Recognize anyone here?
Who are they
to recognize crown title
on our unceded lands?

The BC Treaty Negotiating Times

Summer 2009

Recognition of BC?

If the tribes acknowledge crown title, what will become of the land? This pictograph in Stein Valley shows how everything depends on Mother Earth.

The First Nations Leadership Council is collaborating with the province to recognize crown title in BC. They promise a province-wide benefits sharing agreement. Who is the province to pretend they can recognize indigenous rights? We do not need the province to recognize our rights, but the province needs indigenous peoples to recognize them, because they have no jurisdiction over our traditional territories.

In this Special Edition of the BC Treaty Negotiating Times, we bring you insight, international comparisons, and criticism.

When the province comes to the table to talk about the Recognition Act, what they are really seeking is recognition of the province.

This has come to pass because our ancestors stood strong and never gave BC a bill-of-sale. They never signed any agreement. There is no way that the British Columbia government would have engaged the former Attorney General Geoff Plant to negotiate the Recognition Act if we did not own British Columbia.

There is no way that Canada and BC governments would be negotiating treaties under the British Columbia Treaty Commission if we did not own our territories.

The proposed provincial Recognition Act in its current form would secure recognition of the province of British Columbia and their control over our territories but we can reverse that if we stand up. The British Columbia government and the First Nation Leadership Council have opened the door on the recognition of our Aboriginal Title. We need to take control. We need to use this opportunity to shift from poverty and servitude to return to being self-reliant and owners of our territories.

The choice is ours as Indigenous Peoples. What the province has put on the table is garbage but that does not mean we cannot change that. You and your action, energy and ingenuity are needed. The struggle has laid these choices before you.

Words of the People-Page 19

It's not about the money, it's about the land.

We hear that "recognition legislation" will mean big bucks for First Nations. The BC government keeps telling industry it won't change a thing. BC wants to negotiate because they just can't win in court anymore.

Poverty - Page 10

Assimiliation Again?

Surely there will be no more BC Treaty Commission extinguishment treaties.

As aboriginal people gain a stronger understanding of the international strength of their title, BC and the First Nations Summit moves to *legislate* municipal status on the nations.

Recognizing the Child of BCTC - Page 2

Words of the People

Throughout this paper they remind us why our ancestors never engaged with the province and why this provincial recognition act is so dangerous.

In The Words of The Hereditary Chiefs
quotes throughout from across the nations

The Latest Power Grab

As Indigenous peoples we have inherent jurisdiction - and the province wants to use this legislation to claim jurisdiction over our territories.

Our right to self-determination does not need provincial recognition.

The provincial recognition legisalation is an empty shell for indigenous people, and has a hidden pearl for the province to secure hidden access to indigenous territories.

Legal Pointers - Page 16-18

Looking west? Look east.

The only governments with the strength to negotiate with indigenous nations are the federal and British crowns. The idea of dealing with the province regarding land issues has always been unacceptable to our peoples and ancestors. Only the federal government can enter into nation to nation agreements and we have to force them to resolve the land question.

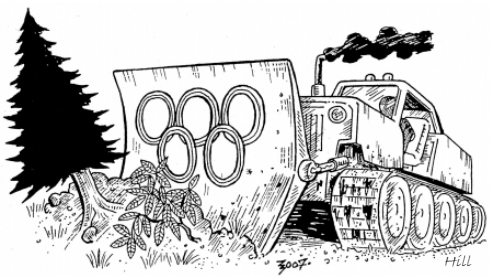
Remember! - Page 8

Industry is not afraid of this.

The architects of the proposed Recognition and Reconciliation Legislation - lawyer Geoff Plant, Premier Gordon Campbell, and the First Nations Leadership Council, are promising greater certainty for third party interests with this new legislation.

These people have been touring the mining associations and industry stakeholders to explain how much better it will be for them.

Like in Forest and Range Agreements, the government will be able to prescribe the limits of shared decision making and the ceilings on benefits agreements. This is for the certainty of industry - and government revenues.



In the words of the Hereditary Haisla Hemas

March 10, 2009
Dear Ed John and Stewart Phillip

Today I received the attached document re: implementing the new relationship. This document talks about Aboriginal Title and Rights.

The Haisla Hereditary Chiefs do not speak of their ongoing ownership of Haisla Lands and Waters in the past tense as referred to by the Canadian contrived word, "Aboriginal". If you break this word aboriginal down into its component parts it goes like this, ab - original. ab meaning - "used to be" so the word aboriginal really means - used to be original. Haisla Hereditary Chiefs cannot agree with this. We will never agree that we used to be original but now we are a remnant of our originality. Instead we continue to hold ourselves out as the original people of our territory and thus still the true Indigenous owners of our ancestral territory.

