CHAPTER OBJECTIVES

After reading this chapter, you should be able to

1. Outline the historical background of the relations between Aboriginal peoples and the Canadian government.
2. Explain the significance of constitutional changes and court rulings in establishing Aboriginal rights.
3. Examine the key features of recent land claims settlements.
4. Describe the changes to government policy concerning Aboriginal peoples.
5. Discuss what is needed to improve the relationship between Aboriginal and non-Aboriginal peoples.

Phil Fontaine, then head of the Assembly of Manitoba Chiefs, shocked Canadians in 1990 when he revealed in a national television interview that he had been subjected to 10 years of physical and sexual abuse at the Fort Alexander Indian Residential School. Although he was reluctant to provide the details of the abuse that the children at his school had experienced, he did say that his aunt had been stripped and whipped by a priest in front of a class (Fontaine, 1990). In the following years, other Aboriginals from across Canada came forward with similar stories of abuse in residential schools.
The residential schools funded by the Canadian government and run primarily by the Catholic, Anglican, United, and Presbyterian churches reflected the persistent view that Aboriginals were primitive, should give up their native customs, and needed to be taught European values. The first residential school was established in 1883, and in 1920 education was made mandatory for Aboriginal children aged seven to fifteen. From 1883 until the last school was closed in 1998, about 160,000 First Nations, Inuit, and Métis children were enrolled in the residential school system. 

Children were forcibly removed from their parents to attend schools that were often distant from their homes. They were not allowed to speak their native languages during or outside class hours, and many were beaten for violating this rule. They were taught that their culture was inferior and were required to adopt the Christian religion. Physical and sexual abuse by those in authority was common, and there was a high death rate as a result of malnutrition and tuberculosis in the more crowded schools. Many students tried to run away, and some committed suicide to escape their horrific treatment. The residential school experience had the effect of making many Aboriginals ashamed of their ancestry and heritage, and disrupted the transmission of language and culture from parents and other family and community members to children. 

While some who went through the residential school system turned to alcohol, drugs, and prostitution, Phil Fontaine pursued his education, receiving a degree in political studies at the University of Manitoba. As National Chief of the Assembly of First Nations during 1997–2000 and 2003–2009, he worked to achieve reconciliation by seeking an apology for past injustices at the residential schools and compensation for the victims of abuse. 

Faced with the threat of lawsuits on behalf of thousands of victims, the Canadian government eventually accepted responsibility and paid about $1.9 billion in compensation for the victims of residential schools. The religious denominations that ran most of the schools apologized to the victims. Finally, in June 2008, in the presence of Fontaine and other Aboriginal leaders, Prime Minister Harper issued a formal apology in the House of Commons and asked the forgiveness of Aboriginal peoples for the great harm caused by the policy of assimilation and the abuse of helpless children who were separated from their “powerless families and communities” (Harper, 2008). Nevertheless, the Canadian government claimed that 7000 pages of documented evidence of sexual abuse did not exist until the Ontario Superior Court ordered the government to release the documents in 2014 (Saul, 2014).

Despite the formal apology, the Canadian government has been reluctant to take meaningful actions to rectify the many injustices suffered by Aboriginal peoples, including the very poor social and economic conditions they continue to face. As well, the Canadian government has rejected requests to hold an inquiry into the 1122 women and girls murdered or declared missing from 1980 to 2012 according to an RCMP report—a rate about four and a half times higher than for non-Aboriginal women (Amnesty International, 2014).

INTRODUCTION

About 1.4 million Canadians (4.3 percent of Canada’s total population) consider themselves as having an Aboriginal identity, according to the 2011 National Household Survey (see Table 11-1). Moreover, the Aboriginal population (First Nation, Inuit, and Métis) is growing more rapidly than the non-Aboriginal population. In addition to a higher birth rate, a greater number of those with Aboriginal ancestry are now willing to describe themselves as having an Aboriginal identity. Indeed, when the Qalipu Mi’kmag First Nation was established on the island portion of Newfoundland as a landless band in 2011, over 101,000 persons applied for membership, greatly exceeding the
10 000 expected members. After a bungled enrollment process, about 23 000 members were approved and thus became Registered (Status) Indians with benefits under the Indian Act.

Of those who reported an Aboriginal identity, 60.8 percent were First Nations (North American Indian), 32.3 percent were Métis, and 4.2 percent were Inuit. Canada’s First Nations population includes 637 660 Registered First Nations members (Status Indians), of whom 49.3 percent live on reserves. A further 213 900 identified themselves as First Nations or North American Indian but did not have official Indian status. Most of the registered First Nations are a member of one of the 617 recognized “bands” that have an average membership of 1338 (Aboriginal Affairs and Northern Development Canada, 2010b).

Status Indians are exempt from taxes on income earned on a reserve and from GST or HST on goods and services bought on reserve. The Registered population has increased greatly from 341 968 in 1983, in part because of legislation (required as a result of the Charter of Rights and Freedoms) ending

<table>
<thead>
<tr>
<th>TOTAL ABORIGINAL IDENTITY POPULATION</th>
<th>4.3%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newfoundland and Labrador</td>
<td>7.1</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>1.6</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>3.7</td>
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<tr>
<td>New Brunswick</td>
<td>3.1</td>
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<tr>
<td>Quebec</td>
<td>1.8</td>
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<tr>
<td>Ontario</td>
<td>2.4</td>
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<tr>
<td>Manitoba</td>
<td>16.7</td>
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<td>Saskatchewan</td>
<td>15.6</td>
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<tr>
<td>Alberta</td>
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</tr>
<tr>
<td>British Columbia</td>
<td>5.4</td>
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<tr>
<td>Yukon Territory</td>
<td>23.1</td>
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<tr>
<td>Northwest Territories</td>
<td>51.9</td>
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<tr>
<td>Nunavut</td>
<td>86.3</td>
</tr>
</tbody>
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Membership involved proving Canadian Indian ancestry descended from a Newfoundland Mi’kmaq community pre-Confederation [1949], self-identified prior to the formation of Qalipu, and accepted by the Mi’kmaq group based on a current and substantial connection. In April 2015, an agreement was reached between the Qalipu chief and the Canadian government to review 94 000 eligible applications.

Calculation excludes those with multiple identities.

In Ontario and Quebec, registered Indians are exempt from the province’s portion of the HST on goods and services anywhere in the province.
the discrimination against Indian women who lost their Indian status if they married a non-Indian man. Likewise the passage of the Gender Equity in Indian Regulations Act, 2011 increased the Indian population as the grandchildren of those who lost status as a result of marrying non-Indian men can now be registered.

