Douglas initially offered First Nations people the opportunity to acquire Crown lands and become farmers -- an opportunity like that offered to other settlers. However, this policy was not consistent with the culture and priorities of First Nations peoples. Further, when Douglas retired in 1864, many of his policies were reversed, and the right of First Nations people to acquire land was removed. While European settlers were allowed a pre-emption of 160 acres and could purchase additional lands, in 1866 a land ordinance was issued preventing First Nations people from pre-empting land without the written permission of the governor. There was only one case in which such approval was given. Generally, Aboriginal title to the land was denied, and no compensation was offered to First Nations people for their loss of their lands and resources.

Assimilationist Policies

For years after the arrival of Europeans, in both British Columbia and elsewhere in the country, it was assumed by many non-Aboriginal people that First Nations people would eventually be absorbed into the European-based Canadian society. A concerted effort was made to ensure that this process took place, including policies and legislation which banned traditional ceremonies, forbid celebrations, prohibited the wearing of traditional costumes, and silenced spiritual leaders. This effort to impose unfamiliar traditions intensified into a sustained effort toward the assimilation of First Nations people into non-Aboriginal society.

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Residential Schools

One aspect of the policy of assimilation which has resulted in a lasting legacy for First Nations peoples is the residential school system. For decades, First Nations children were removed from their homes, often forcibly, and were sent to residential schools. These schools were usually established and run by missionaries, and were jointly funded by the Canadian government and churches. In these schools, children were trained in European traditions, and they were forbidden to speak their own languages or practice their own cultures. This separation of children from their families, their elders, and their communities was devastating, and efforts are still being made to overcome its effects. In addition, there have been increasing reports of devastating abuse which took place in many of the residential schools, and individuals and communities are still working to resolve the pain those years of abuse created.

The Reserve System and the Indian Act

The reserve system was also a crucial aspect of the history of First Nations and non-Aboriginal people. Established by federal and provincial legislation, the reserve system set aside tracts of land which the Crown held in trust, and First Nations people were assigned to live in specified reserves. Beginning in 1830, the reserve system was gradually expanded to the entire country. The system was in some ways contradictory; it recognized the uniqueness of First Nations people, but it also acted as a way of assimilating them into Canadian society by allowing the government to control their lives.

Related to the establishment of the reserve system was the development of the *Indian Act*, which has had a continued impact on the lives of First Nations people. The first *Indian Act* was passed by the federal government in 1876, consolidating the then existing laws pertaining to Indians. The writing of the *Indian Act* included no input from First Nations people, and First Nations people did not even participate in the election of the politicians who legislated the Act, as they were unable to vote in federal elections until 1960. Yet the *Indian Act* was a comprehensive piece of legislation which regulated virtually every aspect of life.

The Indian Act

The *Indian Act* can be described as the legal centrepiece of past policies relating to First Nations people, as it established reserves and relates to almost all other assimilationist policies.

Most First Nations people resent the *Indian Act*, but there has been adamant and vehement resistance to attempts to repeal or modify the Act without other safeguards of Aboriginal rights in place. Treaties may represent one form of such a safeguard. The *Indian Act* has severely constrained First Nations people, but it has also defined their special status and has guaranteed them at least some recognition and protection by the Canadian government and the Canadian public (although this can be both positive and negative).

According to the *Indian Act*, Indian Agents administered every reserve, and all matters relating to a reserve were under the agent's direct control. For many years, Indian people could not leave their reserve without written permission -- not even to hunt, fish, or visit extended family members on another reserve -- and the Indian Agent enforced all imposed laws. Between 1927 and 1951 it was illegal for Aboriginal people to hire a lawyer or raise money to commence a legal proceeding.

All land title on a reserve was vested in the Crown, and the Indian Agent was the only person authorized to sign contracts that were associated with reserve lands. Even now the *Indian Act* means that First Nations people do not "own" the land on which they live, making it impossible for them to use it as collateral for accessing credit and the financing needed for economic development. This situation is extremely limiting, often frustrating efforts by First Nations to end cycles of economic dependency.

The establishment of the Act also ignored the traditional governing patterns of First Nations and made Band Councils the only form of officially recognized government. It also dictated that elections were to be held every two years. The *Indian Act* explicitly stated that the Minister of Indian Affairs had ultimate control over band governments, and for several years the Indian Agent even called and set the agendas of Band Council meetings.