Under "Recognition Principles," this document states, "That the Crown Title exists with Aboriginal Title throughout British Columbia." We cannot agree with this statement. First you and your respective organizations have never sought and were never given a mandate from Haisla Hereditary Chiefs to discuss and or negotiate such a position on our behalf with the Province. The authority to recognize or not recognize BC Crown Title lies only with the Haisla Hereditary Chiefs. I ask you and your organization to provide evidence that crown title exists in Haisla Ancestral Homelands. We hold you to the strictest of proof.

Under "Interim," it states, "Prior to comprehensive agreements being in place with an Indigenous Nation the Interim level of engagement would involve the application of the recognition principles through shared decision-making and revenue-sharing agreements to certain specified categories of development projects and defined "strategic decisions".

The Haisla Hereditary Chiefs cannot agree to this statement as it will tie us in to recognizing BC ownership through Crown Title as the starting point for any future negotiation of comprehensive agreements. This is a non starter for Haisla Hereditary Chiefs.

Further on your document states, "At the interim level statutory decision makers will be enabled to exercise their discretion in accordance with agreements with an Indigenous Nation. Again Haisla Hereditary Chiefs cannot agree with this statement. This in fact gives recognition to "statutory decision makers" as Crown Title owners of our ancestral lands and therefore authority holders even before and in accordance with future agreements.

It has been brought to our attention that negotiation of this document has been going on for one year already before we hear anything. Because of the issues herein contained and others we do not have confidence in you and your organization to properly represent the true soveran interests of the Haisla Nation and respectfully ask you to stand down in this endeavor until our issues can be addressed in the proper forum.

Morris Amos
Chair, Haisla Hereditary Chiefs
Strategic Alliance Committee

Chief Michael Robinson,
spokesman for Chief Jasee, Haisla.

"We need traditionalists to step up and shut this initiative down and relegate it to where it belongs, namely on the trash heap of history."

- Morris Amos, Haisla

In this Issue

The Proposed "Recogntion Act" will likely facillitate

the Federal "1969 White Paper" Objectives and Endanger First Nations Aboriginal Title & Rights

By Russell Diabo, Mohawk, First Nations Policy Consultant

For those of you too young to remember, in 1969 the federal government proposed a "White Paper" on Indian Policy. A "White Paper" in federal terms is supposed to be a discussion paper, but the federal government announced the "1969 White Paper on Indian Policy" as a federal policy.

Essentially, the main objectives of the federal government in 1969 were as follows:

Eliminate the legislative and constitutional recognition of Indian status. Abolish Indian Reserves & impose taxation.
Dismantle Historic Treaties.
Off-load federal Indian programs and services onto provinces, municipalities and First Nation communities.
Entrench economic underdevelopment (the socio-economic gap between Indians and white Canadians).

In response to the proposed Policy of assimilation and termination of rights, First Nations and their leaders organized opposition to the 1969 White Paper and formed associations at regional and national levels. *Continued Page 17*

Previous attempts at extinguishment with consent:

1857 – Act for the Gradual Civilization of the Indian Tribes in the Canadas
1876 - Indian Act; unilateral imposition of conditions so bad that many refused to register as "Status Indians."
1926 – judicial technical review of BC land question is disposed of in Ottawa as irrelevant and not justiceable
1969 - White Paper Policy
1974, '86 - Comprehensive Claims Policy - attempts purchase of extinguishment by aboriginal title holders
1993-present - BC Treaty Commission, agreements indemnify BC, Canada, and cede aboriginal title for fee simple
2000 - First Nations Governance Act; Ottawa determines native government
2009 - Recognition and reconciliation legislation