As discussed in Chapter 4, Aboriginals are much worse off than other Canadians in terms of lifespan, income, housing, employment, poverty, and education. As well, they have a much higher rate of suicide, alcohol and drug abuse, and incarceration.

Many Aboriginal communities lack the basic necessities of life, such as safe drinking water and proper sewage facilities. Moreover, natural resource developments—such as mining, petroleum extraction, forestry, and dam construction—often harm the environment of Aboriginal communities, the health of their inhabitants, and the sustainability of their hunting, fishing, and trapping activities. The lack of progress in improving public services provided to Aboriginals is particularly evident on First Nations reserves that are the responsibility of the Canadian government (Office of the Auditor General of Canada, 2011).

The relationship of Aboriginal peoples to the Canadian state and its governing structures often poses difficult but important challenges. While many Canadians believe that all Canadians should be treated as equal citizens with the same rights, many Aboriginals argue that they have special rights because of their prior occupancy of land that was often taken away from them illegally or improperly. First Nations typically expect to relate to Canadian governments on a “nation to nation” basis. Indeed, some First Nations claim that they never gave up their sovereignty and thus argue that they should not be subject to Canadian law without their approval.

In this chapter we examine the constitutional status of Aboriginals, the variety of court cases that have increasingly recognized Aboriginal rights, the slow process of settling Aboriginal land claims, and the movement toward self-government for Aboriginal peoples.

**HISTORICAL BACKGROUND**

Unlike many other indigenous peoples in the Americas, Canada’s indigenous peoples were never conquered by the European powers. Instead, many First Nations signed treaties with the French, British, and Canadian governments. These included the Great Peace (1701) between the Iroquois Confederacy and

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4The Kelowna Accord reached by the Canadian government, provincial and territorial leaders, and the leaders of national Aboriginal organizations in 2005 would have brought Aboriginal education, health services, and housing closer to Canadian standards at a cost of $5 billion spread over five years. However, it was not implemented by the Conservative government that was elected shortly afterward.
New France, peace and friendship treaties with the British in the Maritimes (1725–1779), and the Upper Canada treaties (1764–1836) ceding various parcels of land in Ontario for a cash payment. As well, Douglas treaties in the colony of Vancouver Island (1850–1854) were signed with 14 First Nations. After Confederation, the Canadian government sought to expand the new country and open it up to large-scale immigration. Eleven numbered treaties (1871–1906) in the Prairies, the North, and parts of what is now northern Ontario and northeastern British Columbia involved First Nations ceding ownership of large areas of land in return for small remote reserves, annual cash payments, and other benefits (such as clothing, ammunition, and hunting and fishing rights). In many cases, the written text of the treaties differed substantially from the oral agreements and promises made to the First Nations. From the perspectives of First Nations, the treaties were permanent agreements to share the land in a peaceful manner that did not interfere with their way of life (Royal Commission on Aboriginal Peoples, 1996).

The Royal Proclamation of 1763 that formalized British control over the former French colonies in Canada declared that “the several Nations or Tribes of Indians with whom we are connected and who live under our protection shall not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded or purchased by Us, are reserved to them, or any of them, as their hunting grounds.” To protect against exploitation from non-Aboriginal settlers, private individuals were prohibited from buying land reserved for Indians. Although the Royal Proclamation indicated that Indians would continue to be self-governing in their internal affairs, the implication of the phrase “our dominions and territories” was that the British claimed “sovereign title” over the entire territory (Royal Commission on Aboriginal Peoples, 1996, vol. 1, p. 124).

The Constitution Act, 1867, gave exclusive jurisdiction to the Parliament of Canada to make laws concerning “Indians, and Lands reserved for the Indians” (Section 91 [24]). However the Canadian government has inconsistently and improperly decided who is an “Indian” (particularly “Status Indians” living on a reserve) and thus subject to federal jurisdiction. In 2013, the Federal Court ruled that Métis and non-Status Indians were “Indians” under the Constitution Act, 1867 (Peach & Mintz, 2013). However, the Federal Court of Appeal in 2014 ruled that the Métis, but not non-Status Indians, were covered by the

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5 This provision is usually viewed by the Canadian government as applying primarily to the members of the 617 First Nations bands living on reserves. Provincial laws and programs can also apply to First Nations, but the federal Indian Act is considered superior to provincial legislation. Generally, the Canadian government has provided services such as education, health care, and housing to those living on reserves while provincial governments have provided services to other Aboriginals.

6 The Inuit were provided federal government services as a result of a 1939 Supreme Court decision that rejected the federal government’s assertion that Quebec’s Inuit were a provincial responsibility. Since 1951 the Inuit have been exempted from the Indian Act.
Constitution Act, 1867. At the time of writing, an appeal of this decision was set to be heard by the Supreme Court of Canada.

The Constitution Act, 1867 did not include any provisions concerning the rights of “Indians.” Instead, Canadian governments adopted a policy of trying to assimilate indigenous peoples. As Prime Minister Macdonald told Parliament: Canada’s goal is “to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion” (quoted by the Royal Commission on Aboriginal Peoples, p. 165).

Indian Acts

Under the Indian Acts passed by Parliament beginning in 1876, the Canadian government tried to strictly control the lives of First Nations people and their communities. The Canadian government placed an official (the “Indian agent”) in charge of each reservation. The people of First Nations were considered “wards” of the state rather than citizens. Efforts were made to destroy First Nations cultures. For example, some First Nations cultural practices were declared illegal, including the potlatch, a feasting ceremony of the peoples of northwestern North America in which the host gains prestige by giving gifts or, sometimes, by destroying personal wealth. As well, many bands were required to elect band councils in keeping with Canadian models of governance rather than the traditional First Nations models of governance that relied on the wisdom of tribal elders.

In effect, the Canadian government acted like the imperialist powers whose racist belief in the superiority of Europeans was used to try to justify the subjection of indigenous peoples around the world. Because they were deemed to be incapable of governing themselves, it was thought that Aboriginals needed to remain under the tutelage of the Canadian government and had to be encouraged to adopt the values and practices of the more “advanced” or “superior” civilization. The overall effect of control by the Canadian government, according to a 1983 House of Commons committee report (the Penner Report), was to turn “previously free self-sustaining First Nations communities” into a state of “dependency and social disorganization” (quoted in Prince & Abele, 2005, p. 243).

