

Self-Government Bilateral Jurisdictions Between Canada and an Indigenous Community or Group

On bilateral negotiations:

- Any self-government negotiations without provincial participation would be strictly limited to matters within **exclusive** federal jurisdiction. In practice, this means that if a given subject matter **may** fall in whole or in part within provincial jurisdiction, the Government of Canada will not negotiate First Nation jurisdiction in relation to that subject matter in a bilateral context.
- With respect to subject matters not within exclusive federal jurisdiction, the First Nation may consider other practical arrangements, provided that the support of the province is obtained wherever it may be important to harmonize the operations of the three governments.

Disclaimers:

- This document is without prejudice to any position Canada may ultimately decide to take in negotiations. It is intended for discussion purposes only.
- The following table does not attempt to delineate the dividing line between federal and provincial jurisdiction, the precise location of which remains unclear and subject to debate. The table is based on an analysis of the subject matters included for negotiation at other bilateral tables: nothing more should be inferred from it.
- Federal policy with respect to Indigenous self-government continues to evolve as additional agreements are concluded and implemented. Existing precedents (e.g. the bilateral agreement with Westbank) are a suitable starting point for discussions. As circumstances are unique for each First Nation, Canada may decide not to negotiate a given jurisdiction notwithstanding its inclusion elsewhere.

Jurisdiction	Can negotiate bilaterally	Cannot negotiate bilaterally	Comments
Agriculture	✓		– subject to federal or provincial paramountcy – does not extend to interprovincial or international trade/commerce
Businesses (licensing / regulation / operation of)	✓		– not including banking, securities, labour relations, incorporation, or interprovincial or international trade
Child and Family Services		x	
Culture and Language	✓		– no First Nation jurisdiction re intangible property
Economic Development	✓		– has not been treated as a jurisdiction in its own right, but First Nations can negotiate jurisdiction with respect to related matters (e.g., business licensing and regulation; land management; renewable and non-renewable resources)
Education – Kindergarten to Grade 12	✓		– subject to provincial standards to ensure that students have the knowledge required to transfer between First Nation schools and provincial schools

Jurisdiction	Can negotiate bilaterally	Cannot negotiate bilaterally	Comments
Education – Post Secondary		x	
Enforcement of First Nation Laws	✓		– agreeing to First Nation jurisdiction does not automatically result in a federal funding obligation (e.g. for a First Nation court) (the same proviso applies re all other First Nation jurisdictions)
Enforcement – First Nation Police Service		x	– no police officers, but the agreement may provide for First Nation enforcement officers
Environment (protection and conservation of)	✓		– subject to federal paramountcy
Financial Management	✓		
Gaming		x	
Health – traditional medicine	✓		– not including regulated products or substances, or the regulation of medical or health practitioners that require provincial licensing or certification
Health – nursing, health programs		x	
Landlord and Tenant	✓		– in relation to housing on First Nation lands
Lands and Land Management	✓		– First Nation jurisdiction would not apply on lands held in fee simple, unless the province is a party and concurs with that arrangement
Legal Status and Capacity	✓		
Public Order and Peace	✓		– subject to federal or provincial paramountcy
Public Works, Community Infrastructure, and Local Services	✓		– must meet federal health and safety standards
Resource Management (whether renewable or non-renewable)	✓		– not including fish and fish habitat – First Nation jurisdiction applies only on First Nation lands (same proviso applies re most other First Nation jurisdictions) – may be subject to federal or provincial paramountcy
Social Services		x	
Structure and Procedures of Government	✓		
Taxation	✓		– at a minimum, jurisdiction in relation to direct taxation of First Nation members resident on First Nation lands – presumably the agreement will also maintain existing arrangements entered into via other agreements (e.g. FNGST)

Jurisdiction	Can negotiate bilaterally	Cannot negotiate bilaterally	Comments
Traffic and Transportation (local, ground traffic)	✓		– subject to federal and provincial paramountcy and/or standards
First Nation Membership	✓		– a rare exception where First Nation laws would apply off reserve as well as applying on First Nation lands
Wills and Estates	✓		