

# **Transformational Governance**

## **Re-Building Our Nations**

*Centre for First Nations Governance*

## OUR RIGHT TO SELF-GOVERNANCE

“

For thousands of years, the aboriginal people of what is now Canada organized themselves as sovereign nations, with what was essentially governmental jurisdiction over their lands, including property rights. Those rights—of governance and property—were trampled in the stampede of European settlement, colonization and commercial interests. But they were never lost or extinguished. ”

*Kent McNeil, 2007: “A Brief History of Our Right to Self-Governance: Pre-Contact to Present”*

## **WHAT IS THE INHERENT RIGHT TO SELF-GOVERNMENT?**

*Five Pillars of the Inherent Right to Self-government:*

**The People | The Land | Laws and Jurisdiction  
Governance | Resources**

*The people define the Inherent Right to Self-Government*

## **HISTORY OF THE INHERENT RIGHT TO SELF-GOVERNMENT**

- The history of our inherent right to self-government involves:
  - Pre-contact;
  - The impacts of **settlement, colonization and confederation**;
  - The origin and content of the **Indian Act**;
  - The legal and constitutional recognition of Aboriginal & Treaty rights; and
  - How each influenced our inherent right to self-government.

## LIVING UNDER THE INDIAN ACT

“ The people who live under the Indian Act in Canada live in unique circumstances. There are no other citizens of Canada for whom a specific piece of federal legislation regulates their social and political citizenship, and the most fundamental features of their social and economic lives. No other groups of people, except those who are in prisons, live so thoroughly under the supervision and control of the executive branch of the federal government. ”

*Frances Abele, 2007: "Like an ill-fitting boot: Government, Governance, and Management Systems in the Contemporary Indian Act"*

# THE ENDURING GRIP OF THE INDIAN ACT

“ Today the *Indian Act* is the repository of the struggle between Indian peoples and colonial and later Canadian policy-makers for control of Indian peoples' destiny within Canada. The marks of that struggle can be seen in almost every one of its provisions. ”

*Final Report of the Royal Commission on  
Aboriginal Peoples, Volume 1, Chapter 9, p.  
258.*

## LEGACY, LEADERSHIP, AND RESISTANCE

For over 150 years, First Nations have struggled to *re-establish recognition and respect* for traditional lands and inherent rights.

- We changed the law relating to Aboriginal Title and Rights
- We achieved recognition of our inherent right to self-government
- We transformed Section 35 from an empty box to a full box of rights

## RE-BUILDING OUR NATIONS

Today's children are the **8<sup>th</sup> generation** living under the Indian Act

The Crown's constitutional and legal obligations to First Nations:

- apply in **both title and treaty contexts**, and
- are **driving negotiations** between First Nations and the Crown toward a **new nation-nation-nation relationship**.

Across Canada, the transformation achieved through the law and the constitution must be **matched at the community-level**.



