In Search of Indigenous Educational Sovereignty

by

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Abstract

Completing a comprehensive survey of the education clauses in forty-one self-governance agreements between different First Nations and the Canadian government regarding educational sovereignty demonstrates that these agreements are not delivering First Nations educational sovereignty. The agreements do not provide First Nations with the autonomy and freedom needed to develop a curriculum framework outside of the provincial or territorial standard. Analyzing the exact clauses and how their wording expands or limits First Nations' ability to govern educational content and implementation provides an opportunity to identify methods to address these issues in future negotiations. This research provides an opportunity to begin to answer the call for action by the Assembly of First Nations to review all existing documents and make recommendations for their continuance, revision, and termination and to influence the ninety agreements currently under negotiation in Canada.

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Definitions

For the purpose of this thesis:

"Aboriginal" is a term that includes First Nations, Inuit and Métis peoples.

"Act of Parliament" primary legislation passed by the legislature that must be adopted by the House of Commons, the Senate and receive Royal Assent.

"Agreements in Principle" an agreement as to the terms of some future contract.

"Assembly of First Nations" an organization that represents the First Nations in Canada that grew from the National Indian Brotherhood. The name officially changed in 1982.

"Bilateral Agreement" an agreement between a First Nation or a collective of First Nations with either the provincial, territorial or federal government.

"Comprehensive Land Claim Agreement" deal with the unfinished business of treaty-making in Canada. These claims generally arise in areas of Canada where Aboriginal land rights have not been dealt with by treaty or through other legal means.

"Conflict" means an actual conflict in operation or operational incompatibility in law.

"Curriculum" refers to the provincial standard curriculum approved by the ministry of education focusing on two areas: 1) the aggregate of materials, procedures, activities and instructional aids used in a program; and 2) the range of courses or instructional programs available to students from a legal perspective.

"Federal Law" includes federal statutes, regulations, ordinances, orders-in-council, and the common law.

"Final Agreement" an agreement constitutionally protected which defines the rights on the First Nations settlement land.

"First Nations" A term that came into common usage in the 1970's to replace the word "Indian."

“Indian” under the Indian Act; Indian means a person who under this Act is registered as an Indian or is entitled to be registered as an Indian.

“Indian Act” Canadian federal legislation, first passed in 1876, that governs the lives of Registered/Status Indians.

“Indian Band” means a body of Indians under the Indian Act (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty (b) for whose use and benefit in common, money are held by Her Majesty, or (c) declared by the Governor in Council

“Indigenous” term used to refer to the First Nations, Métis and Inuit peoples.

“Indigenous Education” can also be referred to as Aboriginal Education or First Nations Education meaning the education available to the First Peoples through formal education institutions. It does not refer to traditional knowledge or ways of knowing or Indigenous-led education. Indigenous education is the policy-driven education experienced by First Peoples learners in Canadian and First Nations school environments.

“Indigenous Educational Sovereignty” is an inherent right, power, or authority to exercise control over education. In the context of First Nations self-government, sovereignty includes the authority to create programs, set standards, and draw up curricula; to establish educational equivalencies and teaching methodologies and to evaluate education systems and the training and certification of teachers for students from preschool through post-secondary stages.

“Inherent Right” are distinct and separate from the rights of non-First Nation people and are protected under *Section 25* of the *Canadian Charter of Human Rights*. A God/Creator-given right; those rights that exist naturally within a people. For this thesis, the inherent right is that to control education.

“Jurisdiction” meaning the right, power, authority and/or control over education and training an exploration of the individual First Nations capacity. Jurisdiction is the formal recognition by both the Federal and Provincial government of the inherent right for First Nations to

make decisions about the education of their children. Within this right provides the First Nations with the control over the foundation of their education system.

“Memorandum of Understanding” for this thesis is a nonbinding agreement between two or more parties one being First Nations, Métis or Inuit outlining the terms and details of an understanding, including each parties' requirements and responsibilities.

“Minister” means, in respect of a matter, the Minister of Her Majesty the Queen in right of Canada, or in right of the province having the responsibility to exercise of powers.

“Provincial Law” includes provincial statutes, regulations, orders-in-council and the common law.

"Reserve" means a Reserve as defined in the *Indian Act*, R.S.C. 1985, c. I-5. A tract of land set apart for the use and benefit of a First Nation.

“School Act” legislation that governs public education.

“Section 35 Rights” means the rights, anywhere in Canada, of a First Nation, that are recognized and affirmed by section 35 of the Constitution Act, 1982.

“Self-determination” recognition of their rights and renewed relationships with other governments outside of self-government negotiations.

“Self-Government” Indigenous peoples inherent right recognized by Section 35 of the 1982 Constitution Act to design, establish and administer their own governments.

“Self-Government Agreement” an agreement between the federal government a First Nation and potentially a provincial or territorial government which addresses structure of new government, funding arrangements, laws between jurisdictions, programs and services and implementation of the First Nation to self-govern.

“Sovereignty” authority or supreme power.

“Treaty” agreement between two or more nations; negotiated in Canada between the Crown and First Nations.

“Treaty Rights” entitlement personal or collective derived from a Treaty.

“Tripartite Agreement” an agreement made between the provincial or territorial Governments and Canada participate in a tripartite process with a First Nation.

List of Abbreviations

AFN	Assembly of First Nations
BCTC	British Columbia Treaty Commission
DIAND	Department of Indian Affairs and Northern Development
FNESC	First Nations Education Steering Committee
INAC	Indigenous and Northern Affairs Canada
MOU	Memorandum of Understanding
MK	Mi'kmaw Kina'amatnewey
NIB	National Indian Brotherhood
OECD	Organisation for Economic Co-operation and Development
RCAP	Royal Commission on Aboriginal Peoples
UBCIC	Union of British Columbia Indian Chiefs
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Introduction

> *In the past, the Canadian governments'* [sic] *education policy has been a tool of oppression, but it can be a tool of liberation founded on First Nation control over education. First Nations view education as a means to achieving self-determination and redressing the negative impacts of colonial practices.*
>
> *Assembly of First Nations*

Historical Context

The Government of Canada's legal responsibility for Indian[1] education is enshrined in both the *Indian Act* and in treaties. However, joint agreements between the federal government, provincial school jurisdictions, and First Nations have created an unparalleled failure in educational delivery to Indigenous learners for over a hundred years. The dysfunctional state of education available to Indigenous students in Canada has been thoroughly documented by the Royal Commission on Aboriginal Peoples (RCAP), the Truth and Reconciliation Commission, and countless other reports and research studies. Graduation levels and fundamental skills of Indigenous learners continue to fall well below the national average of non-Indigenous learners. According to a 2018 C. D. Howe Institute study using data from the 2016 Canadian Census, only 48.4% of on-reserve adults aged 20–24 had completed high school.[2] The 2016 Census indicated that 30% of First Nations people in that age cohort lacked a certificate, diploma, or degree, compared to only 12% of the Canadian population as a whole. With the breakdown of bachelor's

[1] Throughout the thesis, the words Indigenous, Indian, First Nation and Aboriginal will be used interchangeably for the First Peoples of Canada. Individual documents will use the name of the individual First Nation's legally recognized name. However, the writing and titles of various agreements and works, depending on the time they were written, will vary with the language used during its publishing.

[2] John Richards and Parisa Mahboubi, *Measuring Student Outcomes: The Case for Identifying Indigenous Students in Canada's PISA Sample* (Ottawa: C. D. Howe Institute, February 13, 2018), https://cdhowe.org/sites/default/files/attachments/research_papers/mixed/C.D.%20Howe%20E-Brief%20272%20-%20Measuring%20Student%20Outcomes%20The%20Case%20for%20Identifying%20Indigenous%20Students%20in%20Canada%E2%80%99s%20PISA%20Sample.pdf, 1.

(9.6%), college (21.4%), apprenticeship (4.7%), and high school (24.5%) completion, the remaining population with no certificate, diploma, or degree comprise 40.8% of First Nations people. The *Education in Canada: Key Results from the 2016 Census* released from Statistics Canada touts Canada as first among Organisation for Economic Co-operation and Development (OECD) countries in the proportion of college and university graduates, with more than half (54%) of Canadians obtaining college or university qualifications.[3] However, the First Nations reality is 33.9% of Aboriginal people (First Nations, Métis, and Inuit) aged 25 to 64 had the same level of education, with fewer than 10% of First Nations individuals holding a bachelor's or graduate degree. Federal neglect of these facts is a major hindrance to true Indigenous educational reform.

From the late nineteenth century to the present day, the Canadian government has gradually "allowed" Indigenous people is an actuality an inherent right: more control and authority over their pre-school to post-secondary education.[4] Arguably, federal interference exists in all final agreements, self-government agreements, comprehensive land claim agreements and government-to-government agreements in the form of clauses that prevent educational freedom and true educational reform for Indigenous learners. Indigenous leaders negotiating for the future education of their citizens have been forced to adhere largely to a flawed education delivery system that has failed Indigenous people for generations. Similarities between clauses in the past forty-one self-government and final agreements with First Nations

[3] "Education in Canada: Key Results from the 2016 Census," The Daily, Statistics Canada, last modified November 29, 2017, https://www150.statcan.gc.ca/n1/daily-quotidien/171129/dq171129a-eng.htm.

[4] Assembly of First Nations, *First Nations Control of First Nations Education: It's Our Vision, It's Our Time* (Ottawa: Assembly of First Nations, July 2010). https://www.afn.ca/uploads/files/education/3._2010_july_afn_first_nations_control_of_first_nations_education_final_eng.pdf, 4.; Forsythe, Laura. "Undermining Self-Determination: Education and Self-Government." *Looking Back and Living Forward: Indigenous Research Rising Up*. Edited by Jennifer Markides and Laura Forsythe, 135–144. Leiden: Brill, 2018.

and Métis groups reflect a persistent federal refusal to relinquish control over Indigenous education.

In 1972, the National Indian Brotherhood (NIB)[5] demanded a review of existing governance documents to establish the level of local control First Nations had over their members.[6] This thesis is the first comparative survey of the self-governance agreements made from 1975 to 2016 across Canada to determine whether Indigenous educational sovereignty has been realized through negotiations; it demonstrates that, despite federal engagement in the negotiation of self-governance agreements, the promise of educational self-determination remains unrealized.

Literature Review

The purpose of this literature review is to address two themes in this thesis by acknowledging and evaluating the significant work done in the areas of Indigenous education policy and Indigenous political sovereignty. The review concludes with an outline of the gaps in the literature and the impact that the findings of this thesis will make on Indigenous education policy in self-government agreements. This literature review demonstrates that self-government remains a goal rather than a reality in terms of Indigenous education and education policy, and sets the tone for the thesis. While also indicating the need to educate policymakers and treaty negotiators about the provisions and specific language that have been used throughout

[5] National Indian Brotherhood formed when the National Indian Council separated into two distinct groups in the 1960s. Eventually the National Indian Brotherhood would become the Assembly of First Nations following a name change in 1982. It now represents over 900,000 First Nation citizens and 630 distinct First Nations.

[6] National Indian Brotherhood. *Indian Control of Indian Education*. Policy paper presented to the Minister of Indian Affairs and Northern Development. (Ottawa: National Indian Brotherhood, 1972).

government policies and agreements over the past fifty years to ensure that educational sovereignty is never actualized.

At any given time, the Government of Canada employs an average of 140 federal representatives from 36 departments and agencies working on comprehensive land claims and self-government negotiations, with a total annual operating cost of approximately 79 million dollars.[7] Currently, ninety First Nations are sitting at comprehensive land claims and self-government negotiation tables attempting to reclaim sovereignty over their members, free from the *Indian Act*.[8] These agreements are divided into separate clauses that address various areas of sovereign jurisdiction such as natural resources rights, housing, and education. The negotiators are discussing education provisions in the hope of attaining educational sovereignty for First Nations through legally binding clauses. The impact of these clauses on First Nations today and on future generations depends on the nations' ability to assert their inherent right to educational sovereignty. An impact assessment of aboriginal self-government concluded that self-governing First Nations demonstrated higher outcomes in education than First Nations subject to the *Indian Act*.[9] Even with flawed educational clauses, if educational sovereignty was realized, the outcomes would be profound.

It is important to honour the Assembly of First Nations (AFN), which continues to use the term "control," to indicate what they accept educational sovereignty to mean. In a recent communication they stated:

> First Nations control of First Nations Education means respecting, protecting and enforcing First Nations inherent rights and Treaty rights, title and jurisdiction. It means

[7] Canada. *Evaluation of the Process for Negotiating Comprehensive Land Claims and Self Government Agreements November 2013* (Ottawa: Indigenous and Northern Affairs Canada, 2013), http://www.aadnc-aandc.gc.ca/eng/1403794888717/1403795285437.

[8] Canada. *Evaluation of the Process*.

[9] Canada. *Evaluation of the Process*.

> First Nations education systems under First Nations control and based on First Nations design, supported by direct transfers from the federal government.[10]

This definition constantly recurs throughout the literature. However, the language of academia has changed over time. The terms used to assert educational sovereignty have changed from the NIB's 1970s control of education to Dianne Longboat's preference for sovereignty over education through jurisdiction, as in her "First Nations Control of Education: The Path to our Survival as Nations" from 1986. The term "educational sovereignty" was used more frequently in the United States in 2000 by scholars such as Teresa McCarty and Tiffany S. Lee in works like *Critical Culturally Sustaining/Revitalizing Pedagogy and Indigenous Education Sovereignty.*

The theme of sovereignty through self-governance in this literature review begins with the government-commissioned, two-volume Hawthorn Report, which was released in 1966. This starting point is not intended to belittle work in Aboriginal self-governance before the report but more of a comment on the recognition by the federal government of the need for such a report. The Hawthorn Report edited by Harry B. Hawthorn was commissioned by the Canadian Government under Lester B. Pearson.[11] It recommends a refocus on education and suggests a move to Indigenous self-government. Whether a step towards reconciliation or not this report still influences both policy reports and academic research today. The Hawthorn Report introduced the concept of citizens plus arguing that due to Aboriginal title and treaty rights Indigenous people deserved better treatment than non-Indigenous Canadians. The Hawthorn Report surveyed the contemporary political, economic, and educational needs of Indigenous

[10] Assembly of First Nations, "AFN Bulletin—Update: First Nations Education May 2018," May 15, 2018, https://www.afn.ca/2018/05/15/afn-bulletin-update-first-nations-education-may-2018/.

[11] Hawthorn, H. B., ed. *A Survey of the Contemporary Indians of Canada: A Report on Economic, Political, Educational Needs and Policies Part 1*. Principal Authors of Volume I: H. A. C. Cairns, S. M. Jamieson, K. Lysyk. (Ottawa: Indian Affairs Branch, 1966)

people in Canada, and its recommendations shaped Indigenous policy for years afterward. Scholars such as Jerry Paquette, Ned Franks, K. P. Binda, Sharilyn Calliou, John W. Friesen and Virginia Agnes Lyons Friesen describe the Hawthorn Report as a catalyst for focusing on Indigenous policy in Canada.[12] Seeing the importance of highlighting past policy and reports issued by the Canadian government, Weaver in 1993 explored the Hawthorn Report twenty-seven years after its release to expose the slow uptake of its recommendations.[13] Arguably, the Hawthorn Report served as a reference point for both the Statement of the Government of Canada on Indian Policy 1969 referred to as the White Paper and the 1983 Penner report on "Indian First self-government."[14] Keith Penner, Chair of the House of Commons Committee on Indian Self-Government, delivered the *Indian Self-Government in Canada: Report of the Special Committee*; without the Hawthorn Report, such conversations and observations by Members of Parliament would not have taken place.[15] The Hawthorn Report influenced government policy and the language used around citizens-plus for decades.[16] Another government-commissioned report spawning policy development and academic discourse regarding self-government and self-determination was presented in 1983. The Hawthorn Report is cited in numerous works for its contribution to the concept of new funding structures and citizen-plus. Alan Cairns, the senior researcher for the Hawthorn Report, wrote *Citizens Plus: Aboriginal Peoples and the Canadian*

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[12] Jerry Paquette, "Aboriginal Self-Government and Education in Canada," Aboriginal Peoples and Constitutional Reform Background Paper no. 10 (Kingston: Queen's University Institute of Intergovernmental Relations, 1986); C. E. S. Franks, "Public Administration Questions Relating to Aboriginal Self-Government," Aboriginal Peoples and Constitutional Reform Background Paper no. 12 (Kingston: Queen's University Institute of Intergovernmental Relations, 1987; K. P. Binda and Sharilyn Calliou. eds., *Aboriginal Education in Canada: A Study in Decolonization* (Mississauga, ON: Canadian Educators' Press, 2001); John W. Friesen, and Virginia Agnes Lyons Friesen, *First Nations in the Twenty-First Century: Contemporary Educational Frontiers* (Calgary: Brush Education, 2005);

[13] Sally Weaver, "The Hawthorn Report—Its Use in the Making of Canadian Indian Policy," in *Anthropology, Public Policy, and Native Peoples in Canada*, ed. Noel Dyck and James B. Waldram, (Montreal: McGill-Queens University Press, 1993), 75–97.

[14] Jean, Chrétien. Statement of the Government of Canada on Indian Policy, 1969 / Presented to the First Session of the Twenty-eighth Parliament by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development. (1969); Penner, Keith. Indian Self-Government in Canada: Report of the Special Committee. (Ottawa: Queen's Printer of Canada, 1983).

[15] Penner, "Indian Self-Government in Canada: Report of the Special Committee"

[16] Weaver, "The Hawthorn Report."

State in 2000, which stresses the need for public policy to perceive Indigenous people as distinct as 'citizens plus.' Whereas Paquette and Fallon in 2010's *First Nations Education Policy in Canada: Progress or Gridlock?* use sections of the Hawthorn Report to undermine First Nations control of education.[17]

Anthropologist Sally Weaver published an essential analysis of the policy papers like the Hawthorn Report and the White Paper in the early 80s. This report serves as a reference point for the analysis of sovereignty that follows; it depicted the relationship between First Nations and both the federal and provincial governments as a revolving door.[18] This perspective grounds the approach to policy development adopted in their thesis. Examining documents that predated any self-government agreements and land claims, Weaver began to write in 1981 about the true motivations of Canadian Indian policy.[19] *Making Canadian Indian Policy: The Hidden Agenda 1968-70* has been cited hundreds of times, including in foundational work by Frank Cassidy and Dale Bish to highlight the troubled relationship between the federal government policies and Indigenous people, Peter Kulchyski critically evaluates strategies for maintaining sovereignty, John Borrows looks to expand the concept of Indigenous law, Alan Cairns as a basis for the argument for instituting 'citizens plus' and John S. Milloy explores educational policy and residential school.[20] Each scholar illustrates the impact that comparing government agreements,

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[17] Paquette and Fallon. First Nations Education Policy in Canada: Progress or Gridlock. 14.

[18] Sally M. Weaver, *Making Canadian Indian Policy: The Hidden Agenda, 1968-70*, Studies in the Structure of Power, Decision-Making in Canada, no. 9 (Toronto: University of Toronto Press, 1981); Paul Tennant et al., "The Report of the House of Commons Special Committee on Indian Self-Government: Three Comments," *Canadian Public Policy / Analyse De Politiques* 10, no. 2 (1984): 211–24; Weaver, "The Hawthorn Report.

[19] Weaver, *Making Canadian Indian Policy*.

[20] Frank Cassidy, Norman Dale, and Institute for Research on Public Policy. *After Native Claims?: The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia / by Frank Cassidy and Norman Dale.* 1988; Alan, Cairns., *Citizens Plus: Aboriginal Peoples and the Canadian State*. Brenda and David McLean Canadian Studies. (Vancouver, CA: UBC Press, 2000); Peter Keith Kulchyski, and Canadian Electronic Library. *Like the Sound of a Drum: Aboriginal Cultural Politics in Denendeh and Nunavut / Peter Kulchyski.* DesLibris. Books Collection. (Winnipeg, Man.: University of Manitoba Press, 2005); John, Borrows, *Drawing out Law: A Spirit's Guide / John Borrows (Kegedonce.* 2010); John S Milloy, and Mary Jane Logan Mccallum. *A National Crime: The Canadian Government and the Residential School System.* Critical Studies in Native History. (Winnipeg, CA: University of Manitoba Press, 2017).

documents and clauses can have on scholarship as a whole. Weaver's approach to policy analysis by reviewing each line of the text as a methodology inspires the work throughout chapter two of this thesis. As a powerful measure of the efficacy of a given document, this approach allows for a frank, in-depth evaluation of the clauses that affect educational sovereignty. Throughout Weaver's work from 1984 to 1993, government—regardless of which party held power—addressed the same recurring events or issues regarding educational sovereignty in an incessant cycle. By building the foundation for this concept of policy development, Weaver's work offers clarity to those searching for similarities between agreements.[21] Years later, she was asked to report to the House of Commons on Indian self-government and presented a scathing report that outlined the fundamentally undermining nature of the policies of the day.

Scholars working on Indigenous political sovereignty have also informed the present study. Frank Cassidy and Robert Bish speak from a position in which Indigenous sovereignty pre-existed the arrival of Europeans,[22] so First Nations are demanding restoration. They provide a thorough examination of the legal and political history of each First Nation and thus the opportunity to extend their work into the area of education in a seamless fashion. In *Indian Government: Its Meaning in Practice*, Cassidy and Bish explore policymaking, citizenship, finance, and service in their chapter in First Nations jurisdiction to demonstrate the failings of the current conception of self-government.[23] Their approach to exploring the agreements and current situations of two First Nations informs chapter two of this thesis, which takes a similar approach in comparing thirty-four communities.[24] While others like Wayne Warry in 1998's *Unfinished*

[21] Sally Weaver, "A New Paradigm in Canadian Indian Policy for the 1990s," *Canadian Ethnic Studies / Études Ethniques au Canada* 22, no. 3 (1990): 8–18.

[22] Frank Cassidy and Robert L. Bish, *Indian Government: Its Meaning in Practice* (Lantzville, BC: Oolichan Books; Halifax: The Institute for Research on Public Policy, 1989).

[23] Cassidy and Bish, *Indian Government*.

[24] Cassidy and Bish, *Indian Government*.

Dreams: Community Healing and the Reality of Aboriginal Self-government cite Cassidy and Bish's ability to describe the range of jurisdictions entailed in self-government and take this notion to analyze the areas of health, judicial and political systems, this thesis presents the results of applying their insights to the education system. In *Like the Sound of the Drum*, Kulchyski uses *Indian Government: Its Meaning in Practice* to highlight the failings of the ethnocentric Westminster model in governments provided to First Nations through Aboriginal government and their failure to fully grasp the totalizing effect that the federal government has over First Nations.

There is no doubt that Cassidy and Bish's book led to an emergence of research interest into Indigenous political sovereignty and helped scholars like John H. Hylton and Cairns in *Citizens Plus* to ask questions about the effort required by First Nations to re-create their governments.[25] Critical theorist Glen Coulthard demonstrates an effective integration of Indigenous resurgence, community political activism, and historical accounts of negotiations with the Canadian government, providing an excellent exemplar for future work.[26] Coulthard's writing style confronts colonialism by using fact to disrupt the narratives that the federal government has woven into the fabric of Canadian society. In *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, Coulthard details the experience of the Dene Nation's struggle for self-determination and issues arising from self-government, echoing Cassidy and Bish in key respects.[27] Employing elements of Coulthard's approach this thesis explores the educational situations of the nations. The theories and assertions regarding Indigenous sovereignty expressed by Cassidy and Bish and Coulthard provide the basis of the present study.

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[25] John H. Hylton, *Aboriginal Self-Government in Canada: Current Trends and Issues*. 2nd ed. Purich's Aboriginal Issues Series. Saskatoon: Purich Publishing, 1999; Cairns, *Citizens Plus.*

[26] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

[27] Coulthard, *Red Skin, White Masks*

The work of these scholars demonstrates the need for First Nations to reclaim their inherent rights rather than accept the perspective that those rights are granted by colonial governments, and this thesis highlights the way in which education provisions in bilateral and tripartite agreements undermine the inherent educational sovereignty of Canada's Indigenous people.

After the Hawthorn Report, the next milestone in the course of Indigenous education policy is *Indian Control of Indian Education*, a policy paper presented to the Minister of Indian Affairs and Northern Development by the NIB in 1972. Running alongside conversations about Indigenous sovereignty were those of Indigenous educational sovereignty. The concept of Indian control of education arose in Saskatchewan among Indigenous leaders looking to regain their inherent right to control their education systems. The NIB policy paper sparked debate both academically and politically throughout Canada.[28] With it, the creation of a new field of study was created: Indigenous educational sovereignty, though that term was coined decades after the policy paper was released.

Indian Education in Canada Volume 2: The Challenge, edited by Jean Barman, Yvonne Hébert, and Don McCaskill in 1987, features a central focus stemming from the 1972 *Indian Control of Indian Education*. In that volume, Mi'kmaq researcher Marie Battiste highlights the Mi'kmaq need for linguistic integrity, citing the provincial failure to provide adequate education to First Nations and using many of the same claims made by the NIB in *Indian Control of Indian Education.* Battiste also chronicles the negative aspects of adhering to the Eurocentric model of education and highlights the pitfalls of the current failed educational policies in *Decolonizing Education: Nourishing the Learning Spirit*.[29] Arguing for substantive educational policy reform, Battiste proposes, alongside a rejection of the current colonial system of education, that

[28] National Indian Brotherhood. *Indian Control of Indian Education*
[29] Marie Battiste, *Decolonizing Education: Nourishing the Learning Spirit* (Vancouver: UBC Press, 2013).

Indigenous ways of teaching move to the fore of curriculum development.[30] Since the mid-1990s, Battiste has championed the reconceptualization of Indigenous education in books such as *First Nations in Canada: The Circle Unfolds*, co-edited with Jean Barman, where the four directions are used to illustrate a four-step process for educational sovereignty.[31] Battiste's body of work is crucial to the understanding of Indigenous education upon which this thesis is based. Battiste's recent work shows that the issues raised by Battiste and others remain. Editors Kiera Ladner political scientist and Myra Tait, a law student at the University of Manitoba, offer a contemporary perspective on sovereignty struggles remaining unchanged for decades regarding the education of language and culture in their recent collection of essays *Surviving Canada Indigenous People Celebrate 150 Years of Betrayal*. The essays examining the intolerance of the colonial structures seen under Canada 150 and inspiring education policy reform in Canada are of relevance to this thesis,[32] which answers the same call to reassess the issues that have plagued First Nation communities for decades from a contemporary perspective. As with the Ladner and Tait collection, the research presented here takes into account the national shift toward the era of reconciliation.[33] With a new sense of co-existence in Canada, there is an opportunity for negotiators to use the survey in this thesis to suggest clauses that enhance the relationship between First Nations, and the various levels of government to build on the momentum of the reconciliation movement and the political pressure to actualize change for First Nations.