The system of reserves tended to isolate the First Nations from the Canadian mainstream and thus was inconsistent with the goal of assimilation. However, the Canadian government tried to encourage Status Indians to give up their Indian status and assimilate into the general population (a process termed “enfranchisement”). As Duncan Campbell Scott, deputy superintendent general of Indian Affairs, stated in 1920, “I want to get rid of the Indian problem. Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department” (quoted in Cairns, 2004, p. 351). Very few Indians voluntarily gave up their status. However, those who accepted a
government offer of money and land, voted, owned property, or served in the Armed Forces were often required to give up their Indian status.

PROPOSALS FOR CHANGE

The Hawthorn Report

In 1963, the Canadian government commissioned a major study of the condition of Indians under the direction of anthropologist Henry Hawthorn. The Hawthorn Report was critical of the Canadian government’s policy of treating Indians as wards rather than as citizens and recommended that Indians be regarded as “citizens plus” (Cairns, 2000). That is, “in addition to the normal rights and duties of citizenship, Indians possess certain additional rights as charter members of the Canadian community” (quoted in Cairns, 2000, pp. 161–162). The Hawthorn Report was also critical of the long-standing government policy of assimilation and recommended that Indians should not be forced to acquire the values of the majority society (Dickason, 2009).

The White Paper on Indians

Prime Minister Pierre Trudeau rejected the Hawthorn Report’s key recommendation. Trudeau’s view (consistent with his rejection of a “special status” for Quebec) was that all Canadians should be treated as individual citizens, with each person having exactly the same rights. Trudeau’s view was reflected in the Canadian government’s White Paper on Indians (1969), which argued that “the separate legal status of Indians and the policies which have flowed from it have kept the Indian people apart from and behind other Canadians.” Instead, Indian people should have the fundamental right “to full and equal participation in the cultural, social, economic and political life of Canada” (Indian and Northern Affairs Canada, 1969). To achieve this, the White Paper proposed ending the different legal status of Indians and the separate provision of services to them. Specifically, the special responsibility of the Canadian Parliament to legislate for Indians would be ended, the federal Indian Affairs Department would be phased out, and provincial governments would be responsible for providing the same services (such as health, education, and welfare) as provided to other provincial residents. Control of Indian lands would be transferred from the government to Indian bands, with each band deciding whether to manage the lands itself or to transfer title to individuals. Although “lawful obligations” would be recognized, the White Paper viewed treaties as providing minimal benefits to Indians, and thus called for a review to see how the treaties could be “equitably ended.”

The White Paper held out the promise that Aboriginal identities could be strengthened and their distinctive cultures preserved while Aboriginals would play a full role in Canadian society. However, in a bestselling book, The Unjust Society, Alberta Cree leader Harold Cardinal (1969) condemned the
White Paper as “a thinly disguised programme of extermination through assimilation” (p. 1). Many First Nations leaders mobilized strong opposition to the proposals in the White Paper (which was withdrawn in 1971) because they wanted to maintain their distinctive status and collective rights. This mobilization fuelled the development of politically active Aboriginal organizations and the willingness and determination of Aboriginal peoples to take political actions to pursue their rights.

Initially some First Nations leaders who opposed the White Paper advocated the “citizens plus” concept of the Hawthorn Report. However, within a short time, the developing First Nations movement turned to gaining recognition of what they viewed as their inherent right of self-government—that is, the right to govern themselves based on their independence before European colonization. They view this right as inherent in that it was not ceded by First Nations and thus does not depend on the Canadian Constitution or Canadian law (McNeil, 2007).

The Royal Commission on Aboriginal Peoples

In 1991, the Canadian government established the Royal Commission on Aboriginal Peoples headed by four Aboriginal and three non-Aboriginal commissioners. Its 4000-page report published in 1996 detailed the ill-treatment and injustices suffered by Aboriginals and called for a fundamental restructuring of the relationship between Aboriginal and settler societies based on the recognition of Aboriginal nationhood. Canada should be viewed as a partnership of Aboriginal and non-Aboriginal nations, with the details of the relationship worked out on a nation-to-nation basis. The hundreds of specific recommendations of the Royal Commission included the following:

- A new Royal Proclamation should acknowledge past injustices and recognize the inherent right of Aboriginals to self-government.
- A Lands and Treaties Tribunal should be instituted to speed up the process of settling land claims, with the authority to impose binding orders if negotiations fail.
- The more than 600 Indian bands should be consolidated into 60 to 80 self-governing nations with an average population of 5000 to 7000 people and an enlarged land base.
- Aboriginal governments should be recognized as a “third order” of government in Canada (federal, provincial/territorial, and Aboriginal), each autonomous with its own spheres of jurisdiction and sharing the sovereignty of Canada as a whole. Aboriginal governments would be subject to the Charter of Rights and Freedoms.
- An Aboriginal House of First Peoples should be established to provide advice to the House of Commons and Senate and should eventually be empowered to initiate and pass legislation crucial to Aboriginal peoples.
Chapter 11: Aboriginal Rights and Governance

• There should be a very substantial increase in funding by the Canadian government to deal with Aboriginal problems, and an equalization formula should ensure that Aboriginal governments have the financial capacity to provide services to their people equivalent to the services provided by other governments.

• Aboriginals would be citizens of the First Nation community to which they belong as well as citizens of Canada.

Aboriginal leaders generally responded positively to the report and demanded the implementation of its recommendations. Some Inuit leaders, however, felt that the report did not give sufficient attention to the problems faced by their people.

CONSTITUTIONAL PROPOSALS AND CHANGES

The Constitution Act, 1982 recognized “the existing aboriginal and treaty rights” of Indian, Inuit, and Métis peoples. A constitutional amendment in 1983 clarified that rights established by current and future land claims agreements are constitutionally protected. A proposal to entrench the right to self-government in the Constitution failed to gain sufficient provincial government approval in 1987. The Charlottetown Accord (1992), which included a proposal to recognize the inherent right of Aboriginal self-government, was defeated in a national referendum. The accord would have set the framework for Aboriginal governments as a “third order” of government with the authority “to safeguard and develop their languages, cultures, economies, identities, institutions, and traditions and to develop, maintain and strengthen their relationship with their lands, waters and environment, so as to determine and control their development as peoples according to their own values and priorities and to ensure the integrity of their societies” (Consensus Report on the Constitution, 1992, pp. 37–38).