## SELF-GOVERNANCE IS A SECTION 35 RIGHT

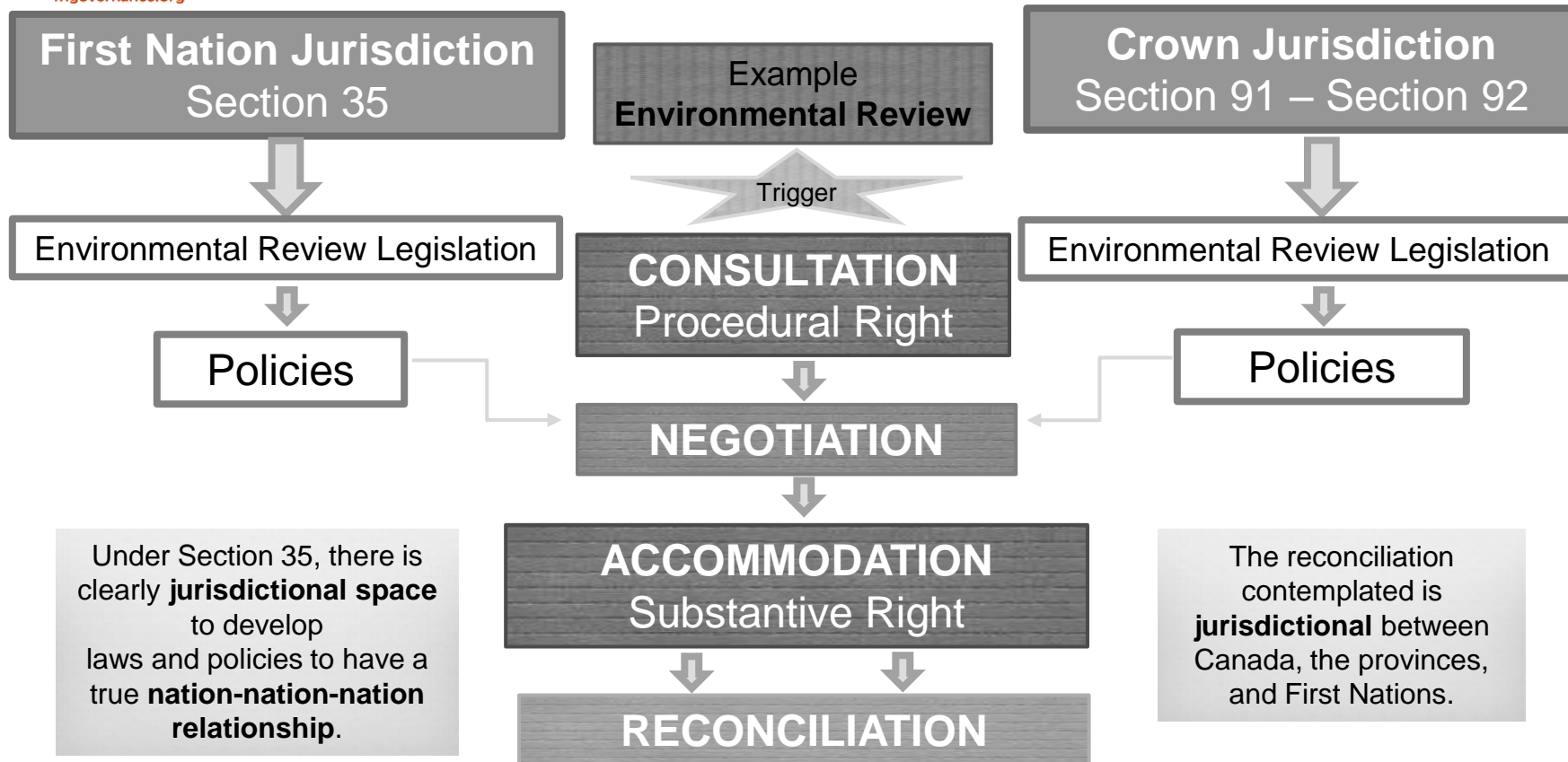
*Delgamuukw* (1997):

- Aboriginal title amounts to ***the entire beneficial interest in the land***
- Aboriginal titleholders have ***decision-making authority over their lands***

*Tsilhqot'in Nation* (2014):

- Aboriginal title (~ 1700km<sup>2</sup>) declared for the first time
- Aboriginal titleholders have ***exclusive rights of possession, use, and management*** of their lands.
- Given the communal nature of Aboriginal title, ***to exercise these rights Aboriginal peoples must have a section 35 right of self-government***

## THE CONSTITUTIONAL CONTEXT



## **APPROACH TO TRANSFORMATIONAL GOVERNANCE**

- I. Education and training to re-engage *The People* in nation building;
- II. Obtaining a clear mandate and *Vision for Change* from the community; and
- III. Support throughout the *Transitional Steps* necessary to move from Indian Act administration into the inherent right to self-government.

## RE-ENGAGING THE PEOPLE

Indigenous rights are **communally held by the people.**

- the decision to initiate transition to self-government must be made collectively.

*Citizen Engagement.* CFNG provides community-wide education and training on the inherent right to self-government and supports the development of a citizen engagement strategy.

## RE-ENGAGING THE PEOPLE

*Activating Collective Memory:* Fully understanding the inherent right to self-governance involves activating a community's collective memory of their inherent right *prior to contact*.

- CFNG uses Open Space and other emergence-based facilitation technologies that engage citizens in dialogue and collaborative decision-making to re-build a picture of self-governance.

## **A CLEAR VISION, MANDATE, AND STRATEGIC DIRECTION**

A clear mandate and vision for change from the community is necessary to seize the opportunity to re-build nations

**CFNG** delivers a learning journey that prompts a **consensus decision for change** and **clear strategic direction** for implementing the inherent right to self-governance.