Tradition and Education: Towards a Vision of Our Future: A Declaration of First Nations Jurisdiction Over Education was published in 1988. Following years of scholars' efforts

[30] Battiste, *Decolonizing Education*.
[31] Marie Battiste and Jean Barman, eds., *First Nations Education in Canada: The Circle Unfolds* (Vancouver: UBC Press, 1995).
[32] Kiera L Ladner and Myra Tait, eds., *Surviving Canada: Indigenous Peoples Celebrate 150 Years of Betrayal* (Winnipeg: Arbeiter Ring Publishing, 2017).
[33] Ladner and Tait, *Surviving Canada*.

to document how the federal and provincial governments subvert First Nations efforts to gain self-government, this declaration was issued by the National Indian Brotherhood, Assembly of First Nations before the official name change and still using a hybrid when publishing this work in 1988. Inaction created the momentum to assert the need for a unanimous vote among the AFN Chiefs, which led to a report authored by Osgoode Hall's James C. MacPherson. His 1991 report concluded that *Tradition and Education* were "substantial and significant" and had the potential to influence sovereignty.[34]

Written by G. Mike Charleston, the words of passion and conviction used in the declaration inspired Indigenous scholars such as Marie Battiste, who used it as a basis for three of her works: "Enabling the Autumn Seed: Toward a Decolonized Approach to Aboriginal Knowledge, Language, and Education"; *Indigenous Knowledge and Pedagogy in First Nations Education: A Literature Review with Recommendations*; and "Indigenous Knowledge: Foundations for First Nations".[35] Battiste's work moves beyond the theoretical outlook of *Tradition and Education* and stresses real-world examples in which Indigenous sovereignty can be asserted while continuing to describe the failings of the provincial and federal school systems. Verna Kirkness, a Cree scholar and lifelong advocate for revitalizing Indigenous languages, cites *Tradition and Education*'s views on Indigenous educational sovereignty to enhance First Nations ability to reclaim identity and language in *First Nations and Schools: Triumphs and Struggles* in

[34] James C MacPherson. MacPherson Report on Tradition and Education: Towards a Vision of Our Future. Toronto: Osgoode Hall Law School, York University, September 1991.

[35] Marie Battiste, "Enabling the Autumn Seed: Toward a Decolonized Approach to Aboriginal Knowledge, Language, and Education." Canadian Journal of Native Education 22, no. 1 (1998): 16-27.; Marie Battiste, and Canada. Minister's National Working Group on Education. Indigenous Knowledge and Pedagogy in First Nations Education / a Literature Review with Recommendations / by Marie Battiste. 2002.; Marie Battiste, "Indigenous knowledge: Foundations for first nations." World Indigenous Nations Higher Education Consortium-WINHEC Journal (2005): 1-12.

1992.[36] The content and tone that occur throughout *Tradition and Education* are echoed in this thesis, which is partly a call for the inclusion of First Nations in the control of their education.

The 2000s saw a flowering of literature on Indigenous educational sovereignty from both academic and governmental sources. Indigenous and Northern Affairs Canada commissioned Nancy Morgan to create a literature review of Indigenous educational sovereignty that highlighted the issues in the various interpretations of jurisdiction and levels through 2002 in *"If Not Now, Then When?" First Nations Jurisdiction Over Education: A Literature Review 2002*, which sparked the 2004 Chiefs of Ontario-commissioned report "An Overview of Federal and Provincial Policy Trends in First Nations Education" by Harvey McCue. Surprisingly, these two reports, unlike Hawthorn's much earlier effort, have rarely been cited and have had little effect on the literature that followed. This is unfortunate, as they chronicle the history of Indigenous educational sovereignty.

Nevertheless, they have been incorporated by some. Specifically, Jerry Paquette and Gérald Fallon who have done extensive research on educational sovereignty key provisions and government policy on educational sovereignty in Canada.[37] Their understanding of how the *Indian Act* oppresses First Nations and how current treaties offer no protection of their inherent right to education shapes the understanding and interpretation of existing agreements presented frames much of the work done in this thesis. Throughout their work, arguments of hopelessness caused by chronic underfunding, lack of control, and lack of ability present a sympathetic but highly Eurocentric view of Indigenous educational sovereignty which must be acknowledged.

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[36] Kirkness, Verna J., and Canadian Education Association. First Nations and Schools: Triumphs and Struggles.1992.

[37] Jerry Paquette, "From Propositions to Prescriptions: Belief, Power, and the Problem of Minority Education," *Curriculum Inquiry* 19, no. 4 (1989): 437–51; Jerry Paquette, "Aboriginal Self-Government and Education in Canada,"; Jerry Paquette and Gérald Fallon, "First-Nations Education and the Law: Issues and Challenges," *Education Law Journal* 17, no. 3 (2008): 347–78; Jerry Paquette and Gérald Fallon, *First Nations Education Policy in Canada: Progress or Gridlock?* (Toronto: University of Toronto Press, 2010).

Their contributions can be redeployed to empower rather than demean Indigenous people and their leaders. Branching off from Paquette's and Fallon's understanding of educational clauses in self-government agreements honours the past while rectifying their weaknesses and rightfully places the focus on the clauses themselves; their pioneering work included the historical context of the Indigenous school experience, a conceptual framework for self-government, an exploration of the post-secondary experience of First Nations people, and an emphasis on funding structures.

In the edited collection of essays *Aboriginal Education: Fulfilling the Promise*, published in 2000, trailblazers in Indigenous education Marlene Brant Castellano, Lynne Davis, and Louise Lahache explored the issues plaguing Indigenous students in today's Canadian educational system by evaluating educational practice, educational policy, and post-secondary exclusion.[38] Scholars throughout Turtle Island (North America) contributed to the anthology with ideas regarding not only the current state of education but also the future directions needed. Although nearly two decades have passed, the volume continues to be highly relevant and influential, which speaks eloquently to the lack of progress on the educational crisis in Canada's Indigenous communities. Sheila Carr-Stewart, a specialist in education policy studies, cites *Aboriginal Education: Fulfilling the Promise* in her own "The Changing Educational Governance of First Nations Schools in Canada: Towards Local Control and Educational Equity," a look into the jurisdictional mechanisms implemented in Canada with individual nations.[39] Carr-Stewart concludes those mechanisms are not capable of providing equitable education systems to Indigenous children. Indigenous educational sovereignty literature can then be considered any

[38] Marlene Brant Castellano, Lynne Davis, and Louise Lahache, eds., *Aboriginal Education: Fulfilling the Promise* (Vancouver: UBC Press, 2000).

[39] Sheila. Carr-Stewart, "The Changing Educational Governance of First Nations Schools in Canada: Towards Local Control and Educational Equity." Management in Education 20, no. 5 (2006): 6–12.

literature that asserts the need for equitable education for inclusion both on and off reserves. *Aboriginal Education: Fulfilling the Promise* ignited the Indigenous educational sovereignty scholarly scene with hundreds of citations leading to works by education scholars Marie Battiste exploring Indigenous pedagogy, Laara Fitznor stressing the need to foregrounding Indigenous knowledge and process, Frank Deer bringing the work into navigating research, and Michelle Pidgeon focusing on post-secondary.[40] Each adopts the position of claiming and reclaiming Indigenous education and bring it to new and exciting facets of educational research. This thesis could provide the launch pad for scholars in educational policy, political science, native studies, education and anthropology creating arguments that both the federal and provincial government have undermined First Nations using educational clauses. Each discipline has the power to use the data in this thesis to highlight claiming and reclaiming Indigenous educational sovereignty in more depth.

Scholars such as Cassidy and Bish, Kulchyski and Coulthard take an in-depth look at communities and the process of obtaining various levels of sovereignty.[41] With a focus locally, considering the federal processes that determine the outcomes for those specific nations Cassidy and Bish visited nineteen First Nation communities in the late 80s looking to present ways nations can move beyond Aboriginal rights to self-government.[42] This thesis moves beyond a local focus to one of comparing nationally the federal and provincial governments refusal to relinquish control to First Nations, highlighting the template of clauses used to undermine Indigenous educational sovereignty, moving beyond the historical and the anecdotal.

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[40] Battiste, Indigenous knowledge and pedagogy in First Nations education: A literature review with recommendations; Laara Fitznor. "Aboriginal educational teaching experiences: Foregrounding Aboriginal/Indigenous knowledges and processes." *University of Manitoba: Winnipeg* (2005).; Frank Deer, "On the Tenure-Track: Navigating Research, Teaching, and Service Responsibilities in a U15." *The Academic Gateway: Understanding the Journey to Tenure* (2017); Michelle Pidgeon. "More than a checklist: Meaningful Indigenous inclusion in higher education." *Social inclusion* 4, no. 1 (2016): 77-91.

[41] Cassidy and Bish, *Indian Government*; Kulchyski, *Like the Sound of a Drum*; Coulthard, *Red Skin, White Masks*

[42] Cassidy and Bish, *Indian Government*;

The concept of Indigenous educational sovereignty is explored by both Indigenous and non-indigenous scholars in disciplines as varied as education, educational policy, and political science. As this research emerged, so has a larger presence of Indigenous scholars who question the work of non-Indigenous scholars by viewing them through a different lens. John W. Friesen and Virginia Agnes Lyons Friesen are among the non-Indigenous authors working to identify the key aspects of Indigenous education sovereignty, and they have been challenged for having overly conservative views and falling in line with Western approaches to education.[43] However, many of their arguments are in line with fundamental contemporary Indigenous works such as *First Nations Education in Canada: The Circle Unfolds, Aboriginal Education in Canada: A Study in Decolonization, Aboriginal Education: Fulfilling the Promise* in highlighting the need for educational sovereignty.[44] There has, however, been a shift in critiques of the literature as more Indigenous scholars take up prominent positions in academia. This shift is also evident in the voices reporting in work commissioned for the federal government. Métis politician Gerry St. Germain chaired the Standing Senate Committee on Aboriginal Peoples, and the committee found a need to assert Indigenous educational sovereignty through the transferring jurisdiction of education to First Nations. The committee's follow-up report, *Reforming First Nations Education: From Crisis to Hope*, suggests that there is a new understanding of those who should be conducting this type of work from the federal perspective. This new perspective was also demonstrated by the Truth and Reconciliation Commission, which was supported by a TRC Secretariat, a federal government department. To be clear, the inclusion and commission of Indigenous representatives to create reports does not signify the complete uptake—or anything

[43] Friesen, and Friesen, *First Nations in the Twenty-First Century: Contemporary Educational Frontiers*

[44] Battiste, M. A., & Barman, J. (Eds.). (1995). *First Nations education in Canada: The circle unfolds*; Friesen, Calliou, and Binda. "Aboriginal Education in Canada; Marlene Brant Castellano, Lynne Davis, and Louise Lahache, eds., *Aboriginal Education*

near it—of Indigenous educational sovereignty, particularly given that the 2015 calls to action from the Truth and Reconciliation Commission of Canada do not include jurisdiction over education, asking instead for inclusion and participation in the drafting of new Aboriginal education legislation.[45]

Decolonizing education in former European colonies is not a solely Canadian phenomenon. For a global perspective on Indigenous education policy reform, the collection of essays from Latin America edited by Regina Cortina, a professor in international and comparative education, demonstrates that continued colonization using the education system and its policies remain prevalent throughout the Indigenous world.[46] There are thus failures and successes upon which Canadians can draw when considering recommendations for the future of negotiations. American scholars have taken the concept of Indigenous educational sovereignty and created literature expanding into social justice, language revitalization, and curriculum development.

Scholars such as Battiste and Castellano, Davis, and Lahache have written extensively on how Indigenous education is implemented in First Nations and urban communities. While Cassidy and Bish, Coulthard, Borrows, and Ladner and Tait have done the same on self-government, this thesis is the first comprehensive study of the educational clauses in governing agreements and their direct role in the correlation between the freedom to control curriculum and delivery and Indigenous educational achievement.[47] Federal use of transferability clauses and provincial reliance on flawed educational standards and modes of delivery enshrined within the

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[45] *Truth and Reconciliation Commission of Canada: Calls to Action*.

[46] Regina Cortina, ed., *Indigenous Education Policy, Equity, and Intercultural Understanding in Latin America* (New York: Palgrave Macmillan, 2017).

[47] See Castellano, Davis, and Lahache, *Aboriginal Education*, and Battiste, *Decolonizing Education*, for extensive research into the implementation of Indigenous education and Cassidy and Bish, *Indian Government*, Coulthard, *Red Skin, White Masks*, Borrows, *Canada's Indigenous Constitution*, and Ladner and Tait, *Surviving Canada*.

agreements signed to date limit the ability of individual First Nations communities to create dynamic and successful educational services for their members outside of the provincial and territory curriculum standards.

Theoretical Framework and Methodology

Through an analysis of the education clauses within the forty-one final and self-government agreements created from 1975 and 2016 between First Nations and the Crown as represented by federal, provincial, and territorial authorities, the obstacles and challenges that undermine First Nations' ability to educate their people are revealed. Repetitive phrasing recurs across these agreements that limit the authority of First Nations to operate their educational institutions. The few variations in phrasing in the educational clauses highlight the multitude of methods for ensuring that First Nations lack complete authority over education. This thesis explores these variations to determine the limits of educational sovereignty allowed under the agreements and to point out the obvious use of boilerplates during negotiations, regardless of which parties hold power at the provincial or federal levels. It is the restrictions imposed through the clauses themselves that curtail Indigenous educational innovation and success.

In the thesis curriculum when discussing Indigenous educational sovereignty refers to the provincial standard curriculum approved by the ministry of education focusing on two areas: 1) the aggregate of materials, procedures, activities and instructional aids used in a program; and 2) the range of courses or instructional programs available to students from a legal perspective. Specifically, not delving into the daily curriculum development which occurs in classrooms both in First Nation and provincial schools but rather curriculum as a whole enforced by Education Acts, School Acts, and/or Provincial mandated curriculum.

The following nations are included in this survey:

Anishinabek Nation
Champagne and Aishihik First Nation
Carcross Tagish First Nation
Déline First Nation
Gwich'in Council
Inuvialuit
James Bay Cree
Inuit of Quebec and Port Burwell
Kaska Nation
Kluane First Nation
Kwanlin Dun First Nation
Little Salmon Carmacks First Nation
Maa-nulth First Nation
Miawpukek First Nation
Mi'kmaq
Nacho Nyak Dun First Nation
Nisga'a Lisims Government
Sahtu Dene and Métis of Colville Lake
Sahtu Dene and Métis of Fort Good Hope
Sahtu Dene and Métis of Norman Wells
Sahtu Dene and Métis of Tulita
Sechelt Indian Band
Selkirk First Nation
Sioux Valley Dakota Nation
Ta'an Kwach'an Council
Teslin Tlingit Council
Tla'amin First Nation
Tłı̨chǫ
Tr'ondëk Hwëch'in
Tsawwassen First Nation
Vuntut Gwitchen First Nation
Westbank First Nation
Yale First Nation

This project seeks to reframe our understanding of the role of government documents and the power that specific clauses have in limiting the educational potential and achievement of Indigenous youth. It seeks to sensitize the reader to negotiations that continue to impede rather than expand the ability of Indigenous Nations to control the education of their youth. It is therefore important for scholars to identify those areas where colonial and neo-colonial practices have continued and to call on the government to review its negotiation practices. By demonstrating the problematic nature of the standard clauses used in self-governance agreements, researchers such as Australian educational scholar Lester-Irabinna Rigney have introduced Indigenous research practices that privilege sovereignty to help Indigenous communities reclaim, reframe, and rename the process of negotiation and achieve increased sovereignty for their people.[48] As a research methodology, indigenist research aims to decolonize

[48] Lester-Irabinna Rigney, "Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and Its Principles," *Wicazo Sa Review* 14, no. 2 (1999): 109–21.

Western research practices by refocusing the goals of the research itself to contribute to self-determination and liberation struggles rather than reinforcing colonial models. By analyzing, critiquing, and ultimately challenging epistemologies that are commonplace in higher education and using an Indigenous research method, this thesis adheres to Rigney's vision of indigenist research. It serves to shine a light on negotiation methods routinely used throughout Canada that need to be re-examined and identified as colonizing in an era when reconciliation calls on us all to support political approaches that bolster rather than limit Indigenous sovereignty. At the forefront of the theoretical framework are the three fundamental and interrelated principles that inform Indigenist research: resistance, political integrity, and privileging Indigenous voices. Research as resistance seeks to uncover and protest continuing forms of oppression that confront Indigenous people.[49] Indigenous researchers for liberation undertake research as political integrity; here, the struggle is educational sovereignty for First Nations, Métis, and Inuit people.[50] The Indigenous voice is privileged by focusing on lived experience in the historical section of the struggle for educational sovereignty.[51] Through the use of speeches, conference keynotes, and addresses featuring the voices of Indigenous treaty negotiators, Chiefs, and lawyers, the thesis searches for and reveals the issues that are preventing Indigenous educational sovereignty. Framing the research in this manner acknowledges the continuing experience of colonization, challenges the history of settler colonialism and helps move forward the transformation of negotiation in the Canadian landscape.

As this thesis also compares governance agreements, using a method of comparative assessment stemming from the policy dismantling work by Michael Bauer, Professor of

[49] Rigney, "Indigenist Research," 117.
[50] Rigney, "Indigenist Research," 117.
[51] Rigney, "Indigenist Research," 117.

Comparative Public Administration and Policy Analysis has inspired the framework used in chapter two. In this thesis a form of policy dismantling is used to examine government policy changes in the educational clauses in self-government agreements.[52] Policy dismantling is associated with reductions and terminations in policy creation. Theoretically, it is the belief that politicians remove or dismantle policies for a wide range of reasons. Using this approach, the thesis concentrates on the extent of the reduction in educational sovereignty seen in policy changes in agreements with individual First Nations. The conceptual direction of the policy changes that are anticipated over time is a decrease rather than an increase, so these agreements contain policy dismantling or at least the potential thereof. Secondly, the focus on individual clauses found in tripartite and bilateral agreements affords the opportunity to adopt a more comprehensive perspective of each agreement's effectiveness in impeding educational sovereignty. Lastly, the policy dismantling approach curbs biased assessments by considering both directions: either increased or decreased levels of autonomy and control over education. Dismantling the policies affected or imagined by specific clauses enables the assessment of distinctive patterns of change seen throughout the self-government agreements signed from 1975 to 2016. This method does not consider policy outcomes, as those are usually affected by several variables such as funding, making a policy change a merely causal mechanism. Rather, the implementation of the policy analysis using two dimensions to measure change: 1) does the clause acknowledge the inherent First Nations right to autonomous jurisdiction over education, and 2) does the clause remove or limit Indigenous jurisdiction, causing the loss of that inherent right? Using a framework to assess individual clauses can identify both radical and incremental

[52] Michael W. Bauer et al., eds., *Dismantling Public Policy: Preferences, Strategies, and Effects* (Oxford: Oxford University Press, 2012); Michael Bauer, and Christoph Knill, "A Conceptual Framework for the Comparative Analysis of Policy Change: Measurement, Explanation and Strategies of Policy Dismantling," *Journal of Comparative Policy Analysis* 16, no. 1 (2014): 28–44.

changes demonstrated through policy wording by presenting a variety of indicators dealing with devolution, transferability, the power to enact laws, and the level of autonomous jurisdiction. As this project does not focus on policy outcomes, the issues surrounding the generation of funding formulas that are largely absent from self-government agreements are not considered; they are a separate category of bureaucratic implementation, not an inherent policy output.

An ethical scholar always reveals any personal bias that may affect the outcome of a study. As an Indigenous scholar utilizing the Indigenist methodology, some readers may be concerned as to the degree of bias in this study. However, pairing Indigenist methods with the comparative policy dismantling method controls for this issue, as the dismantling approach relies on the existence or non-existence of a specific type of clause in a document under study.

Organization of the thesis

Chapter one begins with an in-depth exploration of the path toward educational sovereignty. Indigenous leaders began to pursue control over education starting in the 1960s through vehicles like the NIB and its successor organization the AFN, RCAP, and the First Nations Education Steering Committee (FNESC). This exploration shows the political context in which the educational clauses of the governance agreements were negotiated; it also delves into the current arrangements throughout Canada in the form of memoranda of understanding (MoUs), educational acts, and Indigenous advisory councils comprised of individual First Nations and school district, provincial, and federal systems. Critiquing these systems demonstrates that current agreements afford First Nations little opportunity to deal with the ongoing problems in educating Indigenous youth, as quasi- or co-management with provincial

and federal authorities leaves them little room for innovation. Educational success for Indigenous youth requires an autonomy not realized in existing self-government agreements.

Chapter two provides a brief introduction to the various agreements in principle, self-government agreements, final agreements, government-to-government agreements, self-government acts, and comprehensive land claim agreements signed in Canada, followed by an analysis of nation-to-nation documents using the policy dismantling assessment framework. A discussion of the two dimensions that involve four areas of analysis—jurisdiction, devolution, ability to pass laws, and transferability within the forty-one documents negotiated in Canada—shows that educational sovereignty has not yet been realized. Finally, identifying which agreements provide greater Indigenous autonomy over each of the four areas or bind them with the most restrictions offers a guideline to best practices for current and future negotiations.

The conclusion features an outline of the themes arising from the language used in the documents and the implications of clauses that through omission or deliberate inclusion undermine Indigenous sovereignty. The conclusion ends with recommendations for communities involved in self-governance agreement negotiations regarding the appropriate language and composition of specific clauses to achieve educational sovereignty.

Anticipated Significance

This thesis demonstrates that the educational clauses in nation-to-nation agreements are formulaic and ensure the maintenance of Canadian government oversight and control over Indian education. The Canadian government still wishes to impose a cookie-cutter education policy on Indigenous people, despite historical agreements to the contrary and recent reconciliation initiatives, as demonstrated through the repeated use of similarly restrictive clauses in agreement

after agreement. Highlighting the impact of these clauses on the performance of Indigenous learners provides vitally needed data to First Nations leaders, federal policymakers, and provincial stakeholders. These actors can then make recommendations concerning the continuance, revision, or termination of these clauses under negotiation in Canada. Therefore, this thesis provides crucial support to Indigenous leaders—and indeed to all Canadians—to establish a solid foundation for Indigenous educational sovereignty.

Analyzing the exact clauses and how their wording expands or limits First Nations' ability to govern educational matters provides an opportunity to identify methods to address these issues in current and future negotiations. The research presented here can help respond to the AFN's renewed call for action to review all existing documents and make recommendations for their continuance, revision, or termination and to influence the ninety agreements that are currently under negotiation in Canada.

Chapter One: The Struggle for Educational Sovereignty

> *We are convinced that you mean to do us Good by your Proposal [to educate our young men]; and we thank you heartily. But you, who are wise, must know that different Nations have different Conceptions of things and you will therefore not take it amiss if our ideas of this kind of Education happen not to be the same as yours…we are…not the less oblig'd by your kind Offer, tho' we decline accepting it; and to show our grateful Sense of it, if the Gentlemen of Virginia will send us a Dozen of their Sons, we will take Care of their education, instruct them in all we know and make Men of them.*
>
> *Onondaga Chief Canassatego*

Chief Canassatego's speech, delivered during the 1744 Treaty of Lancaster in Pennsylvania to on behalf of the Iroquois Confederacy of Nations, serves as an example of the refusal of Indigenous people to give up their sovereign right to educate their youth. Throughout history, colonizers have oppressed Indigenous people by either denying them equitable access to education or enforcing assimilation policies to hinder their educational, political, and economic successes. Before European contact, First Nations exercised absolute control over their people with complex governance and trading systems that spanned North America. Pre-Confederation settler politicians set about to extinguish Indigenous rights to not only land but also political sovereignty with the 1857 *Gradual Civilization Act*, which encouraged enfranchisement to become part of the general polity and the colonial world through assimilation. Section 91(24) of the *Constitution Act* (1867) gave the federal government jurisdiction over Indians and lands reserved for Indians. In 1876, the *Indian Act* was proclaimed, dismantling traditional systems of governance and imposing external controls overseen by the Department of Indian Affairs. Indigenous people were undermined and forced to become dependent, as their way of life was replaced with Canada's assimilationist policies.[1] Lasting over a century, the residential school

[1] Assembly of First Nations, *It's Our Vision*, , 4.

era meant physical, sexual, emotional, and mental abuse that failed Indigenous people and devastated generations. Indigenous education provided by the federal and provincial governments continues to be inadequate, with chronic underfunding, an inability to engage Indigenous students, and an unwillingness to grant First Nations educational sovereignty. Education policy in Canada is used as a tool of oppression. The AFN seeks self-determination and has fought to regain educational sovereignty.[2]

Indigenous educational sovereignty is an inherent right, power, or authority to exercise control over education. In the context of First Nations self-government, sovereignty includes the authority to create programs, set standards, and draw up curricula; to establish educational standards and teaching methodologies and to evaluate education systems and the training and certification of teachers for students from preschool through post-secondary stages. In a self-governance context, educational sovereignty is the formal recognition by federal and provincial governments, local school districts, and individual schools of the inherent right of First Nations to make decisions concerning the education of their children and the methods of delivering that education. American scholars in education policy studies Teresa McCarty and Tiffany S. Lee argue that all tribal sovereignty must include educational sovereignty, for it is a battle between state education departments, the Bureau of Indian Affairs, and tribes for power over the education of American Indians.[3] This situation parallels the one in Canada, as the struggle between Indigenous and Northern Affairs Canada (INAC), provincial governments, and First Nations echoes its southern neighbours' search for power.

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[2] Assembly of First Nations, *It's Our Vision*, 4.

[3] Teresa L. McCarty and Tiffany S Lee, "Critical Culturally Sustaining/Revitalizing Pedagogy and Indigenous Education Sovereignty," *Harvard Educational Review* 84, no. 1 (2014): 101–24.

For this thesis, educational sovereignty is considered to mean a First Nation having regained jurisdiction, devolution, and the power to make laws free from transferability clauses. Jurisdiction is the formal recognition by both federal and provincial governments of a given First Nation's inherent right of power, authority, and control to make decisions about the education of its members and the foundation of its education system. Devolution is the transfer of power from provincial and federal governments to First Nations to govern their members' education and to enact laws that prevail when in conflict with a provincial or federal statute. Finally, Indigenous educational sovereignty means freedom from transferability clauses that require First Nations to adhere to provincial curricula and standards by demanding that First Nations educational institutions permit transfers between provincial and First Nations schools.

This chapter explores the path that Indigenous governing bodies like the AFN, Indigenous educational organizations like the First Nations Educational Steering Committee, and individual nations have taken to pursue control over education since the 1972 publication of the NIB policy paper *Indian Control of Indian Education*. It also highlights their desire to be free from agreements that limited their participation to quasi co-management arrangements with the provincial and federal levels of government. Along with official government reports suggesting movement toward granting educational sovereignty come others actively advocating for continued governmental control. Understanding the impact of federal government reports, MoUs, and the voices of Indigenous people on the development of self-governance agreements allows a greater appreciation for the context within which the current agreements were developed.

Hawthorn Report 1966

Considered the catalyst to Indigenous self-government in Canada, *A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies: Part 1*, dubbed the Hawthorn Report, was commissioned by the Government of Canada in 1963.[4] The government appointed anthropologist Harry B. Hawthorn to oversee a four-year educational survey that concluded in 1966:

> The prime assumption of the Report has been that it is imperative that Indians be enabled to make meaningful choices between desirable alternatives, that this should not happen at some time in the future as wisdom grows or the situation improves, but operate now and continue with increasing range.[5]

The urgency expressed speaks to previous political failures to recognize the capacity of First Nations to manage their programs, which hindered the transfer of any control to individual nations and communities in the 1960s. The Hawthorn Report found that the education provided to First Nations people was largely inadequate and raised public awareness of the realities of Indigenous education among Canadians.[6] Moreover, the report indicated a need to view First Nations self-government as being "treated as municipalities for the purpose of all provincial and

[4] Jerry Paquette, "Aboriginal Self-Government and Education in Canada; C. E. S. Franks, "Public Administration Questions Relating to Aboriginal Self-Government; K. P. Binda and Sharilyn Calliou. eds., *Aboriginal Education in Canada: A Study in Decolonization* (Mississauga, ON: Canadian Educators' Press, 2001); Friesen and Friesen, *First Nations in the Twenty-First Century: Contemporary Educational Frontiers*; Jerry Paquette and Gérald Fallon, *First Nations Education Policy in Canada: Progress or Gridlock?*).