Land Claims and Modern Treaties

In most of British Columbia, Quebec, Newfoundland and Labrador, and the three territories, governments took control of the land without signing treaties with Aboriginals. In the Maritimes, the peace and friendship treaties did not involve Aboriginals giving up their right to their land and its resources. In British Columbia, the provincial government did not see the need for treaties to extinguish Aboriginal land rights as it didn’t recognize Aboriginal title to the land (BC Treaty Commission, 2008). In other parts of the country, First Nations argue that the Canadian government did not fulfill the promises made when they signed treaties. As various groups started to pursue land claims in the courts, an amendment to the Indian Act in 1927 made it illegal to raise funds to pursue land claims (a restriction that was ended in 1951).
In recent decades, Aboriginal groups have launched legal actions as they energetically pursue recognition of their communal rights and title to traditional lands. In several important decisions, the Supreme Court of Canada has recognized Aboriginal rights and, since 1982, expanded upon the meaning of the recognition and affirmation of “existing aboriginal and treaty rights” in the Constitution Act, 1982.

The Supreme Court of Canada decision in 1973 regarding the claim by the Nisga’a Tribal Council in British Columbia that “their aboriginal title to their ancient tribal territory . . . has never been lawfully extinguished” opened the door to recognition of land claims (Calder v. Attorney General of British Columbia, 1973). The Nisga’a claim was dismissed by four of the seven judges on the technicality that the tribal council had not received the required permission to sue the government. Three of the judges who voted for dismissal went on to say that the governor of British Columbia, when the province was a colony of the United Kingdom, had acted within his powers to take possession of all lands in the colony and that the Royal Proclamation of 1763 did not apply to British Columbia. The “right of occupancy” that the Nisga’a “might have had” was ended when “the sovereign authority elected to exercise complete dominion over the lands in question.”

The three judges who dissented argued that the claim should have been upheld because the actions of the BC governor to remove the Nisga’a’s Aboriginal title were beyond the scope of his powers. The Nisga’a had a legal right that could only be extinguished “by surrender to the Crown or by competent legislative authority, and then only by specific legislation” (Calder v. Attorney General of British Columbia, 1973). Significantly, then, the court recognized that Aboriginal title to land could exist through occupancy before European settlement, although the court was divided on whether that right had been extinguished in this particular case. A Supreme Court of Canada decision in 1984 (Guerin v. The Queen) recognized Aboriginal title as “a legal right derived from the Indians’ historic occupation and possession of their tribal lands” (quoted in Hogg, 2006, p. 634). These decisions helped persuade the Canadian government to negotiate treaties (using the term “land claims agreements”) in areas of the country where none existed. In the Guerin case, the Supreme Court also ruled that the Crown has a fiduciary (trust-like) obligation to act in the best interests of the band with land that had been surrendered to the Crown.

In Delgamuukw v. British Columbia (1997), the Supreme Court ruled that oral histories can be admissible as evidence concerning Aboriginal

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7 Communal rights are “grounded in the existence of a historic and present community, and exercisable by virtue of an individual’s ancestrally based membership in the present community” (R. v. Pouley, 2003).

8 The power of Parliament to extinguish Aboriginal and treaty rights through legislation no longer exists as a result of the Constitution Act, 1982.
traditional occupancy of lands where written records do not exist, and that the Aboriginal perspective on their practices, customs, and traditions, and on their relationship with the land, should be given due weight by the courts. Chief Justice Lamer concluded: “Ultimately, it is through negotiated settlements, with good faith and give-and-take on all sides, reinforced by the judgments of this Court, that the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown [will occur]. Let us face it, we are all here to stay.”

The Supreme Court also ruled in Delgamuukw that Aboriginal title to land (determined by occupation at the time of the Crown’s assertion of sovereignty) is not just a right to activities such as hunting and fishing. Aboriginal title to land is distinct from other forms of property ownership in that it can only be sold to the federal Crown, is held collectively by the band members, and cannot be held by individuals. It also grants the right to engage in a variety of activities on the land as long as they do not impair traditional use of the land by future generations. The title can only be infringed by the Canadian or provincial governments “in furtherance of a legislative objective that is compelling and substantial” to the broader Canadian community (of which Aboriginal communities are a part) and ordinarily requires fair compensation for the infringement.

Further elaboration of the rights of First Nations who did not cede the land they used through a treaty was provided by the Supreme Court of Canada in 2014 (Tsilhqot’in Nation v. British Columbia). The case arose when the First Nation objected when the British Columbia government in 1983 granted a company a logging licence on land used by the Tsilhqot’in people. In the unanimous judgement, “Aboriginal title . . . confers on the group that holds it the exclusive right to decide how the land is used and the right to benefit from those uses, subject to the restriction that the uses must be consistent with the group nature of the interest and the enjoyment of the land by future generations.” Any action by government that limits this benefit requires “demonstrating both a compelling and substantial governmental objective . . . consistent with the fiduciary duty owed by the Crown to the Aboriginal group.”

Since Aboriginal claims to title to their traditional lands often take decades to be adjudicated, the Supreme Court has ruled that the “Honour of the Crown” imposes a duty to consult and, if necessary, to accommodate the interests of Aboriginal peoples before authorizing actions that could diminish the value of the land they are claiming. This obligation “from the assertion of sovereignty to the resolution of claims and the implementation of treaties” (Haida Nation v. British Columbia, 2004) affects many major natural resource developments on lands that are subject to treaty negotiations (see Box 11-1: Big Oil Versus Aboriginal Rights: The Northern Gateway Pipelines).

9The ruling established Aboriginal title to 17000 square kilometres of land which the semi-nomadic bands had traditionally used.
Fishing and Hunting Rights

The extent to which Aboriginal rights to fish and hunt are constitutionally protected has been at the heart of a number of cases. In particular, the Sparrow case (1990) involved a member of British Columbia’s Musqueam Band charged with fishing with a larger net than allowed by the band’s food fishery licence issued under the federal Fisheries Act regulations. The Supreme Court found that the right of the members of the band to fish was an existing Aboriginal right, and thus guaranteed by the Constitution. The government’s argument that Fisheries Act regulations had extinguished the right to fish was rejected. The court ruled that the regulations controlled the fisheries but did not extinguish underlying rights. Further, the Supreme Court judgment stated that the phrase “existing aboriginal rights” in the Constitution Act, 1982 “must be interpreted flexibly so as to permit their evolution over time” (R. v. Sparrow, 1990). In other words, the traditional rights of Aboriginals to fish and hunt were not limited to the use of spears and bows and arrows that were used by their ancestors.

