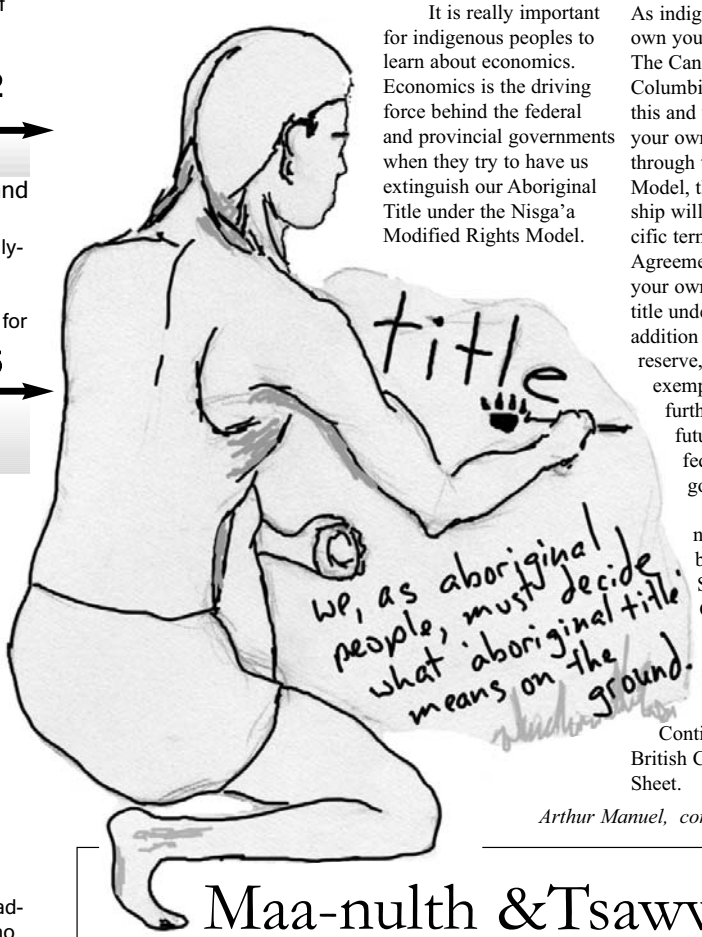
are your people voting on extinguishing title to your territory?

The BC Treaty Negotiating Times

Fall 2007

BC Banks on Economic Ignorance

Treaties offer more money than folks on the Rez have ever seen, but that's not saying much. While Tsawwassen real estate starts at $200 a square foot, the traditional teritory went for $40 a hectare.



It is really important for indigenous peoples to learn about economics. Economics is the driving force behind the federal and provincial governments when they try to have us extinguish our Aboriginal Title under the Nisga'a Modified Rights Model.

As indigenous peoples you do own your traditional territories. The Canadian and British Columbia governments know this and want you to snuff out your ownership by agreeing, through the Modified Rights Model, that your total ownership will be limited to the specific terms contained in a Final Agreement that will restrict your ownership to fee simple title under the power of BC. In addition you will give up your reserve, your right to tax exemption and any further claims, past or future, against the federal and provincial government.

Canada and BC need these Agreements because after the Supreme Court of Canada recognized Aboriginal Title in *Delgamuukw,* 1997, they established Aboriginal Title as a Contingent Liability in the British Columbia Balance Sheet.

Arthur Manuel, continued on Page 6

Maa-nulth &Tsawwassen *chose cash for extinguishment.*

The Huu-ay-aht voted in favour of their treaty almost unanimously in a rush vote their Chief Councilor justified as "not giving the other side too much time." The other four communities in the Maa-nulth treaty group voted to approve Final Agreements in Septmeber. Tsawwassen voted away their title to land in July.

For these people, now there are no "lands reserved for the Indians." They are new BC municipalities with special minority rights. Any interest or right in any of their traditional territory is replaced by the provisions of the Final Agreement. They have released BC and Canada and *anyone else* from all claims, past present and future. Treaty Settlement Lands are held in fee simple title, and can be sold and removed from the First Nation's treaty lands.

Are the economic benefits of the treaties enough to ensure that these Peoples can hold their own and thrive in the future? With settlements around $30,000 per person, it doesn't look like it. *Page 3*

Tsilhqot'in vs BC and the Union's Declaration of Title

A BC Supreme Court judge wrote 470 pages on existing aboriginal title and 125 members of the Union of BC Indian Chiefs made the largest unified Declaration of aboriginal title in history. **Page 12**

4 Buffaloes Jumping...

In-SHUCK-ch, Yale, Yekooche and Sliammon plow ahead, ignoring court developments and thorough analysis of the first two successful Final Agreements. They seem ready to put deals of selling the traditional territory for $4 per hectare to a vote. **Page 15**

BC Politicians Debate Nisga'a, 1998 and 1999

Read the discussion from the Legislature debate, where Sun Dance killers and Reform Party reps question the Premier and the treaty's proponents on how well it satisfies extinguishment goals. *starts on* **Page 3**

Point of No Return

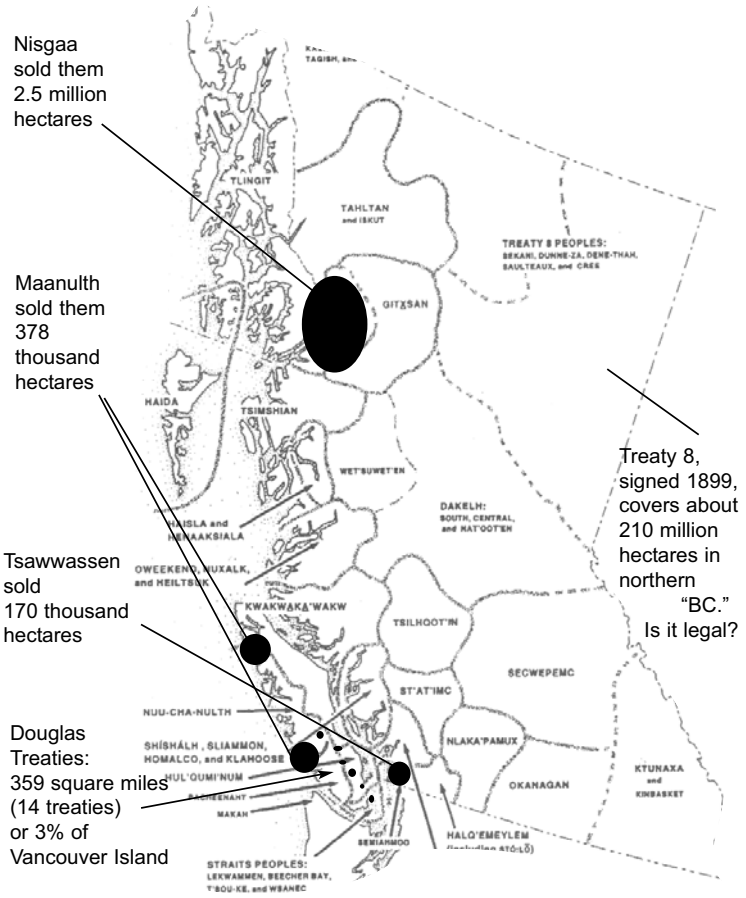
"I do not believe that Steven Point was being straightforward with us when he spoke about treaty. He seems to be part of the power establishment of the current provincial government, a judge, then made lieutenant-governor by white leaders - there are many Indian people who are willing and able to sell their own people down the road." **Page 14**

Marketing Myths

The BC Treaty Commission has produced a lot of glossy pamphlets that spin all kinds of phrases to turn the meaning of *aboriginal title* on its head. The Commission expects us to believe that aboriginal title does not exist and that the Queen owns all the land. If she did, why would she need treaties now? But she never bought the land, did she? **Page 10**

In this Issue

BC Now Owns Some Land!



BC Treaties supply a fraction of the land per person

that was demanded by 85 Chiefs of 7 different Tribes in 1910, in the **Memorial to Frank Oliver :**

"We think at least we should have as much land of our own country to farm as is allowed to white settlers (viz.: 160 acres), or as much as our Indian friends of Eastern Washington, Idaho and Montana retain on the opening of their reserves (viz: From 80 to 160 acres of the best agricultural land available, chosen by themselves, for each man, woman and child). At the time the Indian Reserves of BC, Government allowed 320 acres of land to each white person pre-empting land from them."

Mountain Moves Against Treaty

Hereditary Chief Mountain, shown at right, and Nisga'a matriarch Nisibilada, Mercy Thomas, and other Nisga'a, are challenging their treaty in Canadian courts.

On June 14, they won an appeal which revives the "constitutional challenge" to the Nisga'a Final Agreement.

Sga'nisim Sim'augit (Chief Mountain):

"The number one spiritual responsibility of a Sim'augit is to protect the lands that belongs to the house. That's why my family was telling me, and other elders, when the treaty was coming closer, especially my grandfather – the way he looked at me – he said, "Somebody has to do something." That was when they found out our rights were going to be on the table and our ancestral lands were going to be surrendered."

"To see what's going on in the Nass Valley right now you have to talk to the people, the ones who are living on $175 a month. Not like the ones who work for the Lisims government, making $3,000 every two weeks.

"Kincolith pulled out of the treaty process at one point. Then the negotiators from the north came down and they stomped on the Elders of Kincolith and went on their merry way, they went back and declared that Kincolith was back in the treaty.

"There are houses and subhouses, so in Nisga'a we must have about 60 Hereditary Chiefs. ...So with this name, Chief Mountain; they split it up, and how could another person have the same name? The Elders stepped back and didn't say anything. There's a lot of intimidation going on. We have these struggles in our nation with taking names, and it has everything to do with money, positions in the Lisims government.

"We believe in treaty, that something has to come to us, but not this treaty, which is taking away our land and rights.

"This elderly gentleman believes we still have the title to that land, and he tried to block some logging that was going on. But he went out there and they told him no way, this land belongs to the Nisga'a nation now, and he doesn't have anything to say about it. So he went to court and filed an affidavit that he was misled about the treaty.

"I believe we have something better for all of us. Not just for a handful of us; for the whole nation."

Interview by Art Manuel

"This treaty process is exactly the same as the White Paper Policy; they're after our lands and our rights."

"Aboriginal title to us means that we own this land lock, stock, and barrel.
That means everything in it...
Then why should we allow our title to be extinguished, because if we allow our title to be extinguished it is just like digging our own graves.
We might as well dig our graves and we will be no more.
This land where we live today, it is our land and it's always going to be our land."

- James Gosnell, the late President of the Nisga'a Tribal Council, 1983

Photo - Nisga'a Hereditary Chiefs in Victoria

$40 / hectare. Still want to sell?

Continued from front page

Each Final Agreement has different economic sides. Tsawwassen has received some compensation from the ferry terminal expansion, prior to treaty negotiations. Pursuing treaty was actually a detail of that lump-sum agreement. The Maa-nulth, further from major industry, have arrived at a "resource revenue sharing" agreement in their Final Agreement.

Like a Forest and Range Agreement, the Province will compensate Maa-nulth for logging that takes place on their Treaty Settlement Lands. Maa-nulth will get a percentage of what BC collects in stumpage - averaging $1.2 million for 25 years. The Maa-nulth lands will be 24,500 hectares. Judging by the 12% of stumpage fees they are getting, and the amount of money that adds up to, it seems that most of that land is going to be logged in the next 25 years, the life of this benefits-sharing arrangement.

Existing Final Agreements and draft Agreements show settlement capital amounts of about $40 thousand or less per person. That's before you subtract the treaty loans, usually almost 50% of the settlement. $40k is not a living wage for a year in Tsawwassen.

An old two-bedroom home in Tsawwassen costs $500,000. The $39,000 per person settlement capital to Tsawwassen First Nation is payable over ten years. So Tsawwassen will only have access to $3,900 per person each year. Remember it has already promised each person $10,000 in cash once the treaty comes into effect.

Each treaty First Nation will have annual financing arrangements with the province. These transfers are similar to municipal-transfers that the provinces of Canada pay to municipalities, villages, districts or towns each year, to pay for things like sewage treatment, roads, maintenance, recreation and so on. Costs are shared between municipal, provincial and federal governments.

The financing arrangements for treaty First Nations are to include the First Nation at the municipality level of sharing these regular costs. The *Fiscal Financing Arrangements* are to be renegotiated every five years and no minimum amounts are protected in the treaty.