Provincial Recognition Legislation

How they are trying to sell it to you:	And what you stand to lose:
The proposed legislation is promoted as recognizing your Aboriginal Title. The Canadian courts have already recognized Aboriginal Title and Rights we do not need the province to recognize our title through legislation.	In exchange for the recognition of Aboriginal Title, the province demands that indigenous peoples have to recognize Crown title. This is a big concession – our ancestors taught us that we can never allow the province to have a say in our territories.
The proposed provincial recognition legislation will not take away from federal and provincial government powers.	The proposed legislation does not recognize indigenous sovereignty over our territories, but forces us to share our territory with the province.
The First Nations Leadership Council tells you that following the legislation you will no longer have to go to court to prove your Aboriginal Title and Rights.	Don't be misled – this is only true as long as you participate under the proposed provincial processes. If you do not agree with the province on something and assert your Aboriginal Title, the province will still argue against the existence of your Aboriginal Title and Rights in court.
The First Nations Leadership council says the key advantage of the proposed legislation is that the province will engage in processes for shared decision-making and revenue and benefit-sharing.	We own our land and resources and do not have to share with the province. The revenue and benefit-sharing the province proposes would be under provincial law and operate according to a formula determined by the province .
Joint decision-making is not a veto right for indigenous peoples, the provincial government will maintain final decision-making authority.	As indigenous peoples you have sovereignty over your territories, this means no development can happen without your free prior informed consent.
Nobody knows how the money is going to be shared. The First Nations Leadership Council cannot even tell you how much money the province will put on the table.	The First Nations Leadership council is asking you to hand control over your territory to the province without anything in return. The province will control which and how much money they will give us under these processes.
The First Nations Leadership Council asks you to stand behind them because business does not like the proposed provincial recognition act.	Industry stands to benefit the most from the legislation as it is proposed now, because it will secure them access to indigenous territories and deliver the "certainty" they have been calling for. The Association for Mineral Exploration of BC has already endorsed the proposed legislation.
The provincial legislation foresees a "nation-rebuilding process". The discussion paper describes a re-constituted nation as "one political structure with a mandate to enter into shared decision-making and revenue and benefit sharing agreements with the Crown, the Indigenous Nation will be considered to be reconstituted for the purposes of this Act." Emphasis added	As indigenous peoples we have our own inherent governing structures and authentic decision-making processes. The proposed provincial legislation would allow for amalgamation of Indian Act bands (First Nations). The province will decide which entities they are ready to negotiate with and will favor Aboriginal organizations that mirror government bureaucracies and corporate structures. This undermines our sovereignty and is an attempt to assimilate indigenous peoples.

look at this:

Six regional meetings scheduled after the Leadership Council supported BC to table the legislation before May 12?

The First Nations Summit communications manager confirms that the upcoming meetings scheduled, six dates, are an opportunity for the FNLC to update Chiefs and "get feedback." Surely this is a little after the fact, considering the Council was prepared to have that legislation go through Parliament two months ago.

And what can they provide feedback on? A discussion paper. "No one gets to see draft legislation," says Colin Braker, FNS.

Will there be a criteria of consent from at least a majority of tribes or communities before this legislative proposal continues moving forward? Chief Stewart Phillip says no to this question. There is no notice of a voting date for All Chiefs. None of the Leadership Council has put their job on the block and called for an election within their respective assembly. Ryneld Starr, of the AFN BC, says, "the meetings are informational, so members of the communities can come out and hear more about the recognition legislation."

But why do we need to know this information if our opinions are irreleveant to BC and the Council?

Who is developing this legislation?

Geoff Plant
is a professional
Indian fighter.
He is now advising the
government of BC, of which he
was Attorney General in 2001,
on the Recognition and
Reconciliation Act.

He argued *Terra Nullius* in *Delgamuukw.* As a crown prosecutor in 1994, he addressed a BC court and said that the Líl'wat have no recognizable title or right that would justify their roadblocking logging operations, and they are simply guilty of contempt of court. He said there is no constitutional question; there are no constitutional issues at play, that the provincial Crown does not recognize Aboriginal Title and Rights because they do not exist. He sued BC *in protest* of the Nisga'a extinguishment agreement - because it afforded some municipal powers of self-government.

It must be strange, then, to discover that he is the one engineering the so-called "Recognition and Reconciliation" legislation. Well, he is certainly familiar with the issues. He defended the crown against the houses of the Gitxsan and Wetsuweten in *Delgamuukw.*

Mr. Plant was one of three who sued BC for creating a land claims settlement with Nisga'a that gave them (minimal) self-government powers, comparable to those a municipality would have. The other two named in the case were Gordon Campbell, now Premier of BC, and Mike deJong, now Minister of Aboriginal Affairs and Reconciliation.

They have not abandoned their sense of humour in naming the Ministry responsible for aboriginal issues "MAAR," or "mar," which means to disfigure and make unrecognizable.

Geoff Plant resigned from the office of the Attorney General in 2005, after four years in which he cut legal aid to shreds and walked away from teachers, and amid considerable controversy to do with issues of missing and/or murdered aboriginal women, women's rights in general, and deal-making at Sun Peaks ski resort. He continues as a lawyer at bar.

In 2001 when the Skewelkwek'welt Protection Center was fighting to stop the expansion of Sun Peaks Ski Resort, Geoff Plant was the Attorney General of BC. Geoff Plant arranged a meeting with Arthur Manuel who was one of a few chiefs who supported Skwelkwek'welt Protection Center at Sun Peaks.

