

Aboriginal Self-Government

'Aboriginal self-government' generally refers to the exercise of jurisdiction by Aboriginal peoples over their lands and the members of their nations or communities. This jurisdiction can be either inherent or delegated.

Inherent jurisdiction arises from an Aboriginal right of self-government. To establish such a right, the Supreme Court has held that an Aboriginal people has to prove that the specific jurisdiction being claimed was exercised by them as part of the practices, customs and traditions that were integral to their distinctive culture at the time of assertion of Crown sovereignty (see *R. v. Pamajewon*, [1996] 2 S.C.R. 821). However, it appears that a right of self-government can also arise in relation to other Aboriginal and treaty rights as a result of the communal nature of those rights (see *Campbell v. British Columbia*, [2000] 4 C.N.L.R. 1 (B.C. S.C.)). If an Aboriginal people is successful in proving a right of self-government, and the Crown fails to prove that it was extinguished prior to 17 April 1982, it would have been recognized and affirmed by the Constitution as an existing Aboriginal right at that time.

Delegated jurisdiction arises from delegation of authority, usually from the Parliament of Canada through legislation. For many people, this is not true self-government, as it depends on and is subject to parliamentary power and control.

The extent of the jurisdiction that can be exercised depends on either the scope of the right of self-government, or on the delegating legislation. Some Aboriginal nations claim that they have an inherent right to govern all aspects of their nation's affairs, and that their relationship with Canada is a nation-to-nation relationship that is not governed by the Canadian Constitution.