The Lheidli T'enneh, with a similar number of members to Tsawwassen, was offered for the first term of annual transfers a rate of $1.8 million per year. Up until 2007, Tsawwassen's annual INAC budget has been about $7million per year to run the affairs of the Band.

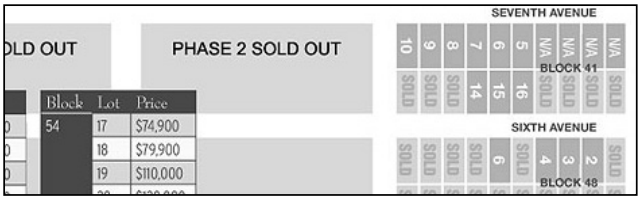
The financing arrangments for treaty First Nations will be to pay for health, social development, education, local programs and services, lands and resources management, physical works / operations and maintenance, treaty management, fisheries management and self-government. If and when the treaty First Nation generates revenue, it will have to contribute to these regular costs and transfer payments will be reduced and possibly phased out altogether.

What financial shape are First Nations in as they consider these deals? Indian and Northern Affairs Canada just released a study showing that federal spending for basic services on-reserve have dropped by 6.4% since 1996-7. Catch-up funding would total close to $1 billion, across Canada, in addition to annual budget increases of $500 million a year. BC First Nations' share of that figure alone is worth more than all the BC treaties combined.

By Kerry Coast

"From just $59,900 per lot you can own some of the last remote real estate on the rugged and picturesque West Coast of Vancouver Island."
- Real Estate developer website

Five Maanulth communities sold their land (shown above) for $166 per hectare (before treaty loan expenses), or $73.1 million. Below, a land development of 64 empty lots where you can build a cabin is selling for over $7.5million. That's "Phase 3." Phases 1 and 2, about the same size, are sold out. The whole area might be about 30 acres, or a dozen hectares, and has a market value of $22.5 million, or more than a quarter of Maa-nulth's total cash settlement.



Nisga'a treaty was brought to you with a smile by:

would-be Sundancer killers, Reform Party reps... In their own words, here are BC politicians discussing how well "Nisga'a" satisfies their extinguishment goals.

"Nisga'a Treaty - Final Agreement Act - Bill C51 - Committee Stage" - notes and quotes from the Provincial Government's debate televised on CPAC and recorded on the Government's website/hansard:

January 18, 1999:

Jack Weisgerber (Reform) - "I don't know whether or not Nisga'a can expect to continue to receive benefits under the Indian Act."
Ujjal Dossanjh (**NDP** Attorney General and Minister for Human Rights) - "The Indian Act ceases to apply - no application to Nisga'a, except whether they're a Nisga'a Indian."
Geoff Plant (Reform) - (The treaty is) "not intended to be anything - (ie) a legal admission - where other mention is asserting Section 35 rights."
Dossanjh: "absolutely right."
Plant - "not necessary because issues in that respect have all been resolved by the treaty?"
Dossanjh - "that is correct, by agreement, not by litigation."
Plant - "Section 35… is resolved by negotiation?"
Dossanjh - "it's irrelevant to have this debate at this point - negotiations provide some security."

Mike DeJong (Reform) - "To what extent is length of time (of previous Nisga'a occupation), ie, "since time immemorial," significant?"
Dale Lovick (NDP Min. Aboriginal Affairs)**-** "We didn't memorialize, we didn't know, we didn't keep dates… depending on whose interests we're talking for. The Nisga'a nation is defined as people who share common language, culture, laws… organized originally as the Nisga'a Tribal Council."
Plant - "We're superceding the trem Tribal Council to Nisga'a Nation - is the intention to use the term Nation very carefully?"
Lovick - "Yes, that's accurate."

DeJong - "The words "hereditary chiefs and matriarchs," I'm puzzled about its presence… where does it end if we begin to wrap significance around culture?"
Lovick - "It's important to acknowledge, not necessarily give it some power."
DeJong - "We are confronted by the argument this is something we have to take account of, its presence in the treaty - more important, not just for cultural - but problem may become more important for legal reasons - the kind of clause lawyers might concoct legal arguments around."
Lovick - "It is here to protect Nisga'a against people within the Nisga'a nation."

Ujjal Dossanjh was Minister of Human Rights and the Attorney General at the time of the Gustafsen Lake standoff in 1995. He stonewalled the Tsepeten Defenders' legal appeal to the Governor General and did nothing as one dozen Sundancers were surrounded by 300 police and army tanks who fired 77,000 rounds of "shoot to kill" fire. He was elected NDP leader and became Premier of BC. He since joined the Liberal Party and became centrally involved in a corporate bribe scandal.

See Pages 16 & 17 for more of the debate

Four perspectives on aboriginal sovereignty:

Aboriginal-Inherent National Jurisdiction

Each aboriginal nation in "BC" has an equal declaration of their position with respect to the land:

"To the Nlha'7kapmx people,

sovereign authority was commonly recognized as the power that determined ownership, entitlement, inherent rights, laws, autonomous government and self-determination. The Nlha'7kapmx people made treaties with the Secwepemc and Stl'atl'imx peoples because they had the sovereign power to do so. There are specific sites that indicate the boundary lines between these nations. When a meeting was to take place, a messenger was sent to invite the people where we met to trade and to strengthen the relationship."
Elder Arthur Sam

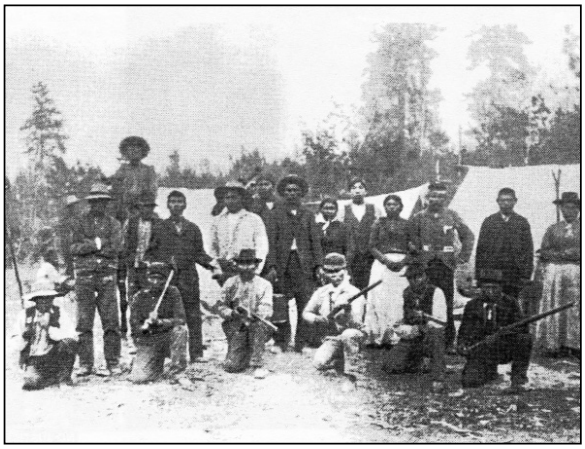
Quoted from Jennie Blankinship's, "The Significance of Place" in Nlaka'pamux and Secwepemc Territories, University of Victoria, unpublished paper, Spring 2003.

The Musqueam Declaration

We, the Musqueam people openly and publicly declare and affirm that we hold aboriginal title to our land, and aboriginal rights to exercise use of our land, the sea and fresh waters, and all their resources within that territory occupied and used by our ancestors...
We, the Musqueam people, are members of the Musqueam Indian Band and/or persons of one quarter Musqueam Indian Ancestry descended from those speaking people who from time immemorial occupied used and gained their livlihood from those lands, waters and seas described above.
June 10, 1976

Declaration of the Tahltan Tribe

Firstly - We claim the sovereign right to all the country of our tribe, this country of ours which we have held intact from the encroachments of other tribes, from time immemorial, at the cost of our own blood.
...We are still dependant for our living on our country, and we do not intend to give away the title to any part of same without adequate compensation.
October 18, 1910.



International Law

Convention on the Prevention and Punishment of the Crime of Genocide
United Nations, Geneva, 1948
Article 2:
In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.
Article 3
The following acts shall be punishable:
(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

The refusal of the Courts of Canada to address the Indian tribes' existing right of exclusive jurisdiction and sole possession pending a free and voluntary sale by treaty, causes genocide.

In 2005 the Constitutional Court of Spain in *Menchu v. Montt* recognized and affirmed the jurisdiction and duty of every national court system to act if and when genocide is occurring in another nation due to "judicial inactivity."

In the pictures: Top, Secwepemc awaiting a game warden who intended to iremove salmon traps, 1890's. *Next,* At the start of the Union of BC Indian Chiefs, about 1969. The Union was a formal alliance between Tribes to pursue recognition of aboriginal title and rights. *Third,* a formal international welcome to the BC Governor at Lillooet, c. 1850. *Fourth,* Modern expression of title.

British Crown Proclamation

Pictures: Below, the original BC crest showing "as long as the rivers flow and the sun shines," contract to respect Indian lands on top *of the Union Jack. Second, Indian rights march in the 1970's.*

Royal Proclamation Act, 1763:

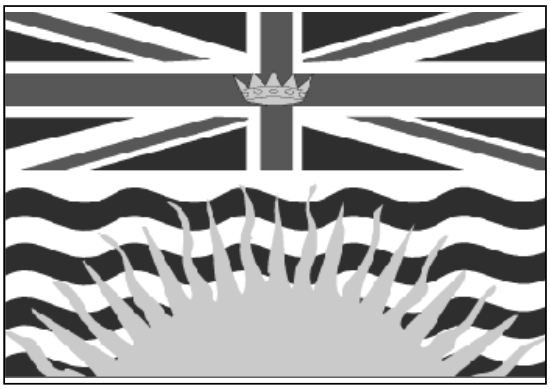
"And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds -- ...no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands ... whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company,...

And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described. or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests. and to the great Dissatisfaction of the said Indians:.. We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians,

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.



Pictures: Above, the BC flag as inverted around 1952. Left, rally in Vancouver, 2006, protesting BC and Canada's policies to ignore aborinal title.

Canada Constitution

Section 109 of the *Constitution Act,* 1867, defines the nature of Aboriginal Title.

"Section 109: All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, ***subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same***." (emphasis added)

The "Trusts" and "Interests" refer to the fact that Indians own the land until the feds buy it. Interpretation of that Section has been settled by the original and authoritative precedent ***In re Indian Claims*, 1897,** where the court identified not only "debt" owed on the land, but "liabilities" as well, meaning the purchase of land is not finished business.

The *Indian Act,* 1876, is unconstitutional. It is also illegal, and constitutes a federally authorized legislative effort to cause genocide. The *Indian Act* set up "client," non-traditional Indian municipal governments and suppressed the sovereign traditional governments.

Section 35 of the *Constitution Act,* 1982, "confirms existing" aboriginal rights. This saves and continues the constitutional law embodied in sections 91(24) and 109 of the *Constitution Act,* 1867.

Section 91 (24):

Powers of the Parliament

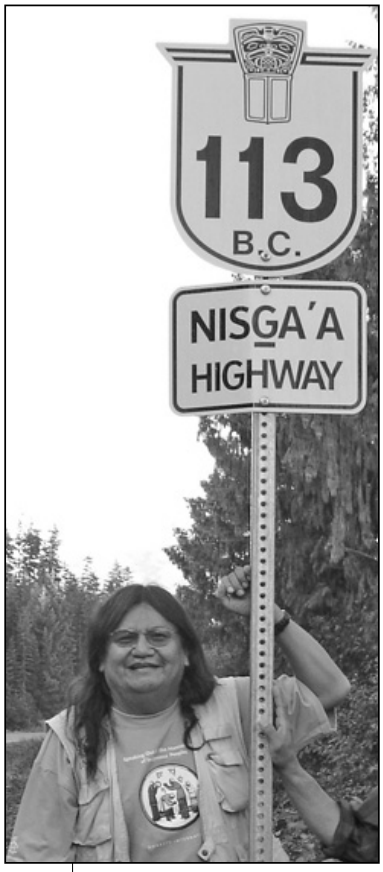
91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, ... for greater Certainty, ... the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,--

24.) Indians, and Lands reserved for the Indians

Under the existing constitutional law of aboriginal rights, the only burden of proof that exists is upon the Canadian nation to produce the valid treaty or get off the land upon which it is otherwise trespassing.

International credit services know that BC doesn't own the land.

Aboriginal Title is a Contingent Liability in the British Columbia Balance Sheet.



The Balance Sheet is a summary of all the Assets and Liabilities what the British Columbia government has. The Balance Sheet tells the outside world what British Columbia claims they own that is valuable, and what British Columbia owes in terms of bills they need to pay.

The Balance Sheet then subtracts what British Columbia owes from what British Columbia claims they own, namely, Assets (Valuable Property) – Liabilities (Bills Owed) = Surplus/Deficit.

Every government, including the Band Office needs to do a Balance Sheet. Even the grassroots have to when trying to stretch your money to pay all your bills and have cash left over for food for the rest of the month.