Amendments to the *Indian Act* in the 1880's and 1890's continued to reflect a policy of assimilation. The Crown banned traditional social and religious institutions, such as the Pacific Coast potlatch. At that time, the minister responsible for Indian affairs had veto power over all Band Council enactments, any financial decisions required his approval, and any resolutions by the Councils were usually approved or rejected by the Crown based upon the Indian agent's recommendations. Today, the Minister still has veto power in many instances.

The imposition of the *Indian Act* was met with significant resistance by First Nations peoples, and changes have been continually demanded. There have been significant amendments to the *Indian Act* in recent years, including changes in the powers of Band Councils, in taxation policies, and regarding membership in First Nations. Some of the most draconian measures have been removed. Many people argue, however, that the Act remains an inadequate basis for First Nations governments, and treaties may represent a more appropriate foundation.

Summarizing Past Policies

There are at least two views regarding early Canadian government policies. Some people believe that the policies were well intentioned but simply misdirected. Such arguments include claims that reserves were intended to protect "Indians and Indian lands" from exploitation and encroachment by new settlers, and that Canadian government policy was intended to help First Nations people to "progress" and transform from wards of the state into citizens. Other people argue that reserves were intended to isolate First Nations people in areas under federal government control in order to facilitate assimilation. They also assert that government policies represented a deliberate attempt to destroy traditional forms of government in order to forestall any initiative for independent political action.

Whether the past policies of the Crown were well intentioned or not, it is generally believed that they were based upon incorrect and ethnocentric assumptions about the "backwardness" of First Nations people. Also, the impact of the policies was and continues to be tremendous. For over 300 years First Nations people have faced a series of challenges brought about by the arrival of Europeans to what is now known as North America, and by the expansion of Canadian social, religious, economic, and political systems. A resolution of the problems which have arisen as a result of that situation are crucial to the establishment and ultimate effectiveness of the current treaty process.

"*We believe that treaty-making offers aboriginal people and other British Columbians our best chance to face the challenges of the future head-on. Treaty-making will not achieve all of our shared objectives. Neither will it resolve all of the conflicts that have resulted from the failure of successive British Columbian governments over more than one century to come to terms with the issue of the rightful place of First Nations in the history and future of British Columbia. Nevertheless, treaty-making is an essential cornerstone in the strategy for moving forward to build a new relationship.*"

First Nations Summit presentation to the Select Standing Committee on Aboriginal Affairs, December 4, 1996

What are Interim Measures?

In 1990, a B.C. Claims Task Force was established to consider the design of a treaty negotiation process (described further on page 17). Among the key points made by that Task Force were those related to interim measures. The Task Force pointed out that the negotiation of treaties could require a significant length of time, and that in the meantime, existing disputes could have a limiting effect on development efforts. At the same time, the continuation of some economic development initiatives could have a detrimental effect on the lands and resources being considered in the negotiations.

Accordingly, the Task Force recommended that interim measures be implemented to resolve any outstanding disputes and to ensure a positive climate for the negotiations. The Task Force noted that:

> Interim measures are an important early indicator of the sincerity and commitment of the parties to the negotiation of treaties. To protect interests prior to the beginning of negotiations, the federal and provincial governments must provide notice to First Nations of proposed developments in their traditional territories and, where required, initiate negotiations for an interim measures agreement.

First Nations have expressed concern regarding developments which could seriously threaten the lands and resources within their traditional territories. As the First Nations Summit(described on page 16) comments in its paper of October 28, 1996, *Interim Measures: Getting the Process Back on Track*:

> Interim measures are necessary in order to facilitate the successful negotiation of treaties by protecting and enhancing lands, waters, air and resources which might form part of a treaty settlement and by protecting and enhancing Aboriginal rights, title or interests pending treaty settlement.

The Summit paper also calls the failure to negotiate satisfactory and timely interim measures "the greatest threat facing the treaty process."

The negotiation of interim measures has proven to be one of the most difficult aspects of treaty negotiations, and interim measures are a somewhat politically sensitive issue for British Columbia. For example, some fear has been expressed that interim measures would act as moratoria on resource development.