[5] Harry B. Hawthorn, ed. *A Survey of the Contemporary Indians of Canada: A Report on Economic, Political, Educational Needs and Policies Part 1*

[6] Marlene Brant Castellano, Lynne Davis, and Louise Lahache, eds., *Aboriginal Education: Fulfilling the Promise* (Vancouver: UBC Press, 2000).

federal acts,"[7] especially regarding delivery of services like education, which would result in a delegated jurisdiction. If treated as municipalities, First Nations' local control could be restricted or withdrawn by the provincial government; provincial governments' right to do so derived from the *Constitution Act* (1867) in Section 92 "Municipal Institutions,"[8] so the result was little to no autonomy and the continuation of provincial control.

According to anthropologist Sally Weaver, the federal government response to the Hawthorn Report's recommendations was overwhelmingly positive.[9] With 110 of the 151 recommendations accepted outright, it appeared that the political climate for Indigenous self-government in Canada had changed. Other scholars, such as political scientist C. E. S. Franks were not as optimistic concerning the outcomes of the Hawthorn Report.[10] Their critique of the recommendations indicated there were conflicting messages throughout the document that advocated for both a more significant role for provincial Ministers of Education *and* autonomy for First Nations. Regardless of the strengths or weaknesses of the report, the political climate changed in 1968, as newly elected Prime Minister Pierre Elliot Trudeau appointed Jean Chrétien as Minister of Indian Affairs and Northern Development. Chrétien's White Paper, which suggested eliminating the "special status" of First Nations people and encouraging them to join mainstream society by repealing the *Indian Act*, sparked outrage in academia and among First

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[7] Franks, C. E. S. *Public Administration Questions Relating to Aboriginal Self-government*. Aboriginal Peoples and Constitutional Reform Background Paper no. 12. (Kingston: Queens University Institute of Intergovernmental Relations, 1987).29.

[8] Nancy Morgan, *"If Not Now, Then When?" First Nations Jurisdiction Over Education: A Literature Review*, A report to the Minister's National Working Group on First Nations Education (Ottawa: Assembly of First Nations, 1999). https://www.afn.ca/uploads/files/education/4._2002_nov_nancy_morgan_fn_jurisdiction_of_fn_education_report_to_min_working_group_-_if_not_now_then_when.pdf.

[9] Sally Weaver, "The Hawthorn Report—Its Use in the Making of Canadian Indian Policy." In *Anthropology, Public Policy, and Native Peoples in Canada*, edited by Noel Dyck and James B. Waldram, 75–97. (Montreal: McGill-Queen's University Press, 1993).

[10] Franks, "Public Administration Questions."

Nations communities.[11] Education scholars Marie Battiste and Jean Barman describe this assimilation policy as "overwhelmingly rejected"[12] by First Nations because it was created to terminate all government-to-government relationships between the Crown and First Nations. Frances Abele, Professor of Public Policy and Administration, Carolyn Dittburner, Chief of Staff in the Privy Council Office, and Katherine Graham, Professor Emerita of Aboriginal and Northern Development Policy, argue that "Indian First Nations saw the White Paper as the final step in the Federal Government's desire to transfer jurisdiction over Indian education (among other things) to the provincial governments."[13] The White Paper approach would have eliminated any potential for First Nations to gain jurisdiction, which is the truest form of Indigenous educational sovereignty.

Red Paper 1970

The two hundred-member Indian Association of Alberta issued a Red Paper in 1970 as an oppositional response to the White Paper.[14] Consisting of six counter-proposals to the White Paper, the Red Paper is credited with inspiring continued dialogue about and resistance to federal and provincial control over First Nations education.[15] Two essential strategies for the way forward, according to the Red Paper, were educational and economic development, which required critical discourse between First Nations and provincial and federal governments. The campaign included the victory of the Blue Quills School sit-in, which ended after Chrétien

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[11] Jean Barman, Yvonne M Hébert, and Don N. McCaskill, eds., *Indian Education in Canada*, 2 vols., Nakoda Institute Occasional Paper nos. 2–3 (Vancouver: University of British Columbia, 1986); Marie Battiste and Jean Barman, eds., *First Nations Education in Canada: The Circle Unfolds* (Vancouver: UBC Press, 1995); Castellano, Davis, and Lahache, *Aboriginal Education*; Friesen and Friesen, *Contemporary Educational Frontiers*.

[12] Battiste and Barman, *First Nations Education*, 10.

[13] Castellano, Davis, and Lahache, *Aboriginal Education*, 5.

[14] Leon Crane Bear, "The Indian Association of Alberta's 1970 Red Paper Published as a Response to the Canadian Federal Government's Proposed 1969 White Paper on Indian Policy" (master's thesis, University of Lethbridge, 2015), https://www.uleth.ca/dspace/bitstream/handle/10133/3770/Crane_Bear%2C_Leon_MA_2015.pdf?sequence=4andisAllowed=y

[15] Crane Bear, "Red Paper," 5.

signed an agreement transferring the operation and control of Blue Quills to the Native Education Council, effective July 1, 1971. The sit-in comprised over three hundred community members of St Paul's Regional Educational Division 1 in Alberta, who demanded control of the education of their children; it resulted in their school becoming the first in Canada to be fully governed by First Nations administrators and educators. The CBC reported that "the success of Blue Quills turned the tide of Indigenous education in Canada toward Indigenous self-determination."[16] Forty-five years later, Blue Quills became University nuhelot'ịne thaiyots'ị nistameyimâkanak Blue Quills, a founding member of the First Nations Adult and Higher Education Consortium dedicated to increasing and accessing educational opportunities for First Nations students.[17]

Watson Report 1971

Another stride toward educational sovereignty was taken in 1971 with the Watson Report, a report of the Subcommittee on Indian Education to the Standing Committee on Indian Education on Indian Affairs and Northern Development of the House of Commons. The subcommittee sought public consultation from First Nations to prepare a list of recommendations which included introducing intensive Indigenous language programs and curricula containing Indigenous cultural content.[18]

[16] CBC, "How Stanley Redcrow and First Nations activists reclaimed the Blue Quills Residential School." CBC Canada the Story of Us, last modified May 10, 2017, http://www.cbc.ca/2017/canadathestoryofus/how-stanley-redcrow-and-first-nations-activists-reclaimed-the-blue-quills-residential-school-1.4108629.

[17] University nuhelot'ịne thaiyots'ị nistameyimâkanak Blue Quills, "Vision," accessed August 12, 2018, http://www.bluequills.ca/mission/.

[18] Barman, Hébert, and McCaskill, *Indian Education in Canada*; Castellano, Davis, and Lahache, *Aboriginal Education*.

Indian Control of Indian Education 1972

At the same time, on a national level, the NIB continued to demand increased First Nations control of education, laying out the principles of control and the significance of jurisdiction in *Indian Control of Indian Education*, a policy paper presented to the Minister of Indian Affairs and Northern Development by the NIB in 1972.[19] As the statutes of the period allowed First Nations parents no input into the education of their children, the NIB took the following position:

> Until now, decisions on the education of the Indian children has been made by anyone and everyone, except Indian parents. This must stop. Band councils should be given total or partial authority for education on reserves, depending on local circumstances, and always with provisions for eventual complete autonomy, analogous to that of the provincial school board vis-à-vis a provincial Department of Education[20]

The NIB also argued that federal and provincial educational authorities had failed to meet the needs of First Nations with regard to Indigenous achievement, teacher training, culturally based curricula, and, most importantly, First Nations control of Indigenous education.[21]

Although the Department of Indian Affairs and Northern Development (DIAND) accepted the policy in principle as a national policy statement, the victory celebration for educational sovereignty was short-lived. The federal government lacked adequate internal mechanisms to actualize the implementation of "Indian Control" cited in *Indian Control of Indian Education* as

[19] Battiste and Barman, *First Nations Education.*

[20] National Indian Brotherhood. *Indian Control of Indian Education*. Policy paper presented to the Minister of Indian Affairs and Northern Development. (Ottawa: National Indian Brotherhood, 1972).

[21] John W. Friesen, and Virginia Agnes Lyons Friesen, *First Nations in the Twenty-First Century: Contemporary Educational Frontiers* (Calgary: Brush Education, 2005);

the core of educational sovereignty.[22] Complications arose at numerous levels of government when interpreting the degree of control and the exact levels of authority that parents and local authorities possessed under the policy. There was a discrepancy in understandings of the exact level of control; Castellano, Davis, and Lahache remarked that while "the [provincial task force on the educational needs of the Native people of Ontario] defines 'control' regarding 'input,' Aboriginal documents define it as the total or partial transfer of jurisdiction over education to the local community level."[23] This fundamental difference of understanding over the issue of control continues to hinder the devolution of control to First Nations and allows policymakers and school administrators to believe that they have already ensured that First Nations have autonomy in the educational realm.

In 1975 the Ontario Director of Education Branch testified confirming the provincial government's position that the policy adopted only allowed First Nations to provide input in a 1972 statement to the Standing Senate Committee discussing the level of control to which First Nations had a right to:

> That it was mutually agreed that Indian control of Indian education meant an influence over education similar to that other Canadian people have over their own children. I think that some people have since that time tended to interpret it as a carte blanche, total control apart from anybody else. I was at the initial discussions and, in my recollection anyway, it

[22] Dianne Longboat, "First Nations Control of Education: The Path to our Survival as Nations" in *Indian Education in Canada*, ed. Jean Barman, Yvonne M. Hébert, and Don N. McCaskill, Nakoda Institute Occasional Paper no. 2 (Vancouver: University of British Columbia, 1986), 22–42.

[23] Castellano, Davis, and Lahache, *Aboriginal Education*, 9.

> was not intended in that way at all at that time, either on the part of the National Indian Brotherhood or on part of the Department.[24]

This piece of revisionist history by the Director exemplifies how the relationship between the NIB/AFN and the federal and provincial governments can be undermined in negotiations or discussions and demonstrates a disregard for the essential goal outlined in *Indian Control of Indian Education*.

Despite obstacles like these, First Nations communities continued to work alongside allies to create opportunities to achieve control over their education. For example, the Saskatchewan Federation of Indians, with the assistance of Harold Cardinal and the Indian Association of Alberta, established the Saskatchewan Indian Cultural College, which was later renamed the Saskatchewan Indian Federated College and is now known as First Nations University; it began offering classes in 1972.[25] Governed by a twelve-member board and entirely Indian-controlled, the institution was accredited in 1976 and thus became Canada's only Indigenous degree-granting university.[26] Unlike the American system of tribal colleges that arose at about the same time, this model has not proliferated in Canada, although cooperative institutions such as the Shingwauk Kinoomage Gamig affiliated with Algoma University are beginning to fill in the gaps.[27]

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[24] Indian Inuit Affairs Program, Education Social Development Branch, *Indian Education Paper, Phase 1 (*Ottawa: Indian Affairs and Northern Development, 1982), 30.

[25] Steven J. Crum, "A History of the First Nations College Movement of Canada, 1969–2000," *Tribal College Journal of American Indian Higher Education* 26, no. 3 (2015): 38–41.

[26] John H. Hylton, ed., *Aboriginal Self-Government in Canada: Current Trends and Issues*, 2nd ed., Purich's Aboriginal Issues Series (Saskatoon: Purich Publishing, 1999).

[27] Shingwauk Kinoomaage Gamig. Anishinabemowin. Algoma University. Accessed August 16, 2018 https://www.algomau.ca/academics/programs/anishinaabemowin/shingwauk-kinoomaage-gamig/

James Bay and Northern Québec Agreement (JBNQA) 1975

Despite the persistence of disagreement on interpretations of control, the early 1970s appeared to be overwhelmingly positive for Indigenous education, as First Nations organized and moved toward educational sovereignty. Further, the modern treaty and Indigenous land claim agreement era in Canada began in 1975 with the ratification of the James Bay and Northern Québec Agreement (JBNQA). The agreement allowed First Nations to create a Cree School Board with the ability to "exercise powers and functions in the said school municipality"[28] and the Kativik school board to have "jurisdiction" over their education aligning with governmental interpretations of Indian control,[29] However, the next clause indicates that the Minister of Education maintained authority over the school board and could veto their decisions, creating an ongoing need to advocate for true Indigenous educational sovereignty.

Indian Act Reform

Recognizing these issues and the slow pace at which change was occurring throughout the country, the NIB formed a joint committee comprised of senior members of the NIB and members of the federal cabinet to discuss reform of the *Indian Act* in the 1970s. The Education Program Staff of the NIB realized that true Indigenous educational sovereignty required a change in sections 114 and 115 of the act.[30] Sheila Carr-Stewart, an education policy studies scholar, refers to the mystifying phenomenon of First Nations exclusion in sections 114 and 115, which stipulate that the only parties with which the federal minister could negotiate were provincial and

[28] Grand Council of the Crees, *The James Bay and Northern Québec Agreement (JBNQA)*, 1975, http://www.gcc.ca/pdf/LEG000000006.pdf, 202.
[29] Grand Council of the Crees, *James Bay Agreement*, 209.
[30] Longboat, "First Nations Control," 31.

territorial governments, school boards, and charitable organizations:[31] "Section 114 Agreements with Provinces" explicitly grants the Governor in Council the ability to authorize the minister to enter into agreements concerning Indian children with the province, commissioner, or the school board and, until recently, religious or charitable organizations.[32] First Nations are absent from this list and thus lacked any ability to negotiate on their behalf. Although the NIB attempted to work with the federal government on this joint committee to change sections 114–123 of the *Indian Act*, discussions came to a halt in 1978 when Noel Starblanket, Chief of the NIB from 1976 to 1980, ended NIB participation due to a lack of progress. Despite the absence of political will at the federal and provincial levels to enact new legislation, schools were established in many communities from the preschool through the post-secondary levels between 1976 and 1980, which eased Indigenous reliance on the federal system of boarding schools. However, Indigenous communities still had minimal input from First Nations on implementation, delivery, and curricula. In 1979, there were twelve Residential Schools in Canada, with over twelve hundred students enrolled.[33] As gains were seen in some First Nations, others continued to fight against residential schools, and as church-run schools closed, federal and provincial programs expanded, reinforcing the need for First Nations to work toward increased Indigenous educational sovereignty.[34]

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[31] Sheila Carr-Stewart, "The Changing Educational Governance of First Nations Schools in Canada: Towards Local Control and Educational Equity," *Management in Education* 20, no. 5 (2006): 6–12. Carr-Stewart has the sections of the *Indian Act* mislabelled, writing section "113" instead of "114."

[32] Canada, *Indian Act*, s. 114 from 2002-12-31 to 2003-03-31, http://laws-lois.justice.gc.ca/eng/acts/I-5/section-114-20021231.html#wb-cont.37.

[33] We Are the Children, "Reclaiming History: The Residential School System in Canada," accessed August 12, 2018. http://wherearethechildren.ca/en/timeline/research/.

[34] We Are the Children, "Reclaiming History."

Indian Education Paper, Phase 1 1982

By the 1980s, despite some local successes, control remained ambiguous at both the federal and provincial levels, and First Nations and various levels of Canadian government began to produce reports and policy papers outlining their understandings of control, jurisdiction, and devolution. In 1982, the federal government requested the Minister of Indian Affairs and Northern Development to conduct an internal assessment of Indian education with an emphasis on education policy to provide a focal point for bilateral federal-Indian consultations. The government hoped that the paper produced from this exercise—*Indian Education Paper, Phase 1*—would help to solve the problems plaguing its educational programs. The paper confirmed that the federal government's interpretation of the section of the *Indian Act* regarding agreements made with provinces hinders First Nations control. In a particularly damaging passage, the *Indian Education Paper, Phase 1* states:

> The minister's authority to delegate his responsibility for providing educational services to bands is in some doubt since the Indian act does not name an Indian band as an entity with whom the minister may enter into an agreement for the education of Indian children.[35]

The unnamed authors of the document admitted a fundamental flaw in sections 115c and 115d of the *Indian Act* that limited bands' educational sovereignty. Before 2014's Bill C-428, only charitable and religious organizations could enter into agreements with a province to improve Indian education.[36] However, while the removal of sections 115c and 115d from the *Indian Act* was a victory, the new legislation only eliminated the ability of religious and charitable

[35] Indian Inuit Affairs Program, *Indian Education Paper*, 37.
[36] National Aboriginal Law Section, Canadian Bar Association, 2013 Bill C-428 Indian Act Amendment and Replacement Act, https://www.afn.ca/uploads/files/canadian_bar_association_on_c-428.pdf.

organizations to contract for educational services for Indigenous people; it did not grant First Nations the ability to enter into their own agreements with provincial governments.

In the *Indian Education Paper, Phase 1*, the federal government insisted that school boards were to operate only under provincial laws, making First Nations jurisdiction impossible.[37] Meanwhile, provincial governments had long contended that Indian bands were a federal matter, placing Indian school boards outside of their jurisdiction.[38] The *Indian Education Paper, Phase 1* in 1982 further demonstrates the federal government's problematic view of the amount of control that it anticipated it could devolve to Indigenous communities, even though it claimed otherwise earlier in its text: "Indian control of education is realized when a band education authority is free to exercise their responsibilities and decision making capacities within normal parameters established for elected school boards."[39] The study goes on to state that local control for First Nations should only allow them to determine education for their children to the same extent as other Canadian jurisdictions, through similar relationships established between provincial Departments of Education and local school boards that rely on transferability between schools. In the *Indian Education Paper, Phase 1*, the authors observed that "the emergence of Indian control has further served to highlight the deficiencies and dependent status of the present system."[40] The document outlines the basic considerations from the federal government perspective, stipulating that Indigenous education is the responsibility of the Minister of Indian Affairs and Northern Development under the *Indian Act* and that the Minister is accountable to Parliament, thus preventing a full surrender of control to First Nations Communities. The paper lays out the position that the federal government is willing to transfer Indian education programs

[37] Longboat, "First Nations Control," 33.
[38] Longboat, "First Nations Control," 33.
[39] Indian Inuit Affairs Program, *Indian Education Paper*, 28.
[40] Indian Inuit Affairs Program, *Indian Education Paper*, 40.

to First Nations education authorities only if they "have had the opportunity to acquire the necessary managerial skills,"[41] have established "suitable"[42] contribution agreements, and have requested autonomy while claiming that the department in fact advocates for enhancing "Indian responsibility and participation with provincial governments."[43] The assertions of the authors of the *Indian Education Paper, Phase 1* speak to the lack of political will at both the federal and provincial levels to relinquish any meaningful control to First Nations. The conclusions of the paper suggest that DIAND did not consider Indigenous people to have the capacity to operate their education systems.

Penner Report 1983

In December 1982, the House of Commons created a Parliamentary Task Force on Indian Self-Government. This body heard testimony from 567 witnesses during 215 oral presentations, resulting in the *Report of the Special Committee on Indian Self-Government, House of Commons, Issue No. 40* (known as the Penner Report) in 1983. At the time of the report, only 20% of Indian children graduated from high school compared to the 80% national average. The Penner Report recognizes the disparity with non-Indigenous Canadians and opens by stating that "external control of the education of Indian children has been destructive."[44] The Penner Report found that the federal government had replaced unilateral federal measures with bureaucratic systems that required First Nations resources but did not provide First Nations with real control. Indigenous people lack adequate representation on educational advisory committees and school boards, with

[41] Indian Inuit Affairs Program, *Indian Education Paper*, 27.
[42] Indian Inuit Affairs Program, *Indian Education Paper*, 27.
[43] Indian Inuit Affairs Program, *Indian Education Paper*, 27.
[44] Keith Penner, *Indian Self-Government in Canada: Report of the Special Committee* (Ottawa: Queen's Printer of Canada, 1983), 27.

the result that First Nations continued to be overruled by provincial and federal resolutions when participating in negotiations.

Further, the subcommittee admitted that DIAND had redefined control to mean "degree of participation" rather than what was intended by the 1972 *Indian Control of Indian Education* policy paper.[45] The report concluded that this definition permitted DIAND to delegate program administration—but not policy development—to First Nations. The Penner Report has been praised for bringing national attention to Indian educational sovereignty a decade after *Indian Control of Indian Education* by damning existing legislation as the culprit that delayed Indian control.[46] The Penner Report used strong language to convey the importance of Indian control of education and the process necessary to exercise it, including policymaking powers, authority to legislate on education, and full control of resources, citing the need to ensure the survival and development of Indian communities.[47] The Penner Report found the "departmental administration stultifying and wasteful"[48] and prone to perpetuating government control by proposing legislation that would deny any self-government. Castellano, Davis, and Lahache reflect on the Penner Report as a national call for a constitutionally entrenched recognition of the right to Indian self-government.[49] Unfortunately, the Canadian government did not follow through on this recommendation; once again, the failure to follow recommendations—even those developed internally—demonstrates that Canada's provincial and federal governments have long lacked the political will to entrench the rights of First Nations in the constitution.[50]

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[45] Longboat, "First Nations Control," 35.
[46] Longboat, "First Nations Control," 35.
[47] Franks, "Public Administration Questions," 29.
[48] Paul Tennant et al., "The Report of the House of Commons Special Committee on Indian Self-Government: Three Comments," *Canadian Public Policy / Analyse De Politiques* 10, no. 2 (1984): 213.
[49] Castellano, Davis, and Lahache, *Aboriginal Education*.
[50] Castellano, Davis, and Lahache, *Aboriginal Education*.

Tradition and Education: Towards a Vision of Our Future 1988

Further progress to assert sovereignty over education continued with the AFN's 1988 release of *Tradition and Education: Towards a Vision of Our Future, A Declaration of First Nations Jurisdiction Over Education*, a result of the national review of First Nations.[51] Castellano, Davis, and Lahache summarize the study's recommendations as consistent with the AFN's constitutional amendment demands while quoting the statement outlining the need for legislation on a federal level that would:

> Recognize the right of First Nations to exercise jurisdiction over their education and mandate federal, provincial, and territorial governments to vacate the field of First Nations education. No delegation of authority over education to First Nations governments is acceptable as a substitute for aboriginal First Nation jurisdiction which is recognized and affirmed in the constitution of Canada.[52]

Further, the document cites paternalistic practices and policies as the real hindrances to First Nations jurisdiction over education. Critiquing minor amendments to the *Indian Act* sections 114–123 advocated a decade earlier, the *Tradition and Education* declaration hold that the *Indian Act* itself is paternalistic and unjust. Even if the NIB call to amend the *Indian Act* in 1976 had been successful, and section 114 had been broadened to include First Nations governments and school boards as potential partners in agreements, the Minister of Indian Affairs would have continued to have the power to create policies and make final decisions.

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[51] Assembly of First Nations, *Tradition and Education: Towards a Vision of Our Future, A Declaration of First Nations Jurisdiction Over Education* (Ottawa: Assembly of First Nations, 1988), https://www.afn.ca/uploads/files/education/7._1988_december_afn_tradition_and_education-_a_declaration_on_fn_jurisdiction_over_education.pdf.

[52] Castellano, Davis, and Lahache, *Aboriginal Education*, 16–17.

MacPherson Report 1991

In the mid-1980s, First Nations proposed legislation that would recognize their right to control education through jurisdiction and law-making powers.[53] In 1991, the MacPherson Report was commissioned by the Department of Indian Affairs and Northern Development and the Department of Justice to review the AFN's *Tradition and Education*. James MacPherson of Osgoode Hall concluded that the federal government held jurisdiction over First Nations education, and constitutional issues would arise if it began to create provincial acts.[54] MacPherson reported that provincial governments maintained the right to create such acts in their school systems, yet both governments would be able to enact laws to support the implementation of the agreements.[55] The MacPherson Report demonstrates governmental failure to determine jurisdiction with clarity and to resolve the two-sided narrative that had plagued negotiations for decades; this reality required a shift if First Nations were to be successful in gaining true Indigenous educational sovereignty. The provincial and federal governments received constitutionally based jurisdiction through Sections 91–93 of the *Constitution Act* (1867), although the AFN sought constitutional amendments to alter the status quo. It became increasingly difficult following the MacPherson Report to deny the reality that educational sovereignty had been denied to First Nations.

This shift, along with the recognition that past attempts were being subverted and undermined by both federal and provincial governments, required a change from the concept of demanding educational authority to obtaining educational self-government.[56] As a result, in 1988

[53] Longboat, "First Nations Control."
[54] Morgan, *"If Not Now, Then When?"*
[55] James C. MacPherson, *MacPherson Report on Tradition and Education: Towards a Vision of Our Future* (Toronto: Osgoode Hall Law School, York University, September 1991).
[56] Castellano, Davis, and Lahache, *Aboriginal Education*.

the AFN demanded a constitutional amendment to recognize their inherent right to exercise self-government. The AFN asserted:

> Education for First Nations people is a matter of inherent aboriginal right. The federal government has a legal obligation through various treaties to provide adequate resources and services for education. The federal government is obligated to provide resources for quality education programs, facilities, transportation, equipment, and materials to meet the needs as determined by First Nations.[57]

The AFN's new position was that educational sovereignty required full operational control. The language used throughout this document shows conviction and asserts a level of authority, especially when speaking to the rejection of delegated authority First Nations experienced in the 1980s as they sought more control. Over the course of the 1980s, the NIB/AFN continued to fight for educational sovereignty and refused to accept provincial and federal government decision making, demanding instead to participate in negotiations on all subjects regarding education, including tuition and capital funding.

Further, the AFN demanded that jurisdiction applies from preschool through the post-secondary level not only in federal First Nations schools but also in public schools. It argued that First Nations authority is not granted by the federal government but rather an inherent right that was never surrendered to any level of government in Canada. Education policy scholars Jerry Paquette and Gérald Fallon characterized this position shift as a move beyond the contemporary understanding of nation-to-nation relationships, resulting in a demand that First Nations have a voice. This demand was generally ignored at the time by the federal government and scholars

[57] Assembly of First Nations, *Tradition and Education: Towards a Vision of Our Future, A Declaration of First Nations Jurisdiction Over Education*., 2

alike.[58] Instead, the federal government continued the course charted in the 1982 *Indian Education Paper, Phase 1* for the rest of the decade by relying on the assertion that:

> Even if legislative changes provided a better base the federal government would still retain a responsibility for the expenditure of funds and qualitative outcome of programs much the same as provincial departments of education. All must clearly understand this. Despite this, local control is still the desired objective which requires definition.[59]

Despite a few local exceptions, the harsh reality of the state of First Nations education in the 1980s was that the majority of decision making remained under the control of the Minister of Indian Affairs, including determining the schools that children would attend by leaving their communities, with no right to input, appeal, or review.

Self-determination Symposium 1990

In 1990, a conference on Aboriginal self-determination bought together First Nations leaders from across the country to discuss the current self-government situation. The proceedings contain the definition of self-governance embraced at the conference:

> Self-determination is the right and the ability of a people or a group of people to choose their destiny without external compulsion. It is the right to be sovereign, to be a supreme authority within a particular geographical territory.[60]

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[58] Gérald Fallon and Jerry Paquette, "A Critical Analysis of Self-Governance Agreements Addressing First Nations Control of Education in Canada," *Canadian Journal of Educational Administration and Policy* 132 (2012). https://files.eric.ed.gov/fulltext/EJ971063.pdf.

[59] Indian Inuit Affairs Program, *Indian Education Paper*, 39.

[60] Cassidy, Frank, ed., *Aboriginal Self-Determination: Proceedings of a Conference Held September 30–October 3, 1990* (Halifax: Institute for Research on Public Policy: Fernie, BC: Oolichon Books, 1991), 1.

