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Forty years since patriation of the Canadian Constitution: Influences on Indigenous and Canadian public administration

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Table of Contents

Introduction ... **1**

Indigenous peoples of Canada ... **5**

Concepts used in this study ... **7**

Treaty federalism ... 7

Indigenous self determination ... 9

Reconciliation ... 10

New elements of the Constitution ... **13**

Section 35 ... 13

a) Existing Indigenous rights ... 13

b) Treaty rights and land claims ... 15

c) Need to consult ... 16

The Charter and s.25 ... 17

Evolution of Indigenous rights—self determination and cultural recognition ... **19**

From 1982 Constitution to RCAP ... 19

RCAP through TRC deliberations ... 20

TRC to MMIWG and beyond ... 24

Influence on Institutions of Governance ... **27**

Executive government and Parliament ... 28

Judicial branch—The Courts ... 31

Case study ... **35**

1. Lead up to the 1982 Constitution ... 37
2. Constitutional amendment attempts to RCAP (1983-1996) ... 38
3. The void (1997-2007) ... 39
4. TRC times, the apology and UNDRIP (2008-2015) ... 40
5. Jordan's Principle, MMIWG Inquiry and current times (2016-2022) ... 41

Discussion of reconciliation ... **43**

Self governance ... 44

Self determination and responsible relationships ... 47

Cultural recognition and working in partnership ... 49

Conclusion ... **53**

References ... **56**

Appendix I — Section 35 of the *Constitution Act, 1982*, and enactment timeframe ... **63**

Appendix II — Case study context and events ... **64**

Forty years since patriation of the Canadian Constitution: Influences on Indigenous and Canadian public administration

Introduction

For centuries, the relationship between Indigenous peoples and settlers has been at the core of what we now call Canada. The 1982 update to the Constitution[1] acknowledged Indigenous peoples' collective and individual rights and forced the Government of Canada to acknowledge original residents and new constituents of the governance landscape. Since then, constitutional influence has committed Canadian public administrations to recognize the changing role of Indigenous communities and individuals from "people to be governed" to governors of shared responsibilities for stewardship of the land and its peoples.

Four decades have passed since the Parliament of the United Kingdom made a final farewell to Canadian public affairs[2] through the Constitution Act, 1982 as the supreme law of Canada subject to amendment only by Canadian authorities. The patriated Constitution added two new elements to Canadian governance and societal values. It guaranteed historic rights of Indigenous peoples of Canada by explicitly recognizing and affirming existing Aboriginal and treaty rights. At the same time, it enshrined the Canadian Charter of Rights and Freedoms protecting individuals from discriminatory government policies, programs and laws.

While the 1982 Constitution clearly enumerated the rights and freedoms of individuals, it left

[1] The *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11

[2] The *Canada Act 1982* (UK), 1982, c 11 is the Act of the Parliament of the United Kingdom that revokes the force of future laws of the UK Parliament in Canada (s. 2), authorizes the *Constitution Act, 1982* as the supreme law of Canada (Part VII, s 52 (1)), provides for Constitutional amendment in Canada (Part V) and provides for judicial review of government and legislative matters that may contravene the *Canadian Charter of Rights and Freedoms* (s. 24 (1)). Indigenous rights and freedoms are referenced in s. 25 of the Charter, and as separate parts of the Constitution Act, 1982 (Part II, s. 35; Part IV, s. 37 (repealed)).

the identification and definition of Indigenous rights to mandated First Ministers' conferences with Indigenous groups' participation. The unfinished business of the Constitution forced Canada's First Ministers (provincial premiers and the Prime Minister) to consult with Indigenous leaders on public policy that affected them instead of designing it from afar.

Their job was to create an amendment package that would reconcile the newly added Indigenous rights with the constitutional framework.[3] Indigenous leaders saw constitutional amendment as a means to guarantee that successive Canadian governments could not continue generations of public policies that devalued, marginalized and attempted to destroy Indigenous cultures. They sought to renegotiate a federalism where Indigenous peoples could exercise their rights as independent, self-governing nations and communities with their own political, legal and cultural organization. For Canadian prime ministers—who were trying in the Constitution to unify the country by enshrining a common set of European values in political, legal and cultural institutions—Indigenous peoples were simply another cultural group to be governed and treated equally in the mosaic.[4] Canadians remained oblivious or insensitive to Indigenous communities and a history they had not been taught in Canadian institutions.

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[3]Section 37 of the *Constitution Act, 1982* was repealed after the conference took place in March 1983:
37 (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year…
(2) The conference…shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

[4] The first conference, chaired by Prime Minister Trudeau in March 1983, included the provincial premiers and representatives of four national Aboriginal organizations who agreed to little constitutional amendment, but did entrench further meetings. The last two constitutional conferences on Aboriginal issues, held in April 1985 and March 1987, and chaired by Prime Minister Brian Mulroney, both failed to make substantial progress towards clarifying the constitutional rights of the Aboriginal peoples (McNeil, 2001, pp.168-170).

One has to wonder what kind of Indigenous bill of rights the First Ministers and the four Indigenous groups might have penned, in this environment of misunderstanding, to complete the Constitution's direction to reconcile Indigenous and treaty rights with the governance institutions and the people of Canada.

The recognition and affirmation of "existing aboriginal and treaty rights" in the 1982 Constitution undoubtably acted as a catalyst for recognizing new actors in the governance landscape and in Canadian society. This paper proposes that the void left by First Ministers in completing the unfinished business of identifying and defining Indigenous rights was a fortunate twist of fate. It allowed Indigenous leaders to pursue alternative routes (the courts, civic actions, human rights tribunals, agreements,) to self determination and cultural expression to spread among Canadians, governance institutions and the international community. These activities and milestone events have helped to reconcile Indigenous and treaty rights outside the confines of the written constitutional framework in a reflexive and just manner. Cultural acceptance within wider society of this independent status remains a work in progress as governments, institutions and people in Canada continue to look for ways to include Indigenous peoples while respecting their rights to be different.

To add to an extensive body of literature on reconciliation, this paper examines the evolution of constitutional influences on the relationship among Indigenous and Canadian public administrations. A literature review and case study highlight what has been learned about reconciling Indigenous self determination and cultural recognition within and in parallel to Canadian institutions of governance as well as among the leadership and people. A discussion

of reconciliation today and going forward equates the state of the relationship to answering the question: Did the journey evolve Indigenous communities' rights to self determination in a way to work effectively in partnership with Canadian public administrations to meet increasingly interconnected governance challenges of modern society?

To begin, this paper presents a short profile of the Indigenous peoples of Canada and review of three main concepts (treaty federalism, Indigenous self determination, and reconciliation) through time. A review of scholarly literature presents new elements of the Constitution, their contribution to the evolution of Indigenous and human rights (self determination and cultural recognition) as well as the influence this evolution has had on Canadian governance institutions—like the Prime Minister and Cabinet, legislature and the judiciary. The literature review includes scholarship on Indigenous constitutional rights from the early days of hope for the Constitution through periods of frustration, inaction and learning through to modern day scholarship that reflects on the progress of Indigenous self-government alongside changes to public management and policy in Canada. Next, the results of a case study—that examined microcosmic events and people—provide evidence of Indigenous peoples' determination to use alternate methods to have their Constitutional rights respected in Canada largely in response to periods of public administrations' (Indigenous and Canadian) action and inaction.

From the base of lessons learned in the scholarly literature and the case study, a discussion of the state of reconciliation today follows with a focus on how the modern governance landscape is evolving (or not) to reconcile with Indigenous peoples' individual and collective constitutional rights. Self determination and the prospect for Canadian and Indigenous administrations to

work in partnership on separate, parallel and converging social and economic issues going forward is proposed. Inroads to change to create space for Indigenous knowledge and heritage is discussed in modern times and going forward. The paper concludes with the idea that Canadian and Indigenous leaders and communities are capable at engaging in multi-level governance alliances that reconcile Indigenous independence with the interdependencies of Canadian public administrations and now is the time for action on those capabilities.

Indigenous peoples of Canada

In this paper, the terms 'Indigenous' or 'Aboriginal' peoples of Canada are used interchangeably and refer to people who identify as First Nations, Inuit and Métis people. The 1982 Constitution refers to treaty rights and the rights of Aboriginal peoples in the sense of those who have ties to historical communities that inhabited what is now Canada before European settlement and control of an area.[5] More recent Canadian governments and courts recognize international principles on the rights and identity of Indigenous peoples. For example, Canadian legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007 describes the rights-bearing identity of Indigenous people as follows:

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[5] The first report of the Royal Commission on Aboriginal Peoples defines Aboriginal peoples to be organic, political and cultural entities that stem historically from the original peoples of North America, rather than a race. The term includes the Indian, Inuit and Métis peoples of Canada.

Defining Indigenous peoples mentioned in the Constitution, particularly Métis people, is an ongoing process. In *R. v Powley* [2003] 2 SCR 207 for example, the Supreme Court set out three basic elements to identify Métis rights holders as distinct from other Indigenous people under the Canadian Constitution (self-identification, ancestral connection to the historic Métis community, and modern-day Community acceptance). By 2016, in *Daniels v. Canada* [2016] 1 S.C.R. 99, the Court removed the territorial, or modern-day community requirement for non-status Indians and Métis to be considered a federal responsibility under s.91(24) possibly in recognition that many among these Indigenous people have never, or no longer live in traditional communities that recognize them.

> …measures to implement the Declaration in Canada must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge;… (the *United Nations Declaration on the Rights of Indigenous Peoples Act, 2021*, preamble).

The 2021 Census of Population shows that 1.8 million self-identified Indigenous peoples account for 5% of Canada's population with 1,048,405 First Nations, 624,220 Métis and 70,545 Inuit people. Indigenous peoples are culturally diverse beyond the First Nations, Métis and Inuit groups with over 70 Indigenous languages. Communities and governance structures vary throughout Canada among "600 First Nations, a plurality of groups representing Métis nationhood, and the four regions and 50 communities of Inuit Nunangat" (STC, 2022).

The national census of population continues to show movement towards urban environments, with close to 45% of Indigenous people living in a large urban area of 100,000 people or more and 60% living in non-reserve municipalities of 30,000 or more in 2021. For these people, municipal or regional public administrations are most relevant to their daily lives and federal or national organizations, programs and policies aimed at traditional treaty communities are becoming less relevant.

Indigenous peoples are younger than the Canadian population in general as less than 10% are older than 65 (compared with 19% of the Canadian population). Younger generations of Indigenous leaders since 2000 have focused less on negotiating land claim and resource ownership through institutional means than did the 1982 Constitution generation instead

favouring actions to promote self-determination in interconnected administrations,[6] equity and justice in social services where they live as well as with global issues like land use and preservation (Slowey & Buyck, 2021).

Concepts used in this study

Treaty federalism

In the early 1980s, the majority of government and public debate around patriation of the Constitution centred on the duality of founding European cultures in Quebec and Canada, equality, unity or the possibility of distinct societies. Political leaders had little time to give to understanding the legacy of destruction that governments and public policies had inflicted on Indigenous peoples.

Alcantara and Spicer (2016) show that Canadian federalism, as set out in sections 91 and 92 of the Constitution, has firmly ensconced in governance structures the belief that federal and provincial governments (the First Ministers, cabinets and legislatures) have specific authorities over Indigenous affairs. This leaves Indigenous people on the sideline as stakeholders. On the other hand, citing scholarship in the Royal Commission on Aboriginal Peoples (RCAP),[7] they show that Indigenous communities, leaders and scholars believe that the 1982 constitutional

[6] A 2007 study reported Indigenous youth favour political participation in non-conventional and indirect ways. Youth are seeking their space in public discourse, but they are also seeking means, methods and instruments to generate real effects in their communities (Alfred et al., 2007).

More recent youth leaders who received Inspire awards use their traditional skills and knowledge to make space in a variety of industries for Indigenous peoples, to act as a role model and mentor to their communities and to use their success as a public platform to influence a wider community (Indspire).

[7] For an account of how First Nations, Inuit, and Métis think about their right to self-government, see Canada (1996), Royal Commission on Aboriginal Peoples, *Report*, vol. 2, part 1, 108–19.

status of the many treaties Indigenous governments have signed with the Crown guarantees that Indigenous communities are equal and independent partners in public policy-making that affects them (p. 184).

British settlement in what was to become Canada was regulated by negotiation and treaty with Indigenous peoples in contrast to some countries that conquered their lands. In the Royal Proclamation of 1763, which is referenced in s.25 of the Charter of Rights and Freedoms, the British Crown acknowledges the autonomy of the "Nations or Tribes of Indians" as distinct political entities with political structures, laws and territories including their hunting grounds. New acquisition of land by British settlers was to only occur through purchase or treaty on behalf of the Crown, and British subjects had a duty to protect Indians from being molested or disturbed in their lands. The "preamble contemplates a quasi-federal arrangement…a protective cloak of imperial rule… autonomous Indigenous nations, living within their own territories, with their own laws and constitutions. These nations are not conquered peoples… Rather their connections with the Crown take the form of treaties, which are periodically negotiated and renewed, often in annual sessions" (Slattery, 2015, p.22).

The issuance of the Royal Proclamation, referenced in the Constitution, and its confirmation by Indigenous leaders in the Treaty of Niagara in 1764 laid a foundation for treaty federalism. Indigenous understanding of the Royal Proclamation, translated into a wampum belt, was accepted by both parties through Indigenous customs to create understanding of the relationship between Indigenous people and the Crown. "The British approach committed the Crown to entering into treaties with Indigenous peoples if their lands were to be occupied by

non-Aboriginal people. Indigenous peoples' diplomacy and perspectives were important to this policy formulation. They persuaded the government to peacefully settle conflicts over land and resources through treaties" (Borrows, 2010, p.62).

While existing treaty rights are recognized and affirmed in section 35 of the Constitution Act, the Government of Canada recognizes 26 historical treaties in effect at the time of the 1982 Constitution and 29 completed comprehensive land claim and/or self-government agreements since the start of the Comprehensive Land claims Policy in 1973 and the British Columbia Treaty Process in 1992. More than 100 comprehensive land claim and self-government negotiation tables across the country are in progress with the federal government while more than 50 treaties are in progress in the BC treaty process.[8]

Indigenous self determination

The *Constitution Act, 1867*, at the time of Confederation, was silent on Indigenous peoples and they were not included in the governance structure of Canada except to say that Parliament had legislative responsibility for Indians, and Lands reserved for Indians under the division of powers section 91, class 24. From a history of being wards of the state with no input into public policies that affected them, by the 1980s Indigenous leaders around the constitutional amendment conference tables were united and firm in fighting for their rights to include self-governance and self-determination (Bulbulian, 1987). Satsan reiterates that the lobby for self determination within the Canadian state has been ongoing between the Constitutional periods. Indigenous peoples have steadily argued for well over a hundred years for recognition of their

[8] Information on land claims and agreements is listed on the Government of Canada website and the British Columbia Treaty Process website.

prior societies' governance and legal traditions, for agreements negotiated with Europeans and settlers to be honoured, and for decision-making influence for use and control of their traditional lands and resources (Satsan et al., 2022, p. 409).

By 2007, Abele identified that in Canada, the executive branch of the federal government continued to dictate every aspect of governance over First Nations individuals and communities with outdated administrative and organizational practices stemming from the Indian Act. The Act imposes top-down authorities, fiscal control, and enforcement leaving little room for cooperative decision making, policy development, or citizen engagement. In terms of self-determination, the federal governance instrument "resembles an ill-fitting boot that pinches in all the wrong places and provides no support where support is needed the most" (p.3).

In the same year on the international scene, the definition of Indigenous self determination is detailed in several articles of the United Nations Declaration on the Rights of Indigenous Peoples (2007). The preamble includes the idea that while Indigenous peoples are equal to all other peoples, they have the right to be different, to consider themselves different and to be respected as such as an inalienable right. This contributes to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.

