

## Indigenous Peoples in Canada

Indigenous Peoples in Canada are identified in the Constitution as First Nations, Inuit and Métis peoples. Each people is considered distinct (hence, the term 'distinctions-based approaches to policy') and each has its own struggle for recognition of sovereignty, self-determination and recognition.

Key turning points in Canada were the Calder case in 1973, which held that the lands claimed by the Nisga'a Nation were not necessarily extinguished by contact with the United Kingdom - British sovereignty did not necessarily nullify pre-existing rights. Equally consequential was the patriation of the Canadian constitution in 1982. The 1982 Constitution Act expressly states that the 'aboriginal and treaty rights' of 'First Nations, Inuit and Metis' are 'recognized and affirmed'. Three constitutional negotiations later, and Canadians decided it would be best to let courts determine the contours of indigenous rights in Canada.

One small point worth noting are the various strategies used to advance rights. The Crown's preferred approach for recognition is the negotiation and conclusion of a 'modern' (post-1973) treaty. Such treaties are diverse in character, ranging from exchanges of land for harvesting rights and resource revenues to more extensive agreements detailing specific self-government powers. Many 'modern treaty' indigenous peoples have multiple and extremely complex agreements. Other treaty nations prefer to assert rights in the broader context of the relationship with the Crown.

### First Nations

First Nations, once referred to as 'bands' or 'Indian Act bands', are governments created per federal legislation, the *Indian Act*. The Act, dating to the 19th century, has (and still does) legislated over identity (whether one may be an 'Indian'), management of 'reserve lands', 'Indian moneys', wills and estates for "Indians", and a range of other issues). The historical objective of the Act was the gradual enfranchisement of all "Indians" into the Canadian mainstream. 'Enfranchisement' was a formal process where an 'Indian' would 'lose status' under the Act: for example, by becoming a licensed professional (doctor, lawyer, engineer) or, in the case of First Nations women, 'marrying out' (marrying a non-First Nations man).

The Indian Act created the 'Indian Band': a local government which was initially subject to supervision from the 'Indian Agent', later 'the Superintendent of Indian Affairs' and in recent years, subject to no supervision at all (save the courts). The Act does not recognize sovereignty (in fact, to exercise sovereignty through domestic legislation makes no sense to me); however, several sections of the Act recognize various forms of self government (over taxation, law-making over a range of minor matters; over membership; over elections; and, in the argument of some First Nations, the very Act of creating a government leads to all of the powers, duties and functions inherent to all governments).

Because the rights of First Nations are generally accepted to be collective in nature, First Nations may also assert collective rights per the section 35 guarantee that such rights 'are recognized and affirmed'. Examples of rights claimed have included harvesting rights, the right to cross international borders, the right to regulate gaming, the right to regulate fishery allocations or the right to lands, territories and resources.

Many First Nations have, within their Nations or communities, traditional and hereditary councils which have been unrecognized by the Indian Act. In some cases, First Nations were imposed specifically to diminish the political power of these hereditary councils. In other cases, First Nations have delegated authority to litigate or negotiate s.35 rights to lands, territories, resources and self-government to hereditary governments. Issues related to the legal power and authority of hereditary governments remain unresolved in Canadian law.

### Inuit

While there are only about 60,000 Inuit in Canada, Inuit Nunangat, or the Inuit homeland, encompasses over one third of Canada's landmass and over half of Canada's shoreline. All Inuit rights-holders currently hold modern treaties with Canada: the first being concluded in 1976 (the James Bay and Northern Quebec Agreement) and the most recent being the Labrador Inuit Land Claims Agreement, which established the Nunatsiavut Government. The others are the Inuvialuit Settlement Agreement, concluded in 1984 and the Nunavut Land Claims Agreement, concluded in 1999, which established the territorial government of Nunavut, a public government (a government representative of all people in Nunavut, ie not an indigenous government per se).

Only one Inuit region has an indigenous self-government arrangement with Canada: the Nunatsiavut government. The other three regions are represented by rights holders which are not governments but rather corporations (Nunavut Tunngavik Incorporated, the Inuvialuit Regional Corporation and Makivik Corporation). In each of these regions, Inuit contend with provincial/territorial as well as federal governance and jurisdiction.

Nunavut Tunngavik Incorporated, the rights holder associated with the NLCA, is the second largest non-governmental land-owner in the world, following the Catholic Church. For Inuit, self-determination does not rest in separation from the state; rather Inuit tend to embrace their special relationship with the state: 'First Canadians, Canadians First'. As a consequence, unlike many First Nations, Inuit disregard concepts of sovereignty that would lead to a break from a relationship with Canada, and instead embrace concepts of self-determination and Inuit ownership of Inuit territories.

Despite the fact that Inuit Nunangat represents over one third of Canada's landmass, it remains one of the least developed regions within Canada. A large proportion of civilian infrastructure was constructed during the Cold War, to ensure a North American presence in the Arctic.

During this period, many Inuit were relocated far into the North because the Canada deemed the high Arctic a 'strategic location' and needed to maintain a presence there.

### Métis

In 2002, some 20 years after the Constitution Act, 1982 recognized that the rights of the Métis were 'recognized and affirmed', the Supreme Court of Canada confirmed that the Métis could exert rights through section 35 of the Constitution. This long struggle is likely indicative of the Métis experience in Canada. For some, the term 'Métis' refers to any person who is of mixed race, who is not 'First Nations'. This is a serious and ahistorical misunderstanding of not only the term, but also 'who are the Métis'. Other indigenous peoples struggle for their rights, while the Metis struggle for recognition of their existence, as well as their rights.

During the 19th century, the Metis, generally defined as a group of mixed descent (French/Cree) people - not accepted as 'European' or 'First Nations', established control of a territory which covered, at least, the territory in Canada now known as 'Manitoba'. The Metis have their own culture, signified by a distinct history, distinct dress, a distinct language (Michif) and distinct customs.

Louis Riel, then leader of the Metis, at one point went so far as to declare independence from Great Britain and establishing a provisional government for the territory. The ensuing rebellion was suppressed by the Canadian government, but led to solemn commitments from the Canadian government to ensure that the Metis would have access to lands. Metis individuals were offered scrip, which they could use to purchase land: scrip which was often not accepted and for some Metis, particularly children, never even offered. This latter situation led to the *Manitoba Metis Federation* decision of the Supreme Court of Canada in 2014.

The history of individual indigenous people and families in the west is often defined by whether their ancestors (in Manitoba, Saskatchewan or Alberta) 'took scrip', thereby cementing the families' status as Metis and not 'Indian'. A 2012 Supreme Court of Canada case, *Cunningham v Alberta*, confirmed that individuals could not be both 'Metis' and 'Indian' at the same time.

Canadian Indigenous policy, due to the influence of the *Indian Act*, has traditionally focused on the situation of First Nations to the exclusion of Metis and Inuit. Only in the past decade have the Metis been able to assert their identity, their rights and their interests in a fashion such that federal laws, policies and programs are inclusive of their existence, rights and interests.