If successfully negotiated, however, interim measure agreements can demonstrate a real commitment to the process of building new relationships. They can provide the time and security for First Nations to address the comprehensive and complex matters involved in treaty negotiations, and interim measures can also allow for a resolution of issues which are hindering development initiatives. As such, effective and clearly communicated interim measure agreements can result in benefits for all people in British Columbia.

As described in the *1997 BC Treaty Commission Annual Report*, in 1996 British Columbia and the First Nations Summit confirmed their commitment to negotiate a range of interim measures at any stage during the process. This confirmation is seen by many people as a positive step.

What is "Self-Government," and How Does It Relate to Treaties?

In discussions of issues involving Aboriginal people, reference is sometimes made to the term "self-government." ***Self-government*** is a term which will be interpreted differently according to varying situations and contexts. Self-government can be viewed as the right and the capacity of people to manage a significant proportion of the affairs which they deem to be important, and to make decisions regarding their social, cultural, economic, political and natural environment.

Self-government generally includes the right of people to decide and consent to the way in which they will be governed, as well as to their government having jurisdiction over health, education and other social programs effecting the lives of its membership. Perhaps the concept of Aboriginal governments can be most usefully understood as products of people living and working to form the political structures they require to meet the challenges of economic development, health, education, social services, resource management, and any number of concerns in their communities and on their lands.

There are currently many examples of First Nations delivering their own health, education, social services, and policing programs. Generally, those examples demonstrate that tremendous success can be achieved when First Nations are responsible for their own services.

According to the federal government's policy on self-government (1995): "Aboriginal governments need to be able to govern in a manner that is responsive to the needs and interests of their people. Implementation of the inherent right to self-government will provide Aboriginal groups with the necessary tools to achieve this objective." This right, the federal government notes, is an existing Aboriginal right under s. 35 of the Constitution. As such, it may find expression as a result of negotiations which lead to constitutionally protected agreements. The federal policy includes within the scope of self-government negotiations matters that are internal to Aboriginal Nations, integral to distinct Aboriginal cultures, and essential to their operation as governments or institutions.

As such, those governments may take a number of different forms. They may involve specific legislation and arrangements for new forms of service delivery and financing between Aboriginal governments and federal, provincial, and/or municipal governments. They may also involve expanded resource management and economic development schemes.

There have been a diverse range of efforts toward the development and recognition of Aboriginal governments. Some Aboriginal people are using treaty and land claims processes as a means of securing their rights through negotiations. Others are testing what they assert is their inherent right of self-determination independent of Canadian laws and social organizations by passing their own legislation. Still others are attempting to guarantee a recognition of their rights by demanding amendments to the Canadian Constitution.

The way in which self-government issues are included in treaties will almost certainly vary depending upon the unique circumstances and goals of each Aboriginal Nation. However, increasing the level of control over their own lives and institutions is a common objective of most Aboriginal people.

Section 35 of the *Constitution Act, 1982* reads:

Rights of the Aboriginal Peoples of Canada

35. (1) **Recognition of existing aboriginal and treaty rights. —** The existing aboriginal and treaty rights of the aboriginal people are hereby recognized and affirmed.

(2) **Definition of "aboriginal peoples of Canada". —** In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

(3) **Land claims agreements. —** For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) **Aboriginal and treaty rights are guaranteed equally to both sexes. —** Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

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Establishing New Relationships

Despite years of pressure to assimilate into Canadian society, First Nations people in this country have refused to abandon their rights, cultures and values. They have remained committed to the continuation and evolution of their traditional lifestyles and value systems, and to the application of those values to current and future circumstances. The extent and nature of their efforts to do so have always been widespread, determined and persistent.

During the last few decades, movements for change have gained momentum, and First Nations peoples have attempted in a variety of ways to regain fuller control over their governments and to assert their land, resource, language, and other rights. The movement has involved attempts to gain more control over the programs, services and institutions which have a significant impact on peoples' lives. Many First Nations organizations and communities have undertaken initiatives to expand their administrative capacities, and efforts have been made to redesign programs and services to make them more culturally appropriate. As these and other developments take place, however, First Nations people often find that they lack the jurisdiction to make the necessary changes to accomplish their goals. In addition, it has become increasingly clear that there is a need for more cooperative efforts. Many people believe that treaty making represents the best route to negotiating new relationships, and to clarify the ways in which Aboriginal and non-Aboriginal title and jurisdiction relate.