The important point for indigenous peoples to understand is that after the cash part of the Balance Sheet subtracts Assets and Liabilities the province is also financially obligated to identify all their Contingent Liabilities.

Contingent Liabilities is money or cash that British Columbia may or may not owe because of some real but unknown outcome of a decision that will be made in the future. The key Contingent Liability in British Columbia is Aboriginal Title.

Right now the province reports to the taxpayers and outside investors that they will extinguish Aboriginal Title under the Canadian Comprehensive Land Claims Policy and the British Columbia Treaty Process. British Columbia is really very financially vulnerable to the economic power of Aboriginal Title and Aboriginal Peoples.

The only hope for British Columbia is the extinguishment of Aboriginal Title under the Nisga'a Modified Rights Model. That is why the British Columbia government is so happy that the Tsawwassen voted YES to the Tsawwassen Final Agreement. It is also why the Canadian and BC government are very worried that the Lheidli T'enneh voted NO to their Final Agreement.

Indigenous peoples need to understand economically what Aboriginal Title means as a Contingent Liability before making any final decision regarding Aboriginal Title. I totally 100% disagree with anyone who says that Delgamuukw or the judicial recognition does not mean anything but Go Back to Court.

That Go Back to Court analysis is Department of Justice or Attorney General rhetoric planned to distract us from the economic power judicial recognition gives us at the domestic and international level.

The Indigenous Network on Economies and Trade (INET) made a number of submissions to the World Trade Organization and the North America Free Trade on the Canada USA Softwood Lumber Dispute.

In that dispute the USA argued that Canada was paying a cash subsidy to the Canadian forest industry by not charging fair market stumpage for lumber they were exporting to the USA. INET supported the position that Canada was giving a cash subsidy to the Canadian forest industry on the grounds that Canada did not recognize Aboriginal and Treaty rights.

All submissions made to the WTO and NAFTA were accepted despite the fact that Canada, the provinces and industry make official arguments against INET in Washington, DC.

INET basically established Aboriginal Title and Treaty Rights as an economic factor before the highest trade tribunal in the world and in North America.

Contingent Liabilities and Cash Subsidies are macroeconomic issues that go to very core of addressing the poverty you experience with your own personal welfare fixed income.

You are poor not because your traditional territory is poor. You are poor because the Canadian and British Columbia governments do not recognize your Aboriginal Title. In fact the Canadian and British Columbia governments want to entrench our poverty by having us extinguish our Aboriginal Title under the Nisga'a Modified Rights Model.

Distinguished human rights experts from all the human rights bodies of the United Nations have told Canada not to extinguish indigenous land title. In fact these very same human rights bodies examined the Modified Rights Model and said that it was no different than extinguishment and that Canada must pursue new policies based on recognition and coexistence.

Canada and BC do not have the political will to do that. It is up to us to make Canada and British Columbia change their mind on this fundamental issue between non-recognition and recognition of Aboriginal Title.

We need to pursue an economic strategy that will reject the itemized strategy of the province in their Financial Statements and address our economic security, and not just the economic certainty of British Columbia. Right now all we get out of being a Contingent Liability is regular social welfare programs, crumbs from the table of the big companies and loans to negotiate and extinguish our Aboriginal Title.

I know we all get embarrassed when people make jokes that we traded Manhattan Island for a few beads and trinkets but what are we doing now?

By Arthur Manuel, pictured above

"Contingent Liabilities" is money or cash that British Columbia may or may not owe because of some real but unknown outcome of a decision that will be made in the future. The key Contingent Liability in British Columbia is Aboriginal Title.

Right now the province reports to outside investors that they will extinguish Aboriginal Title under the British Columbia Treaty Process. British Columbia is really very financially vulnerable to the economic power of Aboriginal Title and Aboriginal Peoples.

This is part of a page from BC's Financial Statements. The highlighted section shows that BC has to explain how it is going to get "certainty," or more specifically, *title,* to the lands it is currently trespassing on.

62

PROVINCE OF BRITISH COLUMBIA
PUBLIC ACCOUNTS 2005/06

Notes to Consolidated Summary Financial Statements for the Fiscal Year Ended March 31, 2006—Continued

25. Contingencies and Contractual Obligations

(a) GUARANTEED DEBT

The authorized limit for loans guaranteed by the province as at March 31, 2006 was $129 million (2005: $168 million). These guarantees include amounts where indemnities have been made for explicit quantifiable loans. Guaranteed debt as at March 31, 2006, totaled $111 million (2005: $142 million). See Statement of Guaranteed Debt on page 81 for details.

(b) CONTINGENT LIABILITIES

Litigation

The province is a defendant in legal actions and is involved in matters such as expropriation compensation disputes and tax assessment appeals. These matters may give rise to future liabilities.

The province has the following contingent liabilities where the estimated or known claim is or exceeds $100,000, but the likelihood of payment is uncertain.

	In Millions 2006 $	2005 $
Tax disputes	1,300	10
Contract disputes	138	126
Property access disputes	118	11
Damage to persons or property	112	13
Negligence and miscellaneous	13	16

Guarantees and Indemnities

Aboriginal Land Claims

Treaty negotiations between the province, Canada and First Nations commenced in 1994. The province anticipates these negotiations will result in modern–day treaties defining the boundaries and nature of First Nations treaty settlement lands. As of March 31, 2006, there were 47 treaty tables in various stages of negotiation, representing two–thirds of the aboriginal people in British Columbia.

"The overall results show that—let's just stick with the 1999 study—the income benefits to British Columbia from treaty settlements range from $6.98 billion to $11.59 billion over 25 years. These are cash flows without any concern about the time that they are achieved and therefore no discounting because some of them come in the future and we put less value on them. These are just straight income flows throughout whenever they occur, treated as they are, except that there's no inflationary factor per se in it."

'Economic Analysis of Treaty Benefits,' Douglas McArthur, Simon Fraser University, to *Venture into a treaty world: open the door to new business opportunities* conference, March 2004

"I felt the province's economic future depended on the success or failure of the treaty process. I saw joining the Treaty Commission as an opportunity to tie together my interest in treaty making with my involvement in the business community. In order to invest, it's very clear you need to know who the landlord is. Business in British Columbia needs treaties to provide certainty." Mr. Lusztig had served UBC as finance professor and as Dean of the Faculty of Commerce and Business Administration. *BCTC Update May 2003.* Lusztig spent eight years and four terms advising the BC Treaty Commission.

"First Nations Summit highlighted the following issues of concern with respect to the existing negotiation support funding arrangements:

- Funding should be in the form of contributions, rather than a combination of contribution and loan funding;
- Accumulation of interest on loan advances made after an agreement-in-principle has been concluded is a significant disincentive to concluding such agreements; and
- It seems unlikely that most First Nations will have concluded treaties before their loans become due (12 years following the first advance)." *'Improving the treaty process report of the Tripartite Working Group,'* February 25, 2002

In 1990, Price Waterhouse calculated the cost to BC of not settling treaties to be $1billion in lost investment and 1,500 jobs in the mining and forestry sectors alone.

Bear Clan Just Wants Their Sacred Land

This will not be a very happy world indigenous day for many of the worlds indigenous peoples, including us as the Bear Clan families of Maxan Lake BC, Canada. For many years we have been trying to get our own sacred lands of Maxan Lake and territory back into our own hands once again. We do not want this illegal treaty process on our sacred lands. But, it seems that we do not have a voice or any say whatsoever, if we want this treaty or not. This illegal treaty process has been stuffed down our throats over and over, by the government elected treaty chiefs.

Our sacred lands have been so contaminated over the years. My letters to the Department of Indian Affairs have gone unanswered with regards to our sacred lands and territorys, and our traplines. Our traplines have been stolen from right under our feet. As the trapline holder is now a dead relative of the present chief of the Wetsuweten band. The chief's mother said that the BC government's forestry company is responsible for putting a dead man's name on our traplines. This action is an illegal and fraudulant process.

This Illegal Treaty process of BC has stolen our sacred lands and our indigenous names to our sacred lands, and we have not given our consent in any way. Since we became wards of the federal government of Canada, we have nothing but the shirts on our backs. Many of the Bear Clan families of Maxan Lake are now homeless, landless and our lives are now coming to extinction. As well as many in the animal kingdom.

Will the federal or provincial government, the Department of Indian Affairs, step up to the plate and help us the true Bear Clan families of Maxan Lake and territory, to help us live on our sacred lands once again? Let us decide our own destiny and future for our children and grandchildren. As it is, we are under foreign rule and our people are suffering and in need of despirate help. Give us back Maxan Lake and our traplines. We want to be free and to live on our own sacred lands and waters.

What Did It Take To Get The Tsawwassen Treaty Ratified?

ignore opposition

While Bertha Williams of Tsawwassen spoke out about secret agreements between Tsawwassen and BC and Canada regarding Deltaport; provincially-sponsored tours of a carefully constructed Nisga'a tour; provincially funded off-reserve band members flights and travel home, from all over North America, to vote for the treaty (more fly-ins than local voters)... there was no response from the Tsawwassen Council to answer these charges. There was no acknowledgement of any discussion needed on these issues.

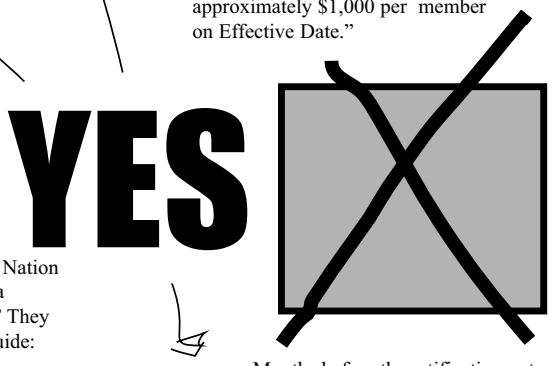
cashback deal on approval

quote from the TFN treaty survival guide:

"If the treaty is ratified, each elder over 60 will receive $15,000, shortly after ratification day, this is to ensure that our elders who have waited so long have a chance to enjoy some of the benefits before it is too late.TFN would provide this to everyone who turns 60 in the future -for as long as we as a government and community decide to continue with this. Because we were successful in obtaining extra-funds for our elders, we will be able to provide a smaller distribution of approximately $1,000 per member on Effective Date."

make incredible, impossible, promises

In it's pre-vote "Guarantees" to Tsawwassen Members, Council made the following empty promises:
"1. The Tsawwassen First Nation Constitution is the supreme law of TFN and it will be adhered to... at all times."
Unfortunately, Canadian and BC laws are now supreme in Tsawwassen, as per their Final Agreement.
"2. No Member's rights under the treaty will be unduly extinguished by TFN government."
Most rights were extinguished by *the treaty, or land-claims agreement.*
"4. ...TFN will oppose any erosion of Indian Status as recognized by Canada on the settlement date."
On that date, Canada had agreed with the treaty voters that the Tsawwassen Indian Band would cease to exist, and that the only right to Status benefits a Tsawwassen member would have is the right to call themself a Status Indian.
"7. TFN will manage all lands and resources on a sustainable basis ... to protect the natural environment... to develop a green economy."
The backbone of the fledgling municipality's economy is an expanded giant of a project known as "Deltaport," a seventeen-rail switchyard, and a new highway to the Port through wildlife lands along the sea.
"12. TFN government will provide services based on the principle of equality of all members, unless by the terms of government funding or laws of Canada or BC TFN government is precluded from doing so."
Enough said.



hire a "public relations crisis management" firm

A "Survival guide to the Tsawwassen First Nation Final Agreement 2007:" was produced by a Vancouver PR firm called "Counterpoint." They had a $250,000 budget. Quotes from the guide:

"It is your government and staff's responsibility to understand these agreements."
Isn't it voters' responsibility to understand?

"Through the treaty, our lands will more than double in size."
We all know Tsawwassen ended up with less than a percent of their aboriginal homelands.

"Under the treaty, Tsawwassen members will still have medical and dental benefits as provided by Canada."
Compare this to one of TFN's 'guarantees': "TFN will endeavor to ensure that...health benefits are not further reduced... and TFN will restore these benefits to earlier coverage as soon as government revenue permits."

"Section 35 of the Constitution protects Aboriginal and treaty rights but does not name these rights."
The Constitution specifies, in Section 109 of the 1867 Constitution Act, reaffirmed in the 1982 Constitution Act, that existing aboriginal rights include exclusive territorial possession and jurisdiction, unless relinquished by treaty.
Canadian policy *on the ground is to ignore that.*

"All the rights under the treaty are protected by the Canadian Constitution."
So were the other ones.

