

The Indian Act vs Self-Determination

	INDIAN ACT <i>Self-Administration</i>	SELF-DETERMINATION <i>Self-Government</i>
Legal Basis of Governing Authority	FEDERAL LEGISLATION: The Minister of Indigenous and Northern Affairs Canada holds primary decision-making authority. Primary accountability flows from Chief & Council to the Minister.	INHERENT RIGHT: The Inherent Right of First Nations to govern themselves and their territories pre-dates European contact. These rights are recognized and affirmed by Canada's constitution, Supreme Court of Canada decisions and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Leadership governs under a citizen-supported constitution. Accountability flows between citizens & leadership.
Governing Structures & Institutions	<ul style="list-style-type: none"> ▪ The Chief & Council structure is defined by the Indian Act. Custom elections are approved by the Minister. ▪ Other institutions, including economic development entities, health centres and education institutions may be created through provincial or federal incorporation. 	<ul style="list-style-type: none"> ▪ With the agreement of its citizens, the self-determining First Nation designs its own governing structures and institutions as defined by its constitution. ▪ The First Nation can develop institutions that match its culture. ▪ First Nations have an opportunity to reconstitute their nations.
Citizens	<ul style="list-style-type: none"> ▪ The Indian Act defines who is to be a band member. Band members are wards of the government. 	<ul style="list-style-type: none"> ▪ The self-determining First Nation decides on criteria for citizenship. Collectively, citizens are rights and title holders.
Law Making	<ul style="list-style-type: none"> ▪ The Indian Act confines and limits law making. Chief & Council have little direct authority. They can enact community by-laws. ▪ Disputes are resolved by the federal government through the Minister of Indigenous and Northern Affairs Canada. 	<ul style="list-style-type: none"> ▪ The self-determining First Nation develops its own laws and policies. ▪ First Nations have a "full box" of rights and jurisdiction over their territories. ▪ Enforcement of laws and dispute resolution determined by the First Nation. ▪ Overlapping and conflicting jurisdictions negotiated with other governments.
Lands & Resources	<ul style="list-style-type: none"> ▪ The Crown claims ownership of reserve lands. ▪ Chief & Council have limited ability to manage and develop reserve lands. ▪ The Crown has a duty to consult and accommodate First Nations about activities on its territories, but Chief & Council may not have the legal authority or mandate to negotiate on behalf of citizen rights holders. ▪ Almost all territorial land use decisions and decision-making processes are determined by federal and provincial legislation. 	<ul style="list-style-type: none"> ▪ The self-determining First Nation has the legal authority and a clear mandate to from citizens to develop its own laws and policies over its territory. There is meaningful and proper government to government consultation to reach accommodation. ▪ Negotiated agreements with other orders of government can lead to a variety of law-making authorities and arrangements relevant to the specific territory. ▪ The First Nation can negotiate extra-territorial and international agreements related to land and resource use.
Capacity	<ul style="list-style-type: none"> ▪ Capacity is largely determined by available funding from INAC and other government programs, and associated spending rules. ▪ Legislative and policy functions, enforcement and courts are rare. 	<ul style="list-style-type: none"> ▪ The self-determining First Nation makes capacity-building and resourcing decisions according to its own priorities and direction. ▪ Revenue sources open up from the exercise of jurisdiction over territory and resources. ▪ Effective self-governing institutions have legislative and policy capacity as well as ability to regulate and enforce own laws.
Finance & Economy	<ul style="list-style-type: none"> ▪ Type of funding, amount available, and transfer mechanisms for operational and program funding are determined by other governments. ▪ Some First Nations have established economic ventures to provide some own-source revenues ▪ Some First Nations can tax and collect fees through the First Nations Financial Management Act and the First Nations Land Management Act. 	<ul style="list-style-type: none"> ▪ The self-determining First Nation has a new fiscal relationship with Canada. ▪ The First Nation has a wide variety of revenue sources, including resource use, extraction and royalties, taxation, fiscal transfers, service funding agreements, fee for service, and own-source revenue through economic ventures.
Intergovernmental Relationships	<ul style="list-style-type: none"> ▪ Other governments decide on service delivery agreements, funding agreements and other administrative arrangements. ▪ Other governments decide on a range of policy, program and resource issues. 	<ul style="list-style-type: none"> ▪ The self-determining First Nation negotiates jurisdictional, service delivery and other agreements on a government-to-government basis, including internationally. ▪ There is joint decision-making where joint interests are involved.