Reconciliation

Reconciliation of treaty and Indigenous rights within Canada's constitutional framework continues to be a work in progress as are Indigenous peoples' relationships to Canada and its peoples. Reconciliation at the constitutional conferences that spanned a decade meant for Indigenous leaders that they would negotiate on behalf of their peoples with First Ministers the

terms for continuing self government in Canada given that Indigenous peoples had never surrendered their responsibility for the governance of their lands and resources (Russell, 2017, p.394). Indigenous scholarship in the early days of the patriated constitution considered what reconciling aboriginal rights with Canadian public administration might mean to us now and in the future:

> The issue of aboriginal rights is now firmly entrenched on the public-policy agenda in Canada. The constitutional status of aboriginal peoples and the constitutional affirmation and recognition of aboriginal rights commit both present and future generations of Canadians to seek a resolution of the issue. The issue subsumes difficult questions about the political, legal, and constitutional steps that should be taken to redress historic injustices to Canada's aboriginal peoples, and, on a broader scale, how aboriginal people as culturally distinct ethnic groups should relate to the larger society (Boldt et al., 1985, p.3).

On other fronts, Canadian Indigenous scholars were rallying the international community to reconcile Indigenous inherent rights with settler peoples around the globe in working groups for the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).

Successive governments proposed three public inquiries over the next thirty years to reconcile how Indigenous peoples relate to governance institutions and larger society. On the demise of the Meech Lake constitutional accord, Prime Minister Mulroney called for a Royal Commission on Aboriginal Peoples (RCAP) in 1991 to examine the relationships between the government and Indigenous Canadians and to restore justice to the relationship between Indigenous and non-Indigenous Canadians. After four years of consultation, testimony and research studies, in 1996, RCAP released 440 recommendations including 54 recommendations on self-governance with the underlying theme that self-determination, self-reliance and the autonomy to structure

their own solutions is essential to better lives for Indigenous peoples and for better relationships within Canada (Abele et al., 2016, p.3). The RCAP reconciliation statement begins with the idea that it is essential that we deal with the legacies of the past to move forward together in a renewed relationship, and one of the recommendations was for a public enquiry into residential schools.

The Truth and Reconciliation Commission (TRC) was active from 2008 to 2015 to hear stories of residential school survivors to learn the truth of Canadian public policy abuses and the continuing harms that Indigenous families and communities face in Canada. The TRC defines reconciliation as "an ongoing process of establishing and maintaining respectful relationships" but also includes a more strident definition: the TRC emphasized collective learning processes and "the need to do more than just talk about reconciliation: we must learn how to take responsibility for reconciliation in our everyday lives—within ourselves and our families, in our communities, in our education, and in our workplaces" (TRC, 2015, p. 16). The TRC issued 89 calls to action including an enquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) which made 231 individual Calls for Justice in 2019 with the following public education message: To build a strong foundation for healing, justice, and reconciliation, governments and institutions must change. So must our society's attitudes and understanding of the issue.

On the death of the monarch, Mary Simon, Governor General of Canada, spoke to CTV News on Sept 14, 2022 about what reconciliation means to her:

> Reconciliation is for me to understand you better within your own culture and your own language, as well as you understanding who I am and what my

> culture is and what my language is. For us to earn that respect.
> My message has always been about hope. And it's always important to continue the dialogue. In terms of building any relationship, especially between Canadians and Indigenous peoples here in Canada, those are difficult conversations…For me, it is important to have those difficult conversations...continue the dialogue to understand each other. That's what reconciliation is all about.

Beyond dialogue and understanding, Indigenous scholarship in the last decade adds the idea that responsible actions are necessary for reciliation. Indigenous scholar and activist in the Idle No More movement, Leanne Betasamosake Simpson, argues that reconciliation is a process of regeneration that will take many years to accomplish; solidarity and responsible action may show us the path forward. Reconciliation involves rebuilding relationships; everyone is part of it and must practice it through responsible actions (Datta, 2020, p. 3).

New elements of the Constitution

Section 35

While Part II of the *Constitution Act, 1982* (s.35) on the rights of the Aboriginal peoples of Canada was a new addition to the Canadian Constitution, it does not create any new rights. Section 35 recognizes and affirms existing a) aboriginal and b) treaty rights, defines the Aboriginal peoples of Canada and provides for c) Indigenous representatives to be at the table for changes to the Constitution (to sections 25, 35, 91(24)) that affect them (s. 35.1) The text and enactment timeframe for s. 35 of the Constitution Act, 1982 is included in Appendix 1.

a) Existing Indigenous rights

Much constitutional scholarship exists about the meaning of "existing aboriginal (and treaty) rights" for Indigenous peoples, governance and legal systems. Ogden (2009) suggests that the Supreme Court recognises these rights because section 35 constitutionalized the common law

doctrine of Aboriginal rights forming a new intersection between Indigenous and non-Indigenous legal systems in Canada. “It is a fresh start – a reconstitutive moment – in the ongoing relationship between Indigenous and non-Indigenous peoples” (Ogden, 2009, p. 51).

Sovereignty

Others suggest that s.35 may raise the question of Indigenous sovereignty, political and legal systems, but at the same time, it preserves the status quo by relegating them to the supreme law of Canadian/ Crown sovereignty (Macklem & Sanderson, 2015, pp. 2, 12). Webber (2015) suggests we let contested issues like sovereignty remain in open debate in an “agnostic constitutionalism”, allowing multiple (and contradictory) assertions of sovereignty to exist in an unresolved tension (pp. 63-64).

Land and Indigenous title

In many areas, historically, Canada did not sign treaties with Indigenous peoples, particularly as only Indians and later Inuit people were recognized in law and subject to treaty negotiations. The control and preservation of unceded lands that have enjoyed Indigenous stewardship and communities for centuries are at the core of s.35 existing aboriginal rights. Webber (2015), with many concurring scholars, asserts that “Aboriginal title has always been claimed not just to establish a property right but as the foundation for an autonomous sphere of Indigenous law and governance” (p. 66). Following on this, the United Nations Declaration on the Rights of Indigenous Peoples, signed by 147 countries has internationalized the right to control aboriginal lands and self determination for the world’s Indigenous peoples numbering more than three hundred million (p. 28).

Land claim agreements in Canada with Indigenous peoples may now include autonomous

governance of peoples and lands as well as influence on land use decisions for surrounding lands or for extending community benefits to people of the community wherever they may live. By way of example of the evolution of s.35 existing aboriginal rights and unceded lands, Nunatsiavut was born of tripartite comprehensive land claims agreement[9] in 2005 with the federal and provincial governments, and the Inuit of Labrador as represented by the Labrador Inuit Association. The agreement allows for the creation of a provincial-like assembly (a consensus parliament, with no political parties) and municipal governments. Five community-level governments are responsible for serving all residents of their remote communities of 450 to 1200 people along the Northern Labrador coastline which is accessibly only by sea or air. There are about 7,200 beneficiaries to the land claim including close to 2400 living in Nunatsiavut territory, and another 2,300 living in Labrador outside of Nunatsiavut (Canada, Newfoundland and Labrador, & Inuit of Labrador, 2005).

b) Treaty rights and land claims

Russell (2017) credits the influence of RCAP in making the federal government extend the land claims process to include self government. First nations' chroniclers of the early days of the 1982 Constitution saw the inclusion of treaty rights in the form of land claim agreements as a most positive development. "The positive results of claims negotiations, in process and completed, over the past several years may indicate that the best hope for progression of

[9] The agreement is a modern treaty and land claim that receives constitutional protection under sections 25 and 35 of the *Constitution Act, 1982*. The agreement provides clearly defined land (including tidal shelfs) and sea ice ownership as well as use of the Labrador Inuit Land Claims Area; its above and below ground resources (Canada, NL and Labrador Inuit, 2020); and according to the Nunatsiavut government website, precedent-setting self-government rights in the areas of health, education, culture and language, justice, and community matters.

aboriginal issues lies outside of the constitutional, judicial, and parliamentary processes" (Boldt et al., 1985, p.11). However, other scholars have documented the frustration that Indigenous communities face when trying to interact with the administrative processes of the government of Canada (Macklem & Sanderson, 2015).

Modern-day treaties and agreements with the Government of Canada may include a constitution, land grants, financial payments and authority to develop and control separate governance structures such as laws, police, school and health systems, governments and councils.[10]

c) Need to consult

This third, new constitutional obligation placed on governments (and arguably third parties) a requirement to consult with affected communities before engaging in action that likely will interfere with Aboriginal or treaty rights. Macklem & Sanderson (2015) identify this post-1982 emergent requirement to consult as one of the most significant constitutional dimensions of the movement from recognition to reconciliation (p. 9). In the last decade, this duty to consult has had wide influence within the resource extraction industries, for economic reconciliation with Indigenous communities and in environmental impact assessments. The need to consult was an infectious concept that put Canada in the spotlight of countries who were also grappling with historical colonialism and Indigenous peoples. Ignatieff (2015) explains his observation in

[10] Enacting legislation for modern-day agreements includes a determination of whether the agreement is considered a treaty under s.35 of the Constitution (i.e., cannot be changed by future federal governments alone). The Government of Canada website (Treaties and agreements) lists only 29 modern-day treaties since 1975. More than 100 non-treaty modern agreement negotiating tables for land and self-governance are in progress (which may be completed more quickly than older land claim approaches or be more flexible to change). All agreements since the year 2000 include self-government provisions.

New Zealand as the society was being transformed by collective rediscovery of its Māori past to contemporary New Zealand identity. “The opportunities for Canadian leadership became clear during a visit in 1999 when the only issue that anybody wanted to talk about was section 35. The lawyers and legal experts I talked to knew more about Aboriginal peoples in Canada and Canadian law than I did at the time” (p. 506).

The Charter and s.25

The Canadian Charter of Rights and Freedoms[11] was a new addition to the Constitution in 1982, containing 7 categories of individual rights and freedoms: fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights, education and language rights. Equality rights (s. 15) are at the core of the Charter: everyone should be treated with the same respect, dignity and consideration (without discrimination), regardless of personal characteristics such as race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability, sexual orientation, residency, marital status or citizenship. Anyone whose Charter rights or freedoms are infringed or denied may apply to a court for judicial review and remedy. As a result, everyone should be treated the same under the law and everyone is entitled to the same benefits provided by laws or government policies.

Section 15 equality rights have been most relevant among the Charter rights in promoting cultural recognition and protecting an Indigenous individual’s heritage and customs from government administrative discrimination wherever they may live in Canada. Equality rights have been the rallying cry for Indigenous civic actions in Canada and for public participation in

[11]According to Statistics Canada, Canadians rank the Charter of Rights and Freedoms as the most important national symbol, beating out other symbols like hockey or the beaver.

fighting discrimination in Canadian society and racism in its institutions.

Section 25 of the Charter is a little used, reinforcement of existing aboriginal and treaty rights:

> 25. The guarantee in this Charter of certain rights and freedoms shall not be construed as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:
>
> a. any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
> b. any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

While scholars have attached great meaning to the reference to the Royal Proclamation in the Constitution as the basis for nation-to-nation relations, the Government of Canada portrays the acknowledgement of Indigenous rights in s.25 of the Charter simply as having little clear judicial direction. It has only been discussed briefly by the Supreme Court of Canada in five cases and may just be instructional to courts and governments to weigh Indigenous collective rights alongside individual rights and freedoms when making decisions.[12] However, at the time the 1982 Constitution was being drafted, it was important to Indigenous leaders and lawyers that a stand-alone part of the Constitution be added for Indigenous rights (s.35) so that governments could not override Indigenous rights using the notwithstanding clause in the Charter.

Henderson (2018) when writing about implementing international rights of Indigenous peoples notes that the Charter values of balancing human rights and freedoms with limitations in the interests of society (European societies) is contradictory to Indigenous laws and knowledge that centre on an inherent dignity approach to human rights. "Human rights are…natural rights held by humans, as distinct from artificial governments… They are consensual norms of a non-

[12] Justice Canada. (2022). Charterpedia

coercive global legal order…Furthermore, the states have no ability to limit these human rights" (p.10). He argues that the Charter and the Supreme Court do not focus on this idea of inherent human dignity, although courts have continually recognized that the existing rights of Aboriginal peoples are inherent rights derived from Aboriginal knowledge and laws. The extent to which governments may intervene upon or override inherent Indigenous rights and individual rights guaranteed in the Charter continues to trigger citizen protests (e.g., Wet'suwet'en protests, trucker convoys, Black and Indigenous Lives Matter marches) against government laws and public policy in Canada.

Evolution of Indigenous rights—self determination and cultural recognition

Scholarship on the role of the 1982 Constitution since its inception for Indigenous self-determination and cultural recognition varies from hope to horror often incorporating reactions to government action and inaction on recognizing these rights.

<u>From 1982 Constitution to RCAP</u>

Building on Indigenous activism, begun in the 1970s, early Indigenous views at the 1983 amendment conference saw the Constitution as a potentially beneficial building block for advancing Indigenous rights, but also, as a shield against further relegation by the federal government. The opening statement from the Native Council of Canada stated that they were approaching the conference with a great caution that Canadians would understand had been bred from hundreds of years of bitter experience with successive federal and provincial governments. For them, the conference provided a great opportunity for government leaders to redress past injustices. "The entrenchment of aboriginal rights, we believe, will go a long way toward helping Canadians recognize the contribution our people have made to this country. As

equal partners in confederation we can join other Canadians as full participants in Canadian society" (NCC, 1983). Despite trepidations, non-status Indians and Métis peoples were willing to carve a place in Canadian society and in the governance framework of Canada, on their own terms. They viewed the elaboration of an Indigenous bill of rights (which did not happen) as a road to a beneficial relationship among rights-bearing Indigenous people, government and Canadians.

Within a few years of the1982 Constitution, Indigenous scholars were still optimistic that that inclusion of aboriginal rights in the Constitution would change the relationship with the federal government. No longer at the mercy of federal institutions, scholars spoke of aboriginal peoples' elevated, special constitutional status and affirmation of their existing aboriginal rights. "Most significantly, entrenchment of existing aboriginal rights in the constitution stands as a commitment from which the Canadian state cannot retreat" (Boldt et al, 1985, p. 12). Writing as a non-status Indian, Wilson (1985) advances the idea that the nature of aboriginal title rights in the Constitution will mitigate the application peculiarities of the *Indian Act*. "All the descendants of the original occupants of the land retain aboriginal title to the land as well as the rights that flow from that title. This will always be the case because no generation or special group has the right to sign away the rights of any future generation" (p. 62). The idea of hereditary aboriginal rights defining who is and who is not Indigenous instead of it being a function of the *Indian Act* was a welcome idea for this author.

RCAP through TRC deliberations

The lack of progress at the political level in recognizing Indigenous self determination within

the Constitutional amendment process led RCAP scholars to argue that constitutional recognition of Indigenous group rights requires a drastic change in strategy for Canadian public administration domestically and internationally. (Dupuis, 2002). The drastic change included in RCAP's 440 recommendations touched all branches of government, increased participation in international fora, added new commissions and expanded the machinery of public government. Few of these recommendations were implemented by successive governments.

Renée Dupuis, former Commissioner of the Canadian Human Rights Tribunal and Commissioner of RCAP wrote at the turn of the millennium about a wall of mutual misunderstanding between Canadian public administration and Indigenous peoples. Despite Constitutional recognition and court decisions reinforcing special rights of Aboriginal peoples, Canadians had little knowledge of Indigenous social and cultural marginalization, or the disparities in living conditions. Widespread political opposition, particularly in western reform parties, to any special treatment for Indians was offset by growing Indigenous frustration that erupted in armed conflicts and police actions in Oka, Ipperwash and Burnt Church. This led to many leaders in Canadian public administrations to talk of the crisis in Indigenous affairs and many Indigenous leaders to outline the dangers of maintaining the status quo (pp. 115-116).

