



What is the history of this issue and how does it impact First Nations?

Canada has created, over decades and centuries, a system of legal and policy denial of First Nations' Treaty rights, inherent rights, Title, and jurisdiction. First Nations have consistently advocated against these systems of legal and policy denial ever since, instead seeking affirmation and recognition of these rights. In 1985, Canada created the Community-Based Self-Government Policy to address issues of Aboriginal self-government. In 1995, Canada created and unilaterally imposed the Inherent Right to Self-Government Policy (IRSG) on First Nations. The IRSG, along with the Comprehensive Land Claims Policy (CLCP) are key federal policies which guide Canada's approach to funding and negotiating modern Treaty agreements or self-government agreements with First Nations, and other Indigenous Peoples.

First Nations have been consistently critical of these policies because they are inconsistent with the full recognition of First Nations Rights, Title and jurisdiction and often require a release or surrender of rights. Moreover, these policies have failed to keep pace with Canadian law, are incompatible with the United Nations Declaration on the Rights of Indigenous Peoples, and often fail to include adequate resourcing to support final agreements. The IRSG rejects First Nations sovereignty, subordinates our inherent rights to the *Charter*, denies our inherent jurisdiction, and requires individual negotiations over national agreements. In 1995, the Chiefs-in-Assembly mandated that the AFN engage the IRSG, specifically through Resolution 5/95, *Proposed Federal Policy Framework on the Inherent Right of Self-Government*, and has consistently mandated the AFN to oppose these policies ever since.

Most recently, Canada has claimed a mandate outside the IRSG policy for "exploratory tables" under the "[Recognition of Indigenous Rights and Self-Determination discussion tables](#)" (RRIRSD) structure. However, Canada will not reveal this mandate and to date has not negotiated a single final agreement outside of IRSG parameters though some 80+ tables are active and some 150 unique negotiations are overseen by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). The same colonial patterns in the IRSG appear to be present, specifically forcing negotiation of inherent rights rather than outright recognition and supports the creation of three (3) tiers of subjects (negotiable, delegated, non-negotiable) which has led to outright rejection by the Chiefs-in-Assembly via Resolution 67/2018, *Rejection of the Recognition and Implementation of Indigenous Rights Framework and Associated Processes*.

In 2019, following the collapse of the federal "Recognition of Indigenous Rights Framework process," Canada announced its desire to work with Indigenous partners, including the AFN, to

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finally replace the IRSG. The AFN was unable to support this approach because the timelines were insufficient and did not allow for the full participation of First Nations or Chiefs-in-Assembly. As an alternative, AFN Resolution 25/2019, *Support for a First Nations Led Engagement Process on Nation Building*, reiterates previous resolutions rejecting the CLCP and IRSG and calls for a process to replace existing rights-based policies through a First Nations-led process.

How has the AFN's recent advocacy affected this area?

Minister Bennett's 2019 Mandate Letter committed to "ongoing work with First Nations, Inuit, and Métis to redesign the Comprehensive Claims and Inherent Rights Policies." In late 2019, CIRNAC agreed to fund a joint process based on existing AFN mandates. Minister Bennett's [Supplementary Mandate Letter](#) of January 2021 did not specifically build upon this commitment but did result in a joint AFN-CIRNA working group. A draft Terms of Reference was provided to the Lands and Territories Chiefs Committee for their review. The purpose of the working group is to hold discussions that will lead to the development of a strategy that will accommodate First Nations-led processes and to support research and possible data gathering.

The AFN has continually sought greater clarity about ongoing Discussion Tables and federal approaches facilitating the negotiation of section 35 rights and title. The lack of publicly available and outdated information has created issues for First Nations. Confidentiality requirements place First Nations at a distinct disadvantage when negotiating with the Crown, while the Crown has the advantage of coordinating internally.

Where do we hope to go in the future?

While Canada committed to review the CLCP and IRSG, there remains an urgent need to ensure that a review includes all First Nations, and is respectful of the multitude of ways in which First Nations assert their rights. The sector will revisit joint AFN-CIRNA Terms of Reference that aims to support the assertion of First Nations inherent right to self-determination is clearly understood and is not subject to the racist Doctrine of Discovery and terra nullius and/or assumed Crown sovereignty. The Sector is advocating for greater transparency on existing federal processes so that First Nations are better positioned and aware when meeting with various levels of government to discuss their priorities and objectives. The AFN is also committed to seeking updated federal information about the various federal processes that impact the ways in which First Nations are choosing to assert their rights. The AFN is also hoping to develop updated

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statistics and data for public presentation about the various federal processes that currently exist, and the ways in which First Nations are choosing to assert their rights.

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