federal government delegates power to Indigenous communities.
Level 2 Limited Self-Governance Rights	Limited Self-Government rights: this grade is given to events which express the sentiment that Indigenous people may govern certain aspects of their communities through delegated power. In such cases the event fails to recognize traditional governance structures the existed before Crown sovereignty.
Level 1 Extinguishment of Rights	To receive this grade an event takes the position that Indigenous People should be assimilated into the larger Canadian population without recognition of their rights.

Now, take a look at the timeline for yourself!



Tracking Colonial Attitudes Towards Indigenous Self-Government
Legend
International Law
National Commitees and Commisions
Canadian Court Cases
Government of Canada Actions
Treaties
Level 5
Indigenous Sovereignty
Treaty of Niagra (1764)
Level 4
Nation-to-Nation Relationship
Royal Proclamation (1763)
Penner Report (1983)
RCAP (1991)
Aboriginal Nations Recognition and Government Act
RCAP (1996)
Restructuring the Relationship
Charlottetown Accord (1992)
TRC (2015)
International Covenant (1976)
UNDRIP (2007)
Level 3
Diminished Self-Governance Rights
Connolly v Woolrich (1867)
Campbell (2000)
Auditor General Report (2011)
Constitution Act (1982)
Carolyn Bennet (2016)
Canada's 10 Principles (2017)
Modern Land Claim Agreements (1975-2016)
Level 2
Limited Self-Governance Rights
Indian Act (1876)
Logan v Styres (1959)
Pamajewon (1996)
Delgamuukw (1997)
Mitchell (2001)
Sga'Nism Sim'Augit (2013)
National Centre for First Nations (2005)
Territorial Land Treaties (1871-1921)
Level 1
Extinguishment of Rights
St. Catherine's Milling (1888)
White Paper (1969)
British North American Act (1867)
1700
1800
1900
2000

I hope you developed a better understanding about what Indigenous self-governance and self-determination mean and about the struggle Indigenous Peoples have faced on the path towards having these rights recognized. These are not new concepts, but rights Indigenous People are born with and seek to exercise freely, as distinct Peoples.

All Canadians must support Indigenous self-determination in order to achieve reconciliation.