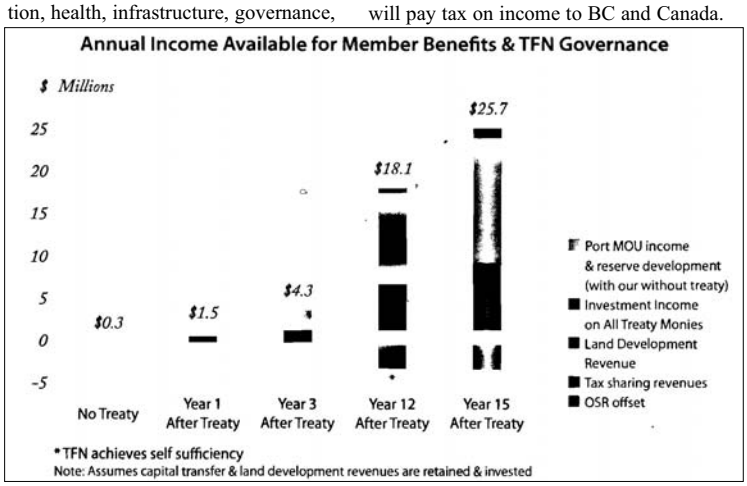
"...your taxes will be coming back to the community to pay for such things as health care and education which will benefit the whole community."
And a graph shows Canada and BC receiving 7% of tax revenue while TFN receives 93%.. So TFN Members will be paying how much on the dollar for taxes? TFN tax on top of GST and PST?

increase pro-treaty eligible voters

Months before the ratification vote, the Tsawwassen elected Council and BC brought a great number of off-reserve members back to the community to vote on whether they should be allowed to vote. The Band payed for the members' travel. The community vote went in favour of allowing off-reserve members to vote. The Band payed travel expenses for those Members to return and vote for the treaty.

produce graphs that show an incomplete view of finance

The graph below would appear to show Tsawwassen becoming rich. The graph does not show the First Nation's expenses. Post-treaty, TFN has become responsible for 100% of its Members' education, health, infrastructure, governance, administration, etc. The feds spend upwards of $10m a year providing these services, and current levels are inadequate. Tsawwassen will have municipal transfer payments, but less than half of current payments, and it will pay tax on income to BC and Canada.



BCTC Surveys Lheidli T'enneh: *why not?*

On March 23 2007, the Lheidli T'enneh voted against a Final Agreement that had been negotiated on their behalf. The treaty / land claims settlement would have payed Lheidli T'enneh First Nation $13.2 million of Settlement Capital over ten years - that's the direct payment to LT for selling their land, rights and interests to BC and Canada. Currently, LT has claimed an area that's almost 3 million hectares in size. That means BC and Canada would have bought the Lheidli T'enneh traditional teritory for little more than $4 per hectare.

The BC Treaty Commission decided to hold a survey of Lheildi T'enneh members to find out why they voted "No" to the Final Agreement.

There was also talk of offering members 3 to 5 thousand dollars each if the Agreement was ratified in a re-vote.

A survey of leadership was conducted by Chief Commissioner Steven Point, Commissioner Robert Phillips and Communications Manager Brian Mitchell. The Mustel group, a Vancouver research firm, conducted a survey by phone and mail. They found: "Some members believe it was a mistake not to hold a vote of the membership on the Agreement in Principle (AiP). It is their belief the AiP vote would have failed and LT would have been better able to determine the level of understanding and support."

The survey itself focussed on procedural inconvenience for members, not treaty content.

BC Business Council helps map treaty process

In 2004, the Business Council of BC took it upon itself to help government see what it wanted, what it can't wait any longer for, and what it *doesn't want,* which includes the list below.

In their "The BC Treaty Process: A Roadmap For Further Progress, 2004," the BCBC has made this very helpful list of exactly what obligations government and industry are under:

- There is always a duty to consult.
- The Crown has unique trust-like duties to aboriginal peoples.
- The Crown has a legally enforceable duty to consult even where the aboriginal group has not proven whether it has aboriginal right or title.
- Consultation is not sufficient; aboriginal interests must be accommodated.
- In some circumstances private businesses may also be subject to a duty to consult and accommodate.
- Willingness of a First Nation to participate in a consultation/ accommodation process does not impair its aboriginal rights and title.
- The assertion of aboriginal rights and title is sufficient to trigger the duty to consult and accommodate.
- The extent of the obligation to consult and accommodate is related to the potential soundness of claims of aboriginal rights and title.
- The Crown has an on-going duty to correct past infringements and should do so at each opportunity.
- Even the sale of assets or the renewal of a license can trigger the duty to consult and accommodate.

These ...have not led to greater certainty for businesses in BC. There is no consensus on these issues and no agreed process to resolve them.

Treaty-Roll Roulette

what if you don't vote ?

July 23, 2007
Dear UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Dr. Rodolfo Stavenhagen:

My name is Bertha Williams and I am a member of the Tsawwassen First Nation. We have Aboriginal Title to our traditional territory and waters, ...

Our elected Chief and Council have been negotiating with the Canadian and British Columbia governments and have arrived at a Final Agreement. This Final Agreement ...will extinguish the Aboriginal Title of the Tsawwassen peoples according to the Modified Rights Model. I do not agree with the extinguishing our Aboriginal Title.

I am writing you this letter to take issue both with the substance and with the procedure followed in this vote, since it does not even meet basic international legal standards.

...

Now let me please address the very urgent procedural concerns to do with the way this vote is being conducted and forced on our people. Firstly, not every Tsawwassen Indian Band Member will automatically be entitled to vote. Rather, we have to sign on to the so-called "treaty roll" or enroll as a Tsawwassen Member to vote regarding the ratification of the final agreement and constitution. Many people feel that by enrolling they are indirectly underwriting a process many of them do not agree with.

It is already being predicted that the government will use the fact that people have enrolled, as meeting the requirement of "free prior informed consent". Yet the majority of the people who sign on, have never read the agreement, nor do they understand the fundamental issues they will be voting on. Also many of us feel pressured to get enrolled, so that our vote will be counted. It is not our "free" decision to get on the roll; only those that get enrolled will vote on the future of our entire nation. I know there will be people who will take the principled, moral decision not to enroll, because they do not want to give any legitimacy to this illegitimate process.

There are no minimum enrolment numbers for the vote on the final agreement to take place and the agreement can be ratified by a simple majority. Given that the vote will be on such a fundamental issue, namely our land rights and the provision for our future generations, and on our constitution, it is absolutely unacceptable to have such non-existent/low thresholds. Usually constitutional votes require a minimum 2/3 threshold, both in terms of voter participation and approval by 2/3 majority. Even for our Indian Band to make a decision on transfer of one simple lot of land, we usually require such minimum participation in a general band meeting and approval by 2/3 majority.

In Canada, in order to change the constitution, the requirements are even higher, in terms of the formula that requires participation of most of the provinces and qualified majorities within them. Of course this formula will not come into play when the federal and provincial governments will vote on the final agreement, because they treat it like a simple law and not like a constitutional law, although they will pretend that it takes away both our land rights and our sovereignty.

If we ever wanted to change the constitution of the Tsawwassen First Nation again after the initial approval it would also require a 2/3 majority of members voting in a referendum.

Ms Williams awaits a reply

When Words Conquer Worlds

Are you ready to defend your land in a match of negotiator talk versus truth and law?

what you heard *and* what it means

BCTC UPDATE newsletter, January 2003:

"Certainty in a treaty means ownership and the rights, responsibilities and authorities of all parties are clear and predictable."

"The challenge is to achieve certainty without extinguishing or impairing those aboriginal rights not specifically dealt with in a treaty. The governments of Canada and BC agree that extinguishment is not an option."

Geoff Plant

Transferring "certainty" away from aboriginal people and placing it with the province is an extinguishment of the existing certainty aboriginal people have now - that the land is lawfully theirs.

Flora Ignace

For The treaty Commission to say Canada doesn't agree with extinguishment is a play on words and an outright lie. They have changed the wording, but not the meaning. Now they say "modified rights." When they say they don't want to extinguish rights "that are not specifically dealt with in the treaty," they are making a ridiculous statement: the whole purpose of treaties is to *extinguish every right that is not recognized in the treaty* by "modifying" the whole title and rights to be just what is written in the treaty.

"First Nations assert their right to govern themselves is an inherent aboriginal right protected by the constitution -- the right is not given or delegated, but is based on their existence as organized societies in this country for thousands of years.
The Government of Canada recognizes that aboriginal people have an inherent, constitutionally protected right to self government – the right to manage their own affairs.
The BC Government has indicated a desire to negotiate a delegated form of self government."

As you can see here, the Treaty Commission is acknowledging the aboriginal *assertion* that it has the right to self government and that this right is based on their long history of governing themselves, with no authority from anyone else being required. They can only acknowledge an "assertion", which is that aboriginal people say it is so, but they steadfastly refuse to acknowledge that the right of self-government is a *fact.*
The second part of that statement is clarifying that Canada and BC wish First Nations to have *delegated* authorities, which means the First Nation will agree that it gets its authority to make laws from Canada, and that it has no other source of authority for anything.

Tsawwassen Chief Kim Baird and MARRMike deJong

Chief Piapot being arrested and forced to Treaty #5

"The Business Council of British Columbia has a longstanding interest in the treaty process in British Columbia. We support treaty making. We believe that business and industry needs the certainty that
treaties can bring." Jerry Lampert, BCBC President, at conference: "Venturing into a Treaty World. BC Treaty Commission, March 2004"


MONEY
Threat to business
MAKE • SAVE • SPEND
PAGE A37
Treaty creates 'certainty, economic opportunity'

Why does business need certainty of treaties? Why can't they be happy with certainty of aboriginal partners with acknowledgement of aboriginal title?
Because BC wants them to pay taxes. Because aboriginal people aren't endebted to the same major international agencies they are. Because aboriginal traditional values are not consistent with the pillaging industrial practices that make "BC business" what it is. Business relies on BC and Canadian governments to ignore human rights law and environmental impacts, and business has no guarantee, no proven track record, that aboriginal people are going to have those same values, or lack of which. However, only aboriginal people can offer certainty.

The new Nisga'a movie, "Dancing in Both Worlds," opens with the following statement:
"This is a story of survival of a people who overcame a devastating natural disaster and a century and a half of colonial suppression to gain legal title to their land."

How do you "gain" legal title to land? Don't people usually buy it? This movie is suggesting the Nisga'a never had legal title to their land. The facts are that they did have legal title, right up until the moment they gave it away in their Final Agreement.

Nuxalkmc Chief Snuxyaltwwa brings a message to Omega Fish Farms

"Our reservations are owned by the Queen in right of Canada"

The Nisga'a Final Agreement on display in an Ottawa museum

Did the Queen buy that land from you? No? She doesn't own it. She thinks she owns a "right of first refusal" to buy the land, which is part of a deal called "Manifest Destiny" that European nations made amongst themselves to sort out who could buy the lands if/when the aboriginal tribes were prepared to sell.

"Aboriginal title has not been defined in Canada."

Noldo Williams and Tipta arrested for roadblocking in Lil'wat in 1990

The Indian interest in exclusive jurisdiction and sole possession exists pursuant to the previously-established consensus of international and constitutional law, which Section 109 of the Constitution Act, 1867, confirmed, and which the 1982 Constitution Act contains. It can't be defined by modern courts because the definiton exists and is clear. It's just ignored.

Fear, Favour and Fraud: flaws in the process

May 30, 2007
Dear Minister Prentice:
Re: Carrier Sekani Land and Governance Grievances

The Carrier Sekani Tribal Council (CSTC) represents eight First Nations in treaty negotiations ... Our people have occupied this territory since time immemorial and do not have any intention of surrendering our ownership or jurisdiction.

While CSTC Tribes have largely pursued peaceful negotiations with the Crown, we will defend these territories through any means necessary.

I am writing to call on your government to remove impediments to the resolution of our land and governance grievances. We have been stalled at the British Columbia Treaty Commission (BCTC) table for more than ten years.

... we have exhausted justification to our membership as to why we continue to borrow funds to participate in a process that leads to a dead-end. Alongside other First Nations in B.C., we have identified several key areas that require immediate attention in order to reestablish a forum for a just resolution to our grievances.