As Constitutional amendment efforts had ceased, and public policies remained unchanged, some Indigenous scholars rejected the Constitution completely as a colonial overlay on a once-free people (Ladner, 2001). Others theorized that the settler nation had little understanding of the roots of discord or of the need for change among governance institutions and Canadians. This scholarship, as exemplified in the Walkem & Bruce 2003 collection of studies, *Box Of*

Treasures Or Empty Box?: Twenty Years Of Section 35, was prominent for a decade after the release of the Royal Commission (RCAP) and was mostly directed at the lack of government acknowledgement and response.

Stó:lō writer Lee Maracle, in her 2003 study (The Operation Was Successful, But the Patient Died) concludes, "Section 35 has created the biggest and saddest sham in our history of having to endure plenty of shams perpetrated by colonial authority" (p. 12). She provides the example that if s.35 was meant to reflect a true nation-to-nation relationship, instead of a "continuance of colonial history," it would have read:

> Canada recognizes the right of Self-Determination of Indigenous Nations.
> The government of Canada agrees to enter into nation-to-nation relations
> with the National governments of the Indigenous people.

She points out that a true nation-to-nation relationship would require that Indigenous Nations adopt the articles of the Constitution for them to apply and that "a true nation-to-nation relationship would not have resulted in entrenching Aboriginal Rights as a Canadian constitutional right" (p.9).

The next decade of scholarship during the deliberations and study of the Truth and Reconciliation Commission (TRC) turned to research as resistance with a burst in studies educating on Indigenous culture, methodologies, frameworks and vision-turned-action as an anti-colonial perspective pointed to the significance of Indigenous knowledge systems (Kovach, 2015). The frenzy reflected Indigenous leaders' engagement with other institutional mechanisms that came to acknowledge and advance Indigenous rights as political negotiations and public enquiries failed. The Supreme Court became very active in defining Indigenous

rights, settlements for class action lawsuits for residential school survivors and apologies in Parliament and legislatures were fulfilled. Human rights tribunals acknowledged and ruled against discriminatory federal programs, policies and inaction, and major land claims began returning Indigenous communities their lands with some self-government clauses.

For First Nations, public administration scholarship began its focus on ways out from the Indian Act. Baird (2011) stresses how important the movement to constitutionally-protected self governance is to restore a direct accountability link between the new governance system and the community at Tsawwassen First Nation. Chief Baird[13] evidences the modern treaty as a form of reconciliation with the Crown, among other relationships:

> The challenge for us has been to figure out who we are as Tsawwassen First Nation: as a legal entity, as a government, and as a people, all within the context of the Canadian federation. Seeking this answer has meant redefining how we relate without the Indian Act to the federal government; to the provincial government; to the Municipality of Delta; to the Metro Vancouver Regional District; and, ultimately, to people living around us (p. 172).

As the main group of people that have been subjected to public policies and rules about their identity and community formation, this strain of First Nations scholarship reflects the learning process that self-governed Indigenous communities face and the unlearning process that Canadians, corporations and governments face in accepting Indigenous self determination. Chief Baird relates that “moving forward takes pragmatism, and not letting the perfect get in the way of the good. Waiting for the perfect in Tsawwassen would have meant opting for the status quo, and failing another generation of our people—totally unacceptable” (p. 179).

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[13] Indspire lists Kim Baird as an Order of Canada recipient for “exemplary leadership and vision by negotiating and implementing the first modern treaty in the BC Treaty Negotiations Process.” The Tsawwassen Final Agreement is British Columbia’s first modern urban land treaty,.

Some treaty and agreement Indigenous communities like Tsawwassen First Nation exercise self governance and are thriving; however, a disproportionate number of Indigenous people in Canada continue to experience food insecurity, homelessness, mental illness and poverty—lacking the basic requirements for human dignity. As the Truth and Reconciliation Commission documented intergenerational harms from Canadian public policy, international studies continued to document that Indigenous peoples face poorer outcomes than their non-Indigenous counterparts on a range of health, social, and economic measures. For Canada, Australia, and New Zealand (nations with some of the highest levels of human development in the world), relative to non-Indigenous populations, the disparity gap for Indigenous populations remained unchanged between 1981 and 2006, despite major efforts to close the gaps (Mitrou et al., 2014).

TRC to MMIWG and beyond

Indigenous scholars rejected the TRC as a mechanism for healing and reconciliation. As an institutionalized public truth-telling instrument, Vanthuyne 2021's study with TRC participants concludes that these human rights instruments often compel participants to speak solely about trauma and identify primarily as victims. In fact, TRC participants expressed self-determination: they "created a space from which to express their desire and capacity to 'move forward' from the pains of their historical and ongoing colonial subjugation" (p.355). The author suggests that TRCs tend to prioritize national reconciliation (a redemptive catharses for the good of the nation) over the true emancipation of victims of state-sponsored violence. These narratives of victimhood and deficiency facilitate the continued intervention in Indigenous lives (Craft & Regan, 2020, p. 88). In other words, Ottmann (2021) summarizes multiple authors concluding

that reconciliation must emphasize Indigenous self-determination, which is often quieted in public governance inquiries that seek (through a Western framework and language) a list of restitutions to solve the problem. Instead, the necessary systemic restructuring work that allows for addressing injustices, respectful participatory processes and uplifting Indigenous knowledges should be pursued (pp. 239, 237).

Other scholars highlight societal influences and ideologies that quell self determination of Indigenous peoples, possibly because the message is unwanted. Ladner (2017) reviewed coverage of Indigenous politics for the Canadian Journal of Political Science on the occasion of its 50th anniversary. The author finds that coverage is virtually absent until the mid 1980s and scarce until the 1990s. She finds that studies of contemporary Indigenous peoples and their interactions with the state have increased and even exploded in recent years; however, political scientists have largely ignored Indigenous political traditions and have mainly studied Indigenous politics through a Western-Eurocentric tradition (p. 164). Looking forward, she advocates for more emphasis on the Canada problem rather than the Indian problem:

> If reconciliation is going to be meaningful and transformative and not merely a warm fuzzy hug or an apology, then we need to better understand how it is that Canada is going to transform institutionally and constitutionally to address the fact that it exists on someone else's land. How is it going to engage in decolonization so as to destabilize settler-colonialism and to re-invent itself or create itself…(p. 176).

Other contributions from the period suggest that there may be common ground. Borrows & Tully (2018) in the introduction to recent studies on resurgence and reconciliation re-emphasize that the practice of treaty-making in modern day Canada requires both independence and interdependence. Resurgence scholarship focuses on Indigenous self-

determination and cultural renewal (independence) whereas reconciliation refers to practices between Indigenous peoples and Settler nations. “While some scholars resist the idea of reconciliation as recolonization,” treaty relationships, like reliance on the natural environment, require interdependencies (p.3). Scholarship since the release of the national inquiry into missing and murdered Indigenous women and girls (MMIWG), focuses on self determination and interdependencies that create a shared responsibility for land use and protection as well as an individual responsibility for social justice issues.

Borrows (2022) suggests that Indigenous and Canadian legal and governance institutions can be reconciled by mutually beneficial, side-by-side, co-creation of public policy particularly in the area of land use and protection which is central to Indigenous peoples and institutions. To understand Indigenous contributions to Canadian public institutions, we must acknowledge that Indigenous Peoples had laws and systems of governance long before Europeans landed on what is now called Canada. Colonialists viewed nature as property to be owned or resources to be commodified. In contrast, many Indigenous Peoples speak of inherent rights accompanied by inherent responsibilities to the natural world. For example, University of Windsor law professor, Beverly Jacobs (past president of the Native Women's Association of Canada) says, “Our laws are always about that responsibility — our relationships, reciprocity” (Land Back, 2022). For Borrows, the Constitutional recognition of Indigenous peoples, their rights as First Peoples, and the evolution of their societies’ world view, legal system and political system to the public policy arena is one kind of beneficial contribution to Canadian public administration.

Datta (2021) focuses on a different perspective of self determination through a decolonizing

framework that exists outside federal government and public policy as a way to support ongoing attempts to recognize, integrate, and promote Indigenous perspectives and communities (p. introduction). In this research strain, Indigenous knowledges teach of respectful relationships (e.g., all my relations, seven generations, medicine wheel teachings) that require public policies (and reconciliation of Canadian and Indigenous peoples) to address barriers to respectful relationships such as inequities, racism, oppression, discrimination and elitism (Ottmann, 2021, p. 237). In this strain of research, self determination of Indigenous peoples may be silenced by the goals of governments and institutions to reconcile on their terms instead of respecting Indigenous perspectives.

Ottmann (2021) summarizes other scholars saying that reconciliation efforts can delay, steer-away and make disappear "conversations of Indigenous self-determination." There are "spaces sacred and exclusive to Indigenous peoples" and non-Indigenous people should respect and recognize that "these spaces are not for settlers. Settlers should not expect to have access to every tool and aspect of Indigenous knowledge." Instead, settlers are asked to stand alongside Indigenous peoples to advance justice and challenge systemic barriers to acknowledging other ways of leading, organizing, and conducting research (p. 239). This kind of self determination would inform Canadian society of Indigenous ways and knowledge that may be used to build better relationships, institutions and public policies.

Influence on Institutions of Governance

Constitutional federalism remains firmly intact in Canada with no sovereign nations or third order of government. Indigenous peoples have continued to restore their collective rights

within the federation and continue to lobby for institutional reform to further political representation and cultural recognition within Canadian society. In addition to the Constitution's traditional federalism division of powers limiting federal government authority, the 1982 Constitution introduced the ability for citizens to challenge federal laws, policies and programs that contravene the Charter of Rights and Freedoms. The Supreme Court was named as the arbitrator adding additional human rights based cases and new Indigenous rights cases to the Court's existing role of judicial review of authorities under the division of powers clauses in the Constitution. Where political governance institutions failed, the Court was called upon to help identify and define Indigenous and treaty rights within a complicated constitutional framework.

Executive government and Parliament

Scholars have identified a shift in public administration and centres of influence on the public policy system over the last 40 years from bureaucratic hierarchical administration in the 1970s that reformed to decentralized, market-influenced administrations in the 1980s and 1990s[14] through to networked, collaborative public governance in the new millennium.[15] Scholars of public administration note some identifying themes for governance institutions in Canada and their role in the everyday lives of citizens that provide context to the constitutional recognition

[14]Chouinard, J.A., & Millay, P (2017: 4-5) summarize the New Public Management in the 1980s-90s as a correction to earlier hierarchical public administration that belittled both democracy and efficiency. NPM advocated putting public policy decisions back in the hands of elected officials (Ministers) to support democratic accountability to Parliament. Among others, features of NPM include delayering of departments to address horizontal issues, opening the policy advice function (consultants and policy networks) beyond the public service and cost-cutting service delivery (outsourcing, private sector contracts and partnerships).

[15] Dickinson, H. (2016: 43) summarizes the shift to a New Public Governance in the new millennium as having a strong focus on networked collaboration and horizontal ties between individuals and agencies to address complex global issues. NPG features a strong a central executive stemming from the Prime Minister, increased ministerial staff influence on policy advice, multiple actors across and beyond government, open access to information, publication of implementation results, and strong central agency control over policy and financial resources.

of Indigenous rights and their elaboration. One theme over the last 20 years is the impetus toward governing from the centre, both in terms of the concentration of power with the Prime Minister and cabinet, and in terms of increasing central government influence in social and economic programs in areas of shared responsibility (Johnson, 2022).

Alcantara and Spicer (2016) look at the above phenomena through Indigenous policy-making models using the Kelowna Accord as an example of multi-level governance that may be more effective and successful than Canadian or treaty federalism has been for Indigenous public policy. They find that multi-level governance promises Indigenous groups a stronger role and voice in the decision-making process, requires little restructuring of the Canadian federal architecture and responds flexibly as it may be called up quite readily and suddenly or dissolved as need be. However, the authors emphasize that the personal commitment and support of the Prime Minister is essential to success of arrangements like the Kelowna Accord as is full federal funding that multi-level governance may require (pp. 194-195).

A second theme in public management is the "more or less" government spectrum. Neo-liberal governments like the current Trudeau government prioritize increased and equitable access to services and benefits encountering protest for Indigenous peoples' continuing inequities in income, housing, and food security as well as on social justice issues, racism in institutions and reconciliation. More conservative administrations like the previous Harper government prioritize shrinking the size and role of the state in favour of entrepreneurship encountering protest for overriding Indigenous rights to control economic development and environmental encroachment on Indigenous and public lands. Both government ideologies are aimed at

promoting individual and community well-being within a state, and their institutions and policies are increasingly legitimized through public acceptance and civic participation by individuals and groups in society (Aucoin & Turnbull, 2003).

The role of a parliamentary institution of lawmakers may be questionable in terms of political representation (through election or appointment) for Indigenous peoples who represent only 5% of the Canadian population, Scholars from many disciplines argue that democratic government may be best to provide consistent, equal protection and economic/social well-being to citizens, but it also tends to favour a dominant ideology or group of people and suppress distinction that may lead to persistent problems for groups that are underrepresented. Making the institution more representative of distinctions may lead to novel paths for solving persistent problems (Borrows, 1994, p.2).

Nevertheless, from Louis Riel's ushering in the Province of Manitoba to the Constitution in 1870 to Elijah Harper's raised feather to help defeat the Meech Lake constitutional amendment package in 1990, Indigenous leaders and communities have kept issues of self-determination and cultural recognition on the legislative and political agenda, and increasingly so since the 1982 Constitution.

Canada has overcome demographics and geography to enhance Indigenous political representation. An Australian report in 1997 notes Canada was one of few countries to try to enhance Parliamentary representation: "Australia also has a poor history of Indigenous representation in Federal Parliament, unlike New Zealand where seats are reserved for Indigenous people, or Canada where the geography has been used (as it could in Australia) to

create some low population electorates which virtually guarantee the election of an Indigenous representative (Dow & Gardiner-Garden, 1998, p.4). This was before the predominantly Inuit, Nunavut Territory, was created in 1999 within the structure of public government.

Reflecting the governance structures that most commonly influence daily life today, Heritz (2017) details the increasing nodes of Indigenous self-governance which include both extensive local networks of municipal and regional government as well as international ties to a "global Indigenous identity based on diverse peoples united by historical experiences and political issues" (p. 291). These two external influences of multi-level governance offset the power and influence that the central government traditionally exercises on Indigenous self-determination and cultural recognition.

Judicial branch—The Courts

Russell (2017) asserts that since the 1982 Constitution was enacted, the Supreme Court of Canada contributed more significantly to developing the Constitution than did the formal amending process. Ignatieff (2015) adds that judicial review weakens Parliament's public policy role but has also raised the Court as an alternate route to legitimately identify and define Indigenous rights. He depicts elected officials as evasive when it comes to Indigenous rights and perfectly willing to let the Supreme Court "sort things out" (p. 509). In reference to Indigenous rights though, the courts have confined their decisions to the circumstances at hand, cautious to avoid setting large precedents on vague concepts like aboriginal and treaty rights. Webber (2015) identifies that the jurisprudence has focused on details of Indigenous title to land—recognition, nature and incident of title; proof, recognition, and extinguishment; and rights related to title like hunting and fishing. Only a few court decisions in Canada have addressed

the rights of self government; and when they have, they have again been cautious to limit decisions to the issue posed in the circumstances (pp. 64-65).