## THE TRANSITIONAL WORK

No matter the starting point, the underlying problem is the same – *dealing with the Indian Act.*

First Nations across Canada have begun to request tools & strategies for:

- reducing the time and energy spent on Indian Act administration;
- transitioning from the Indian Act and into the inherent right; and
- realizing the inherent right to self-government.

## THE TRANSITIONAL WORK

### The Transitional Work

Mastering Indian Act ⇨ Exposing the Transitional Space ⇨ Moving into the Inherent Right

The ***Transitional Governance Project*** supports First Nations governments working to master and leave behind the Indian Act.

The Project is situated at the intersection of two factors:

1. the reality that the legal basis for effective self-government has been achieved; yet
2. progress towards self-government is impeded by institutions and practice shaped by decades of Indian Act administration.



## ENGAGING YOUTH IN THE TRANSFORMATION

Nation re-building takes all its citizens.

We must prepare young people to be the change we are working towards.

Start by inviting the youth to **join the transformative journey** into self-government. Create opportunities for youth to:

- be involved in workshops, planning, and decision-making
- develop leadership and essential skills, and
- reconnect to their territory, beyond reserve boundaries.



## **SCOPE & SEQUENCE**

**TRANSITIONAL STEPS TO IMPLEMENT THE INHERENT RIGHT TO SELF-GOVERNMENT**

## **TRANSITIONAL STEPS TO IMPLEMENT THE INHERENT RIGHT TO SELF-GOVERNMENT**

The proposed workshops are designed to support First Nations as they develop a shared understanding of:

- the inherent right to self-government;
- the obligations they have under those rights;
- the contrasting roles and responsibilities they have under the Indian Act; and
- the principles required to implement a transition to the governance system required to exercise, administer and control Aboriginal title and treaty rights.

## **THE FIVE PILLARS OF THE INHERENT RIGHT TO SELF-GOVERNMENT**

CFNG grounds its forums and workshops in the **Five Pillars** of the inherent right to self-government:

**The People | The Land | Laws and Jurisdiction  
Governance | Resources**

## DELIVERABLES

1. Understand and apply the **Five Pillars** of the Inherent Right to Self-Governance;
2. **Engage the citizens** of the First Nation in a learning journey that leads to a **consensus decision for change**;
3. Produce a **clear and common vision** around the First Nation's inherent right to self-government;
4. Provide a **clear mandate from the community**; and
5. Develop **clear and strategic direction** for implementation.

## SEQUENCING OF SESSIONS

The following topics and sequencing are designed to:

1. Develop a clear *understanding* of the history of our inherent right to self-government;
  - Prior to contact
  - Settlement, colonization and confederation
  - The law and the constitution
2. To create a citizen engagement strategy for *implementing* the inherent right to self-government; for ultimately
3. *Creating* a consensus decision to change.
  - Including, obtaining the consent of the people for nation re-building

## SCOPE & SEQUENCE – SESSION 1

### 1. OUR INHERENT RIGHT TO SELF-GOVERNMENT

#### *Presentation/Workshop:*

- *The Five Pillars of our Inherent Right*
- *Our Land, Our Language, Our History and Our Spirituality*
- *The History of our Inherent Right*

**Exercise:** What was the inherent right like before contact?

Session 1

Session 2

Session 3

# SCOPE & SEQUENCE – SESSION 1

## 2. THE ORIGIN AND CONTENT OF THE INDIAN ACT

*Presentation/Workshop: What Happened to the Inherent Right? The history of the inherent right to self-government in Canada*

- When was contact and when did the Indian Act come to First Nations?
- Identifying the Indian Act's culture of distrust, conflict, and anger, and the need for resolution & reconciliation among ourselves

*Exercise: Our Inherent Right to Self-Government Today*

- The Impacts of Settlement, Colonization, Confederation and the Indian Act

Session 1

Session 2

Session 3



## SCOPE & SEQUENCE – SESSION 1

### 3. THE HISTORICAL STRUGGLE FOR RECOGNITION OF ABORIGINAL AND TREATY RIGHTS

***Presentation/Workshop:** A historical and legal overview of the recognition of Aboriginal and treaty rights and the expansion and definition of Section 35.*

- Outlining the new nation-nation-nation relationship

***Exercise:** We've achieved recognition of our inherent right to self-government; now how do we implement it?*

- We changed the law and the constitution; what is the impact on our inherent right to self-government?