The speeches made during the conference regarding the progress First Nations had achieved on Indigenous educational sovereignty from 1972 to 1990 built up their capacity to negotiate and fueled their passion. Daniel Bellegarde, First Vice Chief of the Federation of Saskatchewan Indian Nations, began by reminding everyone that education was guaranteed under the treaty for First Nations free from federal and provincial jurisdiction, as authority for education was not transferred in the treaties.

Similarly, Grand Chief of the Grand Council of the Crees Matthew Coon-Come confirmed that even recent land agreements like the 1975 James Bay and Northern Québec Agreement (JBNQA) had not transferred educational authority from the federal government:

> We negotiated the James Bay and Northern Québec Agreement because we did not have a choice. Through the agreement, which we signed under duress of losing our lands and our way of life, we thought that we had managed to regain control of the education of our children under the Cree School Board. In fact, we did make some progress under the agreement, but everything that we have done has required continued court actions and confrontation. We learned through our experience with the agreement that the non-implementation by the government is systemic. Not only is government unwilling to live up to its obligations, but it is often unable to do so because of the way the agreement is interpreted and twisted by bureaucrats. We call these deliberate patterns of distortion "white collar terrorism."[61]

[61] Cassidy, *Aboriginal Self-Determination*, 115.

Grand Chief of the Grand Council of the Crees Matthew Coon-Come cautionary speech warning others at the conference of the dangers of attempting to negotiate and the pitfalls of implementation.

Billy Diamond, the former Chief of the Rupert House Band, Grand Chief of the Grand Council of the Crees of Québec, and Chairman of the Cree School Board wrote *The Cree Experience*, which spoke to the challenges experienced since the signing of the James Bay agreement.[62] Issues including decreases in the quality and quantity of services for the school board, budget restrictions, and provincial denials of educational opportunities for individual students to attend programs and courses outside Québec. Diamond stresses that "Indian control of Indian education is not an easy thing to bring about, even when you have signed an agreement which is delegated to facilitate the process."[63] Longboat equates this phenomenon to non-existent control, claiming that First Nations merely run DIAND programming and that DIAND deceives First Nations with a "pretense of free choice of control only within a carefully managed framework of possibilities."[64] However, First Nations were committed to placing education at the core of their effort to restore their sovereignty and would continue in their pursuit of Indigenous educational sovereignty.[65]

David Joe, Land Claims Negotiator for the Council of Yukon Indians, in *Aboriginal Self-Determination* questioned the lack of movement regarding Section 35 (1) of the *Constitution Act* 1982, which recognized and affirmed Aboriginal and treaty rights.[66]Arguing that, due to the existing legislative agenda, if a First Nation created a bylaw "then in a colonial and paternalistic

[62] Billy Diamond, "The Cree Experience," in *Indian Education in Canada*, ed. Jean Barman, Yvonne M. Hébert, and Don N. McCaskill, Nakoda Institute Occasional Paper no. 2 (Vancouver: University of British Columbia, 1986), 45–62.
[63] Diamond, "The Cree Experience," 61.
[64] Longboat, "First Nations Control," 29.
[65] Castellano, Davis, and Lahache, *Aboriginal Education*.
[66] Cassidy, *Aboriginal Self-Determination*, 65.

manner, the minister may disallow the bylaw."[67] The negotiator, speaking months after the signing of the *Umbrella Final Agreement*, a political agreement providing a framework for fourteen Yukon First Nations to complete final claim settlement agreements, recognized that the agreement only partially adopted the amendments to the constitution relating to aboriginal self-government proposed by the federal government at the 1987 First Ministers conference on aboriginal constitutional matters.[68] The proposal ensured that "any right to aboriginal self-government would not derogate from the jurisdiction or legislative powers of Parliament or a provincial legislature, without their consent."[69] The wording of the *Umbrella Final Agreement* commits the government to further negotiations between the federal, provincial, and Yukon First Nation governments on the inclusion of education.[70] In actuality, the subsequent self-government agreement negotiations did not include education clauses that endow Yukon First Nations with Indigenous educational sovereignty. At the conference in 1991, Joe expressed hope that areas such as education would be "exclusive matters for a First Nation."[71] The contemporary situation of the federal government controlling First Nations education was therefore accomplished without consent and to continue that arrangement would "engender bad faith."[72]

Michael Whittington, Chief Negotiator, Council of Yukon Indians Land Claims from DIAND, also spoke at the aboriginal self-determination conference, citing issues with the implementation of self-government that arose from its lack of constitutional protection. He characterised the Yukon First Nations' lack of infrastructure as stalling the progress of negotiations and determined that the government could not transfer the legislative power from

[67] Cassidy, *Aboriginal Self-Determination*, 65.
[68] Council of Yukon First Nations, *Umbrella Final Agreement*, 1993, http://cyfn.ca/agreements/umbrella-final-agreement/2013.
[69] Cassidy, *Aboriginal Self-Determination*, 65.
[70] Council of Yukon First Nations, *Umbrella Final Agreement*.
[71] Cassidy, *Aboriginal Self-Determination*, 67.
[72] Cassidy, *Aboriginal Self-Determination*, 67.

territorial government to the First Nations.[73] Whittington insisted that the federal government was working in the best interest of First Nations to avoid interruption of "delivery of services to non-native Yukoners and to native Yukoners whose First Nations have not yet taken over those legislative roles,"[74] such as education. Whittington claimed that "the aboriginal people in the Yukon have to be developed because self-government is not going to work if Yukon First Nations Governments have in the jobs Indian people who aren't trained."[75] Yukon Premier Tony Penikett supported aboriginal self-government, stating that "exclusive jurisdiction must be constitutionally protected, so that governments cannot arbitrarily interfere in the internal affairs of First Nations."[76] This may have been a worthwhile sentiment, but a lack of educational jurisdiction was seen in ensuing negotiations with the territory for the eleven different self-government agreements completed throughout the Yukon from 1993 to 2006.

Nunavut Land Claim Agreement 1993

Three years after the sovereignty conference, the seventeen-year negotiations concerning the claim in Nunavut finally concluded.[77] The *Nunavut Land Claim Agreement* between the Inuit of the Nunavut Settlement Area in 1993 and the federal government is a point of interest in the pursuit of educational sovereignty in two regards.[78] As solicitor Nancy Morgan highlighted in her commissioned report, *If Not Now, Then When? First Nations Jurisdiction Over Education: A Literature Review*, the Nunavut agreement represented a new model of jurisdiction.[79] Firstly, the Inuit are the largest ethnic group in the overall Nunavut population. Morgan suggests that, as a

[73] Cassidy, *Aboriginal Self-Determination*, 125.
[74] Cassidy, *Aboriginal Self-Determination*, 125.
[75] Cassidy, *Aboriginal Self-Determination*, 127.
[76] Cassidy, *Aboriginal Self-Determination*, 146.
[77] *The James Bay and Northern Québec Agreement (JBNQA)* c 16.0.11, 16.0.2, 17.0.11, 17.0.2 (1975).
[78] Government of Nunavut, *Nunavut Land Claims Agreement*, 1993, https://www.gov.nu.ca/sites/default/files/Nunavut_Land_Claims_Agreement.pdf.
[79] Morgan, *"If Not Now, Then When?"* 41.

result, all government structures in the territory will effectively be self-governing Indigenous bodies; due to their numerical advantage, the Inuit have "effective control over the levers of government."[80] The second issue relates to the perception of those from the territory who were involved with the implementation of the agreements, such as former President of the Kivalliq Inuit Association and Mayor of Rankin Inlet Paul Kaludjak. For them, the Government of Canada was still failing to live up to its obligations and fiduciary responsibilities under the agreement, resulting in a Statement of Claim filed in 2006 by Nunavut Tunngavik.[81] Kaludjak made the following remark about the land claim agreement that created the Government of Nunavut in 1999:

> In light of this, you might have wondered whether or not we negotiated a good agreement. We did negotiate a good agreement. But it's not being implemented as it should. Our agreement is still a major accomplishment and is something to be proud of.[82]

Kaludjak speaks to the complexity of nation-to-nation agreements, as they require years of dedication from negotiators and community members; although they do not achieve full sovereignty, he viewed them as a step forward worthy of admiration.

British Columbia Treaty Commission 1993

British Columbia engaged in a new treaty process during the early nineties that included the establishment of the BC Treaty Commission (BCTC) in 1993. The role of the BCTC is to facilitate treaty negotiations between the First Nations of British Columbia and the provincial and federal governments. However, its mandate does not include negotiating on behalf of First

[80] Morgan, *"If Not Now, Then When?"* 41.
[81] Nunavuttunngavik Incorportated v. Canada (2006)
[82] Paul Kaludjak, "Keynote Speaker," In *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations*, 5–9. Vancouver: BC Treaty Commission, 2007. 6.

Nations; rather, it is to ensure adherence to the blueprint created in 1991. Although it was intended to serve as a new beginning in the search for self-government, within a decade, scholars began to criticize the commission for a paralyzing lack of action. For example, Penikett criticized the BCTC for not being more involved with serious negotiation and influencing the overall atmosphere.[83] Jacqueline Lemieux wrote that the BCTC "has been likened to the Governor General of Canada by one treaty negotiator; a 'public figure with mainly ceremonial duties.'"[84] At the time of its establishment, it was hoped that the BCTC would finally address and institutionalize First Nations' recognition in the treaty process and inclusion in the creation of their self-government. However, by 2018, the B. C. treaty process had become ineffective with sixty-five nations representing 52.8% of all bands in British Columbia seeking self-government only seven First Nations have reached the implementation stage and eight agreements have been constitutionally entrenched in the twenty-five years since the BCTC's inception.[85]

Royal Commission on Aboriginal People

The 1990s also witnessed the Royal Commission on Aboriginal People (RCAP) which held 178 public hearings, visited 96 communities, reviewed research studies, past inquiries, and earlier reports while consulting numerous experts between 1991 and 1996.[86] When the RCAP's final report was released in 1996, it took significant note of Indigenous education in Canada, devoting an entire section (3.5.1) entitled "Aboriginal Control of Aboriginal Education: Still

[83] Tony Penikett, *Reconciliation: First Nations Treaty Making in British Columbia* (Vancouver: Douglas & McIntyre, 2006).

[84] Jacqueline Lemieux, "Comprehensive Land Claims in British Columbia: A Worthwhile Pursuit?" (master's thesis, Concordia University, 2013), 12, http://www.queensu.ca/sps/qpr/sites/webpublish.queensu.ca.qprwww/files/files/9%20comprehensive%20land%20claims%20bc.pdf.

[85] BC Treaty Commission, "Negotiations Updates" http://www.bctreaty.ca/

[86] Canada, Royal Commission on Aboriginal Peoples. "People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples," 1996, http://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637.

Waiting"[87] to the topic. The first educational recommendation of section 3.5.1 urges that "federal, provincial and territorial governments act promptly to acknowledge that education is a core area for the exercise of Aboriginal self-government."[88] The RCAP report quotes Vernon Roote, Deputy Grand Chief of the Union of Ontario Indians, who charged the school system with subtly attempting to control and assimilate Aboriginal children while denying their families the rights of involvement and local influence afforded to non-indigenous people. The RCAP also noted a recommendation by Dr. Eber Hampton, President of Saskatchewan Indian Federated College, that the federal and provincial governments should continue to develop aboriginal-controlled education: "Aboriginal education as assimilation has always, everywhere, failed and failed miserably and failed destructively... Aboriginal education for self-determination, controlled by Aboriginal people, succeeds."[89] This has never been actualized. Friesen and Friesen highlighted the 1991 RCAP conclusion that "education would be the primary channel through which to achieve self-government jurisdiction."[90] However, the most sweeping RCAP recommendations were never implemented, including a proposal for a new treaty process to establish full jurisdiction over First Nations entering into agreements in the form of a new Royal Proclamation. Although numerous scholars have commented on the successes and failings of RCAP in the twenty-seven years since it first met, the quotes above still serve as unanswered calls from the community to implement Indigenous educational sovereignty.

[87] Canada, Royal Commission on Aboriginal Peoples, "People to People."
[88] Castellano, Davis, and Lahache, *Aboriginal Education*, 256.
[89] Canada, Royal Commission on Aboriginal Peoples, "People to People."
[90] Friesen and Friesen, *Contemporary Educational Frontiers*, 88.

Mi'kmaq Education Act 1997

In 1997, the federal and provincial governments began to take a different approach with regard to First Nations exercise of educational jurisdiction. By passing the *Mi'kmaq Education Act*, the Nova Scotia and federal governments put into legal effect an agreement with nine Mi'kmaq communities.[91] Within the *Mi'kmaq Education Act* lay the scope of jurisdiction and the very nature of the transfer to the Mi'kmaq of K-12 education and post-secondary support.[92] Commissioned by the government, Morgan asserted that the agreements set out the authority and educational powers to the Mi'kmaq, although the government admits that the *Mi'kmaq Education Act* is very brief and relies heavily on the attachments, which include a tripartite agreement with the Mi'kmaq, Canada and Nova Scotia, a funding agreement, an implementation plan, and resolutions for band council ratifications. Morgan praised this approach, stating that it "reduces the likelihood of unilateral action being taken by one of the governments."[93] However, this perspective neglects the consideration that the Mi'kmaq should be able to make their own decisions for their community without consulting either or both the provincial and federal ministers. Although the *Mi'kmaq Education Act* appears in many ways to be one of the most effective agreements in the movement toward educational sovereignty, one must consider that these types of tripartite agreements do not assert self-governance or connect to a land claim; rather, they are the result of sectoral negotiations. As a result of this legislation, the Mi'kmaq of Nova Scotia has entered into an educational partnership and have a current framework agreement, created in 2007, that was obtained without ever filing a land claim or pursuing a self-

[91] Canada, *Mi'kmaq Education Acts*, S. C 1998, c. 24, http://laws-lois.justice.gc.ca/eng/acts/M-7.6/FullText.html.
[92] Morgan, *"If Not Now, Then When?,"* 43.
[93] Morgan, *"If Not Now, Then When?,"* 43.

government agreement. However, in 1999, the report to the minister's national working group on First Nations education concluded that implementation had already been "hampered by inadequate funding and preparation for implementation."[94] The Mi'kmaq created the Mi'kmaw Kina'amatnewey (MK), a regional management organization recognized by the provincial and federal governments to support cultural and language programming at band schools. The MK does not function as a school board; it serves its members while facilitating and assisting the nation to obtain jurisdiction of education.[95] Sectoral negotiations allow the federal and provincial governments to devolve only one or two jurisdictions to services rather than allow complete control over the nation's people and land base. For full sovereignty, this is a hindrance, but in the case of Indigenous educational sovereignty, on many fronts, the Mi'kmaq have regained at least partial control over the education of their members.

Nisga'a Final Agreement 1999

Over time, as First Nations have negotiated in hopes of gaining educational sovereignty, even modest changes to agreements are considered successes, such as the Nisga'a Lisims Government's obtaining provisions to create curricula and certify cultural and language teachers while building and managing post-secondary education. Nisga'a Lisims Government boasts that the *Nisga'a Final Agreement* 1999 is the first modern-day treaty in British Columbia; it includes a commitment to improving the education system provided for its members.[96] As the first to assert their claim in litigation in British Columbia (Calder et al. v. Attorney-General of British Columbia, [1973] S.C.R. 313), their case resulted in the Supreme Court of Canada decision

[94] Morgan, *"If Not Now, Then When?,"* 44.
[95] Linda Simon, "Mi'kmaw Kina'matnewey Supporting Student Success," Indspire, accessed August 12, 2018, http://indspire.ca/nurturing-capacities/mikmaw-kinamatnewey-supporting-student-success-2/.
[96] Nisga'a Lisims Government, *The Nisga'a Final Agreement*, 2000, http://nisgaalisims.ca/the-nisgaa-final-agreement.

establishing that Aboriginal title pre-existed the assertion of British sovereignty in British Columbia.[97]

While the *Nisga'a Final Agreement* includes many successes due to the commitment of the nation to education, the terms outlined limit local community authority, with provincial non-First Nations ministries designing the actual implementation of curricula and policies, due to the existence of transferability clauses.[98] Nelson Leeson, executive chairperson of the Nisga'a Tribal Council and one of the primary land claims negotiators during the final stages of negotiations with B. C. and Canada, spoke at the Preparing for the Day After Treaty conference in 2007. Leeson reported that the nation first established a Land Committee for self-government and right to govern established in 1890, long before the formulation of the Nisga'a Tribal Council in 1955. Leeson was attempting to demonstrate the painstakingly long process of reaching their final agreement with the Canadian government. Although the *Nisga'a Final Agreement* 1999 was the first to explicitly extend the protection of Section 35 of the *Constitution Act* 1982 to land rights and self-government in a single agreement, there were enormous compromises. Within the agreement, only 8% of the land claim was awarded, and Nisga'a Aboriginal title was extinguished. Leeson admitted that, although its school system and the University of Wilp Wilxo'oskwhl Nisga'a were developed through self-governance, issues with implementation remain:

> For our opportunities to be realized, for our objectives to be met, we also need a similar commitment to the full and proper implementation of our treaty by our partners, the Federal and Provincial Governments. Unfortunately, as we have learned, there are

[97] Lemieux, "Comprehensive Land Claims."
[98] Fallon and Paquette, "A Critical Analysis."

> significant differences between the way in which the Federal Government views the implementation of modern treaties and the views of aboriginal signatories.[99]

Reflecting on the Nisga'a signing at the Preparing for the Day After Treaty conference, Thomas Berger, a British Columbia lawyer, spoke about the atmosphere following the negotiations, reminding the participants of the political climate and will in 2000.[100] Berger recalled that then Leader of the Opposition Gordon Campbell brought a lawsuit to the Supreme Court of Canada holding that the self-government provisions of the treaty were unconstitutional; although he lost the suit, he was later elected Premier of British Columbia.[101] Berger reminded his audience that "self-government was opposed by some very important figures in this province and across the country"[102] and by a clear majority of British Columbians. Although Campbell did eventually change his mind on the issue, the vehement opposition of politicians and the public was heard loud and clear.

Westbank First Nation Self-Government Agreement 2003

The next decade began with the 2003 *Westbank First Nation Self-Government Agreement*, a new form of self-government agreement in British Columbia, outside of the treaty process. Mischa Menzer, legal counsel to the Westbank First Nations on self-government and treaty negotiations, discussed the process of initialling the agreement in 2000, emphasizing that the

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[99] Nelson Leeson, "Keynote Speaker," in *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations* (Vancouver: BC Treaty Commission, 2007), 4, http://www.bctreaty.ca/sites/default/files/Preparing_Conference_Book_1.pdf.

[100] Thomas Berger, "Keynote Speaker," in *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations* (Vancouver: BC Treaty Commission, 2007), 22–27, http://www.bctreaty.ca/sites/default/files/Preparing_Conference_Book_1.pdf.

[101] Berger, "Keynote Speaker," 27.

[102] Berger, "Keynote Speaker," 27.

process began in 1989.[103] Menzer stressed the three components that led to the agreement; a comprehensive self-government agreement, the Westbank Constitution, and the legislation to enact power that extends only to reserve lands and is not a treaty. Menzer proudly declared to those at the conference:

> The self-government agreement implements self-government based on the recognition of the inherent right of self-government. Moreover, it's unique in that it's really the first time that there's been such a clear recognition by Canada in an agreement, and I think that's very beneficial.[104]

The bilateral agreement did not include the provincial government, although it was consulted and was without prejudice vis-à-vis a treaty. Robert Louie, former Chief of Westbank First Nation, spoke to the province's reason for avoiding entering a treaty:

> Simply put, Canada and B. C. are asking First Nations to give up far too much including the successes we have made on our existing reserves and that's ironic, to say the least. At the end of the day, it's the Crown that really needs treaties. It's not the First Nations. Our aboriginal title will not go away with certainty over who really owns BC and what will happen in this province is only going to deepen.[105]

Louie stated that, by asserting self-government, the Westbank First Nation refused both the concurrent model of jurisdiction (thus denying the provincial government "say on our lands")[106]

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[103] Mischa Menzer, "Workshop Session: Ratification—Best Practices," in *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations* (Vancouver: BC Treaty Commission, 2007), 89–94, http://www.bctreaty.ca/sites/default/files/Preparing_Conference_Book_1.pdf.

[104] Menzer, "Workshop Session," 89.

[105] Robert Louie, "Panel Discussion: Are Treaties the Answer?" in *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations* (Vancouver: BC Treaty Commission, 2007), 44–46. http://www.bctreaty.ca/sites/default/files/Preparing_Conference_Book_1.pdf .

[106] Louie, "Panel Discussion," 44.

and a co-management arrangement on their territories, indicating that it "hasn't been offered quite fairly at the tables."[107] Louie stated that Westbank First Nation felt that the current treaty process held it hostage and cited nations that had crafted self-government agreements outside of the B. C. treaty process, including the Sechelt Indian Band, which was granted self-government by an Act of Parliament.[108] Louie claimed that both "governments, Canada and BC, would not recognize their 91.24 [sic] self-government model under the treaty,"[109] which required a different model to achieve self-government. Louie spoke to the inherent right to self-government out from under the Indian Act and owed to them by 91. (24) of the Constitution Act.

Tłı̨chǫ Land Claims and Self-Government Agreement 2003

In the same year, the Tlicho nation, whose traditional land base was most of the Northwest Territories, also signed a self-government agreement outside of the treaty process, which was vehemently opposed by First Nations in British Columbia. Under the tripartite agreement, the Tłı̨chǫ government gained the power to enact laws concerning k-12 education, although not at the post-secondary level.[110] However, they were not entitled to certify k-12 teachers and all curricula, examinations, and other standards would be specifically designed for transferability into provincial schools at all levels. Like the *Nisga'a Final Agreement* in 2000, the provisions related to self-government are protected by section 35 of the *Constitution Act* 1982. A variation is the tripartite intergovernmental services agreement, which should have lasted for the

[107] Louie, "Panel Discussion," 44.
[108] Louie, "Panel Discussion," 45.
[109] Louie, "Panel Discussion," 46.
[110] "Tłı̨chǫ As Long As This Land Shall Last," *Tłı̨chǫ Land Claims and Self-Government Agreement*, 2003, 54, http://www.tlicho.ca/sites/default/files/documents/communities/T%C5%82%C4%B1%CC%A8ch%C7%AB%20Agreement%20-%20English.pdf.

first ten years of the agreement; it indicates that the Tłįchǫ will work with the federal and territorial governments to provide a single delivery system.[111]

The early 2000s saw other agreements that awarded First Nations less control and jurisdiction than found in earlier agreements like the *Nisga'a Final Agreement* in 2000 and the *James Bay and Northern Québec Agreement* in 1975. For example, the *Kwanlin Dun First Nations Self-Government Agreement* in 2005 only stipulates that the First Nation has the power to enact laws for education programs and services.[112] The ambiguity of the agreement limits the nation's control, as it does not stipulate the forms and functions of the laws. Alan Cairns states that all self-government agreements will thwart total independence and that all Nations are intimately linked to services and funding from both the provincial and federal governments due to the fact the negotiated agreements are "partial, not total."[113] Harvey McCue, former Director of Education for the Cree School Board, has asserted that, for self-government to be successful at creating change in the educational outcomes of members, it is imperative that control and administration be transferred from DIAND.[114] Fifteen years later, however, there remain similar issues concerning the relinquishment of control.

Moving Forward in Aboriginal Education 2005

A national policy roundtable called Moving Forward in Aboriginal Education held at Concordia University in 2005 focused on issues arising in the development of policy with a lack of jurisdiction. The roundtable recognized the complex educational structures within the scope of

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[111] Morgan, *"If Not Now, Then When?"*

[112] Yukon Government, *Kwanlin Dun First Nations Final Agreement*, 2005, http://www.eco.gov.yk.ca/aboriginalrelations/pdf/kdfn_final_agreement.pdf.

[113] Alan, Cairns., *Citizens Plus: Aboriginal Peoples and the Canadian State*. Brenda and David McLean Canadian Studies. (Vancouver, CA: UBC Press, 2000)

[114] Harvey McCue, "An Overview of Federal and Provincial Policy Trends in First Nations Education," In *The New Agenda: A Manifesto for First Nations Education in Ontario* (Toronto: Chiefs of Ontario, 2004), 1-152.

Aboriginal education, which included provincial, federal, territorial, local, and regional jurisdictional concerns servicing students both on and off reserve.[115] Despite the complexity and varying situations of the members affected by jurisdiction, under discussion the roundtable concluded:

> An essential principle of aboriginal education is aboriginal control of decisions, not just as a political practice, but as governance founded in basic rights flowing from treaties and other agreements. This implies a will to assume responsibilities, empowerment to make decisions, and acquiring the necessary skills to govern.[116]

In the same year 2005 the AFN released its *First Nations Education Plan*, which reiterated the calls of the *Indian Control of Indian Education* policy paper from 1972. The language was slightly altered to include "First Nations as empowered and definitive authorities that operate government to government in relation to education,"[117] while stressing inclusion and engagement in education-related decisions. In 2005, there were 485 First Nations schools operating in Canada. All First Nations schools that do not have the support of a self-government agreement granting jurisdiction to the First Nation lack any legal jurisdiction. Schools are established at the discretion of the Minister of Indian Affairs and Northern Development, and children are sent to schools that the minister designates, with the guidelines and curricula dictated by federal authorities.[118] First Nation school under the DIAND have no minimum legislated education standards, meaning there is no core curriculum framework or mandate to meet provincial

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[115] Norman Henchey, *Moving Forward in Aboriginal Education: Proceedings of a National Policy Roundtable: Concordia University, February 22, 2005*, Occasional Paper Series: Aboriginal Education (Kelowna: Society for the Advancement of Excellence in Education, 2005).

[116] Henchey, *Moving Forward*, 18.

[117] Henchey, *Moving Forward*, 3.

[118] Longboat, "First Nations Control."

standards.[119] Those without jurisdiction set out in agreements or Education Acts are subject to the decisions made on non-local factors, rely on federal funding, and do not have a say in the decision. C. E. S. Franks's discussion in the 1980s regarding the systematically destroyed political autonomy was still all too accurate in the mid-2000s, and First Nations were still subject to "an alien educational system."[120] DIAND remained in control and was responsible for five programs: federally operated schools, band-operated schools, schools under provincial jurisdiction, post-secondary education, and cultural-educational centres. Morgan reflects on the status of First Nations education in the early 1990s as consisting of three models; local schools operated by First Nations, provincial and territorial schools, and federal schools controlled by DIAND.[121] Morgan concludes that from their perspective these models do not recognize inherent jurisdiction or offer any constitutional protection of this right to jurisdiction.[122] The models create a scenario for First Nations that raises concerns over forced adherence to colonial curricula, exclusion of those living off reserve and non-status members, inadequate funding, hiring issues, and compliance with a colonial system utterly foreign to Indigenous students.

Lack of control and alien systems prompted numerous nations to begin negotiations over land claim agreements, final agreements, and self-government agreements; one example is the Maa-nulth First Nations, who established the Maa-nulth Treaty Society, which is comprised of five nations in the Nuu-chah-nulth territory. Vi Mundy, manager of Ucluelet First Nation during Preparing for the Day After Treaty, A Conference for First Nations, spoke about the gruelling process of negotiating with the Province of British Columbia and the Government of Canada to

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[119] Ravina Bains, "Myths and Realities of First Nation Education" Centre for Aboriginal Policy Studies. Fraser Institute August 2014. https://www.fraserinstitute.org/sites/default/files/myths-and-realities-of-first-nations-education.pdf, 16.

[120] Franks, "Public Administration Questions," 17.

[121] Morgan, *"If Not Now, Then When?"* 15.