Others suggest that Indigenous people have been successful in achieving some of their legal and political goals through constitutional challenges in the courts where governments have failed or have been unresponsive. Supreme Court decisions have forced governments to revise their policies on land rights, access to natural resources, treaty rights, and involvement of Indigenous peoples in decision-making (Satsan et al., 2022, p.409). Prominent cases that have been instrumental in motivating governments to change public policy in light of Indigenous rights, as defined by the Court, include Calder (1973) on Aboriginal title, Guerin (1984) on the Crown's fiduciary obligations, and Haida Nation (2004) and Mikisew Cree (2005) on the duty to consult. These cases were initiated by Indigenous nations with the goal of forcing governments to respect their rights and enter into negotiations to settle their just claims. Nonetheless, the authors point out that governments do not always change course in response to court decisions, often interpreting them narrowly and showing reluctance to modify negotiations and policies. And referring to Indigenous societies' long history of trying to have treaties honoured, the authors conclude "that, looking forward, realizing the potential of the 'process success' will require similar determination on the part of Indigenous peoples in the decades ahead" (p. 411).

Defining Indigenous peoples mentioned in the Constitution, particularly Métis people, is an ongoing process that has been largely influenced by Supreme Court of Canada decisions. In the 2003 Powley case, for example, the Court set out three basic elements to identify Métis rights holders (in s.35) as distinct from other Indigenous people under the Canadian Constitution

(self-identification, ancestral connection to the historic Métis community, and modern-day Community acceptance). By 2016, in the Daniels case, the court removed the territorial, or modern-day community requirement for non-status Indians and Métis to be considered a federal responsibility under s.91(24), and possibly defined new Métis people, with no connection to a living community.

These rulings have had measurable consequences in eastern Canada: fewer than 1,000 Nova Scotians identified as Metis in the 1996 census, growing to over 3,000 in 2001 after the Supreme Court affirmed Mi'kmaq treaty rights in the 1999 Marshall decision, doubling again in 2006 after the 2003 Powley decision, when the Supreme Court affirmed Metis have an Aboriginal right to hunt for food, and to over 23,000 by 2016 after the Daniels Decision. Gaudry (2018) calls these people with only genealogical ties to dead people the "new Métis necro-communities" in contrast to the Métis communities of the Métis homeland in northwestern Canada (p. 164). He highlights that First Nations with historical treaty and aboriginal rights to fish the lucrative lobster coasts strongly oppose the new Métis while the newcomers insist they had to hide their identities to avoid having their children go to residential schools (as they testified in RCAP). Gaudry warns that the Métis identity that living Métis communities have nurtured may be appropriated by the common culture among "new Métis" which is primarily negative because it is based on hiding and cultural loss (p.184). The contrasting visions of self-determination among and between Indigenous communities, based on their varied histories with Canadian public policy, continues to be a defining feature of Canadian and Indigenous public administration.

By 2016, the Supreme Court—perhaps weary of creating tests for who is included or excluded in Constitutional categories—ruled that all Aboriginal peoples cited in the Constitution are "Indians" under s. 91(24). This ruling ended a jurisdictional wasteland for a non-status Indians and Métis people who were disadvantaged as both provincial and federal governments denied having legislative authority over them.[16] In extending federal responsibility under s. 91(24) for a broader group of Indigenous peoples in the Daniels case,[17] Madame Justice Abella said, "The constitutional changes, the apologies for historic wrongs, a growing appreciation that Aboriginal and non-Aboriginal people are partners in Confederation, as well as the Report of the Royal Commission on Aboriginal Peoples and the Final Report of the Truth and Reconciliation Commission of Canada, all indicate that reconciliation with all of Canada's Aboriginal peoples is Parliament's goal" (para. 37). Justice Abella signals the Court's ability to wade into public policy debates and to provide an alternative avenue for checks on central government authority.

Clearly the inclusion of Indigenous and treaty rights in the 1982 Constitution provided reinforcement for Indigenous peoples' return to self government and a place in public policy making—in land and resource use and control, community development, politics, resource distribution and cultural recognition of languages, education systems and health. While Canada's historic relationship with Indigenous people heavily influenced the reforms in the Constitution, we are four decades into implementing the difficult task of structural and cultural

[16] Russell (2017) relays how insulting this decision may be to Indigenous peoples who believe their inherent identity came with creation, and that nation-to-nation treaty federalism, not Canada's constitutional division of powers, is the legitimate way to regulate their relations with Canada and in public affairs.

[17]Daniels v. Canada [2016] 1 S.C.R. 99 at para. 37

reform of Canadian institutions and civil society to benefit from Indigenous self determination. Below a case study (of the events, individuals and organizations) traces progress through the years since the 1982 Constitution and provides lessons learned about reconciling Indigenous self determination and cultural recognition within institutions of governance as well as among the leaderships and civic society.

Case study

The void left by the constitutional conferences with First Ministers and Indigenous leaders in completing the unfinished business of identifying and defining the special status of Indigenous rights allowed Indigenous leaders to pursue alternative routes to rally legitimacy among Canadians, governance institutions and the international community. From enactment of the Constitution through public policy foundations such as amendment attempts, civic actions, follow-up enquiries, international declarations, court and tribunal decisions, legislation or negotiated agreement—the people and events of the past 40 years bear witness to the resourceful ways and mechanisms that have been employed to nurture these rights to influence political representation in Canada's institutions and society.

Methods: The case study examines key events and individual actions through five periods for their influence on Indigenous and Canadian public administration. The data for the study include a) the context of each period (the current affairs and the economic, political and societal preoccupations of the times) to provide the realities in the wider community and b) the events and people of the period that advanced Indigenous rights and relationships with the federal government and people of Canada. This context and key event data are attached in

Appendix II and are sourced separately in the appendix. Below summary results of each period trace what has been learned about reconciling Indigenous self determination and cultural recognition within institutions of governance as well as among the leadership and people. The periods of study were constructed around major milestones identified in the public administration literature for reconciliation:

1) 1969-1982 Lead up to the 1982 Constitution
2) 1983-1996 Constitutional amendment attempts to RCAP[18]
3) 1997-2007 The void
4) 2008-2015 TRC[19] times, the apology and UNDRIP[20]
5) 2015-2022 Jordan's Principle, MMIWG[21] Inquiry and current times

Cautions: This study relies mainly on interactions at the level of the government of Canada, which has primary constitutional responsibility for Indigenous communities, to give an overall sketch of the people and actions that have defined and continue to define the relationship of Indigenous peoples with societies that came after. The many actions that occur at local or provincial or community level that strongly influence these relations are mainly excluded in this study. A second caution refers to the timelines for events, which are listed at their publication or completion dates. The work and influence of these activities occupied the political and cultural lives of civic society during overlapping periods. Several of the reports and court cases developed over years or decades (e.g., the TRC began in 2008 and reported in 2015, and the federal land claim process often took two decades to complete).

[18] Royal Commission on Aboriginal Peoples
[19] Truth and Reconciliation Commission
[20] United Nations Declaration on the Rights of Indigenous Peoples
[21] the National Inquiry into Missing and Murdered Indigenous Women and Girls

1. Lead up to the 1982 Constitution

Summary results: The 1970s saw a swell in First Nations' advocacy against federal public policy in response to the white paper and reignition of a lobby to recognize treaty land claims that had begun more than a century before. In 1974, the Supreme Court decision in the Calder Case[22] 1974, recognised Aboriginal title in law, based on historical occupation. For the Labrador Inuit, legal status for land rights began long before treaty rights were framed into the Constitution. Indigenous people were organizing nationally [23] and at the same time, advocates in Canada were leading participants in international organizations such as the Inuit Circumpolar Conference and the World Council of Indigenous Peoples.

Canada had seen a human rights explosion in the lead up to the Constitution based on a history of civil liberties associations and provincial human rights codes leading to consolidation in federal and provincial statutes that set up human rights Commissions and Tribunals in the late 1970s.[24] At the same time, Canada participated in several international human rights initiatives at the United Nations and acceded to the International Covenant on Civil and Political Rights, as well as the International Covenant on Social, Economic and Cultural Rights in 1976.

In the lead up to the 1982 Constitution, the Prime Minister was promoting unity, equality for all (with recognition of multiculturalism) and strong role for the central government. To his right, Quebec demanded nothing less than sovereignty-association as a founding culture in Canada.

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[22]*Calder v Attorney General of British Columbia* [1973] SCR 313.
[23] e.g., the National Indian Brotherhood and the Native Council of Canada (representing Métis and non-status Indians) in 1970, the Inuit Tapirisat of Canada in 1971 and the Native Women's Association of Canada in 1974 .
[24] For a detailed history, see Clément, C., Silver, W., & Trottier, D. (2012). *The Evolution of Human Rights in Canada.* Canadian Human Rights Commission.

To his left, provincial premiers ferociously guarded their decentralized constitutional powers in the area of resource development and as equal partners in the federation. And from coast to coast to coast, Indigenous leaders had a non-negotiable mandate to protect their aboriginal title to this land as First Canadians and to gain their rightful place in Confederation.[25]

2. Constitutional amendment attempts to RCAP (1983-1996)

Summary results: Constitutional amendment conferences and accords failed to reconcile Indigenous rights or include Indigenous peoples in decision-making for public policy for close to a decade after the 1982 Constitution. As government agendas moved to economic and military issues, Indigenous leaders turned to the streets in two police incidents and to the courts over land and resource issues.. The Oka crisis led to both support and hostility towards Indigenous people as blockades stopped traffic in Montreal and the Clayoquot protests in B.C. led to mass arrests as protesters and civil society joined forces to garner international attention and respect for heritage land preservation.. The failure of negotiations to expand s.35 did nothing to subdue international interest in Canada's attempts to reconcile Indigenous title and rights within governance structures and among the people. The Supreme Court's decision in the 1984 Guerin Case—that Indigenous title is an inalienable, unique right—formed the basis of a new relationship in sharing the land with Indigenous communities in Canada and around the world. It is not surprising that these Indigenous leaders and scholars would be called upon to inform the development of the United Nations Declaration on the Rights of Indigenous Peoples.

Growing unrest over disrespectful use of traditional lands and development of heritage sites

[25] These sentiments were expressed by the Native Council of Canada in its opening statement to the March 1983 First Ministers ' Conference On Aboriginal Constitutional Matters

led to unpeaceful protests signalling the discord in the relationship among Indigenous peoples, governance institutions and civic society. The federal government was relying on a Royal Commission to lead the country out of turmoil.

3. The void (1997-2007)

Summary results: The void in government attention to Indigenous rights and peoples after the RCAP report increased tensions that saw federal governments being pulled along reacting to events. Rapid changes in governments (three prime ministers in 10 years and three minority governments) did confound relations. The lack of progress with Canadian government officials redirected Indigenous leaders and advocates attention down to ground level disrupting protests (this time in cooperation with police) and up to an international human rights forum as UNDRIP was adopted by the General Assembly of the United Nations. The Supreme Court again boosted cultural acknowledgement in the Delgamuukw Case[26] when it ruled that Indigenous oral history was legitimate grounds for making land claims in British Columbia. Disrupting but peaceful protests in support of mainly First Nations communities intertwined with mainstream news. The Inuit, on the other hand, worked within the existing political system in Canada to have a (predominantly Inuit) 3rd territory incorporated into the institutions of governance, with its own consensus government, seats in Parliament, and legal/education/health systems. Métis communities were held in limbo with neither the federal

[26] *Delgamuukw v. British Columbia*, CanLII 302 (SCC), [1997] 3 SCR 1010, established that traditional Indigenous forms of knowledge, like oral histories, could be weighed in with documentary evidence. In a case soon after, McLachlin, C.J. cemented the idea: In determining the usefulness and reliability of oral histories, judges must resist facile assumptions based on Eurocentric traditions of gathering and passing on historical facts and traditions. Oral histories reflect the distinctive perspectives and cultures of the communities from which they originate and should not be discounted simply because they do not conform to the expectations of the non-Aboriginal perspective.

nor provincial governments making any commitments.

The Supreme Court continued to remind the Government of Canada that it had to reconcile Indigenous constitutional rights[27] with its decision-making processes just as settlement for residential school survivors was reached through human rights tribunals and court complaints. The settlement included the need for the Government of Canada to apologize and to set up the TRC. All of these restitution efforts were instigated by Indigenous peoples and determined by mechanisms outside the federal government as the driving force for national policy. Indigenous leaders in this period managed to transform the discourse and create new venues for challenging government policies to establish their constitutional rights.

4. TRC times, the apology and UNDRIP (2008-2015)

Summary results: The TRC period could also be called the void in terms of voluntary government actions to recognize Indigenous self-determination and cultural recognition. In the era of global recession, service cuts and international military actions, the Canadian government focused on economic priorities with a tendency to avoid Indigenous relations or to reluctantly engage when called out. While this increased frustrations among Indigenous communities with federal politicians and their own leaders in some cases, it also led to new organizing and peaceful protest groups mainly led by Indigenous women, that managed to corral national and international attention in the government's absence. Effectively tapping the

[27] Haida Nation (2004) and Mikisew Cree (2005) were decisions on the duty to consult. These cases were initiated by Indigenous nations with the goal of forcing governments to respect their rights. The Council of the Haida Nation and Guujaaw, on their own behalf of all members of the Haida Nation won a Supreme Court ruling that, "Consultation and accommodation before final claims resolution preserve the Aboriginal interest and are an essential corollary to the honourable process of reconciliation that s. 35 of the Constitution Act, 1982, demands."

social justice concerns of Canadians in the areas of violence against women, housing, hunger and poverty, the Indigenous-led groups made fast allies among the Canadian public. It is within this environment that the TRC's calls to action resonated with all of the people in Canada who may have been frustrated with government inaction as well.

5. <u>Jordan's Principle, MMIWG Inquiry and current times</u> (2016-2022)

Summary results: The Canadian Human Rights Tribunal re-established the principle of equity in the delivery of services to Indigenous people based on historic wrongs ushering in settlements for First Nations children and residential school survivors. Federal government responded with "actions": a policy agenda to implement all TRC recommendations. In 2018, the Canadian government consolidated its service delivery and relations with Indigenous peoples under two departments while targeting funds and resources for self governance under renewed Nation-to-Nation agreements. During the COVID 19 pandemic, federal legislation and public policies set frameworks for UNDRIP implementation and for Indigenous communities' control over social services such as child welfare through direct funding to organizations in multi-level governments. Implementation plans are next.

Civic activism continued around the legacy of residential schools and the Indian Act beginning with commercialization in Orange Shirt Day to honour survivors with a message that "All children matter," and to affirm commitment to reconciliation and anti-racism. Resilience celebration turned somber as unmarked graves of hundreds of children are being brought to light across the country and the federal government declared National Truth and Reconciliation Day. A strong narrative remains among Indigenous leaders and the Government of Canada that reconciliation over the fraught history is still very much a work in progress as seen in reaction

to the Pope’s apology for abuses in the country's church-run residential schools that spoke of the evil of individuals but not the institution.

Indigenous advocacy groups, most often with broad public support, continue to protest and shine the light on environmental concerns such as land use in unceded territory and day-to-day inequities in areas such as food security and housing that Indigenous people continue to face in Canada. Social justice protests, such as lack of progress on effective policing, highlight resurgence of Indigenous self determination and power to tackle issues within Canadian society and public administration. The MMIWG public education message toward reconciliation reads: “To build a strong foundation for healing, justice, and reconciliation, governments and institutions must change. So must our society’s attitudes and understanding of the issue” (MMIWG website, mandate).

Take aways from the peoples and events case study

The action and inaction of governance institutions since the 1982 Constitution along with the reactions of individuals to their leaderships, communities and neighbours have evolved the reconciliation of Indigenous rights along side the constitutional framework. The case study again evidenced that reconciling Indigenous rights within institutions of governance was advanced more quickly by mechanisms outside of slow, federal government administration. While the constitutional talks did begin and cement the process of national dialogue with Indigenous leaders, we later learned from three public enquiries over close to three decades that the path to reconciliation evolved from “looking back to move forward,” “establishing and maintaining respectful relationships,” to “acknowledging” that governments and institutions must change. So must our society’s attitudes and understanding of the issue. Events on the

ground, including court cases and civil actions, nurtured Indigenous rights through institutions of governance gaining slow acceptance through civil society when public administrations failed to do so.

