



COMPREHENSIVE CLAIMS AND INHERENT RIGHT POLICIES

OVERVIEW

In 1973, the Canadian legal system made its first landmark ruling regarding Aboriginal title in *Calder v. the Attorney-General of British Columbia (1973)*.

In an attempt to respond to the findings of *Calder*, Canada created the Federal Office of Native Claims in 1974 and issued a statement of policy agreeing to negotiate comprehensive land claims.

In 1981, Canada amended the policy statement by releasing '*In All Fairness: A Native Claims Policy*'. First Nations were critical of Canada's approach to comprehensive claims, pointing out that it was a policy of extinguishment, which offered to exchange undefined rights and title for defined rights.

In 1982, Aboriginal and Treaty Rights were recognized and affirmed through Section 35 of the *Constitution Act*. Section 35 created uncertainty for Canada because it was unclear what was meant by the recognition of and affirmation of Aboriginal rights, and what that meant for their policies of extinguishment.

Responding to a number of critiques, Canada rebranded its comprehensive claims policy as the Comprehensive Land Claims Policy (CLCP), clearly signally that the policy was about land, and that other issues, such as self-government, would be addressed through other forums.

In 1995, Canada created its Inherent Right Policy (IRP), which outlined its approach to Aboriginal self-government.

First Nations have consistently rejected both the CLCP and IRP for failing to reflect Canadian or international law, the prohibitive costs associated with negotiating, Canada's insistence on certainty and extinguishment clauses, and because they create division among First Nations right holders.

Canada last agreed to work with the Assembly of First Nations (AFN) to address these two policies in 2013 with a Senior Oversight Committee (SOC) process. Following a year of progress, Canada chose not to renew the SOC, and instead unilaterally appointed Douglas Eyford as its Special Ministerial Representative in 2014 to lead engagement with First Nations on how to move forward, resulting in the Eyford Report and an interim CLCP policy.

In 2015, Assistant Deputy Minister for Treaties and Aboriginal Government, Joe Wild, received a secret Cabinet Mandate to begin operating Recognition of Indigenous Rights and Self-Determination Discussion Tables (Discussion Tables) as an alternative to negotiating under the CLCP and IRP. There are currently more than 60 discussion tables, but no mandates have resulted from these efforts.

ISSUE UPDATE

March 2019

On February 14, 2018, Prime Minister Trudeau announced the Government would be moving forward with the Recognition and Implementation of Indigenous Rights Framework Legislation (the Framework). The Framework would effectively replace the CLCP and IRP, and form the basis for Canada's approach to addressing First Nations Inherent Rights at the Discussion Tables.

Following widespread criticism from First Nations regarding Canada's proposed Framework legislation, Minister Bennett announced that she wanted to begin working with the AFN and First Nations to replace the CLCP and IRP.

UPDATE

The AFN Chiefs-in-Assembly passed Resolution 67/2018, which rejects Canada's Framework and process, and calls on the AFN to support a First Nations-led Nation-building process, supported by First Nations principles on

inherent rights. At the same time, Minister Bennett has committed to halting the Framework process and working jointly with First Nations to replace the CLCP and IRP.

NEXT STEPS

The AFN plans to submit a proposal to support a national engagement process on Nation-building as called for in Resolution 67/2018. This work will support First Nations advocacy efforts on CLCP and IRP reform and if accepted, result in a First Nations-led engagement process.