[122] Morgan, *"If Not Now, Then When?"* 8.

create the *Maa-nulth First Nations Final Agreement*.[123] The process lasted eleven months after the signing, which was described by Mundy as "a spectacle of treaty communication."[124] Gary Yabsley, lead negotiator and legal counsel for the Maa-nulth Treaty Society, depicts the negotiations and the reluctance of the provincial government to allow a form of self-governance included in their final agreement:

> In the treaty process the provincial government, five or six years ago, came to the table and said, governance isn't going to be in the treaty, we're going to do governance by way of a self-government agreement and we said no, no way, we don't believe in that. The ultimate propositions came down to if you take governance out of the treaty and governance is not a Section 35 right, we're not giving you legal certainty, we're not giving you one of those things that you say you need to make the treaty work. It took two and a half years to persuade the provincial government to take the self-government agreement off the table and put governance back into the treaty. I believe they did so at the end of the day because logic dictated that the only place you could put self-government was in the treaty.[125]

Reluctance to agree to self-governance arguably stems from a lack of public education, according to *Moving Forward in Aboriginal Education* and *Preparing for the Day After Treaty*. Anthropologist Wayne Warry attributes the lack of agency and political will to the perception of

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[123] Vi Mundy, "Workshop Session: Ratification—Best Practices," in *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations* (Vancouver: BC Treaty Commission, 2007), 95–96, http://www.bctreaty.ca/sites/default/files/Preparing_Conference_Book_1.pdf.

[124] Mundy, "Workshop Session," 95.

[125] Gary Yabsley, "Workshop Session: Effective Negotiating—Developing Relationships," in *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations* (Vancouver: BC Treaty Commission, 2007), 79, http://www.bctreaty.ca/sites/default/files/Preparing_Conference_Book_1.pdf.

non-indigenous Canadians that self-government is "giving away the store"[126] and harsh critiques that believe it is "an inappropriate response to the collective guilt trip."[127] Others merely uphold the racist notions that First Nations are not capable of political control due to over a century of paternalistic and self-serving views that revolve around the average citizen depriving any form of privilege to First Nations.[128]

British Columbia Educational Jurisdiction 2006

Despite public and political opinion, the Indian and Northern Affairs Canada minister's national working group on education focused on jurisdiction and stated that transfer of jurisdiction to First Nations was a critical step.[129] The working group recommended that Canada immediately commit to discussions regarding building the regional and local capacity needed for the implementation of jurisdiction, with a goal of transfer within five years. During those five years, nations in British Columbia began to rise and be heard, no longer willing to wait for self-government or final agreements to "award" them their inherent right to jurisdiction over education. The Union of British Columbia Indian Chiefs (UBCIC) defined their position of self-government as follows:

> We must be masters in our own house in order to survive as Indian people. There is no basis in the laws of Canada to restrict the recovery of Aboriginal rights because we have never given up our rights to control our lives and means to live.[130]

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[126] Wayne Warry, *Unfinished Dreams: Community Healing and the Reality of Aboriginal Self-Government* (Toronto: University of Toronto Press, 1998), 49.
[127] Warry, *Unfinished Dreams*, 49.
[128] Warry, *Unfinished Dreams*, 49.
[129] Jerry Paquette and Gérald Fallon, *First Nations Education Policy in Canada: Progress or Gridlock?* (Toronto: University of Toronto Press, 2010).
[130] Friesen and Friesen, *Contemporary Educational Frontiers*, 23.

With the support of the Nations and the UBCIC, the First Nations Education Steering Committee (FNESC) in British Columbia tirelessly advocated for education jurisdiction in that province. FNESC has litigated for jurisdiction through the creation of MoUs, tripartite agreements, and educational acts with school districts, the Ministry of Education, and the federal government to further their cause.[131] Successful legal actions resulted in the following crucial agreements: *Education Jurisdiction Framework Agreement* 2006, *Bill C-34: First Nations Jurisdiction over Education Act* 2006, *Tripartite Education Framework Agreement* 2012, and the *Canada- First Nation Education Jurisdiction Funding Agreement* 2014.[132] Each agreement assigned power and authority over various functions to the First Nations in British Columbia that had agreed to be part of the negotiations. The *Canada-First Nations Education Jurisdiction Agreement* negotiated by FNESC between Canada and the participating First Nations grants those participating First Nations recognition of jurisdiction over education law-making powers, the ability to manage their education systems, and for First Nation Education Authorities rather than provincial authorities to establish curricular standards and certify educators outside of a self-government agreement.[133] Fallon and Paquette describe the agreements reached with FNESC as a delegated-authority model that has authorized Nations to take on legislative and administrative roles on behalf of the province, with ultimate authority remaining with British Columbia's Minister of Education.[134]

A model in which the province or territory similarly maintains control of creating educational standards, policies, regulations, and laws can be seen in the framework agreement

[131] Laura Forsythe, "Undermining Self-Determination: Education and Self-Government," Unpublished Manuscript. University of Manitoba, 2017.
[132] First Nations Education Steering Committee, "Jurisdiction," accessed August 12, 2018, http://www.fnesc.ca/about-fnesc/jurisdiction/.
[133] First Nations Education Steering Committee, "Jurisdiction."
[134] Fallon and Paquette, "A Critical Analysis."

Bill C-34: First Nations Jurisdiction over Education Act in 2006. The House of Commons unanimously supported the bill, and it was fast-tracked to the Senate. Marc Lemay, Member of Parliament for Abitibi–Témiscamingue, stated in the House of Commons: "This bill is vital to the future of the first nations. I believe that it gives them and will give them what they want most: autonomy. It is a first step toward autonomy,"[135] which are powerful words. A transferability clause included in the bill creates a scenario in which the provincial government ultimately holds power through the comparability limit placed on First Nations, which are forced to emulate provincial school systems.[136] McCue asserts that this shift and newfound apparent commitment will not amount to fundamental change; rather it is a repeat of history.[137] Representatives of the Standing Senate Committee on Aboriginal Peoples in *Reforming First Nations Education: From Crisis to Hope* in 2011 determined that jurisdictional agreements replace the *Indian Act* education provisions (114–122), providing authority to First Nations through legal authority. The committee study also concluded that the following agreements reflected an intent to implement Indigenous Educational Sovereignty: *Framework Agreement in Manitoba* 1980, *Umbrella Final Agreement* 1993, *Nisga'a Final Agreement* 1993, and *Mi'kmaq Education Act* 1998.[138] Fallon and Paquette argue that clauses within the self-government agreements mentioned above support the 1950s policy of integration, resulting in the inclusion of clauses that the education provided at a First Nation school must emulate that of the province in which the school is located.[139]

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[135] Marc Lemay, "Bill C-34 First Nations Jurisdiction over Education in British Columbia parliamentary discussion." Open Parliament. Last modified December 5, 2006, https://openparliament.ca/bills/39-1/C-34/.
[136] Fallon and Paquette, "A Critical Analysis."
[137] McCue, "An Overview."
[138] Friesen and Friesen, *Contemporary Educational Frontiers*.
[139] Fallon and Paquette, "A Critical Analysis."

United Nations Declaration on the Rights of Indigenous Peoples 2007

Perhaps the increased desire to work with First Nations on Indigenous educational sovereignty stemmed from the instrument adopted by the United Nations in September of 2007: The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Although Canada refused to join the 144 states in favour of adoption until 2016, there was a turn in negotiations with First Nations on varying forms of sovereignty. UNDRIP states that indigenous peoples deserve the protection of their education systems and traditional knowledge, with the following article serving as the minimum standard:

> Article 13: Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.[140]

With international pressure to relinquish a certain degree of power and give First Nations autonomy, a blame game began in the Senate. The Standing Senate Committee on Aboriginal Peoples in 2008 concluded there was a lack of federal structure to actualize treaties and a need for increased capacity organizationally to better implement treaties.[141] Due to the need to establish a stronger sense of the nation-to-nation relationships that treaties are supposed to represent, the committee suggested an independent review conducted by a body outside the Department of Aboriginal Affairs, such as the Auditor General's office, which would report to Parliament.[142] The breakdown in implementation and the difficulty of negotiation timelines have

[140] United Nations Declaration on the Rights of Indigenous Peoples. *Human Rights Quarterly* 33, no. 3, 2011: 910.
[141] Lemieux, "Comprehensive Land Claims."
[142] Senate Standing Committee on Aboriginal Peoples, *Reforming First Nations Education*.

caused many First Nations to seek sovereignty through alternative means such as litigation in the Supreme Court (like the Haida Nation) or the use of interim measures seen in education acts that create co-management arrangements or bilateral agreements (like the Carrier Sekani First Nation).[143] These types of alternatives are limited in scope and amount to only temporary gains in the search for educational sovereignty; they come at the cost of not gaining autonomy, at least for the time being.

The international pressure also aided in the AFN's 2005 call to implement Jordan's Principle, which was introduced in 2007 to the House of Commons and unanimously adopted. The need to transfer jurisdiction to First Nations is highlighted in Jordan's Principle, a need-based, child-first approach designed to ensure that First Nations have equitable access to funded services like education. The principle stems from the jurisdictional disputes caused by the ambiguity over the responsibility for the education of First Nations children living on or off reserve that results in disruption, delay, or denial of services. A joint recommendation of the AFN and the Canadian Paediatric Society and UNICEF, *Without Denial, Delay or Disruption* demanded that government systematically identify and address the jurisdictional ambiguities and underfunding practices that led to the conception of Jordan's principle.[144]

Reforming First Nations Education Initiative in 2008

The late 2000s brought an increase in the creation of tripartite agreements like the *Mi'kmaq Education Act* in1998 after the federal government unveiled a Reforming First Nations Education Initiative in 2008. The initiative encouraged tripartite education agreements through

[143] Lemieux, "Comprehensive Land Claims."
[144] Assembly of First Nations, *Without Denial, Delay, or Disruption: Ensuring First Nations Children's Access to Equitable Services through Jordan's Principle* (Ottawa: Assembly of First Nations, 2015), http://www.afn.ca/uploads/files/jordans_principle-report.pdf.

financial incentives alongside the Educational Partnerships Program, a proposal-based program to facilitate collaboration between provinces, stakeholders, and First Nations. Unfortunately, the agreements created through these channels do not transfer jurisdiction in a way recognized by new provincial or federal legislation, nor are they legally binding, according to the Senate Standing Committee on Aboriginal Peoples.[145] Nations were reluctant to enter into these new tripartite agreements, fearing the potential of transfer to the provinces rather than the nations. For the ninety nations that met at the twenty-eight public meetings with the Senate Committee, tripartite agreements met with mixed emotions, as they were viewed as temporary, administrative and failing to recognize true self-determination or self-governance in education, free from strictures of the *Indian Act*.

Tsawwassen First Nation Final Agreement 2009

The late 2000s was marked by turmoil over deciding between avenues to pursue educational sovereignty for individual nations. The AFN issued a call to action in 2009 to reaffirm its insistence on total control, and only one final agreement created toward the end of the decade embodies the call of the AFN's desire for local control.[146] The *Tsawwassen First Nation Final Agreement* in 2009 gave its government jurisdiction to make laws concerning the education, accreditation, and certification of teachers and for developing a curriculum on the culture of Tsawwassen First Nation and the Hun'qum'i'num Language. Also, jurisdiction to make laws for kindergarten to Grade 12 in all subjects provided by the Tsawwassen

[145] Senate Standing Committee on Aboriginal Peoples, *Reforming First Nations Education: From Crisis to Hope*, December 2011, https://sencanada.ca/content/sen/committee/411/appa/rep/rep03dec11-e.pdf.

[146] Assembly of First Nations, *Without Denial, Delay, or Disruption: Ensuring First Nations Children's Access to Equitable Services through Jordan's Principle*

government.[147] The comparability or transferability clause remains to limit the nation's development, and all accredited teachers must meet provincial standards for certification. The First Nation's laws prevail when in conflict with provincial or federal laws, but this is irrelevant due to the comparability clause suffocating the free will of the nation to develop its programming outside of the provinical curriculum standard.

Interestingly, any laws created can result in a negotiation with the provincial government to be extended to members living off reserve and to include non-members educated on Tsawwassen lands. In the wake of this surprisingly comprehensive agreement with much to celebrate, Tsawwassen Chief Kim Baird addressed the B. C. Legislature on the first day of debate on the first modern-day urban treaty:

> The Tsawwassen treaty, clause by clause, emphasizes self-reliance, personal responsibility and modern education. It allows us to pursue meaningful employment from the resources of our territory for our own people. Alternatively, in other words, a quality of life comparable to other British Columbians.[148]

Others were leery of this type of treaty; Joseph Arvay, a civil litigation lawyer with a focus on constitutional and administrative matters who has advocated in court for aboriginal rights, spoke specifically about the Tsawwassen treaty at Preparing for the Day After Treaty, A Conference for First Nations.[149] For Arvay, the issues with the treaty process stem from the many improvements needed to the British Columbia version of the process. He warned of final

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[147] Canada, *Tsawwassen First Nation Final Agreement (*Ottawa: Indigenous and Northern Affairs Canada, 2007), 150, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-BC/STAGING/texte-text/tfnfa_1100100022707_eng.pdf.

[148] Tsawwassen First Nation, "Making History: Tsawwassen First Nation First Urban Treaty in Modern-Day British Columbia," accessed August 12, 2018, http://www.tsawwassenfirstnation.com/pdfs/TFNAbout/Treaty/071015_Chief_Baird_Speech.pdf.

[149] Joseph Arvay, "Keynote Speaker," in *Preparing for the Day After Treaty, A Conference for First Nations: Conference Presentations* (Vancouver: BC Treaty Commission, 2007), 9–17, http://www.bctreaty.ca/sites/default/files/Preparing_Conference_Book_1.pdf.

agreements, noting that the only way to create permanence in self-determination is treaty: "I accept that for some First Nations the treaty that the Tsawwassen First Nation or other First Nations are close to having may not be the treaty that others would want."[150]

Although the *Tsawwassen Final Agreement* in 2009 was a tripartite agreement, not all were happy with its assent. Member of Parliament John Cummins spoke disparagingly of the members of the nation regarding education:

> This treaty is not going to magically increase kids' desire to get an education, their need to work or their pride in who they are," he says. "All that happens now is that money will be doled out from the band instead of the government.[151]

Despite the skepticism of litigators, politicians, and non-aboriginals, within two years the Tsawwassen First Nation was capable of delivering the following program and services: K-12 programming, a Smuyuq'wa' Lelum Early Childhood Development Centre, administration of a local education agreement for the delivery of K–12 education by the Delta School District, post-secondary funding for Tsawwassen members due to a significant rise in applications, a HeadStart program (outreach services to parents with children aged 0–6), a youth program, and early education to both citizens and non-citizens of the Tsawwassen First Nation.[152] This success speaks to the need for public education regarding self-government.

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[150] Arvay, "Keynote Speaker," 10.

[151] Margaret Wente, "Tsawwassen Treaty Takedown," *The Globe and Mail*, June 21, 2008, https://www.theglobeandmail.com/news/national/tsawwassen-treaty-takedown/article720533/.

[152] *Canada-Tsawwassen First Nations Agreement Implementation Report: 2011–2012* (Ottawa: Indigenous and Northern Affairs Canada, 2013), http://publications.gc.ca/collections/collection_2014/aadnc-aandc/R31-18-2012-eng.pdf.

It's Our Vision, It's Our Time: First Nations Control of First Nation Education

It's Our Vision, It's Our Time: First Nations Control of First Nation Education, a framework to achieve success in First Nation education published in 2010, celebrated the advancement of First Nations educational sovereignty since the 1972 policy paper. It heralded the fact that 80,000 students were attending 518 First Nations schools on reserve, with many schools controlled by First Nations, though others remained under INAC. Forty-five locally controlled Indigenous institutions of higher learning had been established since 1972, exceeding even the expectations of the AFN. The policy objective in *It's Our Vision* gave administrators and various levels of government a framework to implement and develop community-based legislation for education. It served as a new call for immediate consultations with the intent of creating concrete plans for developing and implementing the research capacity of First Nations and their institutions, along with support for programming at all levels. *It's Our Vision* reiterated the need for the government to acknowledge the inherent and treaty rights to education recognized in the *Constitution Act* 1982, which require Canada to work toward implementation of full jurisdiction to enable First Nations themselves to make all final decisions for First Nations education.[153]

National Chief Shawn A-in-chut Atleo addressed the AFN's 2010 annual general assembly as follows:

> I believe absolutely in the power and the importance of education as a key part of our path forward. Equipping our peoples for the future means ensuring that every

[153] Assembly of First Nations, *First Nations Control of First Nations Education: It's Our Vision, It's Our Time* (Ottawa: Assembly of First Nations, July 2010). https://www.afn.ca/uploads/files/education/3._2010_july_afn_first_nations_control_of_first_nations_education_final_eng.pdf.

> one of our children has the full support and opportunity to succeed. We must lead the way forward within every one of our communities to tell our children that we care and that we will work for the future.[154]

Atleo's call has however failed to mobilize people in the intervening years. The national chief decades after the original call restates the position of the Assembly of First Nations.

Memorandum of Understandings 2010

Progress toward First Nations involvement in education included MoUs for First Nations Education in Alberta in 2010, the Saskatoon Tribal Council Education Partnership Program MoU from 2010, an MoU Concerning Education and First Nation Learners and Communities in the Province of Prince Edward Island in 2010, the First Nation Education Council Québec MoU in 2012, and the MoU on Educational Partnership in Yukon in 2013. Within these tripartite agreements, the notion that these MoUs constituted a movement toward Indigenous educational sovereignty quickly fades, as the scope is defined clearly to affirm:

> (2) For greater certainty, this MOU is not a Treaty;
>
> (3) This MOU is not intended to define, create, recognize, deny or amend any rights or obligations of individual First Nations in Alberta;
>
> (4) This MOU is not intended to affect the transfer of responsibilities among the parties.[155]

In 2010, the Saskatoon Tribal Council Educational Partnership Program outlined its primary objective to provide non-First Nations students with education about the First Nations in

[154] Shawn Atleo, "It's Our Time: A Vision for the Future," (Ottawa: Assembly of First Nations, 2010), https://www.afn.ca/uploads/files/nc/its-our-time.pdf.

[155] Government of Alberta, *Memorandum of Understanding for First Nations Education in Alberta*, 2010, 10, http://indigenous.alberta.ca/documents/mou_firstnationseducation.pdf.

their community and enhance the educational outcomes of First Nations students in the province.[156] With no mention of scope or jurisdiction, the omission is an implicit statement that jurisdiction was off the table as a topic in Saskatchewan, and there are as yet no self-government or final agreements in that province. The same year another province that lacks any self-determination agreements, Prince Edward Island, signed the *Memorandum of Understanding Concerning Education and First Nation Learners and Communities in the Province of Prince Edward Island*. That MoU clearly articulated as an objective of enhancing "administrative cooperation in relation to education for all Mi'kmaq learners in Prince Edward Island and this is not legally binding nor is it intended to effect the transfer of program responsibilities among parties."[157] The MoUs are not intended to be an admission of the need of transfer responsibility or jurisdiction to First Nations, and from the wording appear to appease the call to action with a modest amount of consultation. Each was a reminder to all parties of that MoU's inability to "repeal, of a denial or recognition of an existing ancestral right, a treaty right or other right."[158] More importantly, the disclaimer indicating that the MoU created no legal obligation allows for any of the parties not to be held responsible for neglecting to keep to the terms of the agreement. Following the creation of the *Memorandum of Understanding on Education Partnership in Yukon* in 2012, thirteen tripartite agreements in the form of MoUs were concluded in Canada. Any argument asserting that a move to create MoUs is a step toward Indigenous educational sovereignty underestimates the ramifications of the constant reminders of the limited scope of the power and control of First Nations that runs through all the documents. Nations continued to

[156] Saskatoon Tribal Council, "Educational Partnership Program (EPP)" (Saskatoon: Saskatoon Tribal Council, 2012), https://www.sktc.sk.ca/fileadmin/user_upload/docs/EDUCATION_PARTNERSHIP_PROGRAM_Website.pdf.

[157] *Memorandum of Understanding Concerning Education and First Nation Learners and Communities in the Province of Prince Edward Island* (Ottawa: Indigenous and Northern Affairs Canada, 2010), 1, https://www.aadnc-aandc.gc.ca/eng/1313778757232/1313778903167.

[158] *Memorandum of Understanding, Prince Edward Island*, 1.

create self-determination agreements such as the *Yale First Nation Final Agreement* in 2011 and the *Sioux Valley Dakota Self-Government Agreement* in 2014, both of which were negotiated within the political will of the provincial and federal level governments to award them varying levels of jurisdiction. It is here that admission of self-government and final agreements lack a clause in all MoUs, which indicates that—regardless of where the responsibility for First Nations education lies— no clause indicates the governments will work collaboratively toward enhancing the education of First Nations.

Bill C-33, First Nations Control of First Nations Education Act 2014

In 2014, the AFN lost the confidence of First Nations throughout Canada with the National Chiefs' support of *Bill C-33, First Nations Control of First Nations Education Act*. The AFN restated in its analysis of the collapse of the bill that, under the current arrangements with the federal and provincial governments, the reality for all nations was that "at present the Minister has absolute and sole authority over every aspect, including outdated and highly objectionable authorities from the residential school era."[159] The AFN continued to reiterate that "under current systems, there is no recognition of First Nation language and First Nation culture, arbitrary funding allocations on an annual basis as well as restrictions and regulations imposed through contribution agreements,"[160] which led to its assertion that "First Nation children have no right to education or access to fairness and opportunity in Canadian law."[161] The AFN commitment to ensure that First Nations controlled all aspects of education, including the right to create policies, laws, and vision through self-government, land agreements, and tripartite or bilateral agreements,

[159] Assembly of First Nations, "Analysis: Bill C33 – First Nation Control of First Nation Education," Ottawa: Assembly of First Nations, April 24, 2014, 1, http://www.afn.ca/uploads/files/education/analysis_bill_c33.pdf.
[160] Assembly of First Nations, "Analysis: Bill C33," 1.
[161] Assembly of First Nations, "Analysis: Bill C33," 1.

remained unchanged. A shift did occur in 2013–2014, altering the level of trust and faith that individual nations had in the AFN to negotiate for their individual nation's interest, despite its commitment to Indigenous educational sovereignty since 1972. The AFN had rejected the original federal *First Nations Education Act* proposal in 2013 with Resolution 21/2013 after 200 Aboriginal leaders flatly rejected it, and set out five conditions for the federal government, which resulted in *Bill C-33, First Nation Control of First Nation Education*. At this point, many nations were no longer behind the AFN's decision to support the new bill. The purpose of the act was to establish a framework for the First Nations to receive related funding, make amendments to all relevant acts, including the *Indian Act*, and control elementary and secondary education.[162] According to its critics, Bill C-33 did not protect treaty rights, offered only inadequate funding, and gave the Minister of Aboriginal Affairs veto power. Carolyn Bennett, the Liberal Aboriginal Affairs Critic in 2014, stated that "the government needs to listen to First Nations communities, who have been clear this bill is unacceptable in its present form."[163] After over four decades of AFN negotiations with federal and provincial governments for control of education, opponents of the bill began to question the AFN's ability to be at the negotiating table, including Pam Palmater, Chair in Indigenous Governance at Ryerson University, who warned, "They [the AFN] have to think carefully about how they respond to the minister. They can't come out and be making a decision about the bill because it's not their decision to make."[164] National Chief Atleo resigned, and during a press conference Grand Chief Michael Delisle of the Mohawk Council of Kahnawake stated, "We're prepared to take whatever action (is) necessary to ensure the control

[162] House of Commons, *Bill C-33–First Nations Control of First Nations Education Act. Legislative Summary* (Ottawa: Library of Parliament, 2013–2014), https://lop.parl.ca/Content/LOP/LegislativeSummaries/41/2/c33-e.pdf.

[163] CBC, "First Nations Education Act 'On Hold,' Minister's Office Says," CBC Politics, last modified May 5, 2014, http://www.cbc.ca/news/politics/first-nations-education-act-on-hold-minister-s-office-says-1.2632390.

[164] CBC, "First Nations Education Act 'On Hold."

is not taken away from us."[165] Bill C-33 was put on hold and, in a legislative summary, the federal government concluded that from its point of view the bill would ensure higher achievement outcomes for First Nations and felt that it had met all the requirements placed on the bill by adopting the AFN's five conditions. In an official statement, the AFN responded,

> Each nation will need to determine for themselves if this bill meets their needs and our demand for an approach that places out children front and center and is founded on our rights, Treaties and jurisdiction.[166]

The failure of this bill is significant due to the need to restructure the AFN, the need to rebuild trust between the Chiefs within the assembly, and, most importantly, the clear message that the AFN does not speak for the Nations. It was an incredibly destructive blow to the clout the AFN can wield in Ottawa, but it was also a loss of power on the part of the individual nations who had been represented by the AFN on the education file for many years. It was the NIB in 1972 that began the charge toward educational sovereignty and whose words permeated both the federal and provincial government enacting movement on many fronts, raising public knowledge about the issues that plagued First Nations communities in the areas of self-governance and education. Despite the epic failure of the bill and the tarnishing of the AFN's reputation, the AFN continues to press the agenda on First Nations control of education today.

[165] CBC, "First Nations Education Act 'On Hold."
[166] House of Commons, *Bill C-33*.

Truth and Reconciliation Commission of Canada Calls to Action 2015

Beginning in 2016, the AFN began working on a narrative intended to work on closing the gap described in the *Truth and Reconciliation Commission of Canada (TRC) Calls to Action*.[167] In the seventeen calls the TRC presented on education, other than encouraging consultation and participation with First Nations on the creation of new Aboriginal education legislation, there is no call to recognize the inherent right of First Nations to control education, nor is there a mention of jurisdictional issues that require partial or full transfers of authority to First Nations. Therefore, the TRC's contribution to support the journey to assert Indigenous educational sovereignty is strikingly minimal. Stemming from calls for funding by the TRC, there appears to be a resurgence in negotiation at various levels of government to discuss funding structures. In 2016, the AFN began to develop a recommendation to support First Nations education reform, which in turn led to a collaboration between INAC, the Chiefs Committee on Education, and the AFN to discuss funding mechanisms. The AFN also began working on a narrative intended to work on closing the gap described in the *Truth and Reconciliation Commission of Canada (TRC) Calls to Action*.[168]

This overview of the journey toward educational sovereignty climaxes in 2017 with the *Anishinabek Nation Education Agreement*, the most recently signed tripartite agreement for education. It includes twenty-three Nations in Ontario and is considered the most significant self-government agreement signed to date. Starting in 1995, the Anishinabek Nation, a political organization of forty central and northern Ontario First Nations, began to design the Anishinabek Education System. During a press conference, Anishinabe Nation Grand Council Chief Patrick

[167] *Truth and Reconciliation Commission of Canada: Calls to Action*, Ottawa: Truth and Reconciliation Commission of Cannda, 2015.
[168] *Truth and Reconciliation Commission of Canada: Calls to Action*.

Madahbee stated, “Wake up, this is no longer a dream, this is a reality, the [Anishinabek Education System] is here.”[169] It had been a long journey that resulted in an agreement in principle on education in 2002 and then an agreement in principle on governance, with new final agreements under negotiation. The latest agreement assented to is the *Anishinabek Nation Education Agreement*, which is based on the recognition that the inherent right to self-government is an existing right in the 1982 *Constitution Act* but stipulates that the federal, provincial, and First Nations governments will not take a position on how an inherent right of self-government may ultimately be defined at law.