Forty years later, community specific self determination, self-government, Indigenous ways and knowledge are being fostered into Canadian institutions and society albeit less through government management and policy than through other mechanisms like the courts, civic protest and international scrutiny. Work in many communities continues to recognize intergenerational trauma caused by Canadian public policies and the need to relearn how to establish respectful and responsible relationships. Indigenous rights to self-determination and cultural recognition have evolved in a way that continues to challenge Canadian public administration to respond in anything more than a case-by-case, issue-by-issue manner. On the other hand, community funding to multilevel governance networks with Indigenous groups at the centre appear to be advancing indigenous self determination and cultural recognition within Canadian society more quickly and effectively through allyships[28] than did any previous attempts by government to establish respectful working relationships with Indigenous peoples.

Discussion of reconciliation

Certainly the relationship for governing and self determination has progressed among Indigenous and Canadian public administrations. The 1982 Constitution contained but a hint of

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[28] In 2018, Forbes magazine presented the idea of allyship as a means to promote inclusion in discriminatory workplaces, industries and society. Allyship is "a lifelong process of building relationships based on trust, consistency, and accountability with marginalized individuals and/or groups of people." Young indigenous leaders employ the concept in workplace training to navigate stigma. Other young Indigenous leaders become role models and influencers in industries such as fashion, media, and education to gain public acceptance and allyship where representation of Indigenous culture is low (Indspire).

reconciliation by acknowledging that within Canadian public administration, Indigenous peoples had existing rights that went beyond watching from the sidelines in Canadian federalism. For Indigenous leaders, the mission was, and always has been, clear: solidify the acknowledgement to their rights and act for self government, control of their lands and resources and self determination. Canada was an early leader in the international spotlight for how, and to what extent, reconciliation could be achieved among Indigenous peoples and settler nations. Forty years later, some community specific self governance, self determination, Indigenous ways and knowledge are being fostered in mutually beneficial way into Canadian institutions and society by those determined to keep trying.

Below is a discussion of the current state for some aspects of reconciliation and what this might mean going forward for Indigenous and Canadian public administrations, leaderships and people. Ultimately, the ability of all governments and people to work in partnerships will determine if the governors and the governed are adequately poised to address the persistent and complex challenges in society today.

Self governance

Today, some Indigenous communities in Canada exercise self-governance through a variety of models, although almost half of Indigenous people live in large urban areas and do not live in these traditional land-based communities that have treaties or agreements with the federal government. For First Nations, the current federal government has a Nation Rebuilding program that is long and laborious but that offers decision-making power over land, resources, health, social services, education, language, and business partnerships for use of their lands. Some First Nations communities have gone through the process of writing their own

Constitutions and legal system or setting up an educational system, away from the Indian Act, for negotiation and approval within the federal system. Implementation, administration and enforcement issues require years of capacity building. Other First Nations accept the existing colonial governance structure imposed by the Indian Act, perhaps afraid of losing support and services stemming from treaty rights.

Regional or national discussion tables to share experiences and knowledge are now set up by federal officials, perhaps as a silent admission that individual self-government arrangements with 600 First Nation communities within the Canadian federation is not feasible for the federal or Indigenous leaderships nor is this process going to advance reconciliation on a national scale when most Indigenous people do not live in these communities. First Nations communities have had more success in influencing public policy through human rights tribunal decisions that reinforce equity and anti-discrimination.

Métis peoples continue to advance their right to self governance through court decisions despite continuous opposition to their Indigenous identity and place in the federation among existing governments, Indigenous and non. Going forward, it is likely that Indigenous peoples in Canada will continue to use these alternate mechanisms to shape public policy and relations with the federal government.

Some Metis and Inuit communities are following a road to independent governance after signing land claim or court decision agreements. For example, the four territories of the Inuit Nunangat covering 40% of Canada's land mass in northern Canada spanning from the Atlantic to Pacific to Arctic oceans operate under a variety of governance mechanisms stemming from

land claims that were completed from 1975 to 2005. While newer agreements such as the Nunatsiavut agreement in Labrador include devolution of self government to their citizens and land, shared revenue from resources, and consultation on use of adjacent unceded lands, Nunavut (Canada's 3rd territory under the public governance structure) lags other territories with large Indigenous communities in securing control over public (unceded) land and resources under the federal government's northern strategy. This makes the future much riskier as much of Nunavut's land is open to changing federal government priorities.

For example, the Arctic Council's website—the leading intergovernmental forum promoting cooperation in the Arctic with a strong Indigenous wing that aims to strengthen unity among Inuit of the Arctic region and encourage long-term policies that safeguard the Arctic environment—says the Council is pausing all official meetings and its subsidiary bodies until further notice. Indigenous and environmental relationships are being traded for security and environmental opportunities as the Prime Minister and NATO's Secretary General travel north to visit military sites because of the region's strategic importance for Euro-Atlantic security.

Service delivery in Canada's north and remote regions remains problematic for all kinds of governments and peoples because of harsh climate and low population density. Inuit cultural recognition and the right to self-determination is also reflected in developments outside of formal self governance structures and territories. The Ottawa Inuit Children's Centre and the Winnipeg-based Manitoba Inuit Association are examples that service a growing Inuit population that live, study and work in urban centres. These non-land based organizations service urban populations through multi-level municipal and provincial structures. Modern

governance networking makes organization and communication fast, effective and close by in addition to traditional homeland governments. Going forward, populating or depopulating the North will depend very much on the federal government's Northern Strategy.

Self determination and responsible relationships

Forty years of dialogue with Indigenous peoples has done more than just establish them as experts in fighting bad public policy within the federation. Through the Royal Commission's first testimonies and scholarly study of Aboriginal peoples, the courageous testimony in the Truth and Reconciliation Commission that chronicled an alternate history, often dark and horrific, through the vivid testimony in the Missing and Murdered Indigenous Women and Girls Inquiry a portrait emerges of the continued harms that some groups face amid institutions that seem unable or unwilling to show the same concern for some groups as for others. Canadians heard and understood that racism in our institutions and society kills people, harms our children and leaves communities grieving and scared. The Indigenous calls for action on social justice issues has resonated with Canadians, gained their support, and turned the spotlight on a much needed parallel, but complementary, track of action.

The federal administration, however, seems stuck in TRC mentality that grew out of restitution efforts more than a decade ago. Indigenous scholars debated the message of the government-led, 8-year TRC Inquiry, favouring instead the messages of the Indigenous-led MMIWG Inquiry that called for action in institutions, among leaderships and among people. For the federal government, however, reconciliation today continues to be about repairing a trusting and respectful relationship among Indigenous peoples and Canadians.

Federal models for moving Indigenous communities forward from grief are not respectful. They include undefined short-term financial and resource supports combined with long-term building with Indigenous people at the centre of the plan. Programs that rely on long-term support cannot be assured under the next government: these are promises that cannot be kept and that move reconciliation efforts to an undefined future. The short-term support announcements rely very heavily on casting Indigenous people as eternal victims and the federal government as a supporter through their grief. As a strain of the literature suggested, some Indigenous communities, and particularly women, see the government's portrayal as victims in need of government support to heal as a suppression of their self determination to move on. They are survivors, ready for action, ready for justice.

The Prime Minister recently announced over $40 million in funding over six years at a live press conference, at James Smith Cree Nation in Saskatchewan, to help community members heal and move forward from a mass stabbing assault earlier in the year. While the federal speech focused on "Identity, that for far too many decades, generations and even centuries has been devalued, demarginalized and attempted to be assimilated," community members saw the funding announcement as a chance to heal and move on. One community member said, "This tragedy was a reminder that our past, our history, is causing all this pain, so we deal with the history, we deal with the past, we move beyond. We don't want to keep retraumatizing our children with the residential school issues, so if we can heal ourselves … we don't have to pass it on." Another saw hope in the financial assistance announcement: "when it does come, we're ready, we're mobile. We're in action. Everyone in Canada, maybe the world, is looking at us because we're a place of grief, we're a place of tragedy, we're a place of suffering…Maybe we

can be the model of recovery." Still others expressed a desire to keep building more and doing more to ensure communities are safe, healthy and vibrant. Some community members at James Smith Cree Nation welcomed the funding but said they, and many other First Nations, need wellness centres and further support in core issues of emergency responders, policing and secure housing. And that may prove to be the undoing of progress made so far in custom-made responses to larger societal issues. The current federal government has an open wallet for many issues, particularly reconciliation, and this Prime Minister is committed. We have to wonder how Indigenous communities will fare when a downsizing government and a less amicable prime minister come to power.

Cultural recognition and working in partnership

Understanding the past is not the only path forward to reconciliation of Indigenous peoples, Canadians, governments and public policies. The Royal Commission proclaimed that individuals are born into these (Indigenous) cultures, and they secure their personal identity through the group into which they are born. This is a questionable concept today. While elaboration of Indigenous and treaty rights in the Constitution has helped solidify group rights for territory-based traditional Indigenous communities, it is the individual rights in the Charter that may have more influence on identity and self determination within society today.

Many self-identified Indigenous people have flocked to urban centres where multi-level organizations and governance structures provide culturally sensitive services and spaces for them. Community funded or intersectional groups like Les Femmes Michif Otipemisiwak—The

national voice of Métis women in Canada[29] show the influence of Charter rights in ways the Royal Commission did not imagine. This group has another history of discrimination to tell from lived experience in both traditional Indigenous and Canadian societies; and is therefore, ultimately qualified to advocate in areas of gender violence, early learning and childcare, and leadership and employment skills training. Federal funding of community groups like this contribute to more trusted services in communities and institutions across Canada and may help with cultural hesitancy to access services.

As culturally sensitive spaces are opening up across municipalities, so too are opportunities for Indigenous scholarship and methodologies to occupy creative spaces in research, policy development and public management. Academic fora occur each year where scholars can share Indigenous knowledge and research based on their worldview and methods. From the literature, we have learned to stand with those scholars to lobby funding institutions to allow for expanded study frames and methods that will allow Indigenous knowledge to flourish.

The events in the case study illustrate how grass roots Indigenous civil action groups have gained traction over the last decade protesting their elected national and regional leaders' (both Canadian and Indigenous) tendency to sign agreements rather than to focus on environmental protection or core social and economic conditions their members face where they live. Most often these protest groups are headed by women or youth that quickly gain

[29] At metiswomen.org, Les Femmes Michif Otipemisiwak "see the strength in Métis women and 2SLGBTQQIA+ folks and we look to them as we look to the future. Les Femmes Michif Otipemisiwak stays connected to our grassroots by setting our priorities and direction in consultation with our community" which includes advocacy in areas of gender violence, early learning and childcare, and leadership and employment skills training.

public and international support such as the Idle No More group. The emergent civic action groups have the ability to attract allies, based on shared intersectional identities. As groups re-establish their identities and priorities, direct interaction with the federal government on Indigenous-Crown reconciliation may become less relevant. The mounting pressure from various groups to identify and express different identities against the envelope of societal norms in Canada augers well for future nurturing of Indigenous knowledge and identity in whatever shape it will appear. Going forward, Indigenous civic protest among new friends and supporters may grow to act as a legitimacy check on public policies and administrations, both Indigenous and non.

A disconnect may exist between generations of Indigenous leaders that signed complicated modern treaties with the federal government and younger generations stepping into community leadership roles. Self determination evolves for communities, but the constitutionally-protected agreements are difficult to change or to merge with other territorial agreements for new political leaders, making s.35 treaty rights more of a limitation than an identity right for some.

Discrepancies and disputes remain within Indigenous identities and Canadian public administration, and the confusion can only grow. Individual and group heritages have always been intertwined and just become more complex with each generation (even parents or grandparents may come from many heritages).[30] Individuals today may favour developing the

[30] James Gladstone was listed as Métis (Cree) on being appointed to the Canadian Senate in 1958. Born in the NWT, Gladstone had mixed Scottish-Cree-Santee Sioux-French Canadian heritage. Yet the Senator most identified with the Kainai Nation in the Blackfoot Confederacy of southern Alberta where he lived, married, raised a family

communities where they live, work and receive services across Canada to secure opportunity and well-being based on their emerging social circumstances and associations in favour of specific Indigenous heritage. This watering down of traditional ways and loss of youth to cities has occurred in rural communities across Canada for decades and will likely continue to affect land-based, remote Indigenous communities going forward.

Indigenous communities who have struggled to protect their heritage may feel differently about their territory. Federal recognition of regional Indigenous organizations as in the Agreement with the Métis Nation of Alberta (who determine who is in and who is out of their nations) is still being called out for not representing smaller communities. Indigenous organizations are not immune from politics and may redraw administrative and political divisions on the land with the consent of "their citizens," sometimes in contradiction to treaty delineations. Add to this generations of federal and provincial governments overlaying administrative regions for collections of communities and redrawing the map becomes a continuous facet of Canadian public administration that may increasingly contradict treaty or Indigenous heritage rights.

When the federal administration determines legitimacy of Indigenous community claims, it can inadvertently instigate conflict among nations resulting in Indigenous communities going to Court, to fight among themselves in adversarial manner. Reconciliation in this sense requires institutional dispute mechanisms will be enlightened to new challenges. Federal funding programs that set Indigenous people against each other risks an uber-reliance on courts to

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and gained Indian status in 1920. Some community members viewed him as an outsider because of his mixed heritage (Boileau, 2008).

make policy determinations where Indigenous and Canadian public administrations fail. So much reliance on the courts is not a good way forward, but it is a consistent reminder of past failures of the leaders' ability to agree to work in partnership in a constructive manner.

The current Government of Canada is committed like no other—in every throne speech and every budget—to inclusion of vulnerable people and to a just and equitable society as the means and the ends to living together. The prime minister, in a position that has seen increasing and concentrated power since the patriated Constitution, is personally committed to accelerate work on reconciliation.

In 2022, 40 years after the patriated Constitution, this is likely a high point in mutual respect and understanding for Indigenous self governance and cultural recognition in public affairs, with a government that is willing to use vast federal spending powers to seek reconciliation among Canadians and Indigenous peoples. Going forward, among the highs and lows that relations among Canadian and Indigenous public administrations will inevitably face, it is unlikely that Indigenous leadership will accept anything less. With an active citizenry and courts checking public policy in Canada and internationally, future governments may be restrained in attempting to withdraw from current commitments.

Conclusion

Sidelined no more, national and local news coverage attest to how Indigenous communities continue to assert self-determination and cultural recognition in informing public policy from within traditional governance structures and through alternate routes required to address increasingly complex issues in our communities. Indigenous leaders are at the

forefront, with increasing support and recognition from Canadians, of the quest to reshape social justice from Canadian institutions in areas of policing, health equity and the necessities of life for human dignity like social services, food and shelter.

While Canadian and Indigenous leaders and communities are engaging in many forms of active reciprocal governance or partnerships to fulfil responsibilities of public administration, there is much more knowledge to be shared as community and individual priorities change over time. In addition to self-governing communities, the expertise that Indigenous people are sharing within Canadian public administration is expanding as never before—for example, 12 elected members of the House of Commons, Justice Michelle O'Bonsawin in the Supreme Court, and Governor General, Mary Simon, who was a negotiator for the northern Quebec Inuit at the Constitutional conferences.

The growth in multi-level efforts is building capacity to address day-to-day inequities in places where we live. Federal frameworks and funding to community leaders, coalitions and governance nodes create community approaches to address needs and deliver on services. Effective Indigenous and Canadian public administration in the future will require more interdependence as national and global issues become more complex and interconnected. To this end, additional research on the younger new generation of Indigenous leaders' views and aspirations for the way forward would be interesting to see how closely they coincide with the visions that are planned for them. Will they see section 35 as a box of treasures? A second area of research past due—now that we have some co-creative spaces and frameworks, research and funding for addressing Indigenous inequalities in society and ongoing harms of Canadian

public policy—is whether these occasions to learn and better understand each other have repaired the relationship enough to see concrete actions in our institutions and communities across Canada.

