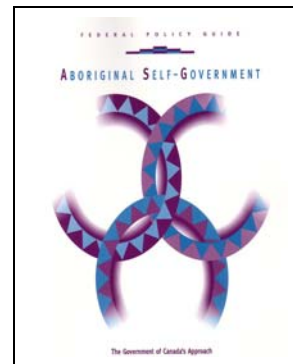
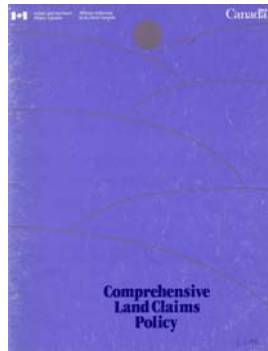


# Should First Nation Communities Negotiate Their Rights Under Federal Policies?

By: Lynn Gehl



If any lesson is clear from history it is that native people must be given the opportunity to define their own affairs. (Purich 1991, page 425)

Many First Nation communities in Canada are in the process of negotiating land claim and self-government agreements with the federal and provincial governments under the Comprehensive Land Claim and the Inherent Right Policies respectively. This process is often done so under the discourse, and thus disguise, that a treaty is being negotiated. It must be appreciated that the federal government drafted and finalized these policies with little, if any, input from First Nation peoples. Given this, I feel it is well worth articulating some of the problems in negotiating under these policies in hope that First Nation peoples will begin to think critically about them.

At the onset, it must be appreciated that treaties are negotiated between nations just as the North American Free Trade Agreement was. Given that treaties are normally negotiated on a nation-to-nation basis one has to ask two questions. First, if it is true that First Nations are in fact negotiating treaties with the crown on a nation-to-nation basis as many claim they are, why are they negotiating under guidelines that the federal government has unilaterally drafted? And second, why are provincial governments involved in the negotiating process?

Furthermore to these two questions, negotiating under the federal government's policies places many limitations and restrictions on First Nation community efforts to establish a better existence. Some of these restrictions are listed below:

- Under these policies the federal government demands that First Nations relinquish *all* their undefined land and resource rights for a much smaller set of clearly defined rights.
- The "Lands" section of the Comprehensive Land Claim Policy clearly states that First Nations can only claim lands that they currently use and occupy (page 12).
- The section of the Comprehensive Land Claim Policy on "Subsurface Rights" *limits* negotiations to the subsurface rights on some federal Crown lands and some settlement lands (page 13).

- The section of the Comprehensive Land Claim Policy on “Resource Revenue-Sharing” also clearly states that resource sharing will be subject to several *limitations* such as an absolute dollar cap and a time cap (page 14).
- The section of the Comprehensive Land Claim Policy titled “Environment Management” relegates Aboriginal participation in this area to merely an *advisory* status where the government maintains the overriding capacity on any decisions made (page 14).
- The “Taxation” section of the Comprehensive Land Claim Policy states that income derived from compensation amounts will be subject to the provisions of the Income Tax Act and states that other elements of compensation such as resource revenues will also be subject to the prevailing taxation legislation and practices (page 15).
- The “Beneficiaries” section of the Comprehensive Land Claim Policy *limits* First Nation peoples to participating in only one treaty (page 15).
- In the “Preliminary Negotiations” section of the Comprehensive Land Claim Policy we see that the process of negotiating settlements is *not* in actuality one that is negotiated what so ever. Rather, the mandate (compensation money and land) is merely handed down in an envelope to the senior federal negotiator from the minister of Indian Affairs (page 24).
- In addition, according to the Inherent Right Policy, First Nation self-government *must* operate within the framework of the Canadian Constitution and the Canadian Charter of Rights in that treaty agreements established under these policies do *not* include a right of sovereignty in the international law sense, and thus will *not* result in sovereign independent Aboriginal nation states (pages 3 and 4).
- Furthermore, the Inherent Right Policy clearly *limits* Aboriginal jurisdiction when it states that primary law-making authority will remain with the federal or provincial governments, as their laws would prevail in the event of a conflict with Aboriginal laws (page 6).
- Finally, although the Canadian Constitution protects existing Aboriginal treaty rights, the Inherent Right Policy clearly states that First Nation self-governments will *not* receive constitutional protection unless an amendment is placed in force and the federal and provincial governments agree (page 8).

Although this analysis of the federal policies is in no way complete, given the limitations that I have identified and listed here, in particular the requirement that First Nations *relinquish* all their undefined rights for a much smaller number of clearly defined rights, one has to ask, should First Nations participate in a process of negotiating under unilaterally drafted and imposed federal policies? And second, can federal policies provide an avenue where First Nation peoples can begin to govern themselves in accordance with their own spiritual and political systems?

## References

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