Plant asked that the Secwepemc Peoples should leave the mountain and negotiate. Manuel told Plant that only the people who were up the mountain could decide that. When Manuel relayed the message from Plant, the Skwelkwek'welt Protection Center said that they will agree to leave the mountain if the province would impose a moratorium on the expansion of Sun Peaks when negotiations were happening. Plant refused to impose a moratorium and told Chief Manuel he was disappointed that they could not come up with an agreement.

Roadblockers were later arrested, and Sun Peaks expanded.

To Plant's work on the legislation, Minister Mike deJong told a CPAC debate a year ago, "His inclusion as part of the government team was welcomed by first nations, and they see that as a positive development." Whoever supports this legislation under his direction must be either very forgetful or very ambitious.

The natural progression of a career in Indian fighting does lead to government, Plant follows in the highly regrettable footsteps of such genocidal maniacs of BC as Amor deCosmos, Joseph Trutch, and Ujjal Dossanjh. And so does a career in selling out the grassroots aboriginal title holders lead to political advancement.

By Kerry Coast

"In fact the proposal acknowledges provincial authority to make decisions and to infringe aboriginal rights and title."

Geoff Plant, Partner in the law firm Heenan Blaikie, is shown here speaking at the April 27, 2009 Association for Mineral Exploration British Columbia Speaker Series event. It's on their website, amebc.ca. *Photo by Jonathan Buchanan.*

Look at this

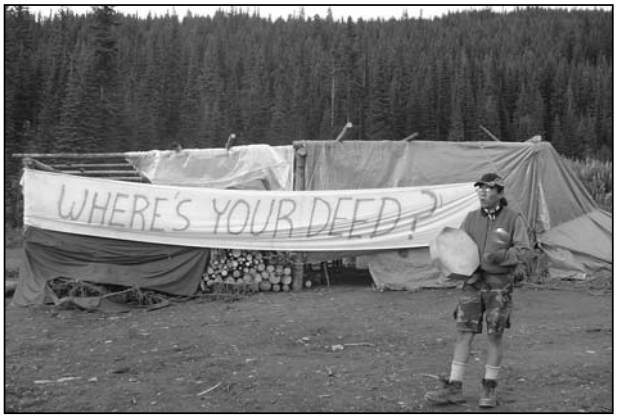
The same guys who sued BC, Canada and Nisga'a because "no aboriginal right to self-government exists" are now trying to convince you to "share decisions" with them, using "aboriginal laws"

In 2000, today's Minister of Aboriginal Affairs and Reconciliation, the Premier of BC, and the now legal advisor of the recognition legislation were just as busy trying to eradicate the force of aboriginal title from the face of BC as they are now that they are the government.

Michael deJong, Gordon Campbell and Geoffrey Plant sued the Attorney General of British Columbia, the Attorney General of Canada, and the Nisga'a Nation. They argued against, "… those portions of the treaty which allocate legislative power in the Nisga'a Government, ...The heart of this argument is that any right to such self-government or legislative power was extinguished at the time of Confederation. ...They say that in 1867, when the then British North America Act was enacted, although other aboriginal rights including aboriginal title survived, any right to self-government did not. …leaving no legislative powers for aboriginal people and their governments." (Williamson J's reasons, Supreme Court of BC)

Perhaps this sheds light on their legislative plan that any new forms of First Nations "government," or, "rebuilding" could only happen under a provincially sponsored commission. It's also a insightful into the government's meaning when it says "shared decision making means we both bring our laws to the table."

The judge disagreed with their view and dismissed the case. This may further explain the government's preference to get away from the courts - there's nothing like extinguishment with consent, negotiated fair and square.



In the words of **Janice Billy**

Secwepemc

Whose Land Is This?
We Should Not Accept the Proposed Act

"We must restore
our Indigenous values
and beliefs to guide us
in all our decisions.
We must rebuild our
traditional forms of
governance
based on our way of life.
We must dismantle colonial
and neo-colonial institutions
which continue to oppress us.
We must assert and uphold
our responsibility,
as Indigenous peoples,
to protect the land
and what it provides for us.
We can achieve this
through sustainable practices
rather than by accepting
"dirty money" from industries
which destroy the land."

There are many reasons why we, as the people of the land, should not support the recognition act proposed by the Provincial government, Union of BC Indian Chiefs and the Summit and the BC AFN. This act, if passed, will become legislation and the people it directly affects know the implications and consequences. This proposed "recognition" act was crafted in secrecy without the knowledge and consent of the people who will be the most affected.

It was crafted by individuals who cannot make decisions on behalf of our future generations.