Federal and Provincial Mandates vs. Positions

Canada and B.C. have taken firm positions on land selection, governance, certainty, and taxation and compensation. These are the issues that underlie the entire treaty process. It is quite apparent that your negotiators do not have the ability to actually negotiate in these areas. Crown negotiators are sent to the table with unilaterally predetermined formulas and models, and negotiation consists merely of their defense of these so-called mandates.

Certaintv

CSTC has learned from other First Nations in Canada who have signed treaties that certainty is a one-sided issue. Where agreements are signed, the Crown achieves the certainty that it seeks, but First Nations find that commitments made are for minimal legal requirements, and not for actual outcomes.

What we are certain of is that governments propose to exterminate Indigenous Nations in B.C. by way of the BCTC platform and move on to lay toxic and poisonous residues on our lands. This is not what the CSTC envisioned when the BC Claims Task Force finished its work, nor was it envisioned when we entered the BCTC process.

Lands & Co-Management

Under the BC treaty process, First Nations must accept treaty settlement lands as fee simple land and must agree to give up constitutional protection under s.91 (24) and to give up Aboriginal title to their territories. This removes substantial constitutional protections against provincial jurisdiction and also removes the historic relation to the federal Crown. This is not what the CSTC envisioned when the BC Claims Task Force finished its work nor was it envisioned when we entered the BCTC process.

B.C. and Canada have unilaterally set a limit or formula on the amount of land that can be "selected" by each First Nation. What is known as the "5% land selection model", has been rejected by our communities. With the more recent treaty ratification votes being contemplated in Tsawassen and Maa-nulth, those percentages are between 1-4%. We are aware that this formula is not legislated.

This is not what the CSTC envisioned when the B.C. Claims Task Force delivered its report and played a key factor in CSTC entering the BCTC process.

Given the enormous increase in proposed development in our territories, CSTC has proposed co-management regimes at the treaty table as an alternative to the land selection model. Again, Crown negotiators do not have the ability to negotiate anything other than their predetermined land selection model.

Interim Measures

When CSTC entered into the BCTC process we fully expected that while bargaining, interim measures would cultivate Indigenous - Crown relations, provide benefits to communities, and ensure meaningful involvement in resource management. The Crown has failed to implement this commitment from the B.C. Task Force Recommendations. If the Crown continues failing on these and other commitments, there is no chance of reconciliation with the CSTC under the BCTC or other platforms.

Governance

Similar to the land selection model, the "municipal-style" governance model developed and proposed by government has been rejected by our communities. The CSTC require recognition of our traditional and modern governance systems in order to effectively manage our land and our affairs. To establish municipal style governments for our people would only perpetuate dependence on the federal and provincial governments.

In many areas B.C. and Canada carve out exclusive areas of jurisdiction or require paramouncy of their laws. Based on our own projections, we will not have sufficient funding to pass or enforce laws in most areas under your governance models. First Nations get some ability to collect tax revenues under tax treatment agreements, but the governments will not protect these arrangements in a treaty. First Nations are being asked to give up their tax exemption forever in treaty. As owners of our territory, it makes no sense to pay taxes to other levels of governments. This is not treaty negotiations and not what we envisioned under the BCTC platform.

Canada imposes an Own Source Revenue model which claws back 50% of most revenues generated by the First Nation. There is no commitment to "close the gap" or improve living conditions for First Nations. Fiscal arrangements are in side agreements which can be modified or reduced by governments. First Nation corporations can be double-taxed and may pay over 70% taxes on dividends to the First Nation. The CSTC Nations will be worse off under this fiscal model post-treaty.

Compensation

Governments refuse to negotiate compensation for past infringements of Aboriginal rights and title or for other matters. You say the process is "forward-looking" not historical. At the same time, the governments demand a full release from First Nations for all past claims. Again, the only certainty being provided is to the Crown, and not to Indigenous Nations.

This is not treaty negotiations and not what we envisioned when we entered the BCTC process.

BCTC Loan Funding

Many of our members have questioned since the inception of the BCTC process, the fairness of requiring First Nations to borrow money to negotiate the surrender of our own land. CSTC has accumulated considerable debt to participate in negotiations that are stalled due to the government's archaic policy framework.

The CSTC relied heavily on the B.C. Claims Task Force Report principles in making our decision to borrow millions of dollars to participate in BCTC process. If CSTC is to consider continuing treaty negotiations with the Crown, we require that government immediately and unconditionally write off all the accrued liability that was forced upon us in your loan funding program.

Conclusion

The so-called treaty negotiations in B.C. have proven to be an endless string of coercive exercises by government. The governments control the lands, resources and the loan funding. The CSTC can only participate through borrowing funds from our future generations which creates pressure on First Nations to rush to complete poor deals. If they do not, the value of their debt can exceed the value of the cash settlement, especially for smaller First Nations.

Our people decided it is time to walk away from this process as there is no possibility of achieving a just reconciliation within the government's current framework.

Governments have proven that they are not willing to respect our existence. After thirteen years, you are still demanding that we surrender our inherent rights and ownership of our lands. We will never give up on ourselves, we will not ruin the land, we will never surrender the future of our children, and we will not dishonour our ancestors.

The CSTC remains prepared and willing to negotiate with the governments in an effort to reconcile our land and governance grievances. However, we will not misuse further time, effort and funding to bargain with you under the terms of the government's existing policy environment.

In the meantime and up to February 2010 and beyond we will advise the global community of Canada's role in their oppressive and sharp-dealing policies when dealing with Indigenous Nations in B.C. We feel it is our duty to inform any potential investors of the high level of risk inherent in developing in our territories because of unresolved land and governance issues.

I am available to meet with you...

CSTC Tribal Chief David Luggi

125 Chiefs Sign Declaration of Aboriginal Title to Territories

On November 29, 2007, in North Vancouver, Squamish Territory, the following Declaration was made at a First Nations Leadership Strategic Planning Session:

"ALL OUR RELATIONS"
ADeclaration of the Sovereign Indigenous Nations of BC

We, the Indigenous leaders of British Columbia, come together united and celebrate the victory of the Tsilhqot'in and Xeni Gwet'in peoples in securing recognition of their Aboriginal title and rights – and all those Indigenous Nations and individuals that have brought important court cases over the years resulting in significant contributions in the protection and advancement of Aboriginal title and rights, including the Nisga'a, Gitxsan, Wet'suwet'in, Haida, Taku River Tlingit, Musqueam, Heiltsuk and Sto:lo - shining light on the darkness of years of Crown denial of our title and rights. After pursuing different pathways, we now come together to make this solemn Declaration out of our common desire to be unified in affirming our Aboriginal title.

As the original Peoples to this land, we declare:

- We have Aboriginal title and rights to our lands, waters and resources and that we will exercise our collective, sovereign and inherent authorities and jurisdictions over these lands, waters and resources,
- We respect, honour and are sustained by the values, teachings and laws passed to us by our ancestors for governing ourselves, our lands, waters and resources.
- We have the right to manage and benefit from the wealth of our territories.
- We have the inalienable sovereign right of self-determination. By virtue of this right, we are free to determine our political status and free to pursue our economic, social, health and well-being, and cultural development.
- We have diverse cultures, founded on the ways of life, traditions and values of our ancestors, which include systems of governance, law and social organization.
- We have the right to compensation and redress with regard to our territories, lands and resources which have been confiscated, taken, occupied, used or damaged without our free, prior and informed consent.
- We will only negotiate on the basis of a full and complete recognition of the existence of our title and rights throughout our entire lands, waters, territories and resources.
- We acknowledge the interdependence we have with one another and respectfully honour our commitment with one another where we share lands, waters and resources. We commit to resolving these shared lands, waters and resources based on our historical relationship through ceremonies and reconciliation agreements.
- We endorse the provisions of the UN Declaration on the Rights of Indigenous Peoples and other international standards aimed at ensuring the dignity, survival and well-being of Indigenous peoples.

We commit to:

- Stand united today and from this time forward with the Tsilhqot'in and with each other in protecting our Aboriginal title and rights.
- Recognize and respect each other's autonomy and support each other in exercising our respective title, rights and jurisdiction in keeping with our continued interdependency.
- Work together to defend and uphold this Declaration.

We, the undersigned, represent First Nations who carry a mandate to advance Title and Rights in our homelands today referred to as British Columbia and exercise our authorities in making this Declaration. We welcome other First Nations not present today to adhere to this Declaration if they so choose.

Signed by First Nations leaders on November 29, 2007

Chief: "I'm $10 million in treaty debt, what can I do?

In its 2007 annual report, the BC Treaty Commission describes the progress of the negotiating tables, some of which represent more than one community. Of the 47 tables described, 17 are totally inactive. 26 tables are still in negotiations, the vast majority of them negotiating Agreements in Principle at Stage 4 of the six stage process.

The Report does not mention First Nations which have abandoned the process. Of the unknown number that have walked away from BCTC, here's what two of the Chiefs had to say about quitting:

Ts'kwaylacw Chief Robert Shintah:

"When I read those old documents (*Declarations of 1911)* it made my stand stronger - I wasn't going to turn over a new leaf and do everything the government wanted.

At meetings I would show them this example: I held up a piece of paper and just bent one corner over, just a tiny bit so you could barely tell, and I covered it with my thumb. I pointed at the paper and told them, 'this is what we want. This paper represents all our Title and Rights and lands and resources, everything; this is what we want.' And then I showed them that tiny corner, just like a dog-eared page of a book, and I said, 'This is what you're offering us in the treaty process.'

I never used lawyers and consultants the way other people do; they never could speak for us - we told them what to do.

That's why that treaty loan agreement isn't happening. I never looked at that as a loan, just a down-payment for all they owe us.

I said if they come looking for that loan, I'm going to make up a bill for them: $16 billion for all they have taken from us.

When a rep from the province came with paperwork to make a repayment schedule, I told her I wasn't going to sign for an extension of the loan. If I did that I would either get hung or thrown off the reserve. I don't know if they tabled it or what, but it's still going to be "No" no matter what."

"It appears that the province has been violating aboriginal title in an unconstitutional and therefore illegal fashion since it joined Canada,"
Justice David Vickers, November 17,2007, reasons for judgement - *Tsilhqot'in vs. BC*

Chief of N'Quátqua, Harry O'Donaghey:

"We held a workshop in the Hall here, ... one of the questions was, 'What are we doing in the treaty process?' I was given direction to find out the details of how we got in, and how do we go to referendum on it. We did the findings on it, and ...there was only a very few members who showed up at the meeting for the show of hands to get involved. We did the referendum and the results showed it: 80% were opposed to the treaty process.

> We refused to pay anything back, it was an illegal situation.

We got into the treaty process illegally. Our legal counsel looked into it and we had never had a proper referendum to enter the process. There were only 5 or 6 people at the meeting to get involved. When the referendum passed, that was one of the issues the legal counsel has trouble with. We refused to pay anything back, it was an illegal situation. They would call me up looking for money and I would say, 'talk to my legal counsel,' and they would just hang up on me.

All in all, the offer they were offering us here was really nothing. It was only about 5% of the territory, that was including the reserve lands, which shouldn't have been in there. They were offering us rock cliffs and land with no resources. No wonder the referendum in the community."

Free Prior Informed consent

is now a part of the Declaration on the Rights of Indigenous Peoples, adopted by the United Nations on September 13, 2007.

Elder Irene Billy defined "prior informed consent" in the following manner:
"It is that we as Native people can say "yes" or "no" to any developments on our land"
She made these comments in 2003, after listening to technical negotiations on the issue of traditional knowledge at the third session of the Working Group of the Convention on Biological Diversity (CBD) that took place in Montreal. The result of these negotiations were the Akwe:Kon Guidelines, Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities. This article of the guidelines was approved in Kuala Lumpur, Malaysia, 2004.

Paragaph 53 of the Guidelines reads:
A. Prior informed consent of the affected indigenous and local communities
53. Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities.

The opening of the paragraph might sound restrictive, but the whole of the traditional knowledge provision in Article 8(j), is subject to national legislation. This means that it is still up to countries to enact legislation that supports Prior Informed Consent, or rely on current legislation that reduces its application.