BOX 11.1

Big Oil Versus Aboriginal Rights: The Northern Gateway Pipelines

In 2012, hearings began on the proposal by Enbridge Corporation to build a 525,000 barrel per day dual pipeline from northern Alberta’s oil sands to Kitimat, British Columbia. With the proposed Keystone XL pipeline (which would carry Alberta oil to refineries in the United States) in doubt, the major oil companies were anxious to quickly gain approval for the Northern Gateway twin pipelines that would deliver crude oil and diluted bitumen from Alberta’s oil sands to energy-hungry Asian markets, particularly China. Following the controversial hearings that recommended approval of the pipelines (subject to a large number of conditions), the Harper government approved the $7.9 billion pipelines in 2014.

However, the pipelines would pass through territory claimed by a number of First Nations communities who fear that an oil spill would cause immense damage to their ancestral lands and important salmon fisheries. Large oil tankers leaving Kitimat would have to navigate treacherous waters. With promises of community benefits to the area’s First Nations and a 10 percent share in the pipelines, some First Nations along the route have supported the pipelines project. Other First Nations along the proposed route have initiated legal action to stop the pipelines because they were not properly consulted. Many environmental groups along with other First Nations strongly oppose the pipelines. A majority of Kitimat voters rejected the pipelines in a plebiscite. The British Columbia government, at the time of writing, had not accepted the proposed pipelines in part because it felt the benefits to the province were insufficient.

Enbridge asserted that the pipelines would add $270 billion to Canada’s gross domestic product over a period of 30 years and would create 1150 long-term jobs. Despite the anticipated economic benefits from the pipelines, the potential for long-lasting damage to one of the last intact temperate rainforests as well as the land’s great importance to First Nations makes the outcome highly controversial.
Fishing rights were also at issue in the Marshall case (R. v. Marshall, 1999). This case involved the interpretation of a historic treaty signed by a people that relied on their understanding of oral negotiations rather than a document they were unable to read (as discussed in Box 11-2: Standoff at Burnt Church: The Marshall Rulings).

The Supreme Court ruling provoked an uproar. Non-Aboriginal fishers complained that Aboriginals would have “unlimited and unregulated access” to the Atlantic fishery, depriving them of their livelihood (quoted in Russell et al., 2008, p. 453). Aboriginal statements that the ruling would allow them rights to the region’s timber and mineral resources caused further concern. The Supreme Court of Canada refused a request for a re-hearing of the Marshall case. However, in a very unusual move, the Supreme Court decided to elaborate on its ruling.

In their second judgment on November 17, 2007, the Supreme Court justices reaffirmed that the treaty rights involved the right to a “moderate livelihood” by hunting, fishing, and berry picking, but did “not extend to the open-ended accumulation of wealth.” The Canadian and provincial governments could regulate Aboriginal fishing for conservation or “other compelling and substantial public objectives,” including fishing by non-Aboriginal groups, provided there was consultation with Aboriginals about limitations on their rights (quoted in Russell et al., 2008, pp. 458–459).

The Supreme Court’s clarification of its first ruling did not end the tension between Aboriginal and non-Aboriginal fishers and between Aboriginals and the Department of Fisheries and Oceans. Eventually, however, all First Nations in the area gave up their right to fish for a “moderate livelihood” in return for the boats, equipment, training, licences, and quotas needed for a commercial fishery, subject to the same regulations as non-Aboriginal fishers. Thus, the Marshall decision did not result in the restoration of a traditional way of life (Bedford, 2010).

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Métis Hunting Rights

In 2003, Steve and Roddy Powley, members of the Métis community in the Sault Ste. Marie area, were charged with unlawfully hunting a moose without a licence. The Supreme Court of Canada (R. v. Powley, 2003) ruled that the Métis community had a traditional Aboriginal right to hunt for food under Section 35(1) of the Constitution Act, 1982, because it had existed before “the time of effective European control” (quoted in Hogg, 2006, p. 638). The case is particularly important because it established that members of a Métis community had Aboriginal rights. Specifically, the Métis were defined as “distinctive peoples who, in addition to their mixed ancestry, developed their own customs and recognizable group identity separate from their Indian or Inuit and European forebears.”

The Supreme Court’s Interpretation of Aboriginal Rights

Overall, as the cases in the preceding pages illustrate, the Supreme Court of Canada has played a significant role in determining Aboriginal and treaty rights by taking into account the history and circumstances of Aboriginal peoples rather than applying a narrow legal interpretation of those rights. Nevertheless, the Supreme Court has indicated that these rights are not absolute, but rather can be subject to some limitations. For example, government regulations for the conservation of resources may be justified, and Aboriginal rights to fish and hunt for food do not necessarily give Aboriginals an exclusive right to commercial use of these resources. Likewise, the Supreme Court has asserted that “distinctive aboriginal societies exist within, and are a part of, a broader social, political and economic community, over which the Crown is sovereign” (Delgamuukw v. British Columbia, 1997).

The Supreme Court has generally avoided ruling on the right to self-government, arguing that this is best achieved through negotiations between First Nations and the federal and provincial governments. When rejecting an Aboriginal gambling law that conflicted with the Canadian Criminal Code, the Supreme Court stated that, “Aboriginal rights, including any asserted right to self-government, must be looked at in light of the specific circumstances of each case and, in particular, in light of the specific history and culture of the aboriginal group claiming the right” (R. v. Pamajewon, 1996).

Negotiating Comprehensive Land Claims Agreements

As a result of the Calder ruling (discussed above), the Canadian government in 1973 began to negotiate comprehensive land claims with First Nations that

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10This differed from an earlier Supreme Court decision (Van der Peet) which only upheld rights that existed before the time of European arrival in North America.
had not signed treaties in the past. In negotiating comprehensive land claims agreements (which are also referred to as modern treaties), the Canadian government has insisted that the settlement of land claims provide a full and final settlement of Aboriginal rights. Most Aboriginal groups have made the establishment of the right to self-government an essential component of any settlement. The process of reaching land claims settlements has been drawn out and fraught with difficulties. For example, negotiations with the Nisga’a (whose chiefs had canoed to Victoria in 1887 to demand a treaty) began in 1976; an agreement was not reached until 1999. In 2014, the Nisga’a finally paid off the $84 million debt that they had incurred to pursue their treaty (discussed below).