It is clear (see the FNLC's letter of congratulations to Gordon Campbell after the recent election) that the UBCIC, the Summit, and the BC AFN support the Liberal Party. They must understand that in supporting this government they are supporting economic exploitation of the land in all its many forms – mining, fish farming, hydro projects on creeks and stream, mass scale tourism, and the list goes on.

Supporting this government means supporting the criminalization of the people who took strong stands to protect our lands from destruction. All of this contributes to the extinguishment of Title and Rights and the extinction of us as peoples of the land

When the UBCIC, Summit, and BC AFN recognize the jurisdiction of the province, they are undermining the strong position traditionally taken by our Elders to protect our land and responsibilities to the land. We must not accept the decisions made on our behalf by a small group of individuals, when these decisions are so detrimental to the future of the land.

The position of our Secwepemc Elders has always been strong. Within the Secwepemc and Okanagan Nations, our position comes from the *Confederated Traditional Okanagan-Shuswap Declaration* which, in part, states, "We have never knowingly sold our title to our land or the rights to use or the resources on it. We never made any Agreements which give any other Nation the right to take any of these Lands and Resources into their possession."

Our Elders have repeatedly said, "we never signed our names to anything". We know that the province has no deed – no proof of how they obtained their assumed ownership to the land. How can they make offers of *resource sharing* on what they do not own. We know we are coming from a place of strength and they, as settlers, are coming from a place of weakness. We know we don't have to prove anything.

The provincial government, on the other hand, knows that they do not have title to our lands. Hence their obsession with land and resource uncertainty and loss of socio-economic opportunities. The goal of the province has always been theft of the land and development of the "resources" on it. Geoff Plant in his *Silk Purse or Sow's Ear?* clearly illustrates the intentions of the province. He states, "Fundamentally this undertaking is not about changing ownership or jurisdiction, but about finding new ways of engaging and better processes for deciding what happens on the land." He further states, "In fact, the proposal acknowledges provincial authority to make decisions and the ability to infringe aboriginal rights and title." He promises that, "existing land interests including fee simple are fully protected," and, "crown title is expressly protected." Clearly, the province has already decided on how this new arrangement will work.

Plant's whole commentary smacks of paternalism and superiority. This recognition legislation offers to, "provide tools to assist in the process of Nation re-building." Surely, we must be able to undertake Nation building ourselves within our respective Nations. We must remember how their tools of colonization (including governance) are still impacting us today.

Within this proposed legislation, how would our people be fully involved when Plants says things like "shared-decision making should not be confused with joint decision-making. In particular, shared decision does not automatically mean that both parties have to agree before some action is undertaken." We should know from experience whose actions will be promoted. It certainly won't be ours.

We have to clearly understand the consequences of agreeing to such legislation. One of which is recognizing the province as the legitimate owner of the land and resources. This will surely set the tone for the work needed to restore our traditional territories.

Geoff Plant comments "crown title is expressly protected," so does this mean that "crown land" will be forever protected by legislation? As we know, the entire province is carved up into fee simple, parks, forestry and mining tenures, cattle grazing, recreation areas, and "crown land". So what land will be left to take back into our control? Are we to be satisfied with "revenue sharing", remain on our little reserves, and let them assume ownership of the land?

So what are we, the people outside of the decision-making bodies, to do? Our first priority must be to protect the land and the culture and language emanating from the land.

We must restore our Indigenous values and beliefs to guide us in all our decisions. We must rebuild our traditional forms of governance based on our way of life. We must dismantle colonial and neo-colonial institutions which continue to colonize and oppress us. We must assert and uphold our responsibility, as Indigenous peoples, to protect the land and what it provides for us. We can achieve this through sustainable practices rather than accepting "dirty money" from industries which destroy the land.

Our goal must be self-determination. That was one of the original goals of the UBCIC. This will mean developing uncompromising leaders committed to freedom. Our leaders must be ethical, principled, have the moral authority to lead, and consider the effects of decisions on the next seven generations. Our governance models must be responsive to the needs of the people. Collective, not individual, decisions must be made. Our governance models must be non-hierarchical, non-coercive and non-authoritarian.

When we take the time to work on rebuilding our Nations ourselves, others will no longer make decisions on our behalf. As is stands, the UBCIC, the Summit, and the BC AFN collaborated with the province in this proposed recognition legislation without input of the people.

Now regional meetings are being set up. It is kind of late for that, especially with the provincial government's confidence that it will become legislation. If the FNLC were sincere about involving the people, it should have happened from the onset.