What is the First Nations Summit?

The First Nations Summit was established in 1990 shortly after the Government of British Columbia announced its willingness to negotiate with First Nations. The Summit's mandate is to represent the interests of those First Nations participating in the treaty process. The Summit does not negotiate on behalf of any First Nation; rather, its role is to support First Nations in their negotiations of appropriate agreements. The Summit also recognizes that not all First Nations in the Province have chosen to participate in the treaty process, and respects each First Nation's right to determine its own course.

(First Nations Summit presentation to the Select Standing Committee on Aboriginal Affairs, December 4, 1996)

For further information on the First Nations Summit, contact Suite 207 - 1999 Marine Drive, North Vancouver, B.C. V7P 3J3 phone (604) 990 - 9939 fax (604) 990 - 9949
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How Was the Current Treaty Process Initiated?

The British Columbia Claims Task Force

In 1990, the B.C. government, then led by Premier Bill Van der Zalm, undertook an historic change in policy and agreed to enter into negotiations with First Nations in the province. Following Premier Van der Zalm's commitment to negotiate, in October, 1990, leaders of First Nations met with then Prime Minister Brian Mulroney and with the Premier and Cabinet of British Columbia. Those meetings led to an agreement to develop a process for negotiations, and to appoint a Task Force to make recommendations about how such negotiations should proceed.

The British Columbia Claims Task Force was accordingly established in December, 1990, reflecting a perspective that negotiations represent the most effective route to articulating First Nations rights, bringing certainty to all parties, and developing positive relationships.

The B.C. Claims Task Force included two representatives appointed by Canada, two by the Government of British Columbia, and three representatives of First Nations chosen at a "First Nations Summit" meeting. Once assembled, the group was called upon to make proposals related to the scope of negotiations, the organization and process for the negotiations, interim measures, and public education.

The Task Force first met on January 16, 1991. Throughout the following six months, it met with a variety of people who had significant interest and experience in relevant negotiations. Following a province-wide request for input, seventeen written submissions were also received. Based upon the materials and suggestions collected, the task force made 19 recommendations. Among the recommendations made was a call for the establishment of a B.C. Treaty Commission -- a Commission to facilitate the process of negotiations and to ensure that they proceed in a fair, impartial, effective and understandable manner. The Commission is responsible for monitoring the progress made, and for assisting with dispute resolution and encouraging timely negotiations.

The report of the Task Force was published on June 28, 1991, and a B.C. Treaty Commission was appointed on April 15, 1993. This Commission is now supported by federal and provincial legislation, and by a resolution of the First Nations Summit.

Recommendations of the British Columbia Claims Task Force

1 The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding -- through political negotiations.

2 Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.

3 A British Columbia Treaty Commission be established by agreement among First Nations, Canada, and British Columbia to facilitate the process of negotiations.

4 The Commission consist of a full-time chairperson and four commissioners -- of whom two are appointed by First Nations, and one each by the federal and provincial governments.

5 A six-stage process be followed in negotiating treaties.

6 The treaty negotiation process be open to all First Nations in British Columbia.

7 The organization of First Nations for the negotiations is a decision to be made by each First Nation.

8 First Nations resolve issues related to overlapping traditional territories among themselves.

9 Federal and provincial governments start negotiations as soon as First Nations are ready.

10 Non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.

11 The First Nation, Canadian, and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.

12 The Commission be responsible for allocating funds to the First Nations.

13 The parties develop ratification procedures which are confirmed in the Framework Agreement and in the Agreement in Principle.

14 The Commission provide advice and assistance in dispute resolution as agreed by the parties.

15 The parties select skilled negotiators and provide them with a clear mandate, and training as required.

16 The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.

17 Canada, British Columbia, and the First Nations jointly undertake public education and information programs.

18 The parties in each negotiation jointly undertake a public information program.

19 British Columbia, Canada, and the First Nations request the First Nations Education Secretariat, and various other educational organizations in British Columbia, to prepare resource materials for use in the schools and by the public.