Session 1

Session 2

Session 3

## SCOPE & SEQUENCE – SESSION 2

### 4. RECAP OF: 1) OUR INHERENT RIGHT TO SELF-GOVERNMENT, AND 2) ORIGIN AND CONTENT OF THE INDIAN ACT

*Presentation/Workshop:* A review of key points:

- History of the Inherent Right
- History and impact of the Indian Act
- What are Aboriginal and Treaty Rights and Section 35?
- What is our inherent right to self-government that arises out of the law and Section 35 of the constitution?
- What does consultation and accommodation mean: The new government-government relationship?

Session 1

Session 2

Session 3

## SCOPE & SEQUENCE – SESSION 2

### 5. THE FIVE PILLARS OF OUR INHERENT RIGHT TO SELF-GOVERNMENT AND THE PRINCIPLES OF EFFECTIVE GOVERNANCE TO GUIDE IMPLEMENTATION

*Presentation/Workshop:* What does effective governance look like under our inherent right?

- Why is it critical and how do we make sure it is part of our inherent right governance?

**Exercise:** Participants will add the critical principles of effective governance to work done in earlier exercises.

Session 1

Session 2

Session 3

## SCOPE & SEQUENCE – SESSION 2

### 6. CONSULTATION AND ACCOMMODATION

#### *Presentation/Workshop:*

#### *Putting Consultation and Accommodation to Work:*

- The legal duty to consult and accommodate represents a key entry point to implement our inherent right within the constitutional framework to shape a new relationship with the Crown on the one hand, and the tools to build it on the other.

**Exercise:** Drafting a new government-to-government relationship. What do we want?



## SCOPE & SEQUENCE – SESSION 2

### 7. ABORIGINAL AND TREATY RIGHTS: A FRAMEWORK FOR IMPLEMENTING INHERENT RIGHT GOVERNANCE

#### *Presentation/Workshop:*

An introduction and review of seven specific strategies for implementing Aboriginal and treaty rights, including self-governance.

**Exercise:** Participants will discuss the seven strategies and provide their own ideas to implementing the strategies in their nation.



## SCOPE & SEQUENCE – SESSION 3

### 8. GOVERNING OUR LANDS AND OURSELVES

*Presentation/Workshop:*

*Setting the context with a review of presentations, including:*

- History of our inherent right to self-government
- Origin and Content of the Indian Act (our time in Canada)
- Legal history of Aboriginal and treaty rights and Section 35.
- Legal and constitutional recognition of our inherent right to self-government, recognition of Aboriginal and treaty rights, expansion and definition of Section 35, consultation and accommodation and reconciliation.
- An Inherent Rights strategy.

Session 1

Session 2

Session 3

## SCOPE & SEQUENCE – SESSION 3

### 8b. AN OPEN SPACE ON: GOVERNING OUR LANDS AND OURSELVES [Community]

**Exercise:** Creating a Vision and Plan to Engage the People of our Nation to Implement Our Inherent Right to Self-government, including:

- Identifying discussion topics and building the agenda;
- Breakout discussion sessions and report back;
- Prioritizing the topics; and
- Work planning the priorities for engaging the citizens.

**Final Work Planning:** Implementation planning for self-government



## **SCOPE & SEQUENCE – SESSION 3**

### **9. DEBRIEF WITH THE FIRST NATION: VISION AND STRATEGIES FOR IMPLEMENTING PRIORITIES**

- Strategies to engage the citizens of the nation
- What is the vision and consensus?
- What are the mandates and policy agenda that arises from that?
- Strategies for implementation?





## SCOPE & SEQUENCE – SESSION 3

### 10. NEXT STEPS: RE-BUILDING OUR NATIONS

#### *Presentation/Workshop:*

*Re-Building our Nations:* Constitutions, jurisdiction, laws, and governance.

- What are the next step in re-building our nation? Return to the Five Pillars
- Why are nation-based constitutions important? How are they developed?
- Why are a nation's jurisdiction, laws, and governance critical in shaping the new relationship?

Session 1

Session 2

Session 3

## THE CONSTITUTIONAL CONTEXT