Grand Chief Stewart Phillip *in conversation*

Penticton, Okanagan,
President, Union of BC Indian Chiefs

Question:
"Do you have some minimum criteria for popular support among the tribes for this legislation before you proceed further with it?"

Grand Chief Phillip: "No."

May 19,2009
In an interview by phone
with Kerry Coast, Editor,
The St'át'imc Runner newspaper

Coast: What is the objective of these six meetings you have planned regarding the recognition legislation?
Phillip: We're going out to get the information to the people, to dispel some rumours that have come about. There was a discussion paper by Louise Mandell and a response to that by Arthur Manuel, and we just want to respond to some of the recurring concerns.
…We attended a meeting in Spallumcheen, with the Secwepemc Chiefs and Arthur was there. Concerns were raised and we answered those.

I've also been meeting with the Mining Association, the Minerals Association and industry, talking about this legislation. I just spoke at Fort St. James to a conference of the Mining Association of Canada, there were over 300 delegates there. When big industry takes issue with this, it tells me we're moving in the right direction. They're scared, they don't want it, they're going to have to do some things differently.

Coast: You mean by the way of sharing economic benefits of resource development.
Phillip: Yes, we will have to be compensated and included.

Coast: If there's no legislation available for people to see and read, what are people at the upcoming meetings supposed to respond to?
Philip: You're absolutely right the legislation isn't drafted, we'll talk about the legislative proposal.

Coast: What was the impetus for this legislative proposal?
Phillip: Well, it's a hundred and fifty year long process. (Chief Philip recounted a history of the Allied Tribes, Nisga'a Chiefs going to England, the formation of the Union, and several other landmarks)

In 2004, after Haida and Taku River Tlingit, those were big wins for us, then Attorney General Geoff Plant and Premier Campbell came to a regularly scheduled meeting of the UBCIC and said, "there must be a better way of doing this."

That conversation was continued later, on our part we had a regularly scheduled UBCIC Annual General Assembly scheduled for October of 2004. A day or two before our meeting, there was a triple murder in Penticton, related to selling drugs. It tore the community apart. That meeting was delayed until December. The murders had torn through our community, and through all of our communities, and it was a very emotional meeting. We said that we need to put our differences aside and work together because of what is happening in our communities, and we had better think about our children.

It was decided at that UBCIC AGA that we needed to strike a working organization between the Assembly of First Nations, the First Nations Summit and the Union.

In February 2005 we went to the First Nations Summit's meeting and presented some resolutions for developing our formal relationship. It was at that point we found out about their work with the province on this new approach. I was asked point blank, "are you in?" I thought of my grandchildren, and said, "I'm in." That work they were doing became known as the New Relationship.

All of us were sitting at the same table, which hadn't happened since 1969.

The essence of what the legislation seeks to do is implement the second line of the New Relationship document, after you get past "We're all here to stay," it says, "We agree to a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights."

The legislation would affect all other legislation. So, for instance, the Environmental Assessment process would have to recognize aboriginal title. Originally Campbell wanted to have it legislated before the election, but because of the backlash from business and industry, they pulled it.

Coast: If you, the First Nations Leadership Council, acknowledge crown title, what would make them bother justifying infringement anymore?
Phillip: (silence) I've heard this question before. I can't recall what the response is.

Coast: I'm sure you're aware of statements the Premier has made in public, like at 100 Mile House where he informed the town that the recognition legislation would have no effect on their developments, that the Fish Lake mine was sure to go ahead. Meanwhile, that mine has not even come through an Environmental Assessment. Then you have Geoff Plant's letters about the legislation, assuring everyone that it will not effectively change business as usual. How do you feel about that?
Phillip: It doesn't surprise me. It was an election. Campbell is just a politician. He says what he needs to to get elected.
As for Fish Lake, the Prosperity mine that wants to turn it into a tailings pond, that is a horrendous prospect and we will fight them again, we won on Kemess North. The worst thing that can happen to us is apathy. This legislation has brought out a lot of controversy.

Coast: When will it be tabled?
Phillip: There are a thousand stories on that; quickly, not quickly. Am I concerned about the Premier going around the province talking out of both sides of his mouth? No.

Coast: Currently we have some court rulings that say aboriginal title exists, and that the crown must protect that interest, but it can rely on the socio-economic mores of the majority of the population to justify infringement. I can't help wondering, if you, the First Nations Leadership Council, acknowledge crown title here, what would make them bother justifying infringement anymore?
Phillip: (silence) I've heard this question before. I can't recall what the response is to that question. I haven't heard anything up to this point.

Coast: Why are you continuing to promote the legislation when there is such widespread opposition to it from many of the tribes?
Phillip: I don't think there's a lot of opposition, I think there's a lot of concern, and that's why we're going around to these meetings.