The agreements that have been reached generally involve removing the group from the provisions and benefits of the Indian Act. In return, Aboriginal groups have been awarded specific rights and benefits (such as a cash settlement) and provisions for self-government (Papillon, 2008). Modern treaties generally recognize the right of Aboriginal governments to provide many public services, manage their natural resources, and determine who are citizens of their First Nation. The treaties specify that Aboriginal governments are subject to the Canadian Charter of Rights and Freedoms. The powers of Aboriginal governments set out in recent agreements are constitutionally protected and therefore cannot be changed without the approval of the Aboriginal government.11

Overall, since 1973, 26 land claims agreements (of which 18 included self-government agreements) and 4 self-government agreements have been reached. As of 2015, about 100 comprehensive land claims and self-government agreements were at various stages of the very lengthy process of negotiations (Aboriginal Affairs and Northern Development Canada, 2015).

The first agreements in the James Bay area and northern and northeastern Quebec (1975 and 1978) were negotiated to avoid the possibility that the Supreme Court of Canada might grant the Cree and Inuit an injunction to block the development of a large hydroelectric project that would flood lands claimed by these groups. An agreement between the Canadian government and the Yukon First Nations in 1993 provided the basis for modern treaties with 11 of Yukon’s 14 First Nations bands. Other modern treaties have been ratified in the Northwest Territories, Nunavut, northern Quebec, and Labrador.

In British Columbia, treaty negotiations with the Nisga’a began in 1973. After intense controversy, agreement was reached in 1998 (ratified in 2000) establishing self-government for the Nisga’a in northwest British Columbia (see Box 11-3: Nisga’a Self-Government Sparks a Public Outcry). The treaty provides the Nisga’a Lisims government with the authority to make laws

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11This constitutional protection does not require a formal constitutional amendment, since Section 35 of the Constitution Act, 1982, provides for recognition of rights that may be acquired through land claims agreements.
BOX 11-3

Nisga’a Self-Government Sparks a Public Outcry

In 1998, the final agreement on the Nisga’a comprehensive land claims caused a public outcry in British Columbia. Open-line radio shows and letters to the editor were filled with scathing comments. Critics argued that the treaty discriminated against non-Aboriginals, and fears were raised that claims by various Aboriginal groups could result in all the land in British Columbia being returned to Aboriginals.

Opponents of the agreement demanded political action. They lobbied for a province-wide referendum on the treaty, and BC Liberal opposition leader Gordon Campbell mounted a 30-day filibuster in the BC legislature. Similarly, the Reform Party of Canada proposed 471 amendments to the treaty in the House of Commons to try to delay its passage. The BC Liberals challenged the treaty in court, arguing that it was unconstitutional because it infringed upon federal and provincial legislative powers. However, the BC Supreme Court ruled that the distribution of legislative powers between Parliament and provincial legislatures in the Constitution Act, 1867, did not preclude the right of the Nisga’a government to exercise legislative powers and that the treaty was compatible with the sovereignty of the Canadian state (Campbell et al. v. Nisga’a, 2000).

Campbell’s BC Liberals gained power in a landslide victory in the 2001 election because of general dissatisfaction with the previous government. They decided not to appeal the loss of their legal challenge to the Nisga’a treaty. Instead, the BC government held a non-binding referendum in 2002 to address the controversy (although the treaty was already in effect). Voters were asked whether they agreed with eight statements that criticized various elements of the treaty, such as “private property should not be expropriated for treaty settlements.” Voters agreed with such statements by large margins, but only 35 percent of the electorate bothered to fill out the mail-in ballot (Lochead, 2004).

Although votes of the members of First Nations have been held in British Columbia and elsewhere to approve modern treaties, governments have shied away from referendums to win the approval of the broader population.

concerning such matters as culture and language, public works, regulation of traffic and transportation, land use, solemnization of marriages, health, child welfare, and education services. The authority of the Nisga’a government is not exclusive in these areas, but on some subjects Nisga’a law prevails if in conflict with federal or provincial law, while on other subjects federal or provincial law prevails. The Nisga’a received the authority to levy income and sales taxes and collect royalties on their land’s resources. They were also given ownership of 2019 square kilometres of land, with the authority to manage forest resources provided they meet or exceed provincial forest standards. In addition, the agreement included a phasing out of the exemption from paying income tax for those on the reserve. The Nisga’a also have to pay provincial and federal sales taxes. The Nisga’a government received a payment of $190 million spread over 15 years, along with fiscal arrangements that would allow the Nisga’a government to provide health, education, and other social services equivalent to those enjoyed by other people in the region. They were also given a share of the total allowable salmon catch in the region. Although some Nisga’a argued that their negotiators had given up too much to reach
agreement (e.g., by gaining less than 10 percent of traditional lands), 61.2 percent of Nisga’a voters approved the treaty (Lochead, 2004). In 1992, British Columbian First Nations and the Canadian and BC governments agreed to establish an independent BC Treaty Commission. As of October 2015, only four treaties (covering eight First Nations) had been ratified in British Columbia (in addition to the Nisga’a treaty that involved a different process) while about 60 potential treaties (covering about one-half of BC’s First Nations) were at various stages of negotiations.

**Nunavut**

In 1993, a comprehensive land claims agreement was signed with the Inuit in the eastern Arctic, giving the Inuit ownership of 18 percent of the land (including subsurface mineral rights in 2 percent of the vast territory), $1.173 billion over 14 years, co-management of land and resources, natural resource royalties on Crown land, and hunting and fishing rights (Henderson, 2007). It also involved an agreement to establish the new territory of Nunavut, which would take over wildlife and natural resource management, land use planning, and property taxation. The Nunavut government is a public government representing all persons in the territory (rather than being based on ancestry). The benefits of the land claims agreement are administered for the social, cultural, and economic well-being of Inuit by Nunavut Tunngavik Inc., of which all Nunavut Inuit are members.

Similarly, the Kativik regional government in the far north of Quebec (established in 1978) is elected by and provides services to both Inuit and non-Inuit people, while the Makivik Corporation administers the benefits of the land claims agreement for the Inuit people of the region.
Specific Claims

Comprehensive land claims agreements in areas where no treaties were signed are not the only category of claims that need negotiating. A large number of specific claims exist based on allegations that treaties and other legal obliga-
tions of the Canadian government have not been fulfilled, or that the Canadian
government has not properly administered Aboriginal lands and other assets. The negotiation process established in 1973 to settle specific claims was extremely slow, with claims taking an average of 13 years to be settled. A more streamlined process created in 2008 allows Aboriginal First Nations to use the independent Specific Claims Tribunal, consisting of superior court judges, if their claim has not been resolved within a specified period of time or has not been accepted for negotiation. The tribunal has the power to make binding decisions and provide monetary compensation of up to $150 million. The specific claims process does not establish rights to self-government.