Interestingly, each of the twenty-three nations will exercise law-making powers under the framework of the *Constitution Act* and the Canadian Charter of Rights and Freedoms. The *Anishinabek Nation Education Agreement* stipulates that First Nation education law prevail when in conflict with the provincial or federal law, allows local authorities to be created, and frees signatory nations from sections 114–122 of the *Indian Act*.[170] Unquestionably, these First Nations are in a new place, as the Anishinabek Nation’s education negotiator Tracey O'Donnell stated:

> It provides the First Nations with the chance to make decisions not only on the curriculum …but in the agreement with Ontario, we have a new relationship where we can influence the curriculum and resources and what’s being taught off-reserve.[171]

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[169] Tanya. Talaga, “Ontario Indigenous Education Agreement Hailed as Step Towards Self-Governance,” *The Star*, August 16, 2017, https://www.thestar.com/news/canada/2017/08/16/ontario-indigenous-education-agreement-hailed-as-step-towards-self-governance.html.

[170] Canada, *Anishinabek Nation Education Agreement*. Ottawa: Indigenous and Northern Affairs, 2018, http://www.aadnc-aandc.gc.ca/eng/1517588283074/1517588305659.

[171] Caroline Alphonso, “Ontario First Nation, Ottawa Sign Self-Governing Education Agreement,” *The Globe and Mail*, August 16, 2017, https://www.theglobeandmail.com/news/national/education/ontario-first-nation-ottawa-sign-self-governing-education-agreement/article35996541/.

For all its victories, there are two extremely problematic issues with the agreement: continued ambiguity and comparability or transferability issues. Despite all the strongly worded affirmations of First Nations control over education, little control has been conferred on First Nations. There is clause 16.1, which deals with future negotiations to set additional jurisdictional arrangements and may be intended to include other services like justice or health in final or self-government agreements. However, the ambiguity of this clause as to education may prove problematic in the future. The education standards and transferability remain under the control of the provincial government, as it establishes and sets system-wide standards for primary, elementary, and secondary education. Although there are many advances, such as the ability to sign graduation certificates and equal pay for First Nations school's educators, there are fundamental issues within the agreement that do not endow the Anishinabek Nation Education Agreement with total control over their members' education.

Conclusion

It is evident after exploring the historical struggle that despite AFN's the numerous attempts to stress the need for Indigenous educational sovereignty coupled with the support of government-commissioned policy papers, a Senate committee report, and community consultations, there is a persistent—if not obstinate—reluctance to transfer control in actual practice. In the 1960s and 1970s, government reports were full of the candid thoughts of committee members who used Eurocentric stereotypes and mythical inadequacies to deny or postpone the transfer of control. It is nothing less than baffling that, despite numerous reports since the 1980s in support of transferring educational sovereignty, so little transfer has taken place.

As this chapter has shown, jurisdiction is awarded to First Nations through landless claims to Indigenous educational sovereignty such as the *Mi'kmaq Education Act* and the *First Nations Jurisdiction over Education in British Columbia Act*. As the federal, provincial, and First Nations governments invest millions of dollars and decades of people's lives in negotiations, Indigenous educational sovereignty is not achieved in the agreements seen in this chapter. The next chapter will provide a deeper exploration into the negotiations of the agreements from 1975 to 2016 and the framing of educational control within them.

Chapter Two: The Power of Self-Government Agreements to Undermine

> *It is clear to the Commission that if Aboriginal peoples are to exercise their self-governing powers within the context of Canada's federal system, then federal and provincial governments must make room for this to happen. Instead of governmental power being divided between two orders of government, it will have to be divided among three orders. This is a major change, and one that will require goodwill, flexibility, co-operation, imagination and courage on the part of all concerned.*
>
> *RCAP*

The previous chapter showed that little had been accomplished over the past forty years in achieving Indigenous educational sovereignty through MoUs and bilateral agreements, and self-governance agreements despite repeated calls for greater sovereignty in federal policy papers and from the Indigenous community. Having reviewed the impact (and lack of impact) that self-government agreements and comprehensive agreements have had since 1975, this chapter will examine the education clauses in forty-one different agreements covering thirty-four communities in clause-by-clause detail to assess the level of Indigenous educational sovereignty recognized and conferred in those agreements.

In this chapter, the policy dismantling method is combined with a nation-by-nation approach to offer the most incisive comparative assessment possible. Each nation's location, type of agreement, the inclusion of clauses, and assessment will help demonstrate the level of Indigenous educational sovereignty achieved. The determination of the level of educational sovereignty is based on whether the First Nation or Inuit government possesses educational jurisdiction, has the power to enact laws and enjoys devolution, all free from transferability requirements. It is the relinquishment of education control by both the federal and provincial/territorial governments and its transfer to First Nations that is the core of Indigenous educational sovereignty.

Dismantling Policy

The policy dismantling inspired method reveals Indigenous educational sovereignty in two dimensions; 1. through identification of explicit language regarding Indigenous educational jurisdiction, the power to enact laws for education, and devolution of education power from other levels of government to the individual First Nation, and 2. the existence of a transferability clause. In considering the clauses found in the agreements, this method asks whether the language used in the relevant clauses explicitly acknowledges the inherent First Nations right to unilateral jurisdiction over education and whether the language directly or indirectly removes or impedes Indigenous jurisdiction, causing the loss of the inherent First Nations right to control education. Using the policy dismantling method to inspire a framework to assess individual clauses and how they interact in a given agreement can identify both radical and incremental change demonstrated through policy wording by presenting a variety of indicators dealing with devolution, transferability, the power to enact laws, and the level of autonomous jurisdiction. For nations with agreements containing a clause explicitly granting jurisdiction over education, there is a follow-up investigation to determine whether the agreement requires that the First Nation's education systems permit transferability with the provincial or territorial school system. Any such requirement negates the First Nation's ability to exercise true educational sovereignty. For clauses that indicate a power to enact education laws, there is a need to investigate three further questions: 1) Is there a distinct clause that provides the First Nation with the inherent right to create laws for the education of their members? 2) Do First Nations laws prevail over provincial and federal laws? 3) Is there an expectation that First Nations law will comply with the provincial or territorial or federal law (or laws)? Clarifying the actual implications of key clauses

and answering these questions will be of real practical value to negotiators and policymakers as the journey to Indigenous self-governance in Canada continues.

Survey

The agreements surveyed in this chapter are established between the various First Nations, Her Majesty the Queen in Right of Canada as represented by the Minister of Indigenous Affairs and Northern Development, and provincial governments as represented by the Leaders of the Provincial Government. The ability to empower or impede First Nations in obtaining control over their education is assessed in chapter two. These agreements range from agreements in principle, self-government agreements, final agreements, government-to-government agreements and self-government acts to comprehensive land claim agreements spanning a wide range of communities.

The following agreements are surveyed in this chapter:

Carcross/Tagish First Nation Self-Government Agreement
Champagne and Aishihik First Nations Final Agreement
Champagne and Aishihik Self-Government Agreement
Déljnę Self-Government Agreement in Principle.
Déline Self-Government Agreement-In-Principle for the Sahtu Dene and Métis of Déline
Déljnę Final Self-Government Agreement
Gwich'in First Nations Comprehensive Land Claims Agreement
Inuvialuit Agreement-in-Principle
James Bay and Northern Québec Agreement
Kluane First Nation Final Agreement
Kluane First Nation Self-Government Agreement
Kwanlin Dun First Nations Final Agreement
Kwanlin Dun First Nations Self-Government Agreement
Little Salmon Carmacks First Nation Final Agreement
Little Salmon Carmacks First Nation Self Government Agreement
Maa-Nulth Final Agreement
Miawpukek First Nation Self Government Agreement-in-Principle
Nacho Nyak Dun First Nation Final Agreement
Nacho Nyak Dun First Nation Self-Government Agreement
Nisga'a Final Agreement
Sahtu Dene and Métis Comprehensive Land Claim Agreement
Sechelt Indian Band Self-Government Agreement Act
Selkirk First Nations Final Agreement
Selkirk First Nations Self-Government

Sioux Valley Dakota Nation Governance Agreement
Sioux Valley Dakota Tripartite Governance Agreement
Ta'an Kwach'an Council Final Agreement
Ta'an Kwach'an Council Self-Government
Teslin Council Self-Government Agreement
Teslin Tlingit Final Agreement
The Carcross/Tagish First Nation Final Agreement
Tla'amin First Nation
Tłı̨chǫ Land Claim and Self-Government Act Little Salmon
Tr'ondek Hwech'in First Nation Final Agreement
Tr'ondek Hwech'in First Nation Self-Government Agreement
Tsawwassen Final Agreement
Umbrella Final Agreement
Vuntut Gwitchin First Nations Final Agreement
Vuntut Gwich'in First Nations Self-Government Agreement
Westbank First Nations Self-Government Agreement
Yale First Nation Final Agreement

The survey examines the agreements for the following clauses: jurisdiction, the power to enact laws, devolution, and transferability. Using the policy dismantling method of comparative assessment developed by Bauer and Krill, the clauses are considered using two dimensions. The first involves assessing the agreements and looking for explicit language recognizing Indigenous educational jurisdiction, the power to enact laws for education, and devolution of the education power from the provincial and federal governments to the individual First Nation. The second involves the existence of a transferability clause. In considering the clauses found in the agreements, the policy dismantling method poses two questions to measure change: a) does the clause used acknowledge the inherent First Nations right to autonomous jurisdiction over education, and b) does the clause remove or impede Indigenous jurisdiction, thus causing the loss of the inherent First Nations right to control education? The method of policy dismantling as a framework to assess individual clauses can identify both radical and incremental change demonstrated through policy wording by presenting a variety of indicators dealing with devolution, transferability, the power to enact laws, and the level of autonomous jurisdiction.

In clauses in which an agreement grants jurisdiction over education, there is a follow-up investigation to determine whether a clause for jurisdiction requires the First Nation education to permit transfer between provincial school systems and First Nation schools, as this language negates a First Nation's ability to exercise true Indigenous educational sovereignty. In the further investigation of the power to enact laws clauses in this survey of documents, three questions must be answered to clarify the presence of Indigenous educational sovereignty: 1) Is there a distinct clause that provides First Nations with the inherent right to create laws for the education of their members? 2) Does that law prevail over provincial or federal laws? 3) Is there an expectation that First Nations law will comply with a provincial or federal law?

To aid in the understanding of the ramifications of each of the four considerations, a definition of each is required. Educational sovereignty requires the First Nation or Inuit government to possess educational jurisdiction, the power to enact laws, and to possess devolution, free from transferability requirements. The meaning of educational jurisdiction as the right, power, authority, and control over education and training is explored. Jurisdiction is the formal recognition by both federal and provincial governments of the inherent right of power, authority, and control of First Nations to make decisions about the education of their members and to control the foundation of their education systems. With the power to enact laws and to have jurisdiction over education within a First Nation, the devolution of power from the provincial and federal governments is presumed, meaning that the delegation or transfer of power from the central government has achieved local control. This chapter explores each Nation's agreement using policy dismantling comparative assessment to establish whether each has obtained educational sovereignty or an aspect of it. The agreements are addressed in chronological order.

James Bay and Northern Québec Agreement 1975

The *James Bay and Northern Québec Agreement* from 1975 was the first agreement between a First Nations and the Crown since the numbered treaties. Completed prior to the 1982 Constitution Act and creation of Section 35 the entire James Bay and Northern Quebec Agreement is constitutionally protected. Negotiated over three years and heralded as the first comprehensive land claim agreement, it was an out-of-court settlement of litigation initiated by the Cree and Inuit against the La Grande hydro development. On many counts, this agreement is one of the best agreements negotiated regarding stipulating the educational sovereignty rights achieved. The specific clause that provides clarification on the First Nations' educational jurisdiction states:

a) James Bay and Northern Québec 16.0.4 A Cree School Board, which shall be a school board under the Education Act, shall be established forthwith upon the execution of the Agreement and shall exercise powers and functions in the said school municipality and for the persons described in paragraph 16.0.6.
b) James Bay and Northern Québec 17.0.3 The Kativik School Board shall have jurisdiction and responsibility for elementary and secondary education and adult education.[1]

The remote First Nations that fall under the *James Bay and Northern Québec Agreement* are nine Northern Québec Cree Communities (Waskaganish, Oujé-Bougoumou Whapmaqoostui, Wemindji, Waswanipi, Eastmain, Mistissini, Nemaska, and Chisasibi) and the Inuit of Québec and the Inuit of Port Burwell. Out of the conflict between the government and the Grand Council of Crees and the Northern Inuit Association that held back hydro-electric development project

[1] Grand Council of the Crees, *The James Bay and Northern Québec Agreement (JBNQA)*, 1975, 202, http://www.gcc.ca/pdf/LEG000000006.pdf.

worth billion to Québec, these groups were able to negotiate a historic agreement that allotted an unprecedented amount of Indigenous educational jurisdiction to several First Nations and Inuit groups.

The *James Bay and Northern Québec Agreement* granted educational jurisdiction to the signers, but it also contains a power to enact clause that subverts the jurisdiction outlined earlier in the agreement by empowering Québec's Minister of Education:

> 16.0.2 The Education Act, (1964, R.S.Q., c. 235 as amended) and all other applicable laws of general application in the province shall apply on the areas covered by this Section save where these laws are inconsistent with this section in which event the provisions on this section shall prevail.[2]

One reading of this clause could find that the laws created by the Cree and Inuit under the agreement would prevail. However, a reader with experience in the language of the *Education Act* would conclude that there are numerous laws not mentioned in the agreement and thus not covered in this section, which means that the *Education Act* would prevail. One example of the clauses in the *Education Act* that subvert the Indigenous educational sovereignty of the signers is as follows:

> 17. The Minister shall approve the text-books, maps, globes, models or other articles for use in the schools, and when he thinks fit may withdraw such approval.[3]

[2] *The James Bay and Northern Québec Agreement (JBNQA)* c 16.0.11, 16.0.2, 17.0.11, 17.0.2 (1975), 202.
[3] Québec. The Education Act for Cree, Inuit and Naskapi Native Persons, R. S. 1964, c. 235, s. 17.

This clause was amended in 1977 and remains in force today. The *James Bay and Northern Québec Agreement* does indicate that both the Cree School Board and the Kativik School Board shall be governed by the provisions of the *Education Act* 1964 and is considered a single school municipality and school board. It also stipulates that all other applicable laws of general application in Québec shall prevail, except if these laws are inconsistent with the agreement's section on education, in which case the provisions of the agreement shall prevail. Unfortunately, there is an additional clause that states that bylaws created under the *James Bay and Northern Québec Agreement* require the approval of the Minister of Education and can be disallowed.[4] When considering the issue of hiring a First Nations educator who does not hold certification of provincial standards, the Cree and Inuit school boards are required to seek approval from the province, thus undermining their Indigenous educational sovereignty:

> 16.0.9 The Cree School Board shall also have the following special powers, subject only to annual budgetary approval
>
> f) to arrange, with the Québec Department of Education, for the hiring of Native persons as teachers notwithstanding that such persons might not qualify as teachers in accordance with the standard qualifications prevailing in the other areas of the province;[5]

Considering the numerous stipulations regarding the power to enact laws and the ambiguity that holds the Cree and Inuit school boards to archaic clauses found in the *Education Act* of 1964,

[4] *The James Bay and Northern Québec Agreement (JBNQA)*, 202.
[5] *The James Bay and Northern Québec Agreement (JBNQA)*, 202.

the *James Bay Cree and Northern Québec Agreement* does not permit the signers true power to enact independent laws.

The *James Bay and Northern Québec Agreement* does not contain a clause that indicates curriculum and achievement benchmarks must be transferable. It also appears to contain language that empowers the Cree and Kativik school boards, through committee or council, to develop curricula involving culture and language. Since the Minister of Education oversees both school boards, however, changes to the curriculum are subject to external provincial and federal evaluation and approval.[6]

[6] *The James Bay and Northern Québec Agreement*, 209.

Sechelt Indian Band Self-Government Agreement Act 1986

The Sechelt Indian Band signed its *Self-Government Act* in 1986, making it the first band to develop a constitution and withdraw reserve lands from the *Indian Act*.[7] The act was negotiated between the federal government and the Sechelt Indian Band as a bilateral agreement, with the Province of British Columbia sitting out of the negotiations. Located fifty kilometres northwest of Vancouver on the Sunshine Coast, the Sechelt Indian Band negotiated an act that does not provide them with constitutional self-government.[8] Under the stipulations of the agreement, the powers delegated to the Sechelt are first approved and then declared by the Governor General.[9] Educational jurisdiction or transferability clauses are completely omitted from the *Sechelt Indian Band Self-Government Act*. The Sechelt Indian Band remain subject to the education clauses (Sections 114–122) of the *Indian Act*. In relation to the last consideration for the Indigenous educational sovereignty, the power to enact laws, the next clause states:

> 14 (1) The Council has, to the extent that it is authorized by the constitution of the Band to do so, the power to make laws in relation to matters coming within any of the following classes of matters:
>
> (g) education of Band members on Sechelt lands;[10]

However, the exclusion of a prevailing clause coupled with the subsequent clause empowering the council to adopt any British Columbia laws as their own fails to provide the Sechelt Indian Band with absolute power to enact laws when considering the three questions. The *Sechelt*

[7] Carol Etkin, "The Sechelt Indian Band—An Analysis of a New Form of Native Self-Government," *Canadian Journal of Native Studies* 8, no. 1 (1988): 73–105.

[8] Frank Cassidy and Robert L. Bish, *Indian Government: Its Meaning in Practice* (Fernie, BC: Oolichan Books; Halifax: The Institute for Research on Public Policy, 1989).

[9] Cassidy and, *Indian Government*.

[10] Government of Canada, *Sechelt Indian Band Self-Government Act*, S.C. 1986, c. 27, http://laws-lois.justice.gc.ca/eng/acts/S-6.6/.

Indian Band Self-Government Act does not contain a mandatory transferability clause.[11] However, this may not be an indication of increased control so much as the consequence of a lack of documented authority to develop, deliver, or manage curricula in any of the agreements. Surprisingly, the Sechelt Indian Band location in an economically viable area with high property values had little effect on negotiating favourable terms. Perhaps due to the timing of the signing or the absence of the province from negotiations, the Sechelt did not obtain the same level of Indigenous educational jurisdiction as others with similar profiles later obtained in the same province.

Umbrella Final Agreement 1990

During the creation of the additional nation-to-nation agreements with Canada, Indigenous leaders expected that power and authority to control education would increase. The *Umbrella Final Agreement* provided a framework for the fourteen nations that it covered, the Yukon government, and the federal government to employ in negotiations to conclude the final agreements. Those resulting final agreements are legally binding, constitutionally protected documents that continue to place the nations under the *Indian Act*, except for taxation and reserves, meaning they are still subject to the education sections (114–122) and therefore under both the federal Minister of Indigenous Affairs and the Yukon Minister of Education. Examining the education clauses in the final agreements of the fourteen First Nations under the *Umbrella Final Agreement* reveals that the Canadian government utilized templates during negotiations for efficiency and consistent control of First Nations education. Eleven of the fourteen agreements

[11] Government of Canada, *Sechelt Indian Band Self-Government Act*, 1–21.

contain identical language defining permitted funded activities for settlement corporations under taxation, which is the only reference to education throughout the document:

> 6. Funding and providing:
>
> a) courses for non-native and native teachers and other instructors to enable them to conduct courses in native culture, language and similar areas;
>
> b) training for Yukon Indian elders to enable them to participate in the delivery of native culture and language instructional programs;
>
> c) native studies, culture and language programs for "school age" and adult people;
>
> d) scholarships and reimbursement of other expenses for juvenile and adult Yukon Indian People to enable them to attend conventional educational institutions within and outside the Yukon;
>
> e) vocational training and similar programs and facilities for youth and adults within and outside the Yukon;
>
> f) native language and cultural education teaching and research programs; and
>
> g) training for justices of the peace and other persons employed in connection with the implementation of an Indian justice program.[12]

[12] For the convenience of the reader, most links to the various agreements surveyed in this chapter are omitted; the links may be found in the bibliography. *Teslin Tlingit Council Final Agreement* (1993), 195; *Champagne and Aishihik First Nations Final Agreement* (1993); *Nacho Nyak Dun First Nation Final Agreement* (1993), 289; *Little Salmon Carmacks First Nation Final Agreement* (1997), 210; *Selkirk First Nations Final Agreement* (1997), 323; *Tr'ondek Hwech'in First Nation Final Agreement* (1998), 329; *Kluane First Nation Final Agreement* (2003), 328; *The Carcross/Tagish First Nation Final Agreement* (2005), 356; *Kwanlin Dun First Nations Final Agreement* (2017), 332; *Vuntut Gwitchin First Nations Final Agreement* (2017); *Ta'an Kwach'an Council Final Agreement* (2002), 264; *Gwichin First Nations Comprehensive Land Claims Agreement* (2017).

These include the following nations: Carcross Tagish First Nation, Champagne and Aishihik First Nation, Gwich'in, Kluane First Nation, Kwanlin Dun First Nation, Little Salmon Carmacks First Nation, Nacho Nyak Dun First Nation, Selkirk First Nation, Ta'an Kwach'an Council, Teslin Tlingit Council, Tr'ondëk Hwëch'in, Vuntut Gwich'in First Nation. However, no mention of jurisdiction appears in the education clauses for any of these eleven First Nations.

The only *Umbrella Final Agreement* Yukon First Nation with an agreement in place other than those above is the Kaska Dena Council, which has negotiated both the *Framework for Government to Government Agreement* 2016 and the *Incremental Treaty Agreement*, allowing for shared benefits in advance of a Final Agreement in 2016.[13] Neither agreement includes any mention of Indigenous educational jurisdiction. The Kaska Dena Council is currently in the fourth stage of the BC Treaty Process, during which substantive treaty negotiations occur; it will be important to see if the resulting agreement includes a clause that varies from those in the other eleven completed Final Agreements.

One can certainly wonder whether the educational jurisdiction outlined in the fourteen self-government agreements remained in the final agreements signed in later years. To be clear, none of the Yukon First Nations self-government agreements use the term "jurisdiction" or imply the right, power, authority, and control over education delivery, curricula, and training.

Reviewing the *Umbrella Final Agreement* and subsequent self-government agreements, the following First Nations have negotiated in their respective self-government agreements a single clause that pertains to education: Carcross Tagish First Nation, Champagne and Aishihik First Nation, Kluane First Nation, Little Salmon Carmacks First Nations, NachoNyak Dun First

[13] Yukon Government, *Kaska Framework for Government to Government Agreement*, 2016, 1–15, http://www.eco.gov.yk.ca/aboriginalrelations/pdf/Framework_Agreement.pdf.

Nation, Selkirk First Nations, Ta'an Kwachan Council, Teslin Tlingit Council, Tr'ondëk Hwëch'in**,** Kwanlin Dun First Nation, Vuntut Gwich'in First Nation.

Each of their agreements includes the following phrasing:

> 13.2 shall have the power to enact laws in relation to the following matters in the Yukon:
>
> 13.2.8 provision of education programs and services for Citizens choosing to participate, except licensing and regulation of facility-based services off Settlement Land.[14]

The power to enact laws is only meaningful if those laws prevail when in conflict with a provincial or federal law through an explicit statement that, in the event of an inconsistency, the First Nations law shall prevail. Unfortunately, in the case of the First Nations with the 13.2.8 clause in their Final Agreements, no prevailing clause protects their bylaws. The absence of the prevailing clause ensures that those bylaws will not prevail, and the absence of a compliance clause reaffirms this conclusion.

The following First Nations under the *Umbrella Final Agreement* in the Yukon have negotiated in their respective final agreements a series of devolution clauses that pertain to education: Carcross Tagish First Nation, Champagne and Aishihik First Nation, Kluane First Nation, Little Salmon Carmacks First Nations, Nacho Nyak Dun First Nation, Selkirk First Nations, Ta'an Kwachan Council, Teslin Tlingit Council, Tr'ondëk Hwëch'in**,** Kwanlin Dun First

[14] For the convenience of the reader, most links to the various agreements surveyed in this chapter are omitted; the links may be found in the bibliography. *Teslin Council Self-Government Agreement* (1993), 17; *Champagne and Aishihik Self-Government Agreement* (1993), 16; *Little Salmon Carmacks First Nation Self Government Agreement* (1997), 9; *Selkirk First Nations Self-Government Agreement* (1997), 8; *Tr'ondek Hwech'in First Nation Self-Government Agreement* (1998), 16; *Kluane First Nation Self-Government Agreement* (2003), 13; *Carcross/Tagish First Nation Self-Government Agreement* (2005), 13; *Kwanlin Dun First Nations Self-Government Agreement* (2017), 13; *Vuntut Gwich'in First Nations Self-Government Agreement* (2017); *Ta'an Kwach'an Council Self-Government Agreement* (2002); *Nacho Nyak Dun First Nation Self-Government Agreement* (1993),13.

Nation, Vuntut Gwich'in First Nation.[15] They all discuss devolution, which is the transfer or delegation of power to a lower level of government, in this case from the federal government to First Nations. The Nations under the *Umbrella Final Agreement* that have completed negotiations toward a Final Agreement have secured the following clauses:

Devolution

24.3.2 For greater certainty, pursuant to 24.2.1, Government and the Yukon First Nation may negotiate the devolution of programs and services dealing with the following:

24.3.2.1

Yukon First Nation authority for the design, delivery and management of Indian language and cultural curriculum;

24.3.2.3 the division and sharing of Yukon First Nation and Government responsibility for the design, delivery and administration of programs relating to,

Education

(a) Indian student counselling,

(b) cross-cultural teacher/administrator orientation,

(c) composition of teaching staff,

(d) early childhood, special, and adult education curriculum,

(e) kindergarten through grade 12 curriculum,

[15] *Telsin Tlingit Final Agreement* (2013), 17; *Champagne and Aishihik First Nations Final Agreement* (1993), 16; *Little Salmon Carmacks First Nation Final Agreement* (1997), 9; *Selkirk First Nations Final Agreement* (1997), 8; *Tr'ondek Hwech'in First Nation Final Agreement* (1998), 16; *Kluane First Nation Final Agreement* (2003), 13; *The Carcross/Tagish First Nation Final Agreement* (2005), 13; *Nacho Nyak Dun First Nation Final Agreement* (1993),16; *Kwanlin Dun First Nations Final Agreement* (2017),13; *Vuntut Gwitchin First Nations Final Agreement* (2017); *Ta'an Kwach'an Council Final Agreement* (2002), 13.

(f) the evaluation of teachers, administrators and other employees.[16]

An important note regarding the devolution clause is that further negotiations were to be reflected in the self-government agreements. Unfortunately, any results of the negotiations concerning education are not documented in the clauses of the self-government agreements. Therefore, there is no reflection or direction in those agreements regarding devolution from the federal government to the various First Nations to gain additional control or even shared control over the education of First Nations members resulting in education not being devolved to the nations.

Other agreements not listed above, such as the *Gwich'in First Nation Comprehensive Land Claim Agreement*, contain mentions of further negotiations, but they do not specifically stipulate education:

3.3 Self-government agreements may provide for the devolution or delegation of programs and services to:

(a) Gwich'in First Nation Authorities;

(b) the Gwich'in Tribal Council or its successor; and

(c) those public government institutions in the settlement area provided for in 3.2(c).[17]

Moreover, the eleven First Nations under the *Umbrella Final Agreement* have final agreements and self-government agreements that do not include a compulsory transferability clause.[18]

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[16] *Teslin Tlingit Council Final Agreement* (1993), 219; *Champagne and Aishihik First Nations Final Agreement* (1993); *Nacho Nyak Dun First Nation Final Agreement* (1993), 289; *Little Salmon Carmacks First Nation Final Agreement* (1997), 237; *Selkirk First Nations Final Agreement* (1997), 365; *Tr'ondek Hwech'in First Nation Final Agreement* (1998), 375; *Kluane First Nation Final Agreement* (2003), 391; *The Carcross/Tagish First Nation Final Agreement* (2005), 416; *Kwanlin Dun First Nations Final Agreement* (2017), 396; *Vuntut Gwitchin First Nations Final Agreement* (2017); *Ta'an Kwach'an Council Final Agreement* (2002), 309.

