



## Jurisdiction in First Nations Education

*In my view, the doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.*  
~Lamer Chief Justice, in *R. v. Van der Peet*, [1996] 2S.C.R. 507 at 30

### Federal Jurisdiction over Education

The *British North American Act* (now the *Constitution Act*, 1867), Section 91 (24), gives the federal government exclusive authority over Indians and lands reserved for Indians; Section 93 states that provinces have authority to make laws in education. Section 35 of the *Constitution of Canada* (1982) provides recognition of Aboriginal rights.

### Current Federal Legislation

The *Indian Act* (sections 114 to 122) is the current legislative authority that is being used by the federal government for the education of First Nations status Indians. Key provisions in the Act include that the Minister:

- May enter into agreements for the education of Indian children,
- May operate and maintain schools for Indian children,
- May provide for and make regulations, provide transportation, enter into agreements with religious organizations, apply funding for the maintenance of "that child at that school", and,
- Requires children 6 years to 16 years of age to attend school.

The *Indian Act* makes no provision for supporting culturally and linguistically relevant education or 'quality' education and makes no guarantees for adequate and sustainable funding. There is no statement for the education of preschoolers. After the age of 16, the federal government supports some status Indians to attend post-secondary programs (Post-Secondary Student Support Program), as a matter of social policy.

### First Nations Respond

The long-term detrimental impacts of the federal governments' efforts to assimilate or 'kill the Indian in the child' with the creation of the residential school system led First Nations

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leaders to unite, calling for radical change. The Nation Indian Brotherhood (NIB) released *Indian Control of Indian Education (ICIE)* to regain control over education and ensure education that is “relevant to the philosophy and needs of Indian people”(6)<sup>1</sup>. The NIB/Assembly of First Nations (AFN) released *Tradition and Education: Towards a Vision of our Future* in 1988, calling for federal legislation to recognize First Nations` inherent right of self-government.

By 2010, Chiefs-in-Assembly affirmed their position of ICIE through resolution 12-2010 and the release of *First Nations Control of First Nations Education*, seeking control over all levels of the lifelong learning spectrum (including early childhood, skills development, adult education, language and culture) for all First Nations peoples.

“First Nations Treaties provide the historical and legal foundation for the creation of the Nation State. Many of the earliest Friendship Treaties affirmed a comparable standard of life between the Treaty signatories. Treaties from the 19<sup>th</sup> and 20<sup>th</sup> centuries explicitly identify the provision of education as a Treaty Entitlement and confirm First Nations jurisdiction over education.” (FNCFNE, 9)

Section 35 of the *Constitution Act, 1982* explicitly recognizes and affirms pre-existing and inherent Aboriginal and Treaty rights of Indigenous Nations.

Therefore, the Crown is obligated, not only to recognize their jurisdiction to lifelong learning, but also to “fulfill their Constitutional, Treaty and international obligations to First Nations peoples by supporting the design and implementation of First Nations comprehensive learning systems with adequate and sustainable resourcing” (FNCFNE, 20).

The United Nations Declaration of Indigenous Peoples, Article 14, supports First Nations “right to establish and control education systems and institutions providing education in their own languages”.

## Legislation and Agreements

First Nations continue to strive for recognition and implementation of First Nations jurisdiction in education. Legislation and agreements include:

- Education Acts – frameworks to recognize First Nation authority to enact laws in education i.e. *Mi’kmaq Education Act, 1997, First Nations Education Act, BC, 2007* (provincial recognition); *Sechelt Self-Government Agreement, 1986; Nunavut Act; Nisga’a Final Agreement* (some restrictions)

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<sup>1</sup> National Indian Brotherhood, *Indian Control of Indian Education*, 1972

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- Self-government Agreements – identify authorities in education i.e. *Westbank First Nation Self-Government Agreement*, BC (authority for kindergarten to secondary; enter into agreements re: post-secondary; compatibility with other education authorities; protection for culture, identity, language and traditions); *James Bay & Northern Quebec Agreement* (limited delegated control over administration under the Quebec Education Act); *Tlicho Self-Government Agreement* (enact laws excluding post-secondary)
- Tripartite Education Framework Agreements (2008-2012) - exist in several provinces to promote collaboration between governments and First Nations to improve educational outcomes of First Nations learners

First Nations continue to assert their jurisdiction in education, but there remains no guarantee for long-term, adequate and sustainable funding to support quality and culturally relevant education across the spectrum of lifelong learning.

## List of Sources, References, and Further Readings

1. Morgan, Nancy A. *If Not Now, Then When? First Nations Jurisdiction Over Education: A Literature Review*. British Columbia: First Nations Education Steering Committee. 19 Nov. 2002.
2. AFN. *First Nations Education Legislation: Comparability Table*. Ottawa: AFN, nd.
3. AFN. *First Nations Control of First Nations Education*. Ottawa: AFN. July 2010