"Prior" means, before action of any kind is taken, and that indigenous contributions to development plans should be considered first. "Informed" means, fully informed. This means that indigenous rights holders should have not only the information to consider, but a reasonable capacity to interpret the information. 'Consent' means the right to agree or not to agree with an action. Once a person indicates that he does not want a project to go ahead, that has to be respected. Consent is a well-defined term at law.

Prior Informed Consent is now a part of the Declaration on the Rights of Indigenous Peoples, adopted by the United Nations on September 13, 2007.

What did it take to get this principle included in the Declaration of the Rights of Indigenous Peoples?

The parties to the UN Convention on Biological Diversity unanimously recognized the principle of prior informed consent of indigenous peoples. You can tell how important it really is by looking into how strongly some parties, especially Canada opposed the principle until the very last moment when they had to give into pressure from indigenous peoples.

The main struggle to get Prior Informed Consent, "PIC," recognized happened at the previous conference of the Parties, COP-6, held at the Hague, the Netherlands, in April 2002. During the first discussion of the issue at that time, Canada, Australia and Malaysia opposed any reference to "prior informed consent" and supported merely "consultation: with indigenous and local communities."

The European Union, Colombia and Norway supported Prior Informed Consent. The International Indigenous Forum on Biodiversity did not support reducing 'consent' to merely 'consultation.' The issue was then referred to an informal "Friends of the Chair" group that indigenous representatives were not allowed to attend.

The Friends of the Chair group could not reach consensus. Canada had indicated that they would oppose all other final decisions of the conference, if "consultation" was not added to the text. A number of delegations prepared to state their political opposition to such negotiating tactics, but they felt bound to agree so the international "consensus" criterion could be met.

Arthur Manuel, an indigenous representative from Canada who did not agree with the inclusion, addressed the head of the Canadian delegation and asked why they insisted on this wording. He was told the reason was the need to protect the power of the federal government to expropriate lands.

At the same time Nobel Prize Laureate Rigoberta Menchu Tum addressed the Chair of the Working Group to stress the importance of recognizing PIC. The Chair explained that she approved the wording because Canada assured her that they had the support of the indigenous representatives from Canada. Arthur Manuel told the Chair and Rigoberta Menchu Tum that he did not support the inclusion and neither did the other indigenous peoples from Canada.

Manuel spoke to Mrs. Pheigi Wilson, the Assembly of First Nations representative from Canada, to ask her if she supported the inclusion. She said that she did not support it but she had not opposed it either when the issue was brought up during the meeting of the Canadian delegation. A number of official representatives of Latin American delegations complained that some Canadian indigenous representatives were sending mixed signals, making it harder for their delegations to support the principle, when indigenous peoples themselves seemed to be divided.

To demonstrate that all indigenous delegates from Canada opposed Canada's position to include "consultation" they then all converged on the head of the Canadian delegation and stated this point very clearly. As a result, at the very outset of negotiations Canada took the floor and indicated that they would no longer insist on the inclusion of consultation and that the text would just state prior informed consent, but be subject to national legislation and delegates agreed to this wording. The guidelines where then revised and approved in their final form at COP 7 in Malaysia as the Akwe: Kon Guidelines, named after the Mohawk term for everything.

The discussion did not stop there, since the main international instrument on indigenous rights, the (then Draft) Declaration on the Rights of Indigenous Peoples was still under negotiation. The document is probably the most negotiated international human rights instrument in the history of the United Nations.

Making the Declaration

The Declaration on the Rights of Indigenous Peoples started at the UN Working Group on Indigenous Populations in 1983.

In 1993, the Working Group adopted the text of the Declaration and sent it to its superior body, the Sub-Commission on the Promotion and Protection of Human Rights, which, in turn, adopted the text in 1994 and sent it to the Commission on Human Rights for its consideration.

In 1995, the Commission on Human Rights considered the text submitted by the Sub-Commission and decided to establish an Inter-sessional Working Group named "Resolution of the Commission on Human Rights, 1995," with the mandate to consider the text presented.

For more than a decade, until 2006, this political body continued to negotiate the proposed Articles of the Draft Declaration. The most controversial articles were: the indigenous right to self-determination; land rights; resource rights; and military issues.

The UN Human Rights Council replaced the UN Human Rights Commission. In 2006 it voted to approve the Declaration on the Rights of Indigenous Peoples, with only Russia and Canada voting against it.

Finally, on September 13, 2007, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples with 143 countries voting in favor, 11 abstaining and 4 countries, Canada, the US, New Zealand and Australia voting against.
The Canadian Ambassador to the United Nations said to the General Assembly: "We have stated publicly that we have significant concerns with respect to the wording of the current text, including the provisions on lands, territories and resources; free, prior and informed consent when used as a veto; self-government without recognition of the importance of negotiations; intellectual property; military issues; and the need to achieve an appropriate balance between the rights and obligations of indigenous peoples, member States and third parties." *By Nicole Schabus*

19 Recommendations

The Report of the British Columbia Claims Task Force

"The Task Force was created on December 3, 1990 by an agreement between representatives of First Nations in British Columbia, the Government of British Columbia and the Government of Canada. The terms of reference asked the Task Force to recommend how the three parties could begin negotiations and what the negotiations should include."

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 the 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 the 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 educational organizations in British Columbia, to prepare resource materials for use in the schools and by the public.

"Implementation of these treaties will require the commitment of all to bring about positive and lasting change in the political, social and economic structures of British Columbia."

The BC Claims Task Force Report was signed June 28,1991 by:

Chief Joe Mathias — Mr. Miles G. Richardson
Ms. Audrey Stewart — Mr. Murray Coolican
Chief Edward John — Mr. Tony Sheridan
Mr. L. Allan Williams, Q.C.

"We believe that in some areas the governments' positions and approaches to negotiations are not consistent with the wording and spirit of the commitments made by all three parties based on the BC Claims Task Force Recommendations.
Unfortunately, the governments are taking one phrase about political negotiations out of context and interpreting it to mean that the negotiations are purely political with no legal basis.
They are using it as an excuse to refuse to negotiate any recognition or reconciliation of aboriginal rights and title.
We are requesting the Commission to clarify this issue as part of the proposed review.
From our perspective the governments' treaty positions have not responded to developments in the law of aboriginal title and good faith negotiations nor to positive developments in the New Relationship.
In fact, what we see at our Tables is less than was available in the Nisga'a agreement, less than is available in Treaties elsewhere in canada, less than is available in court, and far less than is promised in the New Relationship. "

- Robert Morales, Chair of the First Nations Summit, here representing 60 First Nations in treaty negotiations: First Nations Unity Protocol, in a letter to Chief Commissioner Steven Point in Spring of 2007

The Auditor General confirmed the refusal of the governments to recognize rights and title in negotiations:

"...the two governments base their participation in the treaty process on their own policies, and do not recognize the aboriginal rights and title claimed by First Nations."
Auditor General of Canada ' Federal Participation in the British Columbia Treaty Process, Indian and Northern Affairs Canada,' November 2006.

Former BCTC Chief Commissioner

Steven Point is now British Columbia's Lieutenant Governor - he will sign treaty-enabling legislation into law.

*Continuing from front page quote by Peter Cole, Xaxtsa/Port Douglas: "*Short term solutions in which we are given a pittance in terms of money and land are not viable. What is $50 million or $100 million and a few square miles of land, what is that in the long run? ...Most of the money we would get from any land claims process has already been spent - we are hugely in debt for having entered this land-claims process. The money has to be paid back to the government: lawyers don't come cheap, helicopters don't come cheap, hotel rooms, travel, celebrations: the elders are being paid for their services with their own money."

Just this summer Steven Point was touring BC and recommending just these kinds of treaties to aboriginal communities throughout BC. He was proclaiming how he believes First Nations have their sovereignty. He was on TV saying that First Nations will one day be able to reconcile their differences with the new government and find a way to live together.

However, without any of those resolutions achieved, the Honourable Justice Steven Point, Stolo, has made a decision to leave the BC Treaty Commission. He has accepted an appointment to Lieutenant Governor. He will become a member of the Order of British Columbia.

If he can now represent the Queen as one of her own, he must believe this is the Queen's land. The Queen doesn't need a treaty in land that she owns. Maybe Point never believed that the aboriginal tribes own the land, and that's why he repeatedly claimed, "Not only is treaty the best way, *it's the only way*." But the way to *what*?

By Kerry Coast

Yale, Yekooche, In-SHUCK-ch, Sliammon: heading for the Buffalo Jump

After watching Lheidli T'enneh vote down a treaty that offered about $4 a hectare for its traditional territory, these four First Nations are all expected to conclude similar Final Agreements in 2008.

BC and Canada will try to hurry these First Nations over the cliff before Tsawwassen and Maa-nulth can warn them of what happens next...

	Location and Population	Traditional Territory (low estimates)	$ - Treaty Settlement Capital	Treaty loans	Sale price of territory	Settlement $ per/person, after loans	Entry-level real estate in the area
In-SHUCK-ch (3 communities)	Along Lillooet River, Between Whistler and Harrison Lake. Pop. est. 1000	500,000 hectares	$21 million	$9 million	$42 / hectare after loans and private land purchase, $20 / hectare	$10,000	"The cottage has 1 bedroom plus a loft. $219,000" Lillooet Lake estates
Yale	Fraser Canyon, north of Hope, Highway 97 Pop. est. 112	75,600 hectares	$6.5 million	in BCTC process since 1995. Most bands average $.8 million per year on treaty related expenses.	$85 / hectare (before loans)	$58,000 (before loans)	8 1/2 acres, 7 bedroom, 12 mi. N of Yale, 1 mile Fraser River front. $350,000. Historic Alexandra Lodge (2004 posting)
Yekooche	North of Vanderhoof, between Stuart Lake and Lake Babine. Pop.165 (1994)	810,000 hectares	$6.5 million	in BCTC process since 1994. Most bands average $.8 million per year on treaty related expenses.	$8 / hectare. (Before loans)	$39,000 (before loans)	$269,000 2 bedrooms and a full basement, main floor laundry and walking distance to downtown - Vanderhoof
Sliammon	Gulf of Georgia: Desolation Sound, Harwood Island. - Powell River	388,800 hectares	$24.4 million	in BCTC process since 1994. Most bands average $.8 million per year. Sliammon has exceeded this on projects	$63 / hectare (before loans)	$27,000 (before loans)	"over 1/2 acre bare lot in town, close to Powell Lake and hiking trails. Property currently not serviced" $39,900

A letter from a community member:

Who am I?

Back in the mid-1990's I started working for In-SHUCK-ch to educate myself about treaty so I could make my own decision about supporting or rejecting an agreement. I started to feel lost and confused after I realized I couldn't put into my own words why In-SHUCK-ch should be part of the treaty process.

Looking back now, I realize it was just time for me to move on. The job gave me so much more than I expected: I started learning about my culture and connecting with our people, especially the elders.

There are times when I find it really tough to figure out what is right for me, sometimes the hard part is actually doing what is right for me and then there are times when the hardest part of all is how people behave around me.

Ever since I "came out of the closet" and started standing up for what I believe by speaking out loud about my concerns with In-SHUCK-ch being in the BC Treaty Process, I have been labeled as a rebel or a trouble-maker, someone to be ignored. They avoid making eye contact with me, laugh nervously and stick to "safe" topics of conversation. It's like people are afraid of setting me off.

I am very passionate about protecting the land, resources and our people. To do this I believe it is very important for each of us to acknowledge what is in our hearts so we may stand-up for what we believe by sharing what we know, understand and believe to be true for our self.

I believe that we, Ucwalmicw have never owned the land so it is not ours to sell, give away or harm in any way. I believe that in exchange for our respect and protection, Mother Earth allows us to use her land and resources. I believe that all our decisions and activities must be based on honoring our arrangement with Mother Earth so anything we agree to must increase our ability to live up to our end of the bargain.

My name is Tammy Peters. I am St'at'imc from Samahquam; daughter to Brenda Lester and Eppa (Gerard Peters); granddaughter to Margaret and Mac Lester, as well as Theresa (Williams) and Alexis Peters.

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Ujjal Dossanjh - Hon. Attorney General and Minister Responsible for Multiculturalism, Human Rights and Immigration.

"This treaty is exhaustive definition of Nisgaa Section 35 rights (laughs), they will have no more rights than this; their rights under Section 35 have been exhausted, exhaustively defined. This does not create a third order of government, it creates municipal government."