If the goal of reconciliation is to bring the best forms of knowledge and people to confront the complex modern problems of Canadian and Indigenous public administrations, it appears that we are mustering strength. In the words of Chief Stewart Phillip of the Union of B.C. Indian Chiefs, “We’re done with the flirting…now is the time to do some serious work.”

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Canadian Legal Information Institute. CanLII.org
Combined Councils of Labrador. combinedcoucils.ca
Congress of Aboriginal Peoples, (Native Council of Canada). abo-peoples.org
Femmes Michif Otipemisiwak. metiswomen.org
Government of Canada. Canada.ca, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), Treaties and agreements, Indigenous Services Canada (ISC), Indigenous Community Support Fund
Government of Nunatsiavut. Nunatsiavut.com
Government of Nunavut. gov.nu.ca
Idle No More. idlenomore.org
Indigenous Foundation. theindigenousfoundation.org

Indspire. Indspire.ca
Inuit Circumpolar Council. Inuitcircumpolarcouncil.com
Inuit Tapiriit Kanatami. itk.ca
Inuuqatigiit Centre for Inuit Children, Youth and Families. inuuqatigiit.ca
James Smith Cree Nation. Jamessmithcreenation.com
Justice Canada. Charterpedia
Library and Archives Canada. Report of the Royal Commission on Aboriginal Peoples
Manitoba Métis Federation. mmf.mb.ca
Métis National Council. metisnation.ca
National Centre for Truth and Reconciliation. TRC Website
National Inquiry (MMIWG). mmiwg-ffada.ca
Native Women's Association of Canada. nwac.ca
Tsawwassen First Nation. tsawwassenfirstnation.com
UNESCO. Clayoquot Sound Biosphere Reserve
Union of British Columbia Indian Chiefs. ubcic.bc.ca
University of Toronto Press. thinkinggovernment.com
University of British Columbia. indigenousfoundations

Appendix I — Section 35 of the *Constitution Act, 1982*, and enactment timeframe

Constitutional Text	Enactment timeframe
PART II **Rights of the Aboriginal Peoples of Canada** Recognition of existing aboriginal and treaty rights	
35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. **Definition of aboriginal peoples of Canada** **(2)** In this Act, aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada.	**Included in original *Canada Act, 1982* (UK) after direct Indigenous lobby to UN and British Parliamentarians.** The British Parliament included a requirement (s.37, repealed) for a **First Ministers conference within 1 year** that included an agenda item respecting **constitutional matters that directly affect the aboriginal peoples** of Canada, …and the Prime Minister of Canada **shall invite representatives of those peoples to participate in the discussions on that item.** Held Mar 1983.
(3) For greater certainty, in subsection (1) treaty rights includes rights that now exist by way of land claims agreements or may be so acquired. (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.	**Subsections 35(3) and (4) were added by the *Constitution Amendment Proclamation, 1983,*** under a patriated constitution, using the general amending formula. **The Amendment called for two additional Constitutional conferences** that included matters related to Indigenous issues (s.37.1, repealed)
Commitment to participation in constitutional conference 35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the Constitution Act, 1867, to section 25 of this Act or to this Part, (a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and (b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.	**Section 35.1 was added by the *Constitution Amendment Proclamation, 1983.*** Indigenous representatives to be at the table for changes to Constitution Act that affect them.

Source: The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11. CanLII

Appendix II — Case study context and events

The sources for the data in the case study include Indigenous organization and government websites, throne speeches, federal agreements and treaties, payments, legislation, court cases and media coverage.[31] These sources are referenced within Appendix II and are not generally included in the References section of the paper.

1. Lead up to the 1982 Constitution

Context: Around the world, Ronald Reagan is elected as the President of the United States and in 1980 and Lady Diana Spencer and Charles the Prince of Wales hold a spectacular Royal Wedding in 1981. In Canada, Pierre-Elliott Trudeau's Liberals return to government with a majority in 1980 determined to unify the country and take control of developing a stable domestic oil supply. The prime rate hits a record high of 22.75%, Fort Chimo, Quebec, is renamed to Kuujjuaq and "O Canada" becomes the official national anthem.

Milestone events for Charter, Indigenous and Treaty rights	Significance
1969 federal white paper was termed “cultural annihilation” by Harold Cardinal, president of the Indian Association of Alberta. He retorted in metaphor, which was to become a common depiction of Indigenous—government of Canada relations: “It sometimes seems to Indians that Canada shows more interest in preserving its rare whooping cranes than Indians…Canada…does not ask its cranes to become Canada geese. It just wants to preserve them as whooping cranes. Indians hold no grudge against the…birds, but we would like to know how they managed their deal. Whooping cranes can remain whooping cranes but Indians are to become brown white men.” [32]	• The white paper sought to end the special legal status of Aboriginal people with the Canadian government under the separation of powers by assimilating Aboriginal peoples simply as citizens with the same rights, opportunities and responsibilities as other Canadians • Attempt to end the Indian Act and hand responsibility over to the provinces • Negative response to the federal white paper re-ignited Indigenous peoples’ determination to get a different deal with

[31] General history that events occurred and people existed are sourced through thecanadianencyclopedia.ca/en as facts not in dispute by their entry in this information source.

[32] Cardinal, H. (1969). *The unjust society : the tragedy of Canada’s Indians*. M.G. Hurtig.

	Canada.
Special Joint Committee on the Constitution of Canada (1970-1972) In an attempt to secure an agreement with the provinces to patriate the constitution with an entrenched bill of rights, the federal government appointed a joint committee of the Senate and House of Commons.	• Although the initiative was unsuccessful, for the first time, there was a consensus that Parliamentary supremacy could be challenged through a bill of rights • The National Indian Brotherhood declined to recommend any specific rights: they were concerned with first addressing Aboriginal peoples land claims.[33]
1973 Calder case.[34] SCC decision recognizes Aboriginal title based on historical occupation, although the claim was lost. Starting with a 1967 court case, Politician and Nisga'a chief Frank Calder reignited a claim to the BC government from 1887 for displacement from their land.	• Aboriginal title recognized in law. • Foundational to the 1975 Comprehensive Land Claims policy. • Led to first modern-day treaty in BC for the Nisga'a with self government and enabling legislation in 2000
	•
Canadian Human Rights Act. 1976-77, c. 33, s. 1 (and similar provincial statutes) completed a nation-wide effort to entrench human rights in law.[35] The legislation prohibits discrimination in services, employment, accommodation, advertising and signs. It established a Commission, Tribunal and an adjudication process as an alternative to the courts. The law focused on conciliation over litigation with jurisdiction over the public and private sector.	• independent commission that did not report to a cabinet minister • changed public policy and laws in the area of Indigenous child welfare and health.
1977 Labrador Inuit file land claim seeking rights to the "land and sea ice in Northern Labrador." For the next several decades, we worked hard to promote our culture, our health, our well-being, and our constitutional, democratic and human rights. We began the long road to establishing self-government.	• "The transitional government came into effect in December 2005, and we began preparations for the first ever Nunatsiavut elections, which took place the following fall. The first elected Nunatsiavut Assembly was sworn in on October 17, 2006." • https://nunatsiavut.com/our-history/
1979 Sandra Lovelace case. Denied status for herself and her children under the Indian Act because she married a non-Indian, Lovelace brought her case to the United Nations Human Rights Commission.[36]	• International pressure induces policy changes toward women & non-status Indians. • Gov't amendment of some discriminatory sections of the Indian Act, 1985, giving legal Indigenous status to over 100,000 people.

[33] Canada. (1970). Special Joint Committee on the Constitution of Canada, 88:6-35.
[34] *Calder v Attorney General of British Columbia* [1973] SCR 313.
[35] It was 2008 before the government allows complaints against the Indian Act policies *Your Guide to Understanding the Canadian Human Rights Act*, 2010 CanLIIDocs 397
[36] The Commission found Canada in violation of the International Covenant on Civil and Political Rights. Lovelace was later awarded the Order of Canada (1990), received the Governor General's Award in Commemoration of the Persons Case (1992) and was appointed to the Canadian Senate (2005). Lovelace-Nichols continued to lobby Indigenous women's rights from within Parliament through the Standing Senate Committee on Aboriginal Peoples for a study of missing and murdered Indigenous women. The Canadian Encyclopedia.

1980 Parti Québécois referendum on sovereignty-association with Canada. 60% vote no.	• Proposal for asymmetrical federalism rejected.
1980 Fed-prov conference on constitutional renewal. After the Quebec referendum, meeting to discuss constitutional change. Ended in deadlock.	• Indigenous leaders are not invited
1980 Statement By The Prime Minister on the intention to patriate the Constitution with a Charter of Rights. "…people would grow a tradition where English and French, Indian and Inuit, new Canadian and pioneer would unite despite their differences, so that justice and fair play and the practice of sharing would flourish."	• Unity of all peoples, equality under the law to all peoples • Multiculturalism • No mention of Indigenous rights
1980-81 Constitution Express. Activists led by George Manuel, then president of the Union of BC Indian Chiefs, chartered two trains from Vancouver to Ottawa (to be met by 2000 more First Nations people) over concerns that Aboriginal rights would be abolished in the proposed Canadian Constitution.	• delegations continued to the UN in New York and to London to directly lobby MPs to block the constitutional proposal that excluded them • Parliament recognizes Aboriginal rights in the Constitution before sending to Britain.
1981 in the Kitchen Accord, the federal government and all provinces except Quebec agree on how to patriate the Canadian Constitution.	• Back room nation-building among PM and premiers while the Quebec delegation was sleeping.
1981 National Energy Program. In the NEP, the federal government takes a more active role (and tax revenues) in the Canadian oil and gas sector.[37]	• Failed exercise in economic unity • Alienation of western provinces rises

2. Constitutional amendment attempts to RCAP (1983-1996)

Context: Around the world, bilateral relations faltered when the United States challenged Canada's sovereignty by sending the ice-breaker Polar Sea through the Northwest Passage, later recovering as the Mulroney-Reagan governments declared mutual support of the orbital Strategic Defense Initiatives (Star Wars) and Free Trade. Canada received a United Nations award for sheltering refugees, it intensified sanctions against South Africa for its apartheid policies, and the world's fair, Expo '86, opened in Vancouver. A few years later, tanks and militia met pro-democracy protesters in Tiananmen Square in China, and Canadian forces

[37] Two foreign oil crises in the 1970s encouraged the federal government to secure domestic oil resources for Canadians by 1990. Provincial premiers contested this federal interference in provincial powers for resources which led to the NEP demise starting in 1982.

joined a multi-national effort in the Gulf War.

In Canada, Jeanne Sauvé was appointed the first female Governor General of Canada. To make government more open and transparent, the *Access to Information Act* and the *Privacy Act* came into effect giving Canadians a legal method to get information held in government files about themselves. By 1990, Parliament passed the Goods and Service Tax as the government officially announced that Canada was in recession. The maple leaf became Canada's national arboreal emblem in 1996 as most provinces announced huge spending cuts to fight deficits and balance budgets.

Milestone events for Charter, Indigenous and Treaty rights	Influence
March 1983 First Minister Conference on Aboriginal Constitutional Matters resulted in minor constitutional amendments signed by Canada, 9 premiers (Québec excluded) and with the participation of 6 affected groups—Yukon Territory, Northwest Territories, Assembly of First Nations, Innuit Committee on National Issues, Native Council of Canada and the Métis National Council in the [1983 Constitutional Accord on Aboriginal Rights] PM Trudeau convened the required 1984 Conference where it was clear that the First Ministers had no intention of considering Indigenous self-government or sovereignty within the Canadian federation.	• Aboriginal Bill of Rights not completed, but agreement to meet again and be consulted on changes to Constitution that affect them • Only amendment package that has passed under the general amending formula • Métis stressed they were looking for partnership in Canada rather than any form of sovereignty. The Native Council of Canada said ,"Government leaders had better realize that we are a proud and independent people who come to this Conference as equals."
1984 General Election. Conservative PM Brian Mulroney wins a majority election in one of the largest political landslides in Canadian history. PM Mulroney convened the 1985 and 1987 Aboriginal Constitutional Conferences at which he declared that Constitutional amendment on behalf of Canada and Aboriginal peoples has failed to generate the support needed. This constitutional process is at an end.	• Tactic of First Ministers drafting agreements behind closed doors called out • Constitutional amendment under federalism authorities (central and 10 provincial first ministers) not an effective route to self determination and cultural recognition for Indigenous peoples • Indigenous leaders still hopeful and determined to pursue other avenues such as in the courts, and in the streets.
1984 Abella Royal Commission on Equality in Employment studied employment practices in	• Coined the term employment "equity" further delineating the anti-discrimination, Equality

federal crown corporations "to inquire into the most efficient, effective, and equitable means of promoting employment opportunities for and eliminating systemic discrimination against four designated groups: women, native people, disabled persons, and visible minorities." [38] The Abella Commission determined that some groups need additional resources to overcome systemic discrimination to implement equality for some groups. Equitable solutions are needed to overcome systemic discrimination.	rights in s. 15 of the Charter. • The idea that Indigenous peoples need "equitable" solutions to systemic (Canadian public policy, institutions and society) and historic discrimination remains the dominant theme in Indigenous and Canadian governance. • Using this concept, the Canadian Human Rights Commission would later rule against the federal government and change public policy for Indigenous children's health services and for residential school survivors.
1984 Guerin Case. The Musqueam Indian Band surrendered valuable reserve lands in Vancouver to the Crown (Indian Affairs Branch) for lease to a golf club. The lease terms were much less favourable than those approved by the Band.[39]	• Crown has a legal duty to Indigenous people, (not just a moral one) to consult openly and honestly before making arrangements for the use of their land. • Aboriginal title is inalienable, pre-dates treaty rights and the Royal Proclamation of 1763, and is a *sui generis* (Latin for "unique") right. • This Aboriginal title concept was accepted internationally and referenced in the Mabo Case in Australia
1985-1986 International influence. The patriation of the Canadian constitution set an example for similar actions by Australia and New Zealand.	• Recognition of Indigenous rights and title becomes an issue for CANZUS (Canada, Australia, New Zealand and the US) settler countries
1990 Defeat of the Meech Lake Accord, an attempt by PM Mulroney to broker a constitutional amendment package that would gain Quebec's agreement to the Constitution. The decentralization of some powers and recognition of Quebec as a distinct society were penned by First Ministers and sent to legislatures for ratification as required by the patriated Constitutional amending process.	• Elijah Harper raised an eagle feather to vote against unanimous approval in the Manitoba legislature representing Indigenous peoples' refusal to recognize Québec as Canada's principal, if not only, distinct society • Support for separatism within Quebec soars • PM calls for a Royal Commission on Aboriginal Peoples to sort out Crown-Indigenous relations.
1990 Mohawks of Kanesatake/Oka Crisis. A proposed expansion of a municipal golf course and the development of townhouses on disputed land (that included a Mohawk burial ground) in Kanesatake led to a 2 ½ month long blockade and standoff between Mohawk protesters, Quebec police, the RCMP and the Canadian Army.	• Armed conflict where one police officer died, and 14-year-old Waneek Horn-Miller was stabbed in the chest with a bayonet upon surrendering from behind the barriers. • Media coverage across the country and internationally led to both support and

[38] *Equality in Employment: A Royal Commission Report*, (General summary), by Judge Rosalie Silberman Abella, Commissioner, 1984.

[39] *Guerin v. The Queen* [1984] 2 SCR 335.