ABORIGINAL SELF-GOVERNMENT

In 1995, the Canadian government announced its Inherent Right of Self-
Government Policy. Specifically, Aboriginal peoples would “have the right to
govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions and with respect to their special relationship to their land and their resources” (quoted in Abele & Prince, 2007, p. 178). This right would be exercised under the existing Constitution, with the Charter of Rights and Freedoms applying to Aboriginal governments. Laws of overriding federal and provincial importance would prevail over laws passed by Aboriginal governments. The Canadian government would maintain its exclusive authority in areas such as defence and external relations, management of the national economy, maintenance of national law and order and criminal law, and protection of the health and safety of Canadians.

A proposed first step toward self-government was the First Nations Governance Act (2002) which would give greater independence to bands to manage their own affairs. However, among the specific provisions to provide for “effective governance” were the setting of minimum standards for leadership selection and the administration of band governments including publicly available audited financial statements. The Assembly of First Nations strongly objected to the Act, arguing that it violated the inherent right of self-government, imposed more bureaucratic controls on their governments, and added to the cost of governing First Nations (Hurley, 2003). As well, several chiefs argued that they had not been consulted about the proposed Act. In 2004, the government decided not to pursue passage of the Act.

Nevertheless, band councils are now largely responsible for administering most programs and services, and generally have some flexibility in shaping programs to suit the particular circumstances of their community. However, delivery of services does not create full self-government. Band councils still have only
delegated power that is limited to specified local matters and can have their bylaws overturned by the minister of Aboriginal Affairs and Northern Development Canada (Bakvis, Baier, & Brown, 2009). Further, with a very high proportion of band revenues coming from the Canadian government, often with conditions attached, band councils still depend heavily on government support (Prince & Abele, 2005). Band councils are accountable to the Canadian government for the funds allocated for the programs, and the Canadian government can also unilaterally change or cancel most programs (Papillon, 2008).

In its 2011 Throne Speech, the Harper government announced that it was committed to making First Nations governments democratic, transparent, and accountable. The First Nations Financial Transparency Act (2014) requires that the salaries and expenses of chiefs and councillors as well as the audited consolidated financial statements of each band council be disclosed to the general public through a website.\(^\text{13}\) The Assembly of First Nations was critical of the Act, arguing that their accountability should be to their own people rather than to the government. As well, they pointed out that the large number of reports (averaging 160 each year) that are required to be submitted to the Canadian government places a huge burden on each band council (Land, 2011). Further, they argued that the government failed to consult with First Nations leaders, that the bill represented a continuation of “colonialism and paternalism,” and that it did not deal with the real issues facing First Nations (Simeone & Troniak, 2011). In addition, their financial statements could be misleading to the public since they could include revenues from the business operations of the band. Financial statements could also create problems in reaching business agreements with non-Aboriginal corporations (for example, for resource developments) that want to keep the information confidential for competitive reasons.

The First Nations Elections Act, 2014, increased the term of office of chiefs and councillors from two years to four years, provided penalties for questionable activities, and established a procedure for recalling elected officials. As well, appeals of election results go to the courts rather than to the Aboriginal Affairs minister and the cabinet could set aside an election if there were corrupt practices. The Act only applies to the 238 bands that hold elections under the provisions of the Indian Act\(^\text{14}\) if they decide to opt in. However, if there were protracted leadership disputes in a First Nation, the minister could require that the band come under the First Nations Elections Act. Critics pointed out that there had been inadequate consultation with First Nations in preparing the Act.

The Budget Implementation Act passed by Parliament in December 2012 reduced the environmental protection of nearly all of Canada’s lakes and rivers, reduced the number of projects requiring environmental protection, and

\(^{13}\)First Nations are already required to provide this information to the Aboriginal Affairs Department.

\(^{14}\)As of 2015, 343 bands use community-designed or customary systems to choose leaders, while 36 use provisions in the constitution of their self-government agreement.
allowed the surrender of band lands without the approval of the band council. These changes were made without consultation with First Nations and helped to spark the grassroots Idle No More movement of Aboriginals and their supporters who held rallies, demonstrations, and blockades across Canada.

**SELF-GOVERNMENT ISSUES AND CHALLENGES**

Aboriginal governments face many challenges. Most First Nations are small, with the majority having only a few hundred people. Establishing a substantial government responsible for developing and administering various programs and services equivalent, in some cases, to those provided by provincial governments is a daunting task. A sizable expert staff is also needed to coordinate the laws, regulations, and programs of Aboriginal governments with those of the federal and provincial governments. Although there has been a substantial increase in the number of Aboriginal people with university educations and professional degrees, still only about 40 percent of on-reserve First Nations youth aged 20–24 have completed high school (Richards, 2014). Part of the problem is that schools on reserves are poorly equipped, since the federal government funding of these schools is much less per student than schools that are provincially funded (White, 2015).

The Royal Commission on Aboriginal Peoples pointed out that the division of Indians into numerous small bands was primarily the result of past federal government policy designed to weaken and assimilate Indians. It recommended that Indian bands be consolidated into 60 to 80 nations based on similarities in language and culture. However, merging existing First Nations bands might not be acceptable because these bands have developed separate identities and governing structures. And even with consolidation, most First Nations would still have small populations.

Self-government agreements generally require that Aboriginal governments operate democratically with a constitution that Aboriginal laws and governing procedures must follow (as well as being subject to the Charter of Rights and Freedoms and other provisions of the Canadian Constitution). However, putting a meaningful democracy into practice can be challenging. First Nations communities can face governing problems resulting from factionalism, nepotism, and corruption. With high levels of poverty and unemployment, and an inadequate supply of housing, it is not surprising that politics in some Aboriginal communities is very contentious. Some chiefs and band councils have been accused of rewarding their family, clan, and supporters with scarce resources such as jobs and housing and a few chiefs have obtained very high incomes.

Good governing requires that Aboriginal citizens be able and willing to hold their government accountable for its actions. This can be difficult in small communities, particularly where a high proportion of people depend on the chief and band council for employment, housing, and other benefits (Bedford, 2010).
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Creating institutions such as an Aboriginal auditor general and ombudsman rather than relying on the Aboriginal Affairs bureaucracy that has often been criticized for its paternalism and ineffectiveness might help to create good self-government. The development of independent Aboriginal media with the capability to investigate and publicize Aboriginal issues and problems may also help to make Aboriginal governments more accountable to the people they serve.