Weisgerber - "What does it mean, "aboriginal title," that you are so eager to embrace? Not to my surprise, aboriginal title is not defined, yet a statement is included… it certainly isn't a constitutional right."
Dossanjh: "The rights outlined in this treaty are the final rights of Nisgaa - we're not interested in defining title for other aboriginal groups to come at us with, and that's the end of it - no debate."
Weisgerber - "this is less than forthright."
Dossanjh - "To enshrine this would hinder us. We don't need that definition to deal with rights we've agreed upon."

Plant - "On the question of inherent versus delegated rights, we don't need to answer because everything is taken care of in this treaty? Now title, same question, same answer -"no debate," because the intent is to put all those questions to rest?"
Dossanjh - "Thank you. The intention and purpose of negotiating treaties is to exhaustively codify rights… to exhaustively define and limit rights as modified by Nisgaa (treaty). To make sure our treatment exhaustively sets them down and then we put the law on it for certainty."

January 19, 1999
Glen Clark (Premier) - "Section 11 - 'subject to' the Charter of Rights, regards Section 25 challenges - it is more of a shield than a weapon with respect to aboriginal rights… The treaty is replete with mechanisms to limit application of treaty rights. No party will support a challenge to any part of the treaty - we close the door to that as best we can. It is a huge improvement over status-quo with respect to limits."

Gordon Wilson (then PDA, later NDP Minister of Aboriginal Affairs) - "Until this treaty is signed, government has no jurisdiction over Nisgaa land. Where does government believe allodial title will lie? (We're) not creating a homeland, but the opposite - allodial title with the province gives more certainty?"
Lovick - "Correct."

DeJong - "The objective was to cut that link, umbilical cord, programs I couldn't list, but they're out there…"
Clark - "After the treaty, no programs on reserve to status Indians, under the agreement, there will be no reserve land."

Weisgerber - "The Premier says the $300 million from the federal government into the Province is a cost benefit."
Clark - "sucked out of BC for a long time… If $300 million comes to BC, transfers from taxpayers into BC, a positive; money flowing in, a factual benefit, not subtracting but adding."

> "...the Nisgaa indemnified the Province, it is impossible to go to court and assert aboriginal rights, because we were released."
> - Premier Glen Clark

Weisgerber - "I think the point's been made."

Clark - "If we had not so limited (Section 35 rights) then someone may argue (otherwise). To limit, define and box in… We have protected the people of BC by this language: exhaust, modify, and release… the Province is released form any claim, if there was even a possibility in the future; the Nisgaa indemnified the Province, it is impossible to go to court and assert aboriginal rights, because we were released."

Plant - "(The treaty) is a contract with a company yet to exist; it denies implicitly nationhood."
Dossanjh - "defined legally for the first time by this treaty."
Plant - "give recognition?"
Dossanjh - "Not a recognition but a defining of what we consider to be the Nisgaa Nation vis a vis Canada and BC."
Plant - "Is Province making an agreement with someone capable of making an agreement?"
Dossanjh - "Yes."
DeJong - "What about those who do not want to be part of the treaty?"
Lovick - "This treaty was ratified by a significant majority of Nisgaa people. Support is there from Nisgaa citizens."
DeJong - "Do negotiators have the capacity to surrender rights of those opposing?"
Lovick - "Treaties are always binding on all people. The Nisgaa Nation, Tribal Council, has legitimacy of 40 years, the fact is that's the utterance in the treaty. I don't see the issue."
Dossanjh - "25 years history of Tribal Council, always elements that might disagree - if that will is collective - a majority - there may be dissenters, that doesn't make the treaty unlawful. It was 63% approval led us to believe there is consensus among them."
Plant - "How did the Tribal Council become a nation? What is the process?"
Dossanjh - "This treaty has been initiated. This is the process of approval - at that point it is at the time of signing - transition from Tribal Council to First Nation."
Plant - "The process of this legislative creation will constitute necessary recognition?"
Dossanjh - "Could have been by Order in Council, it didn't have to be legislated… W hen you are one of the three parties, you have to be convinced the First Nation, the representatives, have credibility, the ratification process, over 75% supported treaty."
Plant - "There is a problem of overlapping status and identity. Is there anything that would serve those persons Section 25 or 35 rights?"
Dossanjh - "No. Honourable Chair, I think the debate is going in the wrong direction."
Weisgerber - "The first time there is a legally defined nation within Canada."
Dossanjh - "This is not really a nation. All I care is what limitations, restrictions, restraints upon their rights are! The Nisgaa Nation would have attributes in this treaty, no more no less. This is all they get, this is all the rights they have (smiling). I don't care if they call themselves Tribal Council or Nation."
DeJong - "Does this create liability if it's worng?"
Dossanjh - "We're not transferring jurisdiction to the Nisgaa."
DeJong - "If the Province lacks authority, does it create liability?"
Dossanjh - "It's in the interest of

Jack Weisgerber

was leader of the BC Reform party at the time of the debate. He had criticized the Nisga'a deal in a speech to the First Nations Summit (the organizing body for First Nation treaty negotiators), saying treaties should be more about cash and less about land. He also explained his view that natives should emerge from treaties with the same rights, responsibilities, government services and taxation levels as all other British Columbians. In 1988, Weisgerber was BC's first Minister of Native Affairs in the Social Credit government of Bill Vander Zalm, when he helped start up the BC modern treaty negotiation process as a function of the federal Comprehensive Land Claims Policy. In 2002, BC appointed Weisgerber to the BC Treaty Commission. He was appointed to a third consecutive two-year term in March of 2006.

Dale Lovick

was Nanaimo's MLA from 1986-2001. He retired after his participation in the Nanaimo Bingogate scandal, 2001, and his role as Chair of the Select Standing Committee on Finance and Government Services. Lovick was Minister of Aboriginal Affairs from 1998-99, then Minister of Labour. One year before this debate, Lovick signed an agreement with Wetsuweten Chiefs to "address issues raised by the December 1997 Supreme Court Delgamuukw decision." "This agreement signals a commitment to renew discussions aimed at achieving a fair and affordable treaty settlement," Lovick said.

"Until this treaty is signed, government has no jurisdiction over Nisgaa land."
Jack Weisgerber

protecting the honour of the Crown… We have the authority to enter this agreement, regarding the courts - that's a hypothetical question."
DeJong - "It's not so hypothetical when there's an action before the court."

Clark - "It does not bestow right to go to court for Section 35 rights."
Dossanjh - "This treaty is exhaustive definition of Nisgaa Section 35 rights (laughs), they will have no more rights than this; their rights under Section 35 have been exhausted, exhaustively defined. This does not create a third order of government, it creates municipal government, not requiring Royal assent - it proves the point we've been trying to make for a long time."
Wilson - "The Province never has had paramountcy over provincial land. This treaty provides finality and cannot be a bridge for others."
Dossanjh - "Absolutely correct, under the Indian Act."
Plant - "What is the government's intention? Merely to protect identity of the Nisgaa Nation?"
Dossanjh - "Member understands our intention correctly…. Band Councils apply under the Indian Act."

January 20, 1999
DeJong - (noted that there are 5500 Nisgaa citizens, 3300 status Nisgaa adults, 2376 of whom "enrolled" in the Nisgaa "Nation" in order to vote, and 1451 who voted in favour.) "What legal assurances are there that the number who voted are enough to legally bind all Nisgaa citizens - (as it's) not a majority?"
Clark - "Legally, I'm getting info from people beside me, everything is fine; there's an enrolment process, the treaty sets out provisions, it was a significant majority. To take advantage of the Nisgaa treaty and rights one has to be enrolled in the Nisgaa Nation."
DeJong - "The KinKolith group, who voted "no," the strength of their argument would be diminished? It (the treaty) can effectively release them and modify their rights according to the Attorney General?"
Dossanjh - "The answer is yes, sufficient care has been taken to deal with these issues… a legally binding document."
DeJong - "The threshold to be binding - a majority of eligible voters or majority of enrolled eligible voters?"
Dossanjh - "Appropriate steps have been taken, yes majority voter assent can bind other Nisgaa citizens… There was a high threshold to meet and that was met."
DeJong - "Eligible versus enrolled and eligible, does the government have a position?"
Dossanjh - "I have answered in the best possible way that I'm going to, we were satisfied… Those enrolled, 75% no, 70% of those who should support treaty."
DeJong - "No, threshold was 50% + 1."
Dossanjh - "85% of eligible cast a ballot. 72% voted in favour. Overall, 62% of eligible support treaty. This binds for good the Nisgaa citizens."
DeJong - "There were 1000 other eligible unenrolled - does the government have a position?"
Dossanjh - "I'm quite aware of what he's trying to establish and I won't take a position for the future. We were satisfied with Nisgaa treaty for Nisgaa people."

"This is not
really a nation.
All I care is what
limitations, restrictions,
restraints upon their
rights are!
This is all they get,
this is all the rights
they have.
(smiling)
I don't care
if they call themselves
Tribal Council
or Nation."
- Ujjal Dossanjh

Plant - "Regarding the extinguishment issue, the Premier and I made the point, aboriginals are not going to surrender their rights - his view was that extinguishment is too threatening to sense of identity of aboriginal people. Rights ceded, released and surrendered, did the government ever take the position, was it ever the government's position that these must take place?"

Geoff Plant
is a former Crown Counsel with successful prosecutions of aboriginal roadblockers on his resume. In *Delgamuukw,* he argued for BC that aboriginal title had been extinguished. He became Attorney General and Minister Responsible for Treaty Negotiations, from 2001until 2005. He assisted with the Liberals' referendum on treaty making in BC. He then made sweeping cuts to Legal Aid which caused the Canadian Bar association to take BC to court; and scrapped provincial protection of women victims of domestic violence. In 2004, B.C. police complaint commissioner Dirk Ryneveld recommended a public inquiry into the Frank Paul case, but this was rejected by then-attorney general Geoff Plant. He is now Project Civil City commissioner, for Vancouver's Mayor Sam Sullivan.

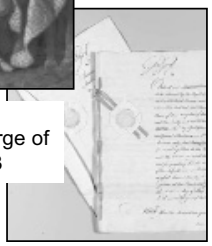
Lovick - "It seems to me I don't think we're serving the treaty process well by talking about ins and outs, (we need) an abundance of caution, we're talking, to display to the world our negotiating position - limited ability - there's a reluctance to talk about what we went in with… (but we've achieved) Certainty in two ways, 1) land base - so we know precisely who owns land base and what the limits are, and 2) undefined aboriginal rights are redefined."
DeJong - "Here's the difficulty, the government wants to minimize obligation to discuss."
Clark - "I couldn't have said it better myself."
Plant - "Certainty issue: in Delgamuukw, if aboriginals want to use land outside definition of title, they must surrender those lands. Why hasn't government taken surrender process?"
Clark - "The language we are using achieves comparable certainty. My goodness, how can it get any stronger? The critics have been muted."
Dossanjh - "The Premier made case strongly - there is no question about certainty of this agreement."
Clark - "We have done enough to canvas, to protect ourselves from any eventuality. Modification of rights are total, as set out in the treaty. In the unlikely possibility (that that's not protection enough) the Nisgaa have released us. (In the vent of) the impossible but hypothetical failure, we are indemnified from any costs, losses, damages, or liability. The possibility of the first two steps failing is so remote, but still, indemnity. ["indemnify" means "legal exemption from penalties attaching to unconstitutional or illegal actions."]
Weisgerber - "I have long been a supporter of cede, release and surrender language. There is a huge resistance to that language. "I commend government, this is a useful debate, clarifying. I don't believe anybody could believe the language in Section 22, 31 (of treaty) to be inferior to 'cede, release and surrender.' Negotiators and government have gotten it right. I do believe very much that this is superior. We've got it right. I commend government."
Dossanjh - "Committed themselves to indemnify Canada. This treaty is a full defense to legal action. The provincial Crown has the right to sue and recover damages." (if successful legal action is brought against them.)
Clark - "The government has ways of enforcing the indemnity. (300 million dollars go to the Province, not the Nisgaa.)
DeJong - "As this debate unfolded, you could just about have had a cabinet meeting in here, couldn't you? (Dossanjh laughs out loud)

"Certainty issue:
in Delgamuukw, if aboriginals
want to use land outside
definition of title, they must
surrender those lands.
Why hasn't government
taken surrender process?"
- Geoff Plant, Reform

"The language we are using
achieves comparable certainty.
My goodness,
how can it get any stronger?
The critics have been muted."
- Premier Glen Clark

1876 Canada occupies unceded Indian land using illegal Indian Act ... becomes White Paper Policy of 1969 ... becomes Comprehensive Claims Policy of 1974... becomes BC Treaty Process of 1992 to today!