Coast: At the Spallumcheen meeting, were peoples' concerns answered? Did they leave that meeting satisfied?
Phillip: All concerns are expressly noted, and in the event of a concern that has not been addressed, it's got to change the process.
People just can't get beyond a deep mistrust of the government. If Louise wasn't involved as closely and deeply as she is, and with her long history with us, I wouldn't be so confident.

Coast: Do you have some minimum criteria for popular support among the tribes for this legislation before you proceed with this?
Phillip: No. The government wanted it done before the election.

Robert Shintah
Political Chief

Tsk'wáy'lacw, St'át'imc
Vice President, Union of BC Indian Chiefs

"I can't recognize crown title. Back in the day when they first came here, they were talking about the one third – one third – one third sharing of the land, one to us, one to the government, and one for the people. Now they're talking about just a little bit for that recognition, like in the Forest and Range Agreements.

You know how I feel about the governments? They always use the big "G" for themselves, and for our governments they always use the little "g." Ours should have the big "G," and both of theirs should only have little "g"s. This recognition legislation is just like what happened with the Children and Families legislation – none of what went into that was the First Nations' doing, it all came from the government, and then Tom Christensen went ahead to put on the table in parliament, and I had to talk it down. I went to a long house meeting on Vancouver Island to explain to those people why we did what we did, because they were in favour of it, but they were the only ones who were.

Stewart and those guys have all gone to school to learn to be politically correct. I never had that opportunity. I get into trouble because of my mouth. The Elders can see I speak straight from my heart. Some of those Elders come up to me and call me Kukwpi7 (Chief), and that's the best kind of recognition I could ever want.

The First Nations Leadership Council does not have the first and final say for all BC, they are supposed to be advocates that open the door for the nations. I've always wanted for us all to work together, but it's got to go to the communities.

> "I can't recognize crown title. Elders come up to me and call me Kukwpi7 (Chief), and that's the best kind of recognition I could ever want."

In 1995/96 when I first was elected, that's when we were in the treaty process and I guess those guys thought they were going to groom me. But then I decided I had to stand up for the people and the community. My people don't belong to me, I belong to them. In August 2001, CNN came to do an interview with me at home. They asked a question about crown land, and I told her, there's no crown land around here. I'm tired of the way the other St'át'imc chiefs talk about me and my activities in the Leadership Council. I'm not a "yes" boy in there.

I can never accept crown title. I told those guys (FNLC executive) in Vancouver at a meeting. I even read from the Declarations and the memorials, but I don't think they were listening. Even at the Kelowna Accord, when they got all the right words they wanted on the paper, they were about to have Andy Scott, Minister of Indian Affairs, to sign off on it. I stopped them, and said, "I want the prime Minister's signature on that." So we got that. I don't need a special title to do what I do. If I was the president I would be the same way.

One time a group of teachers from the Cariboo stopped by our store on their way home from a meeting. They had wanted me at that meeting, but I was busy. They came to ask if I would run for MLA in the Cariboo. Not only natives there had heard of me and liked what I was doing, but non-natives too. They said I could get voted in, they asked me to run. I said I couldn't do that because I'm not Canadian. Had I done that, I could have talked the way I talk, I could have got support from them, but in my heart I would see myself as a sell-out. It would have been good money, a good pension, but that's not where I needed to be.

Chief Shintah is pictured here at last year's St'át'imc Gathering, with Chief Marilyn Baptiste of Xeni Gwetin, Tsilhqot'in; Chief Rose Haller of High Bar, Secwepemc; Dorothy Voight, Tsilhqot'in, and Rose Smith, Samáhquam, St'át'imc.

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look at this:

What is the First Nations Leadership Council?

This Council is the executive of the First Nations Summit, the Assembly of First Nations, BC region, and the Union of BC Indian Chiefs. Three Members are from the Union, President Grand Chief Stewart Phillip, Okanagan; Vice President Robert Shintah, St'át'imc; and Secretary Lynda Price, Secwepemc. For the Summit there is Chief Doug Kelly, Sto:lo, Dan Smith, Cape Mudge, and Grand Chief Edward John, Carrier Sekani. For AFN, regional Chief Shawn Atleo, Ahousat. There are some major differences in the mandates of these organizations.

The Summit was formed in 1993 to provide a council for all First Nations involved in the BC treaty process. The Union was formed in 1969 to unite leadership in opposition to the Trudaeu / Chretien federal White Paper Policy, aimed at making Indian Status irrelevant and existing treaties and Reserves null. The AFN is the transformed National Indian Brotherhood, incorporated in 1974 - then transforming from the Federation. In 1982 the name was changed and federal sponsorship was provided. The incorporation remains the same.