The protest grew as Mohawk members of the nearby Kahnawake reserve blockaded the Mercier Bridge in Montreal and communities across the country held protests. When Quebec Premier Robert Bourassa requested the help of the Canadian Armed Forces, 4,000 troops were deployed. After the standoff, the federal government agreed to purchase the disputed land to prevent further development.	hostility towards Indigenous people • Illustrated potential for future conflict when land claims and Indigenous rights are not resolved. • Inspired disrupting civic action • faltering relationship among levels of government and Mohawk activists finally convinced the federal Cabinet to appoint the Royal Commission on Aboriginal Peoples.
1991 Ovide Mercredi—a Manitoba lawyer who had been instrumental in leading efforts by the Assembly of Manitoba Chiefs to block the Meech Lake Accord—is elected leader of the Assembly of First Nations.	• Mercredi's popularity with mainstream politicians earned him the nickname of Canada's 11'th premier. • But his leadership style of not consulting Chiefs was criticized and he was replaced in 1997 by Phil Fontaine
The Charlottetown Accord 1992 was termed the "everything for everyone" effort that garnered little support among competing factions. A national referendum saw Canadians voting 'No' to the Charlottetown Agreement, a second attempt to revise the Canadian Constitution after the failure of the Meech Lake Accord.	• Population over-saturated with unsuccessful constitutional reform initiatives. • National referendum seen to be a poor mechanism to overcome democratic deficit, except in Quebec
1992 Cod Moratorium. The federal government banned cod fishing along Canada's east coast as a conservation measure to restore depleted stocks. Initially for two years, the ban was extended, and federal unemployment payments/retraining were offered to the nearly 40,000 fishers who lost their jobs, and their way of life.	• Newfoundland and Labrador's population dropped by 10 per cent in the first decade of the ban as people left the province for lack of work. • Bitterness and hostility at federal intervention in east coast fisheries becomes an enduring issue for Indigenous and non-indigenous fishers.
1992 Phase One of the James Bay Project, one of the world's biggest hydro-electric projects, was completed. The large scale development project is cited in encyclopedias as one of the worst human-made environmental disasters in Canadian history.	• Phase Two (Great Whale) was halted when environmentalists and Indigenous leaders convinced New York State and Vermont to cancel their contracts and to purchase electricity from Hydro-Quebec instead.
1993 The Nunavut Settlement Agreement with the Inuit set into motion the plans to divide the Northwest Territories to form a third territory, Nunavut.	• Example used in RCAP of public government that could become a territory in the federation, with representation in Parliament
1993 Clayoquot protests, the War in the Woods protested the logging of the disputed rainforest land in western Vancouver Island during a period of BC government contracting with the logging industry. A series of protests from 1980 culminating in 1993. Organized protest groups	• 859 people were arrested, tried and convicted in BC Supreme Court -- the largest act of civil disobedience in Canadian history. • Indigenous advocacy over disputed land use gained international mass media attention and public support for nonviolent protests and the

included local residents of the Sound, the Tla-o-qui-aht First Nation and Ahousaht First Nation, and environmentalist groups such as Greenpeace and Friends of Clayoquot Sound. In 1993, the BC government and the Nuu-chah-nulth signed an agreement for local aboriginal review of logging plans in the sound while a land claim was ongoing.	environmental movement • A scientific panel, set up to study alternatives to clearcut logging and to establish "the best forest practices in the world,…"[40] • In 2000, the entire sound, including part of Pacific Rim National Park Reserve, was designated a UNESCO biosphere reserve, adding to the global profile of the wilderness area.[41]
1994-2003 international Mary Simon served as ambassador for Circumpolar Affairs, becoming the first Inuk to hold an ambassadorial position in the Canadian government. Concurrently, she served as Canada's ambassador of Canada to Denmark from 1999 to 2001.	• Negotiated the creation of the Arctic Council representing eight Arctic countries and their Indigenous peoples.
1995 Quebec Referendum on sovereignty: very close vote scared federal politicians. The Québec Cree and Inuit peoples held their own referendum and rejected separation from Canada.	• Bloc Québecois federal party represents Quebec interests in Parliament. Provincial governments forge ahead external to federal institutions in cultural areas and under constitutional duality provisions.
1996 Royal Commission on Aboriginal Peoples took five years at a cost of $58 million. The report's 3,537-pages were boiled down to one headline, "To spend or not to spend" as the report indicated the federal government would need to spend $30 billion over 15 years to "eradicate the social ills facing most Canadian aboriginals and pave the way to a self-reliant future."[42] The report made a shopping list of recommendations that would require constitutional change, including a new Royal Proclamation and entrenching self-government in the Constitution.	• Successive governments did not act on most of the recommendations of RCAP. • Some Indigenous communities met the report with scepticism suggesting that specific, legislated, self-government agreements with Ottawa might erode treaty rights, by ending the Crown's responsibility for services that the treaties provide. • Others suggested the report says all the right things, but the tome could easily be shelved under the excuse of fiscal constraints. • The report was based on more than 350 studies and community consultation. It remains the largest source of written information on historical and contemporary relations among Indigenous and non-Indigenous peoples in Canada (from a colonial perspective).

3. **The void** (1997-2007)

Context: In the lead up to the new millennium, computer analysts worked furiously to ensure

[40] Canadian Encyclopedia
[41] UNESCO
[42] Maclean's. (Dec. 2, 1996). Natives Respond to Royal Commission.

the lights would not go out and global connectors like Wikipedia launched in January 2001 followed by the first iPhone and Facebook (2004). Around the world, in 2001, the 9/11 suicide bomber attacks on US targets ushered in the era of the Global War on Terrorism while Canada and the United States had salmon fishing disputes in the Pacific Northwest. Environmental issues increase in importance through the signing of the Kyoto Protocol on climate change by Canada's Liberal government in 2002 through to its nullification by PM Harper's Conservative government which proposed a made-in-Canada solution to climate change in 2007.

In Canada, Beverley McLachlin is sworn in as the 17th Chief Justice of Canada as the first woman in that role. and a murder in Victoria, BC in 1997 drew public attention to the growing violence against teenaged girls. Indigenous loggers protested government restrictions in the forests of New Brunswick and Indigenous communities in the Atlantic provinces continued to fish despite government warnings. Through several elections, Canada saw short-term or minority governments from 2003-2006, during which, Canada became the fourth country in the world and the first country in the Americas to legalize same-sex marriage nationwide.

Milestone events for Charter, Indigenous and Treaty rights	**Influence**
1997 Indigenous oral history. The Supreme Court of Canada ruled in the Delgamuukw Case[43] that Native oral history was legitimate grounds for making land claims in British Columbia. In a case soon after, McLachlin, C.J. cemented the idea: In determining the usefulness and reliability of oral histories, judges must resist facile assumptions based on Eurocentric traditions of gathering and passing on historical facts and traditions. Oral histories reflect the distinctive perspectives and cultures of the communities from which they	• The use of oral evidence, passed down from one generation to another was interpreted as hearsay by the trial judge. Delgamuukw established that traditional Indigenous forms of knowledge, like oral histories, could be weighed in with documentary evidence. • Legal status to oral history after many years of scholarship in various fields that contends this may be the “true” history of culture and society.

[43] Delgamuukw v. British Columbia, 1997 CanLII 302 (SCC), [1997] 3 SCR 1010

originate and should not be discounted simply because they do not conform to the expectations of the non-Aboriginal perspective.[44]	
1999 Nunavut. The new territory of Nunavut was created on April 1, changing the map of Canada for the first time in 20 years. The population is 80% Inuit.	• 3rd Canadian Territory created within public government and with representation in the House of Commons. • Nunavut government is a consensus government, without political parties.
2007 Indian Residential Schools Settlement Agreement begins for "eligible claimants." Residential schools were set up to meet treaty obligations, but were used by public administrators to a means of preventing, in the public interest, a race of wild men.[45] Métis Survivors have shared that their feelings of being outsiders in both the TRC and compensation processes are similar to how they felt like outsiders in the residential schools.	• Federal policy continues to exclude some Indigenous people despite Constitutional inclusion. • Exposes problem with Crown relations to just some groups, instead of with all those who were harmed by Canadian public policy • TRC commissioned
1998 Federal government statement of Reconciliation. RCAP unearthed a community of residential school survivors with a growing willingness to speak publicly and to press for reparation. Many churches and other organizations issued specific apologies between 1993 and 1998, not just for their role, but the general presumption of cultural superiority as well as the often systematic abuse inflicted under their watch. In 1998, the Liberal government made a Statement of Reconciliation and established the Aboriginal Healing Foundation.	• The federal government's statement was not an apology that would lead to reconciliation. It expressed, "profound regret for errors of the past and a commitment to learn from those errors." • The idea of systemic inequities or responsibility for harms inflicted is not yet apparent in Canadian governments.
1999 Justice Louise Arbour appointed to Supreme Court. Justice Arbour was appointed in 1996 as Chief Prosecutor for International Criminal Tribunals (Rwanda and the former Yugoslavia). Arbour served as Justice at the Supreme Court of Canada for five years. After leaving the SCC, Arbour became the United Nations High Commissioner of Human Rights.	• One of many prominent people who brought their international human rights experiences to bear on Indigenous rights, and vice versa.
2005- Kelowna Accord "First Ministers and National Aboriginal Leaders Strengthening Relationships and Closing the Gap" Under PM Paul Martin was a historic consensus among provinces (except Quebec), territories, and five national Indigenous organizations—the Assembly of First	• Concluded under PM Paul Martin's minority government 2005, policy document that did not make it to authorization through financing or legislation before the government lost power to a Conservative

[44] Williams, B. (2015). The Anniversary of Delgamuukw v The Queen: Two Legacies
[45] Métis Experiences at Residential School

Nations (AFN), the Inuit Tapiriit Kanatami (ITK), the Métis National Council (MNC), the Congress of Aboriginal Peoples (CAP), and the Native Women's Association of Canada (NWAC). on a multi-level approach to reduce inequities in the standard of living and services in health, education, housing and economic opportunity. (Quebec Indigenous peoples did not attend)	government in 2006. • Framework for modern agreements and treaties, and movement from government control of services to self-governance.
Haida Nation (2004)[46] and Mikisew Cree (2005) on the duty to consult. These cases were initiated by Indigenous nations with the goal of forcing governments to respect their rights and enter into negotiations to settle their claims. The Council of the Haida Nation and Guujaaw, on their own behalf of all members of the Haida Nation won a Supreme Court ruling that, "Consultation and accommodation before final claims resolution preserve the Aboriginal interest and are an essential corollary to the honourable process of reconciliation that s. 35 of the Constitution Act, 1982, demands."	• Crown has duty to consult and accommodate Aboriginal peoples prior to making decisions that might adversely affect their as yet unproven Aboriginal rights and title claims • Haida Nation (2004) The honour of the Crown cannot be delegated, and the legal responsibility for consultation and accommodation rests with the Crown. • Mikisew Cree (2005) Consistent with other recent Supreme Court of Canada decisions which have emphasized the need for ongoing reconciliation of aboriginal interests into government decision-making… [47]
2006 Senate Committee Report,[48] *Negotiation or confrontation: It's Canada's choice,* on the Specific Claims Process set up to resolve historic grievances by First Nations arising out of alleged wrongdoing by federal officials . About 900 of the approximately 1,300 claims submitted since 1970 are in the system 25 years later at one stage or another.	• Recommendations for Canada to demonstrate that it will live up to its legal responsibilities. Oka, Ipperwash, Caledonia blockades[49] cited as alternative.

[46] *Haida Nation v. British Columbia* (Minister of Forests) [2004] SCC 73.
[47] Millward, D. (2005). The Mikisew Cree Decision: Balancing Government's Power to Manage Lands and Resources with Consultation Obligations under Historic Treaties. Lawson Lundell LLP
[48] Senate of Canada, Standing Senate Committee on Aboriginal Peoples. (2006). *Negotiation or confrontation: It's Canada's choice.* Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process, 39th Parliament, 1st Session.
[49] The Toronto Star (Feb 14, 2020) outlines blockade activism over land use and director Alanis Obomsawin (2002) chronicles the Burnt Church conflict between the Canadian Government and the Mi'kmaq people over traditional fishing rights.

June 29, 2007 Aboriginal Day of Action was organized by First Nations leaders to protest government inaction on land claims issues, the quality of Indigenous health, poverty and social service programs. Blockades and sites were set up across the country, blocking transportation routes like the 401 in Ontario and the Mercier Bridge in Quebec. The protest day events were closely coordinated with police.	• Now Indigenous Day of Action, the Day became an annual event before falling victim to the Cancel Canada Day cultural protest. • Indigenous response to federal abandonment of the Kelowna Accord • Inuit communities did not participate saying they preferred to use the political process rather than fight on the ground.[50] • Further evidence of how First Nations' history and concerns diverge from those of Inuit and Métis communities
2007 The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly of the United Nations. Canada, Australia, New Zealand and the U.S. are the only countries that vote against the resolution, later reversing positions. The Declaration is the product of almost 25 years of deliberation by UN member states and Indigenous groups, with extensive Canadian participation. James (Sa'ke'j) Youngblood Henderson, a constitutional advisor to the AFN during patriation of the Constitution said about the long struggle to draft UNDRIP, "[Member states] worried about the implications of Indigenous rights, refusing to acknowledge the privileges they had appropriated for themselves."[51]	• Canadian reaction was troubled with the idea that UNDRIP would conflict with existing Indigenous and treaty rights in the Constitution. • In 2010, Governor General says the Canadian government "will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws." Later that year, Canada announced it would officially support UNDRIP • Declaration is a non-legally binding document that does change Canadian law • In 2021, the federal government passed the implementation Act— the *United Nations Declaration on the Rights of Indigenous Peoples Act*

4. **TRC times, the apology and UNDRIP** (2008-2015)

Context: The World was in a global financial crisis at the beginning of the TRC period, and the opioid crisis worsened with the introduction of synthetic street drugs like fentanyl. Until 2011, Canadian soldiers were deployed in the Afghanistan War as part of NATO-commanded International Security Assistance Force. Col. Chris Hadfield became a household name in Canada when he became the first Canadian commander of the International Space Station.

[50] CBC News. (June 29, 2007). Inuit opt out of aboriginal day of action

[51] James Sa'ke'j Youngblood Henderson. (2008). *Indigenous Diplomacy and the Rights of Peoples: Achieving U.N. Recognition* (p.70). Purich Publishing,

The H1N1 flu outbreak struck Canada in 2009. The federal government announced the largest purchase in Canadian military history, totalling CA$9 billion for the acquisition of 65 F-35 stealth combat aircraft. The government released its Action Plan for Canada's Cyber Security Strategy (the Strategy) to improve governance as Vancouver hosted the winter Olympics. Prime Minister Harper's conservative party won a majority in the 2011 election and immediately implemented massive cuts to the public service. Four years later, On October 19, 2015, the Conservative government were defeated by a newly resurgent Liberal party under the leadership of Justin Trudeau which had been reduced to third-party status in the 2011 elections.

Milestone events for Charter, Indigenous and Treaty rights	Influence
2008 Prime Minister's apology. Bowing to a unanimous motion in the House of Commons that the government apologize to survivors and the families of residential schools, the Prime Minister delivered the apology on behalf of the government and Canadians. "…The Government of Canada sincerely apologizes and asks the forgiveness of the aboriginal peoples of this country for failing them so profoundly..." He notes that implementation of the Indian Residential Schools Settlement Agreement has begun, and that the cornerstone of that agreement, the TRC, presents "…a unique opportunity to educate all Canadians on the Indian residential schools' system. It will be a positive step in forging a new relationship between Aboriginal peoples and other Canadians…"	• Denounced by some as wanting to apologize, be forgiven, and move on. • The government set up the Truth and Reconciliation Commission. Canadians will get an education but the benefit to Indigenous people is undefined. • The apology text ended with the expected outcome of the TRC, sounding very much like the government's throne speech: "a relationship based on the knowledge of our shared history, a respect for each other and a desire to move forward with a renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us."
2008-2011 Specific Claims Tribunal is established as an independent adjudicative body as part of the federal government's *Justice at Last* policy and jointly with the Assembly of First Nations. The Tribunal is aimed at accelerating the resolution of specific claims, to provide justice for First Nations claimants and certainty for government, industry and all Canadians. . Became operational in 2011. The tribunal sets its own Rules of Practice and	• Tribunal's decisions are made independently from the government. • Protocols for entering oral history evidence and expert evidence.