Most First Nations have a limited economic base. Inevitably, they depend heavily on federal government funding, which, in effect, limits their autonomy. A few exceptions are bands that are wealthy because they occupy valuable land, have precious resources, or operate successful businesses. Generally, however, the lack of opportunities in remote and isolated areas has meant that an increasing proportion of the Aboriginal population has migrated to cities. According to the 2011 National Household Survey, 56 percent of Aboriginals lived in urban areas (Aboriginal Affairs and Northern Development Canada, 2014).

Some have argued that the communal ownership of land with the legal title held by the Canadian government is a major factor in hindering the economic development of Aboriginal communities (Flanagan, Alcantara, & Le Dressay, 2010). Without private ownership of property, it is difficult to borrow money to start businesses or for individuals to obtain mortgages to build their own home. Most First Nations chiefs are opposed to the idea of private landowning on reserves, arguing that it would threaten First Nations control of land for future generations. Instead, the Assembly of First Nations favours looking at ways to combine communal ownership with private property, such as allowing non-band members to lease reserve property (Curry, 2011).

Although Aboriginal governance faces an array of problems and challenges, there is a positive side to self-government, namely that establishing effective self-government can help change attitudes of despair and dependence. Some Aboriginal communities that have gained self-government have become active in economic and community development. For example, the Inuit of Nunavik (Quebec) used some of the money provided by their land claims agreement to establish the Makivik Corporation, owned by all members of the Inuit community. The corporation operates various businesses, including the major northern airline, First Air.

**ABORIGINAL SOVEREIGNTY AND THE RIGHT TO SELF-DETERMINATION**

Some First Nations have refused to enter into negotiations to establish self-government arrangements, with some asserting that they are sovereign nations. In their view, the early treaties that were signed with the British

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15As part of their comprehensive land claims agreement, the Nisga’a became the first First Nation to allow private ownership of reserve land including the right of individuals to sell their land to non-Aboriginals.
Crown involved an agreement between independent nations to share territory, with First Nations retaining their sovereignty while delegating some specific powers to the Crown. The Six Nations Confederacy, for example, has a long history of asserting its independence\(^\text{16}\) (see Box 11-4: Sovereign Powers: The Two-Row Wampum Belt). However, Tom Flanagan (2000) has challenged the assertion that First Nations have retained their sovereignty. His argument is that Canadian sovereignty has been acquired, in keeping with international law, by long-term continued possession and effective control of the whole country.

A somewhat different approach is suggested by the United Nations Declaration on the Rights of Indigenous Peoples (2009). This declaration focuses on the right of Aboriginal peoples to self-determination; that is, “freely determining their political status and freely pursuing their economic, social, and cultural development. This includes the “right to autonomy or self-government in matters relating to their internal and local affairs as well as ways and means of financing their autonomous society.” In addition, it includes “the right to

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\(^{16}\)The Six Nations Confederacy has never accepted Canadian sovereignty. Indeed, in 1923 they unsuccessfully applied for membership in the League of Nations, the predecessor of the United Nations (Woo, 2003).
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maintain and strengthen their distinct political, legal, economic, social, and cultural institutions while retaining their right to participation, if they so choose, in the political, economic, social, and cultural life of the state” (Articles 3–5). However the declaration does not justify “any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states” (Article 46).

Although the declaration was passed by the General Assembly of the United Nations in 2007, Canada voted against the declaration. Nevertheless, Canada endorsed the declaration in 2010, although noting that it is not legally binding and is “an aspiration document” (Aboriginal Affairs and Northern Development Canada, 2010a). However, in 2014, Canada was the only country that objected to a reaffirmation of the declaration’s commitment to obtain from indigenous peoples their “free, prior and informed consent, before adopting and implementing legislation or administrative measures that may affect them” (Lum, 2014).

The three other countries that voted against the declaration—the United States, Australia, and New Zealand—have also reversed their opposition.

Summary and Conclusion

Aboriginal peoples played a major role in Canada’s early development. However, as settlement by those of European ancestry increased, First Nations were pushed to the margins of society and treaty promises were often ignored. In recent decades, Aboriginal peoples have actively pursued their rights and sought to change their relationship with Canadian governments through legal and political action. Nevertheless, many Aboriginal communities continue to suffer from poor housing, inadequate services, poverty, and serious social and health problems. Aboriginals are less likely than non-Aboriginals to participate in Canada’s democratic processes, in part because of their historic exclusion and marginalization from the political process and because of the inequalities they continue to face.

Aboriginal and treaty rights were recognized and affirmed by the Constitution Act, 1982. Although attempts to add the inherent right of self-government to the Constitution have not succeeded, the Canadian government has declared its commitment to the “inherent right of self-government” principle. Nevertheless, Aboriginal nations have had to undertake extremely lengthy and costly legal battles in the courts to secure their rights and have faced various legislative obstacles to full self-government.

In those areas of the country where First Nations did not sign treaties, a few recent comprehensive land claims agreements have included self-government provisions and have removed First Nations from the provisions of the Indian Act. For most First Nations, powers have been delegated from the Canadian government to band councils. However, these communities are still subject to the Indian Act and generally lack the financial resources to be truly self-governing. Furthermore, the small and impoverished populations of most First Nations raise questions about the capacity of the more than 600 First Nations to exercise a wide range of governing responsibilities. Developing good government is a difficult challenge.

The circumstances of the Métis and non-Status Indians often receive much less attention than those of
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Status Indians. Nevertheless, these diverse groups represent a substantial proportion of the Aboriginal population and can claim constitutional rights, even though who qualifies as a Métis or a non-Status Indian is often unclear and their rights are largely undefined. Likewise, inadequate attention has been paid to the majority of Aboriginals who now live in urban areas.

Overall, the treatment of Aboriginal peoples is a serious blot on Canada’s human rights record. However, beyond apologies for past injustices (such as the residential schools) and rectifying the “Third World” conditions of many Aboriginal communities, a fundamental rethinking of the nature of Canada may be necessary. As the former grand chief of the Assembly of First Nations stated, “We want to reset the relationship between First Nations and Canada on its original foundation of mutual recognition, mutual respect and partnership” (Atleo, 2011).

Discussion Questions

1. Should Aboriginals have special rights because of their occupancy of the land before European control? Should these rights be limited to activities engaged in prior to European contact?
2. Is the Nisga’a agreement a suitable model for other First Nations?
3. Should Aboriginals be encouraged to integrate into Canadian society?
4. Should Canada be viewed as an equal partnership between sovereign Aboriginal nations and the Canadian government?
5. Should Aboriginal governments be constituted as a third order of government?

Further Reading