May 4, 1493, Papal Bull "Inter caetera" delivered by Pope Alexander VI, instructs:
"Among other works ... in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself." "In the islands and countries already discovered are found gold, spices, and very many other precious things of divers kinds and qualities. ...we, of our own accord,... by the authority of Almighty God conferred upon us ...do by tenor of these presents, should any of said islands have been found by your (*explorers)* envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south,..."



King George of 1763

Chief Pontiac, England's crucial military ally.

May 29, 1537, Sublimus Dei delivered by Pope Paul III: "...the said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and have no effect."

June 19, 1538 - Pope Paul III revoked Sublimis Deus at the urging of Spanish Emperor Charles V. However, there is controversy as to whether the Pope actually revoked Sublimis Deus or the brief Pastorale Officium of May 29, 1537.

1704, Queen Ann's Standing Committee or Privy Council was created in England to hear disputes between the new colonial governments and the Indians. This Council came about as a result of the court case, *Mohegans vs Connecticut,* where the Mohegan Indians sued the US government for crimes including and related to stealing lands.

1763 Royal Proclamation was deliverd at the end of the Seven years War between England and France. Britain was totally dependent on Indians in America for their allegiance against the French. The proclamation incorporates key elements of *Sublimus Dei,* and instructs all Settlers as to the King's law:
"And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds -- ...no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands ... whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.
And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company,...
And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described. or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.
And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests. and to the great Dissatisfaction of the said Indians:.. We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, *Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.*

1832 The US Supreme Court confirmed that, "except by compact we have not even claimed a right of way through their lands."

1867 the British North America Act enacted by British . This document includes that:
91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,--
24. Indians, and Lands reserved for the Indians.

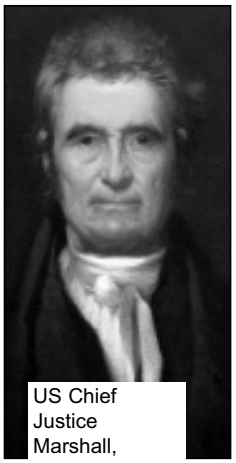
Judge Begbie was shipped to BC from England in 1858, was made Chief Justice and swore James Douglas into power over "BC."

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same."
Those *other Interests* include the Indian interests.

May 16, 1871 Court at Windsor, *Order of Her Majesty in Council admitting British Columbia into the Union* **(BC Terms of Union)**
5. Canada will assume and defray the charges for the following services:-- And such further charges as may be incident to and connected with the services which by the "British North America Act of 1867" appertain to the General Government, and as are or may be allowed

to the other Provinces."
10. The provisions of the "British North America Act, 1867" shall ...be applicable to British Columbia.
The *Terms* also included such points as that the feds would *buy land from BC* to complete a rail line to the north, and apparently relied on such articles as 1860's *The Preemption Act* authored by BC's Judge Begbie. As a colony of traders and raiders, all such acts of assumption were categorically illegal, and for Canada to adopt them into the Union was a major departure from the Constitution they owed allegiance to.

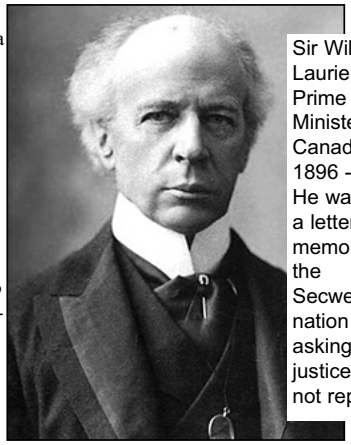
In 1803, US President Thomas Jefferson purchased the ³Louisiana Territory² from France for $15,000,000.00.


US Chief Justice Marshall, see '1832'

1874 BC Lands Act this Act unilaterally opened up all lands to settlers. It was over ruled the following year in the:

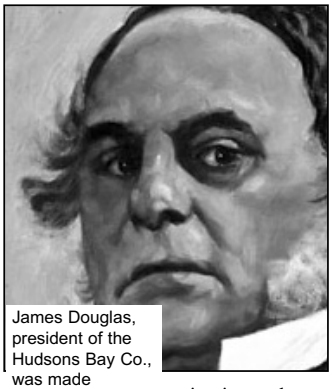
1875 Duty of Disallowance - Canada disallowed the BC Lands Act, but

in the **1876 Indian Act,** Canada took Legislative license with all matters pertaining to Indians or Indian lands, and in this way sought to disenfranchise all the indigenous tribes by this legislation. Without a constitutional amendment to undo the obligation to buy the land first.


Sir Wilfred Laurier was Prime Minister of Canada from 1896 - 1911. He was sent a letter, a memorial, by the Secwepmc nation in 1910, asking for justice. He did not reply.

October 7, 1898 In Re Indian Claims;
Province of Quebec vs Dominion of Canada appeal case in Supreme Court of Canada: "It is consistent with section 91 of The B. N. A. Act that such a contingent and uncertain liability con- nected with the Indians fell upon the Dominion at confederation, and did not go to increase the surplus debt existing at confederation to be borne by these provinces.
Section 111 of the B.N.A. Act in declar- ing that Canada should be liable, not simply for the "debts," but for the "debts and liabilities" of each province existing at the union had for its object and effect the imposing of such obligations upon the Dominion, and when by sections 11., 114 and 115 the word "debt " alone without "liabilities" is used in dealing with the subject of the public debt something different and more restricted is meant than by the use of the more comprehensive terms "debts and liabilities" in section 111. The term "and liabilities" added after the word "debts" means something and adds something, and should be so interpreted.

1910 Prime Minister Laurier visits BC to settle the federal-provincial conflict over reserve size and Aboriginal Title. Federal and provincial lawyers prepare ten questions to be submitted to the Supreme Court of Canada. Premier McBride demands the removal of any questions related to Aboriginal Title, informing Prime Minister Laurier that Aboriginal Title is a political matter that cannot be decided in court as it would have disastrous effects on BC's financial standing and jeopardize investment in the province. Premier McBride then travels to London to request that Britain maintain a policy of non-interference in BC. The London colonial office agrees.


James Douglas, president of the Hudsons Bay Co., was made Governor of "BC" in 1858.

1914 In response to the Nisga'a Petition, Prime Minister Borden revives Laurier's proposal to bring the issue of title to the Exchequer Court. Order-in-Council PC751 establishes the conditions under which Canada would allow such a case. Before a case can be heard, the Indians of BC first have to agree to 1) use lawyers appointed by the Department of Indian Affairs; 2) surrender their title if the court agrees that it exists; and 3) accept the recommendations of the McKenna-McBride Commission as a final adjustment of reserve lands.

1931 Statute of Westminster Canada secured full control of its foreign affairs. It includes the passage:
"7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder."

December 9, 1948, Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by the United Nations General Assembly in Geneva:
Article 1
The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.
Article 2
In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.
Article 3
The following acts shall be punishable:
(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.
Article 4
Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

1949 The Supreme Court became Canada's final court of appeal . Decisions of the new court still could be appealed to the Judicial Committee of the Privy Council for final judgment. The Judicial Committee's superior appellate jurisdiction over Canada did not end until 1933, for criminal appeals, and 1949, for civil appeals.

2004 U.S. Supreme Court Justice Clarence Thomas, in *U.S. v. Lara,* held that the whole of federal Indian law, which derives from the *Appropriations Act*, 1871 (the same as the whole of federal Indian law in Canada derives from the Indian Act, 1876), is prima facie unconstitutional.

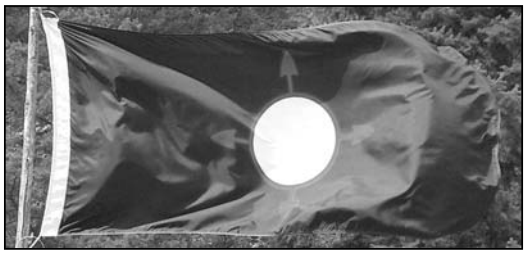
2005 the Constitutional Court of Spain *Menchu v. Montt* recognized and affirmed the jurisdiction and duty of every national court system to act if and when genocide is occurring in another nation due to "judicial inactivity."

2006 the General Assembly of the United Nations enacted a Resolution recognizing and affirming that the United Nations legal system in all its aspects is bound by the rule of law not to give in to the opposite principle that might is right. The General Assembly phrased this as "universality" and "non-selectivity" in application of law.

2007 BC Supreme Court Justice Vickers stated in his ruling that:"It appears that the province has been violating aboriginal title in an unconstitutional and therefore illegal fashion since it joined Canada."

Sources: *Stolen Lands, Broken Promises,* Chapter 1: Dispossession and Resistance in British Columbia; www.hrweb.org; www.solon.org; www.nativevillage.org; www.papalencyclicals.net; Dr. Bruce Clark; www.collectionscanada.ca

All you need is land!



Your Homeland

is what makes your nation a people: title. Not *fee simple title,* taxed by BC. Without land, you are an ethnic minority. John Borrows in "Domesticating Doctrines: Aboriginal Peoples after the Royal Commission" (2001) "Courts have read Aboriginal rights to lands and resources as requiring a reconciliation that asks much more of Aboriginal peoples than it does of Canadians. Reconciliation should not be a front for assimilation."

Consider:

If your people have always needed the whole territory, why wouldn't you need it now? Why wouldn't future generations need it centuries from now? In spite of Canadian policies that ignore Aboriginal Title, this land belongs to the Tribes until they decide to sell it. There wouldn't be a treaty process if Canada or BC owned the land.

"What is clear to me is that the impoverished view of Aboriginal title advanced by Canada and British Columbia , characterized by the plaintiff as a "postage stamp" approach to title, cannot be allowed to pervade and inhibit genuine negotiations. A tract of land is not just a hunting blind or a favourite fishing hole. Individual sites such as hunting blinds and fishing holes are but a part of the land that has provided "cultural security and continuity" to Tsilhqot'in people for better than two centuries." Justice Vickers in *Tsilhqot'in Nation vs. British Columbia, November 2007*

You hunt

BC treaties strip you of your aboriginal right to hunt and modify them to become measured, site specific rights. "Aboriginal title land is not "Crown land" as defined by provincial forestry legislation. The provincial Forest Act does not apply to Aboriginal title land. ... and such title has not been extinguished by a conveyance of fee simple title." *Tsilhqotin vs BC*

What defines your People, *if not your land?*

When you sell your land, what else goes with it?
Is the land your connection to the past? Does your language come from the land? Will you give up the parts of your culture that depend on the land?
"In *Van der Peet*, McLachlin J. stated at para. 230: … s. 35(1) recognizes not only prior aboriginal occupation, but also a prior legal regime giving rise to aboriginal rights which persist, absent extinguishment." - quoted by Justice Vickers in *Tsilhqot'in Nation vs. British Columbia, November 2007*

Water

was recently recommended to the world's top stock brokers and investment managers as the commodity to invest in. Does your treaty settlement lands include your glacier streams?

"I have found there is land inside and outside the Claim Area over which Tsilhqot'in Aboriginal title would prevail. .. The resources on Aboriginal title land belong to the Tsilhqot'in people and the unjustified removal of these resources would be a matter for appropriate compensation. It is not my intention to dismiss a valid claim for compensation..." Justice Vickers in *Tsilhqot'in Nation vs. British Columbia, November 2007*

Wildlife Habitat

Many First Nations are negotiating for 1-4% of their territory. Many will lack jurisdiction over the slopes and mountains that feed their treaty settlement lands. The animals' winter habitat, migration corridors, and medicine places will not be recognized in your treaty. A treaty First Nation will have no more than 3rd-party status on regional advisory panels when it comes to land use decisions on traditional territory. BC legislation does not protect wildlife.

"The Minister will retain authority for managing and conserving Fish, Aquatic Plants, and Fish habitat.
The public will still be able to hunt and fi sh in the Yekooche public treaty lands.
The Minister will retain authority to manage and conserve wildlife and migratory birds."
These provisions are included in every BC treaty Final Agreement, and are a key part of BC and Canada's non-negotiable positions.