Procedure, which are similar to civil court rules.	
2008 *Kelowna Accord Implementation Act* S.C. 2008, c. 23 required a annual reporting of government progress.	• Like many Acts that require reporting, the government may just report that no progress has been made or that funds are prioritized elsewhere.
2012 Bill C-45 (The Jobs and Growth Act), introduced by Prime Minister Harper's conservative government as an omnibus bill to implement certain provisions of the budget. It updated 60 Acts, including the Indian Act, Navigable Waters Protection Act and Environmental Assessment Act to allow for economic development based on the government's 2012 economic action plan and its pro-growth agenda.[52] Environmental and Indigenous activists argued that the law would make it easier for governments and businesses to push through projects without strict environmental assessment or respect for the rights and authority of Indigenous communities.	• Shows priorities of government and where funding will go • Reignited environmental and Indigenous activism
2012 #Idle No More. Idle No More started in November 2012, among Treaty People in Manitoba, Saskatchewan, and Alberta protesting the Canadian government's dismantling of environmental protection laws, endangering First Nations who live on the land. Unhappy with the AFN leadership that was too willing to sign legislation and didn't represent the concerns of First Nations people—like housing and poverty—the grass roots group moved into disrupting activities that grew to the current #Cancel Canada Day activities. 2013 demands:… 3) fully implement the UN Declaration on the Rights of Indigenous Peoples, including the right of Indigenous peoples to reject development on their territory; .. 6) hold a national inquiry into missing and murdered Indigenous women.	• Response to lack of government policy, and inaction on RCAP proposals • #IdleNoMore spread internationally as a grassroots, volunteer-led movement, noted for its # and social media organization and coordination. • Modern tools and reach: Born out of face-to-face organizing but fluent in social media and new technologies • Since 2012 over 400,000 people and hundreds of local Indigenous-led groups self-organized around the world under the hashtag #IdleNoMore. https://idlenomore.ca/ • Calls on all people to Join In A Peaceful Revolution to honour Indigenous sovereignty & protect the land & water & sky.

[52] Government of Canada. (2012). *Harper Government Continues Pro-Growth Agenda With the Jobs and Growth Act, 2012* (press release, Ottawa, October 18, 2012-126).

2012-13 Chief Spence's hunger strike.[53] In Dec 2012, Chief Theresa Spence began her 30 day hunger strike in a teepee on an island behind Parliament hill to protest her people's living conditions. Picked up by the Idle No More group of 4 Indigenous women from Saskatchewan protesting the federal government's omnibus bill, Chief Spence's protest garnered much media attention. PM Harper said the top priority is to ensure that residents have adequate shelter for winter. But federal officials also want to know how $90 million directed to the community since 2006 has been spent. The reserve was put under a third party manager and an audit was initiated.[54]	• PM Harper meets with Indigenous leaders but wants "accountable" first Nations government.[55] • Spence draws attention to housing conditions on reserves and that many northern First Nations communities live in poverty • Audit results in federal government asking Attawapiskat government to pay back $1.8 million in missing funds in 2014
2015 TRC reports. Born out of a RCAP proposal 20 years earlier, and required under the residential schools' settlement agreement, the TRC was a transitional justice mechanism (often used following mass human rights violations in an effort to promote healing and reconciliation and to seek justice for Survivors) produced 4 reports 94 calls to action to redress the legacy of residential schools and advance the process of Canadian reconciliation.	• Calls for the next investigation on missing and murdered Indigenous women and girls • Each call for action received funding from the new government in 2015 and the MMIWG Inquiry was initiated in 2016. • Canadian legislation was passed making Sept 30 the National Day for Truth and Reconciliation

5. Jordan's Principle, MMIWG Inquiry and current times (2016-2022)

Context: Around the world, an explosion of activism in response to climate change made Greta Thunberg a household name. Donald Trump becomes president, terrorists attack Paris, and Brexit is never ending. In response to populist governors, right wing governments and police incidents, the protest movements like Black & Indigenous Lives Matter turned our attention from merely personal discrimination to racism in government institutions and in society.

In Canada, gender spectrum identity is celebrated while Quebec passes Bill 21—a law that bars

[53] Maclean's (2013). Chief Spence's hunger strike.
[54] CBC News. (2011, Dec 02). Harper wants 'accountable' First Nations self-government

public servants from wearing religious symbols while at work. Canada gets a new Governor General who is no stranger to Indigenous rights or to reconciliation while the United Nations expresses concern that Canada is not doing enough for Indigenous peoples' status.

Milestone events for Charter, Indigenous and Treaty rights	Influence
2016 Jordan's Principle.[56] Is a legal rule for the government to follow in providing substantive equality to First Nations children. The child-first principle to ensure First Nations children could access the services they need without denial, delay, or disruption was interpreted narrowly in 2007 by the federal government so that few children qualified. The Canadian Human Rights Tribunal ruled that Canada's definition of Jordan's Principle was discriminatory and ordered the federal government to take immediate measures to implement the full and proper scope of Jordan's principle.	• The Tribunal has issued over 20 non-compliance orders to the federal government since 2016. • Between 2016 and 2022, over 2 million products, services, and supports for First Nations kids were approved through Jordan's Principle • The federal government initiated a similar program for Inuit children under the Inuit Child First Initiative.
2018 Jody Wilson-Raybould, Minister of Justice and Attorney General for Canada releases Litigation Year In Review 2018, with a focus on commitments in the Minister's mandate letter from the Prime Minister. These include promoting the Charter of Rights and Freedoms, and pursuing the Government's commitment to a transformed nation-to-nation relationship with Indigenous peoples within the government's approach to litigation…the Review focuses on…reconciliation with Indigenous peoples and defending federalism.	• Respected Indigenous lawyer and politician, Jody Wilson-Raybould is a high profile example among a trend of women MPs who exit Cabinet and partisan politics to pursue their work outside of government.
2019-22 Federal Antiracism Strategy and Action Plan Canada's Anti-Racism Strategy 2019–2022 is a $45 million investment to help address barriers to employment, justice and social participation among Indigenous Peoples, racialized communities and religious minorities. $30 million is for community-based projects.	• Rolled together with: Community Capacity Building – Community Support, Multiculturalism, and Anti-Racism Initiatives Program • Additional funding for community capacity building & promoting dialogue
2018 Whole of Government approach is a redirection of federal relationships with Indigenous communities with the creation of two departments:	• Services delivery in the areas of transportation, health, fisheries and oceans is delivered centrally through one

[56] Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba, died in hospital at age five never having spent a day in a family home. He did not get to go home because federal and provincial governments disputed who should pay for his homecare. First Nations Child & Family Caring Society

Indigenous Services Canada (ISC) works collaboratively with partners to improve access to services for First Nations, Inuit and Métis. The vision is to support and empower Indigenous peoples to independently deliver services and address the socio-economic conditions in their communities. Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) continues to renew the nation-to-nation, Inuit-Crown, government-to-government relationship between Canada and First Nations, Inuit and Métis; modernize Government of Canada structures to enable Indigenous peoples to build capacity and support their vision of self-determination and lead the Government of Canada's work in the North. CIRNAC tracks results on delivering on TRC recommendations.	department, with a consistent policy to devolve these services to Indigenous self-governing communities. • ISC mainly provides services to First Nations and Inuit communities with whom the GoC has a previous agreement or relationship. "Improved clarity and a shared understanding of the role of various levels of government is needed, including for Métis, off-reserve First Nations and urban Inuit populations." i.e., the federal government is not responsible. • Comprehensive land claim policy winds down as modern agreements and treaties replace the laborious process. • Funding and self-governance agreements are CIRNAC's main preoccupation
2019 Indigenous child welfare Act (Bill C-92).[57] To reduce the number of children in foster care or non-indigenous institutions and households, the Act contains measures that courts and social services must consider in making decisions for an Indigenous child's welfare: While the best interests of the child remains a primary consideration in the child's physical, emotional and psychological safety, security and well-being, primary consideration should then be attached to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture.	• Difficult to implement. Many records do not identify children as Indigenous • Administratively burdensome. The implementation strategy for this law was released by the federal government in 2022. • Has led to better data collection programs in health and social services. • The Act provides a framework within which Indigenous groups, communities or peoples may engage with other parties such as the Government of Canada and provinces and territories around the exercise of jurisdiction • Funding is available to these groups.
2019 MMIWG Final Report. Begun in 2016, the Inquiry issued an interim report, Our Women and Girls are Sacred, in 2017. With a public education mission, the goal of the Inquiry is to transform the national conversation about Indigenous women, girls, and 2SLGBTQQIA people. The final report volumes deliver 231 individual Calls for Justice directed at governments, institutions, social service providers, industries and all Canadians.	• Research is rooted in Indigenous methodology. It is governed by traditional laws and ethics that affirm the resistance and resurgence of Indigenous women and girls, including 2SLGBTQQIA people. "Indigenous women's experiences will guide our truth every step of the way." • Public education message: To build a strong foundation for healing, justice, and reconciliation, governments and institutions must change. So must our society's attitudes and understanding of the issue.

[57] *An Act respecting First Nations, Inuit and Métis children, youth and families* (S.C. 2019, c. 24)

	• Switch to calls for social justice for those with diminished status in society due to colonial and patriarchal public policy, which leaves them open to violence. (mmiwg-ffada.ca)
2019 Indigenous Marketing Solutions and Orange Shirt Day. Orange Shirt Day is the legacy of the St. Joseph Mission (SJM) Residential School (1891-1981) Commemoration Project begun Williams Lake, BC, in 2013. Phyllis (Jack) Webstad, a former student, shared her story of how the new orange shirt her grandmother bought her was taken away from her on her first day of residential school. Phyllis's story resonated and opened discussions of the harm done to generations of children. On September 30th, we wear orange shirts in honour of the healing journey of Residential School survivors and their families, and to affirm our commitment to reconciliation and anti-racism. Posted to YouTube in 2019. Also Take a stand against bullying with Pink Shirts and Hoodies. Artist statement "When we choose to use our strength to protect rather than to harm others we make the world a better place for at least one person." https://www.indigenousmarketing.ca/pinkshirtday	• Movement into private sector to promote Indigenous goals and gain public support. "Committed to reconciliation." https://www.indigenousmarketing.ca/ • Under the banner "Every Child Matters" the symbol on the shirts by local Indigenous artists is a symbol of hope and reconciliation. • Indigenous-owned marketing company is a socially responsible marketing company with revenues contributing to Indigenous-led efforts to recover, reclaim, and revitalize Indigenous culture and positively impact Indigenous peoples. • Sept 30 becomes national holiday for National Truth and Reconciliation Day in 2021.
2019 Wet'suwet'en Protest and Blockades against continuing pipeline development in BC that violates the Wet'suwet'en and Gitxsan nations aboriginal title to unceded lands. Following BC court decisions in favour of development companies and the federal government's consultation process, RCMP attempted to clear the protesters which "resulted in a massive outpouring of support for Wet'suwet'en with solidarity actions happening in over 70 cities," and blockages of the Toronto-Montreal via rail lines. "In the following months, there was a promise of proper consultation but no resolution was reached." [58]	• Indian Act federal consultations called out for excluding hereditary chiefs. • Hot potato that no governments or courts want to sort out. • Indigenous view of political youth: police, government, and corporate actions are "glorification of warrior identities to the detriment of traditional governance models". Indigenous Foundation
2020-21 Indigenous Community Support Fund—a $1.6 billion series of distinctions-based funding initiatives for Indigenous community-based response to the spread of COVID-19 as Canada recognizes that First Nations, Inuit and Métis are among the most at-	• Direct federal to community funding in healthcare, in addition to generous provincial and territorial government funding. • Wide definition of Indigenous people

[58] Shah, S. (2022). Wet'suwet'en Explained. Indigenous Foundation.

risk during the COVID crisis The funds can be used for public health preparedness, mental health assistance and emergency response services, support for Elders and vulnerable community members, measures to address food insecurity, and educational and other support for children. Close to $500 million was allocated according to needs in Indigenous communities and among organizations serving Indigenous peoples, including those living in urban centres or off reserve. Another $760 million was allocated to ICSF in Budget 21 and $190 million was committed in Budget 2022.[59]	funded: First Nations communities and organizations, including self-governing and modern treaty nations; Inuit communities and organizations in Inuit Nunangat; Métis Nation communities and organizations; urban and off-reserve Indigenous communities and organizations • "distinctions-based approach," meaning that distinct responses are needed for the specific needs of different First Nations, Métis, and Inuit communities and people. • Federal Government defends this approach as a way to improve the public health response to provide Indigenous communities with the flexibility they need to address the specific needs identified by communities and their members.[4] Distinctions-based funding was intended to correct Canada's previous policies, with their "one size fits all" approach to Indigenous funding and decision-making.
2021 Cancel Canada Day. use the hashtags: #CancelCanadaDay #NoPrideInGenocide #JusticeForIndigenous. We will gather to honour all of the lives lost to the Canadian State – Indigenous lives, Black Lives, Migrant lives, Women and Trans and 2Spirit lives – all of the relatives that we have lost. We will use our voices for MMIWG2S, Child Welfare, Birth Alerts, Forced Sterilization, Police/RCMP brutality and all of the injustices we face. Where: any traditional Indigenous territory, urban or rural, from coast to coast to coast.	• Disrupt celebrations. • We refuse to sit idle while Canada's violent history is celebrated. • We are once again calling on Indigenous land, water and sky protectors and allies to come together and disrupt the celebration. • Now an outlet for many angry people.
2021 Election—12 Indigenous MPs are elected, continuing a history of Parliamentary representation that began with Louis Riel.	• the highest number of Indigenous people elected to the House of Commons in history, from all three major parties[60]
2022 Away from the Indian Act. Five communities (Moose Deer Point, Wahnapitae, Nipissing, Magnetawan and Zhiibaahaasing First Nations within the Anishinabek Nation in Ontario sign self-governance agreements with the federal government moving them into them into self-governance. Prior to the agreement, the Grand Council chief said the federal government "controlled every aspect" of First Nation governance, dictating what operating systems	• First Nations will choose how they operate, whether through a traditional government system, clan system governance, or even older styles of governance that were in place before settlers arrived in Canada.

[59] Government of Canada. Indigenous Community Support Fund.
[60] Chen, Alice. (2021, September 29). 'We have drive': Indigenous MPs on their election and their future. Hill Times.

and management is put in place.[61]	
2022 The Pope apologizes to Indigenous peoples on Canadian soil to atone for the church's role in the residential school system. Pope Francis said his visit and apology were but first steps and committed himself and the local Canadian church to "move forward on a fraternal and patient journey with all Canadians, in accordance with truth and justice, working for healing and reconciliation, and constantly inspired by hope."[62]	• Popes' long-time reluctance to name the Catholic Church as an institution bearing responsibility is still a matter of contention. • A good first step say Indigenous leaders, but too long in coming. Concrete actions of opening up church records and returning artifacts required.

[61] 5 CBC News. (2022, April 7). Anishinabek First Nations in Ontario sign agreement with Ottawa that would allow them to self-govern.
[62] Canadian Press staff. (2022, July 25). *Pope Francis apology: A look at reactions across Canada*. Global News.