[17] *Gwich'in First Nations Comprehensive Land Claims Agreement* (2017), 2.

[18] *Telsin Tlingit Final Agreement* (2013); *Champagne and Aishihik First Nations Final Agreement* (1993); *Little Salmon Carmacks First Nation Final Agreement* (1997); *Selkirk First Nations Final Agreement* (1997); *Tr'ondek Hwech'in First Nation Final Agreement* (1998); *Kluane First Nation Final Agreement* (2003); *The Carcross/Tagish First Nation Final Agreement*

However, this is not an indication of increased control; rather it is the consequence of no documented authority to develop, deliver, or manage curricula within any of their agreements. Upon review, it can be concluded that the eleven First Nations with final agreements have not obtained Indigenous educational jurisdiction from the federal government.

Sahtu Dene and Métis Comprehensive Land Claim Agreement 1993

The *Sahtu Dene and Métis Comprehensive Land Claim Agreement* came into effect in 1994 and included the Dene and Métis from the following communities: Colville Lake, Fort Good Hope, Norman Wells, Déline, and Tulita. As a modern treaty and comprehensive land claim, the *Sahtu Dene and Métis Comprehensive Land Claim* is the only agreement to include the Métis. Located in the northwest portion of the Northwest Territories it, shares borders with the land allotment from the *Gwich'in First Nations Comprehensive Land Claims Agreement*, 1992 and the *Inuvialuit Final Agreement*, 2015.

Beyond sharing a border, the Sahtu Dene and Métis pact share another similarity with the *Gwich'in First Nations Comprehensive Land Claims Agreement*. Both agreements contain the same language regarding limited Indigenous educational jurisdiction; each features only one clause about education and training identical to the *Umbrella Final Agreement* as a permitted activity for funding through the settlement corporation.[19] On reflection, the ambiguity as to the level of control the Sahtu Dene and Métis have over education is perplexing. The agreement outlines the permitted activity but does not stipulate the standards that any programming offered must meet. A generous interpretation could view this as autonomy, but the lack of clarity creates

(2005); *Kwanlin Dun First Nations Final Agreement* (2017); *Vuntut Gwitchin First Nations Final Agreement* (2017); *Ta'an Kwach'an Council Final Agreement* (2002); *Nacho Nyak Dun First Nation Final Agreement* (1993).

[19] Canada. *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, Ottawa: Indigenous and Northern Affairs Canada, 1993, 37, http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/sahmet_1100100031148_eng.pdf.

uncertainty. An attempt to eliminate this ambiguity is found later in the document, which states that further negotiation on self-government will address education.

In 2003 the Délįnę began their journey with the creation of the *Délįnę Self-Government Agreement in Principle*. Over the next twelve years, they undertook and finally completed negotiations on the *Délįnę Final Self-Government Agreement*. There are no differences between those documents regarding education; both contain the same language and clauses. Regarding education, the Délįnę First Nation has jurisdiction over kindergarten to grade 12, with the stipulation that those students must range from five to twenty-one years of age.[20] The *Délįnę Final Self-Government Agreement* also outlines the Indigenous educational jurisdiction over the certification of teachers from kindergarten to grade 12. Unfortunately, the Délįnę First Nations do not have the authority under their self-government agreement to do the following, according to the subsequent clause:

> 6.1.2 The Jurisdiction set out in 6.1.1 does not include:
>
> a. the development of the Curriculum Framework; and
>
> b. setting the requirements for grade 12 graduation.[21]

The *Délįnę Final Self-Government Agreement* is the first agreement surveyed that outright denies the Nation the ability to set its own standards. Others communicate this clause under the guise of permitting transferability, but this agreement explicitly states that the Nation does not have jurisdiction over curricula or graduation standards.

Further, the next clause removes all Indigenous educational sovereignty from the Délįnę:

[20] Canada. *Déline Self-Government Agreement-In-Principle for the Sahtu Dene and Métis of Déline*. Ottawa: Indigenous and Northern Affairs Canada, 2003, 24, http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/aip_1100100032125_eng.pdf.

[21] Canada, *Déline Self-Government Agreement-In-Principle*, 24.

6.1.3 When exercising its Jurisdiction pursuant to 6.1.1, the [Délįnę First Nation] shall ensure that:

a. the method of delivering kindergarten to grade 12 education is consistent with achieving the prescribed learning outcomes set out in the Curriculum Framework; and

b. all Students have access to kindergarten to grade 12 education in a regular instructional setting in the Déline District.[22]

Clause 6.1.3 makes clear that the method of delivery and instructional style while teaching the provincial curriculum must be aligned with the standards set by the Minister of Education of the Northwest Territories. This leads to the question of what degree of autonomy the Délįnę have regarding education.

The laws created by the Délįnę First Nation under these constraints do prevail to a certain extent, but any law that conflicts with a Northwest Territory law about teacher certification does not prevail. In simple terms, the Délįnę First Nation may make any law that supports the provincial law for teacher certification.[23] The Délįnę can enter into agreements with other provinces, territories, and Canada itself. However, none of these agreements alter the *Délįnę Self-Government Agreement* and the jurisdictional powers found within it.[24]

A clause unique to the *Délįnę Self-Government Agreement* stipulates that the Délįnę First Nation shall—meaning must—use the Government of the Northwest Territories means of assessment if using a tool to assess a student's level of achievement when a student is

[22] Canada, *Déline Self-Government Agreement-In-Principle*, 24.
[23] Canada, *Déline Self-Government Agreement-In-Principle*, 26.
[24] Canada, *Déline Self-Government Agreement-In-Principle*, 25.

transferring into a school operated by the Délįnę.[25] The placement of students must also be in accordance with the policies created by the Délįnę arguably demonstrating some level of autonomy from the territorial government. However, the standards for grades and competency are dictated by the Minister of Education of the Northwest Territories, leading once again to a lack of educational sovereignty. There is hope— rare in self-government agreements—in the following language:

> 6.3.2 The [Délįnę First Nation] may enter into agreements with a territory, province or Canada for the delivery of kindergarten to grade 12 education within the Déline District, or for Students receiving kindergarten to grade 12 education outside of the Déline District.[26]

The ability to enter into agreements with the Northwest Territories or Canada leaves open the possibility of regaining Indigenous educational sovereignty in future negotiations, as is found in agreements like the *Mi'kmaq Educational Act* 1998 or *the First Nations Jurisdiction over Education in British Columbia* 2006. As this review of the *Délįnę Self-Government Agreement* demonstrates, the agreement does currently not indicate an increased level of Indigenous educational sovereignty for kindergarten to grade 12.

The *Délįnę Self-Government Agreement*, under language, culture, and spirituality, does permit the Délįnę to have jurisdiction over education in Déline Sahtu Dene and Métis language, culture, heritage, and spiritual practices, customs, and traditions, including the certification of experts and educators in these areas,[27] with all such laws prevailing when in conflict with

[25] Canada, *Déline Self-Government Agreement-In-Principle*, 25.
[26] Canada, *Déline Self-Government Agreement-In-Principle*, 26.
[27] Canada, *Déline Self-Government Agreement-In-Principle for the Sahtu Dene and Métis of Déline*, 50.

Canadian and territorial laws. However, this section is separate from the education of kindergarten to grade 12 and does not indicate who receives this education or the platform through which it is to be delivered, leaving the clause with more than a little potential for ambiguity.

Four other communities originally signed the *Sahtu Dene and Métis Comprehensive Land Agreement* in 1993 that are still negotiating self-government agreements. The Sahtu Dene and Métis of Norman Wells concluded their agreement in principle in 2017 and awaited signatories to negotiate a final agreement.[28] The Sahtu Dene and Métis of Tulita signed their agreement in principle in 2017 and also await further negotiations.[29] The Sahtu Dene and Métis of Fort Good Hope signed a process and schedule agreement in 2016 and are currently negotiating the *K'ahsho Got'ine of Fort Good Hope Self Government Agreement*.[30] Finally, the Sahtu Dene and Métis of Colville Lake also signed a process and schedule agreement in 2014 and are currently negotiating the *Dela Got'ine Self-Government Agreement*.[31] It is twenty-six years after the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, and only one community has completed the negotiations promised in 1993.

Nisga'a Final Agreement 1999

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[28] Government of Northwest Territories, Executive and Indigenous Affairs, n.d., *Concluding and Implementing Land Claim and Self-Government Agreements. Sahtu Dene and Métis of Colville Lake*, accessed August 12, 2018, https://www.eia.gov.nt.ca/en/priorities/concluding-and-implementing-land-claim-and-self-government-agreements/sahtu-dene-and-0.

[29] Government of Northwest Territories, Executive and Indigenous Affairs, n.d., *Concluding and Implementing Land Claim and Self-Government Agreements Sahtu Dene and Métis of Tulita*, accessed August 12, 2018, https://www.eia.gov.nt.ca/en/priorities/concluding-and-implementing-land-claim-and-self-government-agreements/sahtu-dene-and.

[30] Government of Northwest Territories, Executive and Indigenous Affairs, n.d., *Concluding and Implementing Land Claim and Self-Government Agreements Sahtu Dene and Métis of Fort Good Hope*, accessed August 12, 2018, https://www.eia.gov.nt.ca/en/priorities/concluding-and-implementing-land-claim-and-self-government-agreements/sahtu-dene-and-1.

[31] Government of Northwest Territories, Executive and Indigenous Affairs, n.d., *Concluding and Implementing Land Claim and Self-Government Agreements Sahtu Dene and Métis of Colville Lake*, accessed August 12, 2018, https://www.eia.gov.nt.ca/en/priorities/concluding-and-implementing-land-claim-and-self-government-agreements/sahtu-dene-and-0.

The Nisga'a from the Nass River Valley in northwestern British Columbia negotiated their self-government agreement in 1999. It became the first modern-day treaty in British Columbia. As the treaty marked the end of a 113-year battle with the government, which included the Calder Supreme Court case unanimously recognizing the existence of Aboriginal rights to land and resources, the Nisga'a felt that they had won the right to govern their education. Although Indigenous educational jurisdiction is not outlined in the self-government agreement, some clauses indicate the power to make laws while subverting their actual ability to do so. To begin, the Nisga'a must inform the other governments of their intent to create a law:

> 27. Before Nisga'a Lisims Government first exercises lawmaking authority in respect of social services, health services, child and family services, adoption, or pre-school to Grade 12 education, Nisga'a Lisims Government will give notice to Canada and British Columbia of the intended exercise of authority.[32]

Once notification has been given, the following clauses move to centre stage:

> 100. Nisga'a Lisims Government may make laws in respect of pre-school to grade 12 education on Nisga'a Lands of Nisga'a citizens, including the teaching of Nisga'a language and culture, provided that those laws include provisions for:
>
> a. curriculum, examination, and other standards that permit transfers of students between school systems at a similar level of achievement and permit admission of students to the provincial post-secondary education systems;

[32] Nisga'a Lisims Government, *The Nisga'a Final Agreement*, 2000, http://nisgaalisims.ca/the-nisgaa-final-agreement, 164.

> b. Certification of teachers, other than for the teaching of Nisga'a language and culture, by: i. A Nisga'a Institution, in accordance with standards comparable to standards applicable to individuals who teach in public or independent schools in British Columbia, or ii. A provincial body having the responsibility to certify individuals who teach in public or independent schools in British Columbia; and
>
> c. Certification of teachers, for the teaching of Nisga'a language and culture, by a Nisga'a Institution, in accordance with standards established under Nisga'a law.[33]

Reading the clauses in depth reveals that the ability to create laws about curricula must comply with the provincial government to allow for transfer and the ability to create laws in respect to teachers apply only to those also certified under provincial standards. In truth, the only area in which the Nisga'a hold power to enact laws that stand as an example of Indigenous educational sovereignty is their ability to certify language teachers. A prevailing clause noted below does exist; however, its weight, considering the parameters, calls into question the Nisga'a's ability to make local laws, if the prevailing clause means anything at all. There also appears to be a clause regarding negotiations between the Nisga'a Lisims Government and the provincial government about a law that is unique to the Nisga'a Self-Government Agreement:

> 102. If Nisga'a Lisims Government makes laws under paragraph 100, at the request of Nisga'a Lisims Government or British Columbia, those Parties will negotiate and attempt to reach agreements concerning the provision of Kindergarten to Grade 12 education to:

[33] Nisga'a Lisims Government, *The Nisga'a Final Agreement*, 176.

a. persons other than Nisga'a citizens residing within Nisga'a Lands; and

b. Nisga'a citizens residing off Nisga'a Lands.[34]

After the agreement was concluded, Canadians expressed concern regarding the rights and privileges that it granted. Some Canadians felt the *Nisga'a Final Agreement* devolved too much to the nation. In response, the Federal Treaty Negotiation Office released a statement and special brochure reassuring Canadians as follows:

> The Nisga'a Government will function under the umbrella of federal and provincial legislation, just like other local governments. Generally, if there is a conflict between Nisga'a laws and those of Canada and British Columbia, the federal or provincial legislation will prevail. It's true that there are some exceptions where Nisga'a laws will have priority, but they are limited and defined. In general, they concern matters that are internal and local such as culture or include a condition that the laws meet existing government standards, such as for social services.[35]

The laws that would prevail include education, both K-12 and post-secondary. Although the Federal Treaty Negotiation Office attempted to console concerned Canadians by addressing the limited scope of the Nisga'a's power to make laws, its statement does raise an interesting point. All their powers extend only to their schools or school systems. The Nisga'a, under this agreement, have no inherent right to influence the education of their members in provincial or federal schools, a stipulation that is clear in the section regarding post-secondary education. Although there are clauses that ensure Indigenous educational sovereignty for their post-

[34] Nisga'a Lisims Government, *The Nisga'a Final Agreement*, 176.

[35] Federal Treaty Negotiation Office, "Nisga'a Final Agreement Issues and Responses" (n.d.), Accessed August 12, 2018, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/gov_1100100031320_eng.pdf.

secondary institutions eighteen years after the agreement came into force, the Nisga'a do not have any post-secondary institutions. This is an incredible insight working toward the future of their nation, as no clause secures power to influence the education of their students in provincial post-secondary institutions. However, the final agreement extends the opportunity to enter into arrangements with other institutions, which is rare within this survey, as only two Nations—the Nisga'a and the Sioux Valley Dakota—have secured such a clause:

> 107. Nisga'a Lisims Government may prescribe the terms and conditions under which Nisga'a post-secondary institutions may enter into arrangements with other institutions or British Columbia to provide post-secondary education outside Nisga'a Lands.[36]

Both the K-12 and post-secondary clauses empower the Nisga'a to enact laws that will prevail over provincial or federal laws. However, both contain a transferability clause tying the standard of the education that the Nisga'a can provide to British Columbia's provincial standards.

Westbank First Nations Self-Government Agreement in 2003

The *Westbank First Nations Self-Government Agreement* in 2003, a nation-to-nation agreement, includes a clause about the jurisdiction of the First Nation with regard to education. Located in the Okanagan region of British Columbia, the Westbank First Nation has successfully negotiated jurisdiction over education in their agreement:

> 186. (a) Westbank First Nation has jurisdiction in relation to kindergarten, elementary and secondary education on Westbank Lands for Members.[37]

[36] Nisga'a Lisims Government, *The Nisga'a Final Agreement*, 177.

[37] Canada, *Westbank First Nation Self-Government Agreement* (Ottawa: Indigenous and Northern Affairs Canada, 2003), 45, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/wfn_1100100031767_eng.pdf.

The Westbank First Nation has been extremely successful; indeed, it is one of the two most economically successful First Nations in the country, according to political columnist Sasha Boutilier, due to its signing the *First Nations Land Management Act*.[38] One may question if its economic success influences its power to negotiate favourable terms regarding education. Interestingly, the only self-government agreement discussed in this survey which suggests devolution of power of education without specifically labelling it devolution is the *Westbank First Nation Self-Government Agreement*:

> 187. Without limiting the generality of section 186 [seen above], Westbank First Nation has the authority to:
>
> (d) enter into agreements with the province concerning the delivery of provincial services or the application of provincial standards including:
>
> (i) curriculum development;
>
> (ii) education level equivalencies;
>
> (iii) teaching methodologies;
>
> (iv) programs and standards;
>
> (v) teacher certification;
>
> (vi) teacher training and development; and
>
> (vii) evaluation of the education systems;[39]

The Westbank First Nation has jurisdiction over kindergarten, elementary, and secondary education. However, it is subject to the following clause:

[38] Sasha Boutilier. *An Unsung Success: The First Nations Land Management Act (*Policy Options: The Public Forum for the Public Good, August 18, 2016), http://policyoptions.irpp.org/magazines/august-2016/an-unsung-success-the-first-nations-land-management-act/.

[39] Canada, *Westbank First Nation Self-Government Agreement*, 45.

186. (b) The Westbank First Nation education systems shall be designed to permit transfers between education systems without academic penalty to the same extent as transfers are effected between other education jurisdictions in Canada.[40]

This transferability clause partly undermines its ability to exercise Indigenous educational sovereignty. The language is ambiguous; it does not stipulate the precise parameters of the design required. For some, this might indicate the freedom to create educational delivery methods and curricula at will. For others, though, this might symbolize the ebb and flow of political will that plagues First Nations Indigenous educational sovereignty. The true meaning depends upon the current government officials in places of power when a given curriculum or delivery method is assessed. Having to participate in the provincial evaluation diminishes the power to assert a Nation's inherent right to control its members' education.

Tłı̨chǫ Land Claim and Self-Government Act 2003

Another nation whose agreement seems promising is the Tłı̨chǫ of the Northwest Territories, with their capital at Behchokǫ̀; they govern the largest First Nations community in any of the territories. The Tłı̨chǫ include the following communities: Behchokǫ̀, Whatì, Gamètì, and the Wekweètì. In 2003, the Tłı̨chǫ signed the first combined self-government and land resources agreement in the Northwest Territories. Although their agreement does not include a clause explicitly indicating its jurisdiction over education, there is a clause pertaining to the power to make laws concerning education:

7.4.4 The Tłı̨chǫ Government has the power to enact laws in relation to

[40] Canada, *Westbank First Nation Self-Government Agreement*, 45.

> (j) education, except post-secondary, for Tłı̨chǫ Citizens in Tłı̨chǫ communities or on Tłı̨chǫ lands, including the teaching of the Tłı̨chǫ language and the history and culture of the Tłı̨chǫ First Nation but not including the certification of teachers;[41]

Answering the first of the framework questions in the affirmative, the *Tłı̨chǫ Land Claims and Self-Government Agreement* includes the power to make laws. Unfortunately, a subsequent clause undermines that power, for their laws do not always prevail.

> 7.5.16 When the Government of the Northwest Territories is of the opinion that a Tłı̨chǫ law in relation to a matter set out in any of 7.4.4(f) to (l) has rendered territorial legislation partially inoperative, unreasonably alters the character of the legislation, or makes it unduly difficult to administer that legislation, the Government of the Northwest Territories, including a community government, may amend its legislation;[42]

The laws do not prevail, and upon asking the third question regarding compliance, it is clear in clause 7.5.16 that if a Tłı̨chǫ law does not comply, the provincial government has the power to amend it. Although governments' willingness to respect Indigenous educational sovereignty through awarding the power to enact laws appears bleak from the nations surveyed to this point, there are a few successful nations like the Tłı̨chǫ.

Arguably, the Tłı̨chǫ have gained the ability through the *Tłı̨chǫ Land Claims and Self-Government Agreement* to enact laws for all education matters (except post-secondary) for its citizens and community, including language and culture. However, they have not secured the

[41] "Tłı̨chǫ As Long As This Land Shall Last," *Tłı̨chǫ Land Claims and Self-Government Agreement*, 2003, 53, http://www.tlicho.ca/sites/default/files/documents/communities/T%C5%82%C4%B1%CC%A8ch%C7%AB%20Agreement%20-%20English.pdf.

[42] "Tłı̨chǫ As Long As This Land Shall Last," 54.

ability to accredit teachers.[43] Further, their agreement also contains a transfer and matriculation clause so that they must design curricula, examinations, and other standards with the objective of permitting transfers of students between and within provincial and territorial schools and gaining admission to provincial and territorial post-secondary education systems.[44]

Maa-Nulth Final Agreement 2009

The Maa-Nulth Nation located on Vancouver Island is made up of five First Nations: the Yuułuʔiłʔatḥ, Ka:'yu:'k't'h'/Che:k'tles7et'h, Toquaht Nation, Huu-ay-aht First Nations, and Uchucklesaht Tribe. The *Maa-Nulth First Nation Final Agreement* contains constitutionally protected self-government provisions operating within the framework of the 1982 *Constitution Act*. Following a transition period, the Maa-Nulth nations will no longer be subject to the education sections (114–122) of the *Indian Act*. On July 24, 2018, they established an alliance between themselves, the Tla'amin, and the Tsawwassen as modern treaty nations in British Columbia advocating in areas of shared interest.

In the *Maa-nulth First Nation Final Agreement*, control is lacking, even though the nations have been afforded the ability to make laws regarding K-12 education. Their curricula, examination, and other standards must permit transfers of students between school systems in British Columbia and permit entry of students to provincial post-secondary education systems.[45]

Like the Tla'amin First Nation and the Tsawwassen First Nation, the *Maa-nulth Final Agreement* provides the nations with the educational jurisdiction to control culture and language, an aspect of their lives over which the provincial and federal governments should never have had

[43] Laura Forsythe, "Self-Determination Undermined: Education and Self-Government," in *Looking Back and Living Forward: Indigenous Research Rising Up*, ed. Jennifer Markides and Laura Forsythe (Leiden: Brill, 2018), 135–144.
[44] Forsythe, "Self-Determination Undermined," 137.
[45] Forsythe, "Self-Determination Undermined," 139.

control. In 2009, the Maa-nulth reclaimed the right to make laws in respect to education in their institutions for their people on their land with respect to:

a. certification and accreditation of its Nuu-chah-nulth language and culture teachers; and

b. the development and teaching of its Nuu-chah-nulth language and culture curriculum.[46]

With prevailing clauses, the struggle for educational control over language and culture has been determined in the favour of the Maa-nulth First Nations.

Interestingly, the Maa-nulth have obtained the ability to make laws in respect to home education on their land for their citizens, with a subsequent supportive clause ensuring that their laws will prevail if there is a conflict.[47] This right of the Maa-nulth nation to create laws for homeschooling sounds like a gain in educational sovereignty until the homeschooling policy of the British Columbia Ministry of Education is reviewed. Under the School Act in British Columbia, homeschooling is open and available to any parent anywhere within the province. It is an educational program not under the direction of a qualified teacher but provided by a parent. British Columbian parents who decide to educate their children using this method "exercise complete independence and control over their children's education, may use the learning resource of their choice and are not obligated to follow the provincially prescribed curriculum."[48] Homeschool parents in British Columbia have more educational control over their children than the majority of all First Nations, even those with agreements that contain education clauses. This also means that, although all parents in British Columbia may choose to educate their children in this manner with little to no influence from the province, if a Maa-nulth family chose this method of education, they would not be under the laws of their own nation if they lived outside

[46] Canada, *Maa-nulth First Nations Final Agreement* (Ottawa: Indigenous and Northern Affairs, 2009), 169, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-BC/STAGING/texte-text/mna_fa_mnafa_1335899212893_eng.pdf.

[47] Canada, *Maa-nulth First Nations Final Agreement*, 169

[48] British Columbia, "Homeschooling Policy," accessed August 12, 2018, https://www2.gov.bc.ca/gov/content/education-training/administration/legislation-policy/independent-schools/homeschooling?keyword=homeschooling&keyword=policy.

the land allotted in the final agreement. If a Maa-nulth family chose this method of educational delivery and wanted it to be overseen by their nation, the province would dictate where they live. The homeschooling clause is thus extremely problematic and hardly a clear victory for Indigenous educational sovereignty.

The Maa-nulth have secured a clause allowing them to make laws for post-secondary education which prevail on their land for registered citizens with respect to:

> a. the establishment of post-secondary institutions and programs with the ability to grant degrees, diplomas or certificates;
>
> b. the development of the curriculum for post-secondary institutions established by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institutions; and
>
> c. the provision for and coordination of all adult education programs.[49]

Post-secondary clauses found within the agreements of the Maa-nulth and the Nisga'a are extremely forward-thinking, although they are also aspirational at best. Even though First Nations University in Saskatchewan has existed since 1976, the likelihood of the creation of another post-secondary institution is not high. What is far more likely is a lack of documented need for consultation with the Maa-nulth by existing institutions and the provincial and federal governments to influence the current conditions in post-secondary institutions attended by Maa-nulth members.

Tsawwassen Final Agreement 2009

The survey revealed that the Tsawwassen First Nation in the Greater Vancouver area who are considered the other most economically successful First Nation in Canada is also a signee of

[49] Canada, *Maa-nulth First Nations Final Agreement*, 170.

the *First Nations Land Management Act*. Within the *Tsawwassen Final Agreement*, the following clause provided the Nation with the ability to make laws:

> 78. Tsawwassen Government may make laws in respect of kindergarten to grade 12 education provided by a Tsawwassen Institution on Tsawwassen Lands.[50]
>
> 79. A Tsawwassen Law made under clause 78 will:
>
> a. establish curriculum, examination, and other standards that permit students to transfer between school systems at a similar level of achievement and permit students to enter the provincial postsecondary education systems; and
>
> b. provide for the certification and accreditation of teachers, by a Tsawwassen Public Institution, or by a body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially-funded independent schools in British Columbia.

The requirement to adhere to both accreditation and educational standards undermines the Tsawwassen' ability to assert their Indigenous educational sovereignty. The laws created align fully with those of the province, rendering the subsequent prevailing clause 81 null.

[50] Canada, *Tsawwassen First Nation Final Agreement*, 150.

Yale First Nation Final Agreement 2013

The Yale First Nation, sixteen distinct reserves located in Yale, British Columbia, concluded its final agreement after twenty-one years of negotiation, but it has announced that it will not be implementing the treaty. According to Chief Ken Hansen and his council "The Yale final agreement has critical flaws that cannot be resolved within the current B.C. treaty process," the statement said. "We want to look ahead to how we can meet the real, pressing needs of our people, in a relationship of mutual cooperation and respect."[51] The announcement comes as no surprise when the document is surveyed; it lacks any form of educational sovereignty outside of language and culture.

According to the section on governance activities, Yale First Nation was permitted to negotiate an agreement with British Columbia regarding the provision of kindergarten to grade 12 education for Yale First Nation members who reside in British Columbia.[52] It does have the right to make laws and develop curriculum for the Puchil dialect of the Nlaka'pamux (Thompson) language and culture.[53] The laws created for culture and language and kindergarten to grade 12 would prevail in a conflict, which is a sign of Indigenous educational sovereignty.[54] The Yale First Nation was permitted to create laws that upheld the standards and accreditation

[51] Peter O'Neil and Rob Shaw, "Yale First Nation Puts Hold On Treaty Implementation, *Vancouver Sun*, November 2, 2016, http://www.vancouversun.com/news/yale+first+nation+puts+hold+treaty+implementation/11714025/story.html.

