August 2003 **by Kinwa Bluesky**

What is Aboriginal Self-Government?

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As part of the BC treaty process, the governments of Canada and British Columbia are negotiating self-government arrangements with Aboriginal people. In 1998, federal and provincial governments entered into a treaty with the Nisga'a Nation, which includes numerous self-government provisions.

Despite all the attention being given to Aboriginal self-government in recent years, it is a topic that remains little understood by the general public. What is Aboriginal self-government?

Self-Government and the Power to Make Laws

One of the basic functions performed by any government, regardless of its size, power or the source of its authority, is to make laws. Accordingly, the power to make laws is one of the essential components of Aboriginal self-government. As part of the BC treaty process, the governments of Canada and British Columbia are negotiating the scope of Aboriginal law-making powers with Aboriginal people.

What types of law-making powers do Aboriginal people want to exercise?

Aboriginal people are seeking recognition of their power to make laws over the following subject matters:

1. Matters integral to their distinct culture, such as language and traditional laws;

2. Internal matters, such as membership, government institutions, marriages, social services, health services, child and family services, child custody, adoption and education;

3. Management of lands acquired through a treaty settlement as well as control over access to treaty settlement lands and highways located on settlement lands;

4. The use, management, planning, zoning and development of treaty settlement lands; and

5. Management of forest, fisheries wildlife and other resources on treaty settlement lands.

What types of law-making powers are Canada and BC willing to negotiate with Aboriginal people?

Canada is willing to negotiate the following types of law making powers with Aboriginal people:

1. Matters internal to the group, integral to its distinct culture, and essential to its operation as a government or institution, such as membership, marriage, adoption, language, culture, religion, education, health, social services, property rights, land management, natural resource management, hunting, fishing and trapping and direct taxation and property taxation; and

2. Matters that have impacts that go beyond individual communities, such as divorce, environmental protection, fisheries co-management and migratory birds co-management.

British Columbia is currently revising its self-government mandates following the province wide referendum on treaty principles. Accordingly, we cannot be certain of the types of Aboriginal law-making powers that BC is willing to negotiate with Aboriginal people until this process of mandate revision is completed.

What types of law-making powers is Canada not prepared to negotiate with First Nations?

Canada is not prepared to negotiate the following types of law-making powers with Aboriginal people as part of treaties or self-government agreements:

1. Powers related to Canadian sovereignty, defence and external relations, such as international/diplomatic relations and foreign policy, national defence and security, security of national borders, international treaty making, immigration, naturalization and aliens and international trade; and

2. Other national interest powers, such as management and regulation of the national economy, including bankruptcy, insolvency, trade and competition policy, intellectual property, currency, maintenance of law and order and criminal law.

The scope of law-making powers that will ultimately be recognized and affirmed in treaties or self-government agreements between Aboriginal people and the federal and provincial governments is a matter for negotiation. Governance arrangements will likely vary from treaty to treaty to address the unique social, cultural, political and economic needs of Aboriginal people in the various regions of this province.

Self-Government and the Harmonization of Laws

Another essential component of Aboriginal self-government is the harmonization of Aboriginal law-making power with the law-making power of the Governments of Canada and British Columbia. It is not uncommon for governments in a federal system to share law-making authority over the same subject matter. Where governments share law-making authority, it is essential that there be clear rules in place to determine which law applies in a given situation.

Canada's law-making powers are set out in section 91 of the *Constitution Act, 1982* and British Columbia's law-making authority is set out in section 92. Most of the powers that Aboriginal people wish to have recognized and affirmed in treaties are subject matters that Canada and BC also have law-making authority over, in sections 91 and 92 of the *Constitution Act, 1982*. To avoid confusion about which law will apply in any given situation, it is necessary for the parties to harmonize their respective law-making authorities. That is why Canada, BC and Aboriginal people are negotiating harmonization of laws as part of treaty negotiations in the BC treaty process.

In the Nisga'a treaty, which is the only treaty concluded to date in British Columbia, harmonization of laws was accomplished by identifying those instances when Nisga'a law must be followed and those instances where federal or provincial laws must be followed. For example, Nisga'a laws generally prevail, or must be followed in respect of matters that are internal to Nisga'a lands and people, such as decisions about Nisga'a language, culture and treaty entitlements. Federal and provincial laws prevail over matters of broader application, such as peace, order, public safety, construction of buildings, health services and environmental protection.

About the Scow Institute

The Scow Institute is a non-partisan organization that is dedicated to addressing public misconceptions about various issues relating to Aboriginal people and Aboriginal rights. For additional information, please visit our website at **www.scowinstitute.ca.**