[52] British Columbia Ministry of Aboriginal Relations Reconciliation, Yale First Nation, and Indigenous and Northern Affairs Canada. *Yale First Nation Final Agreement*. 2013. http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs2014_2/542708/vancouvr_2017345_v2_yale_first_nation_final_agreement_final_version_english_print_version.pdf.

[53] British Columbia Ministry of Aboriginal Relations Reconciliation, Yale First Nation, and Indigenous and Northern Affairs Canada. *Yale First Nation Final Agreement*. 57,

[54] British Columbia Ministry of Aboriginal Relations Reconciliation, Yale First Nation, and Indigenous and Northern Affairs Canada. *Yale First Nation Final Agreement*., 58,

found in the British Columbia education system. An additional clause provides an opportunity not enjoyed by many Nations:

> At the request of Yale First Nation or British Columbia, Yale First Nation and British Columbia will negotiate and attempt to reach agreement for the provision of kindergarten to grade 12 education by a Yale First Nation Institution to:
>
> a. Non-Members; or
> b. Yale First Nation Members residing off Yale First Nation Land in British Columbia.[55]

The Yale First Nation recognizes the limitations of the *Yale First Nations Final Agreement*. As it stands, the First Nation has agreed to adhere to the curriculum and standards of the provincial government; this agreement has not secured Indigenous educational sovereignty.

Sioux Valley Dakota Nation Governance Agreement and Tripartite Governance Agreement 2013

A nation-to-nation agreement that does grant educational jurisdiction involves the Sioux Valley Dakota Nation, located in southwestern Manitoba. This is a unique situation, as the Sioux Valley Dakota Nation entered into two different types of agreements in 2013. One is a bilateral governance agreement with the Queen as represented by the federal government and the other a tripartite governance agreement with the governments of both Canada and Manitoba. The educational jurisdiction clause found in the bilateral agreement plainly states that "Sioux Valley

[55] BC Treaty Commission. *Yale First Nation Final Agreement*, 57, http://www.bctreaty.ca/sites/default/files/Yale-Final-Agreement_Feb10_0.pdf., 57

Dakota Nation has Jurisdiction in relation to education,"[56] but there is no mention of education in the tripartite agreement at all.

The Sioux Valley Dakota, which the survey concluded had affirmed their inherent right to educational jurisdiction, also have a clause that includes the power to enact laws:

> 18.01 Laws about education
>
> (1) Sioux Valley Dakota Nation has Jurisdiction in relation to education
>
> (2) Laws made under (1) may include laws about:
>
> (a) pre-school education;
>
> (b) elementary and secondary education;
>
> (c) technical and vocational education and training;
>
> (d) post-secondary education;
>
> (e) education about Dakota culture and language;
>
> (f) curriculum in respect of the types of educational programs described in (a) to
>
> (g) entities, structures or mechanisms, for delivering education services; and
>
> (h) accrediting individuals to teach:
>
> (i) Dakota culture and language; and (ii) subject to (3), other subjects.[57]

3. A Sioux Valley Dakota Nation Law made under (1) that provides for standards of pre-school, elementary or secondary education, including standards for the accreditation of teachers, will provide for standards that are at least equal to any comparable standards under provincial laws.

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[56] Canada, *Sioux Valley Dakota Nation Governance Agreement* (Ottawa: Indigenous and Northern Affairs Canada, 2013), 29, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-LDC/STAGING/textetext/sioux_valley_dakota_governance_agree_1385740747357_eng.pdf.

[57] Canada, *Sioux Valley Dakota Nation Governance Agreement*, 28.

4. If a Sioux Valley Dakota Nation Law made under (1) is inconsistent with any applicable federal or provincial law, then the Sioux Valley Dakota Nation Law prevails to the extent of the inconsistency.[58]

As a strong agreement that works toward educational sovereignty, the *Sioux Valley Dakota Nation Governance Agreement and Tripartite Governance Agreement* include both the ability to enact laws and a clause that ensures that First Nation law prevails. Unfortunately, regarding the implication of compliance, the *Sioux Valley Dakota Nation Governance Agreement* includes the provisional clause indicating they must be "at least equal" to provincial laws, thus subverting the ability of the First Nations truly to create their own standards. For example, if the nation wanted to accredit an elder to become a language teacher, the elder would have to complete a teaching degree and gain the appropriate provincial accreditation. Due to these limitations on the ability to create laws, the *Sioux Valley Dakota Nation Governance Agreement and Tripartite Governance Agreement* do not grant autonomy and therefore do not represent Indigenous educational sovereignty free from government interference.

Regarding post-secondary education, the Sioux Valley Dakota Nation has the power to enact laws, as stipulated in their agreements, whereas the Tłı̨chǫ are explicitly denied the ability to make laws for post-secondary education[59] As a result, the Sioux Valley Dakota have the most extensive authority of all communities included in this study. Their agreement includes a clause stating that they have jurisdiction over education and may make laws about pre-school education, elementary and secondary education, technical and vocational education and training, post-secondary education, and education about Dakota culture and language, along with curricula,

[58] Canada, *Sioux Valley Dakota Nation Governance Agreement*, 28.
[59] Forsythe, "Self-Determination Undermined," 137.

entities, structures, or mechanisms for delivering education services and accrediting individuals to teach Dakota culture and language on their lands.[60] However, a subsequent clause enforcing transferability of all curricula impacts the actualization of control because adhering to provincial standards is required.[61]

Miawpukek Agreement-in-Principle 2013

The Miawpukek First Nations living on their traditional territory in Newfoundland had negotiated an agreement in principle. The purpose of this nation-to-nation agreement was to allow the exercise of various jurisdictions by the Miawpukek First Nations under the *Constitution Act* 1982 of Canada; it thus cannot be considered a land claim or a treaty. The Miawpukek still reside on a reserve where:

> 14.1 Title to all Miawpukek First Nation Lands shall continue to be held in the name of Canada for the use and benefit of Miawpukek First Nation.[62]

Tammy Drew, General Manager of the Miawpukek Nation, responded in the *Journal of Aboriginal Management* to band members who strongly criticized the concept of landlessness:

> Self-Government without a land claim has been described by a small assortment of community members as self-administration. It is so much more. It is the ability to make our own laws and, although applicable only on current reserve land, it gives power back to our people – the same power that has been

[60] Forsythe, "Self-Determination Undermined," 139.
[61] Forsythe, "Self-Determination Undermined," 140.
[62] Canada, *Miawpukek First Nation Self Government Agreement-in-Principle* (Ottawa: Indigenous and Northern Affairs Canada, 2013), 49, https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-LDC/STAGING/texte-text/ldc_ccl_sgb_miaw_1402323649082_eng.pdf.

> eroded by [Aboriginal Affairs and Northern Development Canada] over the past thirty years.[63]

This agreement has a two-fold interest; first, due to the jurisdiction granted by the Province of Newfoundland and the Federal Government to the Miawpukek First Nation, and, second, its continuation of the practice of landless agreements which empower nations in the Maritimes to control their education. The *Miawpukek Agreement-in-Principle* in 2013 contains a similar clause to those found in the *Umbrella Final Agreement*, but one slight change provides education jurisdiction:

> 7.1 Miawpukek First Nation Government has Jurisdiction with respect to education of Members on Miawpukek First Nation Lands in relation to the following matters:
>
> a) early childhood development and education;
>
> b) primary, elementary and secondary education;
>
> c) adult basic education;
>
> d) vocational and post-secondary education, and training;
>
> e) the requirement for Miawpukek First Nation Government certification in addition to those required under any Federal Law or Provincial Law for those who provide educational services on Miawpukek First Nation Lands;
>
> f) premises, centres, facilities and buildings used for educational programs and services;
>
> g) boards, authorities or other entities to establish, manage and operate educational programs, services and related facilities.[64]

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[63] Drew, Tammy. "Indian Act we got in, we could get out." Journal of Aboriginal Management 14 (February 2014): 2–3. https://www.afoa.ca/afoadocs/L3/JAM_Preview/JAM_Issue%2014.pdf.

[64] Canada, *Miawpukek First Nation Self Government Agreement-in-Principle*, 33.

For the Miawpukek First Nation, the jurisdiction afforded over early childhood development, primary, elementary, and secondary education, and curriculum development is subject to a clause stating their curricular, examination, and other standards must be transferable with provincial schools and suitable for admission to post-secondary institutions, thus considerably limiting the scope of the initial educational jurisdiction.[65] There are no clauses in the *Miawpukek First Nation Agreement-in-Principle* about the devolution of any powers regarding education from either the federal or the provincial government.[66]

Inuvialuit Agreement-in-Principle 2015

The Inuvialuit signed the second comprehensive land claim in Canada, and the first above the 60th parallel, after ten years of negotiation. The Inuvialuit communities are the Aklavik, Inuvik, Paulatuk, Sachs Harbour, Tuktoyaktuk, and Ulukhaktok. The Inuvialuit believe that they gave up "their exclusive use of their ancestral lands in exchange for certain other guaranteed rights from the Government of Canada."[67] The *Inuvialuit Agreement-in-Principle* signed in 2015 provides the Inuvialuit with the ability to create laws, although there is no explicit mention of jurisdiction. In the review of the three questions under the heading of jurisdiction in the *Self-Government Agreement-in-Principle*, the following clauses are relevant:

14.1.1 The Inuvialuit Government may make laws applicable within the Western Arctic Region in relation to:

(a) early childhood care and education for Inuvialuit Pre-School Children including pre-school curriculum;

[65] Forsythe, "Self-Determination Undermined," 137.

[66] Canada, *Miawpukek First Nation Self Government Agreement-in-Principle*, 171

[67] Inuvialuit Regional Corporation, *Inuvialuit Self-Government Agreement-in-Principle* (Inuvik: Inuvialuit Regional Corporation, 2015), 1, http://www.irc.inuvialuit.com/publications/pdf/INUVIALUIT_SELF-GOVERNMENT_AIP-Signed.pdf.

(b) the licensing and regulation of facilities providing care and education for Inuvialuit Pre-School Children; and

(c) the certification of early childhood educators and caregivers for Inuvialuit Pre-School Children.

14.1.2 Inuvialuit Laws made pursuant to section 14.1.1 shall provide for standards compatible with NWT core principles and objectives for early childhood education.

14.1.3 In the event of a Conflict between an Inuvialuit Law made pursuant to section 14.1.1 and a Territorial Law, the Inuvialuit Law prevails to the extent of the Conflict.[68]

Through the power to enact laws within this agreement, the Inuvialuit almost obtain true Indigenous educational sovereignty. However, one must question the extent to which the standards the Inuvialuit would wish to create for their learners will align perfectly with the standards that they are mandated in this agreement to uphold, as their laws must be compatible with those of the Northwest Territories. Thus, the assumption of compatibility, which is circuitous at best, weakens the strength of the prevailing law clause.

Tla'amin Final Agreement Act 2016

The 2016 *Tla'amin Final Agreement Act* is the most extensive agreement in relation to education signed in decades. Tla'amin is another nation on British Columbia's Sunshine Coast, north of Powell River. The Tla'amin have negotiated an agreement that is considered a treaty and land claim agreement within sections 25 and 35 of the *Constitution Act* 1982. At the time of

[68] Inuvialuit Regional Corporation, *Inuvialuit Self-Government Agreement-in-Principle*, 49.

signing, the Tla'amin were subject to the *Indian Act*, but over time that act will no longer apply and will be replaced with a constitutionally protected self-government provision. In the *Tla'amin Final Agreement Act* of 2016, the nation has the authority to enact laws not only for culture and language education but also from kindergarten to post-secondary levels. An interesting note regarding culture and language stems from its ability to dictate by enacting a law the certification and accreditation of teachers of language and culture. The relevant clauses are as follows:

> 101. The Tla'amin Nation may make laws in relation to Tla'amin language and culture education provided by Tla'amin Institution on Tla'amin Lands for:
>
> a. the certification and accreditation of teachers for Tla'amin language and Tla'amin culture; and
>
> b. the development of teaching of Tla'amin language and Tla'amin culture curriculum.
>
> 102. Tla'amin Law under paragraph 101 prevails to the extent of a conflict with Federal or Provincial Law.[69]

Under the *Tla'amin Final Agreement Act*, the nation has obtained the ability to accredit its language teachers outside of the Ministry of Education of British Columbia and the federal government. The laws, standards, and regulations it creates for these educators prevail over provincial and federal laws. The autonomy to dictate who is qualified to teach a nation's language and culture is rare, as this comparison of documents has shown, and is an extremely significant indicator.

Unfortunately, the same cannot be said for the clause about general education:

[69] Canada, *Sechelt Indian Band Self-Government Act*.

103. The Tla'amin Nation may make laws about kindergarten to grade 12 education on Tla'amin Lands:

a. for Tla'amin citizens; or

b. provided by a Tla'amin Institution

104. Tla'amin Law under paragraph 103 will:

a. establish curriculum, examination and other standards that permit transfer of students between school systems in British Columbia at a similar level of achievement and permit admission of students to the provincial post-secondary education systems; and

b. Provide for certification and accreditation of teachers by a Tla'amin institution or body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially-funded independent schools in British Columbia.[70]

For the Tla'amin, the Indigenous educational sovereignty obtained in the case of cultural and language is not absolute. The agreement is fraught with the same undermining clauses as found in many other agreements that have been reviewed in this thesis. The transferability clause (104.a) regarding content and assessment along with set standards for certification and accreditation do not provide the nation with the autonomy required for true Indigenous educational sovereignty, which demands cultural and language education free from external interference. Clause 106 stresses that these two stipulations exist, ensuring that they do not have to comply with the province.

[70] Canada, *Sechelt Indian Band Self-Government Act*, s. 183.

The negotiators have also included a clause unique to the *Tla'amin Final Agreement Act*. Although other agreements omit any discussion of the influence of nations on provincial schools, this agreement stipulates that the laws created by the Tla'amin do not transfer to any other institutions and existing agreements:

> 105. Tla'amin Law under paragraph 103 will not apply to schools under the School Act or the Independent School Act unless the Tla'amin establishes the school under the Independent School Act.[71]

Each province has an act that sets out the responsibilities, roles, and goals of the province's K–12 education system; these acts cover the conduct of teachers, administrators, students, parents, and community organizations. Here, the Province of British Columbia can assert that all laws created are only applicable to Tla'amin students in Tla'amin schools on Tla'amin land, which may be a foregone conclusion that is often articulated in legal provisions in the *School Act*. Secondly, the *School Act* indicates that the Tla'amin would not be under the jurisdiction of the School act by stating:

> (3) This section does not apply if the person
>
> (a) is attending one of the following:
>
> (i) an independent school;
>
> (ii) a Provincial school;
>
> (iii) an educational institution operated by the government of Canada or by a first nation or a Community Education Authority established by one or more participating First Nations under the *First Nations Jurisdiction over Education in British Columbia Act* (Canada),

[71] Canada, *Sechelt Indian Band Self-Government Act*, s. 184.

(b) is registered under section 13, or

(c) is participating in a kindergarten to grade 12 program of studies provided by a treaty first nation under its own laws.[72]

This language raises the question of whether a First Nations agreement—be it self-government, land claim, or final—regarding education ever challenged the provincial school act in such a manner that warrants the inclusion of such a clause. As research has yet to provide an unequivocal answer, it calls into the question the inclusion of the clause. The *Independent School Act* no longer binds the Tla'amin, so it is unclear why they would establish a school under that act in the future.

As we progress through the education section of the *Tla'amin Final Agreement*, there are more clauses found only in two agreements:

107. The Tla'amin Nations make laws in relation to kindergarten to grade 12 home education of Tla'amin Citizens on Tla'amin land.[73]

This one-of-a-kind clause amongst dozens of agreements raises interest on two levels: need and relevance. The inclusion of a clause that allows Tla'amin to use homeschooling removes many barriers to resources and makes it easier for nations looking to provide an alternative to provincial schools for their citizens. A new form of education is creating a new opportunity for First Nations to capitalize on a method of learning used by many Canadians searching for the same thing. The stipulation in the clause that it must be on the land of the Tla'amin is an acknowledgement of the opportunity for Nations to educate their citizens who for various reasons must relocate but is denying them that opportunity. Ultimately, this undermines First Nations Indigenous educational sovereignty in a manner never seen in an agreement.

[72] British Columbia, *School Act*, [RSBC 1996] Chapter 412, http://www.bclaws.ca/Recon/document/ID/freeside/96412_02.
[73] Canada, *Sechelt Indian Band Self-Government Act*, s. 184.

The next clause questions the agreement itself, as it indicates that all parents have the right to choose an educational institution for their children. In fact, Clause 107 does just that. If a Tla'amin parent wanted to homeschool a child from anywhere but the nation's allotted land, that would not be permissible, according to the agreement. Clause 108 is as follows:

> 108. Tla'amin Law under paragraph 103-107 will not interfere with the rights of parents to decide where their Children may be enrolled to receive kindergarten to grade 12 education.[74]

However, Paragraph 107 interferes with that right by only allowing them to enroll in homeschooling or independent schools online that are not offered by their nation but rather by the provincial government. In British Columbia, there are numerous province-wide homeschool programs for which a Tla'amin child would be eligible. The *Tla'amin Final Agreement Act* contains within in it a new form of educational oppression and withholds the ability to use technology and new age ways of educating from Tla'amin citizens. Considering this, the prevailing clause is rendered insignificant for sections 103–107. Like other agreements negotiated in the past decade, the *Tla'amin Final Agreement Act 2016* creates space for the nation and the provincial government to enter into agreements for provisions for Tla'amin citizen's education. However, that is only for Tla'amin institutions and not for provisions in the British Columbia provincial school system.

Much like the Nisga'a, the Tla'amin can make laws about post-secondary institutions on their land. Although they can establish an institution which can grant a degree, certificate or diploma with autonomy over curriculum, their laws do not prevail over federal and provincial

[74] Canada, *Sechelt Indian Band Self-Government Act*, 184.

laws concerning post-secondary matters. Interestingly, the Tla'amin can offer and provide post-secondary education off Tla'amin land, unlike homeschooling:

> 113. A Tla'amin Institution may operate and provide post-secondary education services off Tla'amin Lands in accordance with Federal and Provincial law.[75]

The above clause creates an interesting need for the federal and provincial law to prevail in section 112, as it then allows the Tla'amin to offer post-secondary courses off their allotted land.

The *Tla'amin Final Agreement Act 2016* is a fascinating development in the creation of self-government and final agreements. It retains the spirit of many of the limiting clauses seen for the past forty years but also introduces a new form of suppression of Indigenous educational sovereignty in a new field of education, learning at home and online learning, that is not yet fully developed.

Conclusion

After a comprehensive survey of forty-one agreements made between respective First Nations, Queen in right of Canada, and the appropriate provincial or territorial representative concerning educational jurisdiction, the power to enact laws, and the independence of First Nations control over education in self-governing agreements, all have been found ineffective in granting Nations the authority necessary to operate and regulate their own educational institutions. The agreements surveyed have not provided the Nations with the autonomy and freedom to develop a curriculum framework outside of the provincial or territorial standard. They do not empower Nations to identify an educational delivery system that fits their members; nor do they provide Nations with the opportunity to attempt alternative traditional or innovative

[75] Canada, *Sechelt Indian Band Self-Government Act*, 185.

methods to educate their members, which may result in higher achievement and engagement levels.

Even where Nations have managed to negotiate relatively broad powers to develop curricula and certify teachers, the direct impact of transferability and lack of prevailing clauses provided in the agreements prevent First Nations from obtaining true jurisdiction over their own members' education. Further, the power to enact laws that prevail over provincial and federal laws and the ability to develop curriculum apart from the provincial or territorial Ministry of Education mandates is ambiguous at best. Additional research into the actualization and effects of the transferability clauses is required to gauge their impact. In any case, this survey demonstrates the federal and/or provincial imposition of a series of templates seen in the Umbrella Final Agreement and the fourteen nations included as well as the numerous clauses seen in the survey that contain the same language resulting in the loss of Indigenous educational sovereignty when negotiating self-governance education clauses, all of which are aimed to limit the powers of First Nations. As a result, there is a demonstrated need for continued negotiation. Research into the individual communities' educational outcomes is needed to fully understand any direct or indirect correlations between educational self-determination and Indigenous educational achievement. This additional research offers an opportunity to respond to the NIB's call to review all existing governance documents and make recommendations for the continuance, revision, or termination of education clauses in existing agreements and or to influence the ninety agreements that are currently under negotiation in Canada.

Conclusion: Lessons for Tomorrow

No delegation of authority over education to First Nations governments is acceptable as a substitute for First Nations jurisdiction recognized and affirmed in the Constitution of Canada.

Assembly of First Nations

Over the past forty-six years, since *Indian Control of Indian Education* was published in 1972, there have been twenty-nine comprehensive land claim and self-government agreements, thirteen tripartite agreements with the three signatories ranging from First Nations or their delegated organizations, and twelve modern treaties that address education in the form of tripartite education agreements or sectoral agreements. There has yet to be a single agreement in which a First Nation has obtained the level of autonomy discussed by the NIB in 1972, particularly around Indigenous educational sovereignty.

Summary

The review from the 1960s to 2016 of the historical struggle for Indigenous educational sovereignty in chapter one demonstrated the political context that influenced negotiations with individual nations. The review illustrated that, despite different political parties holding power, the willingness to agree to terms that allow First Nations to reclaim their inherent right over the education of their citizens was simply not present. By reviewing the various arrangements throughout Canada in the forms of MoUs, educational acts, and Indigenous advisory councils, the findings indicate quasi- or co-management arrangements that deflate the Indigenous educational sovereignty of the nations and leave them little room for innovation.

Of the forty-one nations' agreements surveyed using the indigenist research methodology, it was noted that the Mi'kmaq, in 1997, completed a sectoral negotiation in the

Mi'kmaq Education Act and secured the most effective agreement in the movement toward Indigenous educational sovereignty, although aspects of even that agreement can be considered problematic for its ability to assert self-government. It does grant the Mi'kmaq the authority to make unilateral decisions for their community without consulting both the provincial and federal governments.

As a province, British Columbia has the largest number of agreements, which theoretically increases the probability of its having at least one effective agreement. However, it was not the B. C. treaty process that has aided First Nations in obtaining Indigenous educational sovereignty; it was the FNESC in partnership with individual nations and the UBCIC, whose efforts resulted in the following crucial agreements: *Education Jurisdiction Framework Agreement* of 2006, *Bill C-34: First Nations Jurisdiction over Education Act* in 2006, *Tripartite Education Framework Agreement* in 2012, and the *Canada-First Nation Education Jurisdiction Funding Agreement* from 2014. Each agreement moves toward educational sovereignty as an inherent right of First Nations.

In the cases of increased Indigenous educational sovereignty, it was not a self-government agreement that secured this level of autonomy but rather another form of negotiation in the Atlantic provinces and British Columbia. This leads one to question the purpose of education provisions in self-government agreements and to look further at the type of agreements that have led to this level of achievement.

The in-depth look in chapter two at individual clauses found in over forty-one agreements in principle, self-government agreements, final agreements, government to government agreements, self-government acts, and comprehensive land claim agreements signed in Canada from 1975 to 2016 found a lack of educational jurisdiction provisions. The review of clauses

related to jurisdiction, devolution, the ability to pass laws, and transferability demonstrated the inability of these agreements to provide First Nations with the greater control over the education of their members demanded by the NIB in 1972.

This is a significant finding since scholars and community members have long asserted that the success of Indigenous learners is directly related to the amount of involvement and control their communities have on the delivery of education. However, the agreements with First Nations, Métis and Inuit have not reflected the 1972 call for control of Indigenous education envisioned by the NIB, despite the intentions of leaders and negotiators. The policy paper *Indian Control over Indian Education* spoke to the jurisdictional issues surrounding Indigenous education and the "unusual school services" provided by joint agreements with the provincial and federal governments and the "Master agreements" that violated local control.

Significance of Findings

Through such a study, federal policymakers and provincial stakeholders may be able to draw on a stronger knowledge base for making recommendations concerning the continuance, revision, or termination of these clauses during a period in which ninety agreements are currently under negotiation in Canada. This level of research could not be found in the literature review.

The agreements surveyed have not provided the Nations with the autonomy and freedom to develop a curriculum framework outside of the provincial or territorial standard. It does not empower them to identify a delivery system of education that fits their members. It does not provide them with the opportunity to attempt alternative methods of educating their members that may have resulted in higher achievement and engagement levels. Arguably critics will retort that the curriculums developments and delivery systems that are rooted in an Indigenous

pedagogy have already been placed in many school districts throughout the country, but, Indigenous control over curriculum frameworks are still overseen and limited by the Canadian Government. This thesis serves as evidence of the inability for self-government agreements to ensure First Nations reclaim Indigenous educational sovereignty.

Future Research

In the research for this thesis, three research gaps have been identified that will need to be addressed in future studies:

a. the effectiveness of the educational provisions in practice;

b. case studies examining how changing political will affects educational sovereignty; and

c. in-depth studies on nations that have secured aspects of educational sovereignty and their student success rates in order to understand better whether the performance indicators can be attributed to increases in Indigenous educational sovereignty.

As to the research gap related to the effectiveness of educational provisions on individual nations educational success, the finding that agreements made outside of self-government were more effective at providing nations with Indigenous educational sovereignty indicates the need to research the nations on an individual basis to test the effectiveness of their education provisions in practice and to help inform future negotiations.

Although numerous studies and publications herald the need for decolonized education and Indigenous education, there is a significant lack of resources to complete this task demonstrating the inability of education controlled by First Nations to exist at a level of Indigenous educational sovereignty. Many programs and curricula have been created at the provincial and district levels at the behest of First Nations and these programs have been

implemented and accredited, due to the political climate. However, little to no research has been completed on the effectiveness of agreements, be they bilateral or tripartite, to ensure that nations will not lose their ability to contribute if the political climate should change.

Finally, there is a lack of research using the qualitative approach to analyze textual data from the agreements, student educational attainment statistics, approved curricula, and educational MoUs between provinces and select First Nations. Such studies could be coupled with qualitative interviews with community stakeholders in education and those who sat at the negotiation tables during the creation of the agreements. This work is imperative, given that nations in British Columbia (69.5%) and the Atlantic provinces (71%) have the highest percentages of high school attainment for First Nations students in Canada, both on and off reserve.[1] These are the same two areas where the greatest gains have been made in educational sovereignty, gains which have been achieved through means other than self-government agreements.

In conclusion, this thesis has reviewed the history of the struggle for educational sovereignty by First Nations in Canada over the past forty years and has shown that it is at the technical level of the language in the clauses of self-governance agreements that Indigenous educational sovereignty is lost often due to additional clauses that negate the possibility of sovereignty. This happens even in language that purports to support Indigenous educational sovereignty. A detailed survey of forty-one local agreements has provided concrete evidence of the repeated failure of the negotiation processes around self-government to secure Indigenous educational sovereignty due to the systemic implementation of policy language. Further areas of

[1] Richards, John, and Parisa Mahboubi. *Measuring Student Outcomes: The Case for Identifying Indigenous Students in Canada's PISA Sample*. C. D. Howe Institute.

research are needed to support negotiators and policymakers to come to understand the need for clarity in each clause of these agreements as well as the need to understand how some clauses that could be considered common to these agreements, such as clauses requiring the need for transferability to and from provincial schools, effectively negate the idea of educational sovereignty. Finally, it can be noted that the greatest gains in Indigenous student achievement, the basic reason for educational sovereignty in the first place, can be correlated with two areas in the country which have achieved the most educational sovereignty interestingly through methods other than self-government agreements. Further research into this phenomenon is needed to improve student success rates throughout Canada and to understand better the effectiveness of different types of agreements for supporting the educational attainment of a given nation's students, the true goal of educational sovereignty.

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