It seems that each entity provided resolutions from the membership to form this coalition in 2005. The question that remains is, what would they have in common?

In the words of # Kukpi7 Wayne Christian

Splatsín, Secwepemc
Spokesperson,
Shuswap Nation Tribal Council

The Secwepemc Chiefs invited the Leadership Council to Splatsín to explain the recognition legislation, and answer their questions.

"We do not consider your letter an appropriate response to the concerns raised by our people at the Splatsin community meeting. We refuse to allow our concerns to be minimized and reduced to the selective list of issues that were included in your letter."

Provincial Recognition and Reconciliation Legislation – Is this the Bill of sale for our lands and resources?

1911 Memorial to Frank Oliver

"Premier McBride, speaking for the B.C. government, said ***"We Indians had no right or title to the unsurrendered lands of the province."*** We can not possibly have rights in any surrendered lands, because in the first place they would not be ours if we surrendered them, and secondly, we have never surrendered any lands. This means that the B.C. government asserts that we have no claim or title to the lands of this country. Our tribal territories which we have held from time immemorial, often at cost of blood, are ours no longer if Premier McBride is correct.

We are all beggars, and landless in our own country. We told him through one of our chiefs we were of the opposite opinion from him, and claimed our countries as hitherto.

We asked that the question between us be submitted for settlement to the highest courts, for how otherwise can it now be settled? His answer was: ***"There was no question to settle or submit to the courts."***

Now how can this be?"

Our leaders in 1910 and 1911 clearly stated that the Province has no claim of ownership; that our relationship was Nation to Nation with the Federal government. We have for the past 100 years advocated to Ottawa, to the United Kingdom and to the courts by way of declarations, petitions and other legal and political processes that our relationship has always been with the Federal crown, first established with the Royal Proclamation of 1763.

Why is it that for the last twenty years that First Nations political organizations have instead focused on negotiating with the provincial government? In the BCTC, removing the fed gov from their legal resp to create a Nation to Nation process where our Nations can participate on an equally footing? The BC Treaty process is a legislative means to extinguish our title to our homelands. We have never seen the BC government as the entity on which we would focus our attention related the land question. The BC government for 150 years has stolen our lands from us; stolen all our resources, removed our children, imposed laws on us to force us off our lands and resources, and banned our spiritual practices.

Over the past 20 years we have seen the Indian political leadership of the First Nations Summit and the BCAFN immerse themselves in negotiating the extinguishment of aboriginal title. Then the UBCIC joined in and became a part of this process vis a vis the Leadership Council. The Leadership Council is more concerned about money than title and rights for Indigenous citizens.

Almost three decades ago I spoke about how Section 35, if left un-defined, was an empty box; that the courts would define our title and rights. Similarly, this provincial legislation, if left undefined by us, is an empty legislation that only exists to recognize Provincial claims of title. It gives the Premier economic certainty over our lands and resources. We will remain in poverty, landless in our country. The Leadership Council has effectively given BC the Bill of Sale to our territories and resources. The reverse onus of proof where our ancestors have always requested "*show me the Bill of Sale for our lands?*" is no longer on the table.

We maintain a sacred duty to those yet unborn and our future generations to maintain our indigenous peoples' rights and to engage only in processes that are based on a nation-to-nation relationship and that ensure the recognition of indigenous peoples' rights rather than the legitimization of claims of the provincial government.

What can you do as an ordinary Indian who lives off the land and our wealth, to continue to use your lands, your traditions and ceremonies to reconnect to who you are? What do you have to do to never ever let an outside political leader, whether Indian or white, sell your title for mere trinkets and beads, or this 'recognition legislation,' that creates the illusion of recognition; while business as usual continues as our lands, water and resources are sold right from under our feet?

You can get involved.

"As the British Columbia Government through Mr. McBride has refused to consider any means of settling these matters legally, we call on the Dominion Government at Ottawa—the central and supreme Government of Canada—to have the question of title to our lands of this country brought into court and settled. We appeal to you for what we consider justice, and what we think you would yourself consider justice if you were in our position. Who has the power to help us in this matter? Only the Federal Government, and we look to them."
1911 Memorial to Frank Oliver

When they first came among us there were only Indians here. They found the people of each tribe supreme in their own territory, and having tribal boundaries known and recognized by all. The country of each tribe was just the same as a very large farm or ranch (belonging to all the people of the tribe) from which they gathered their food and clothing, etc., fish which they got in plenty for food, grass and vegetation on which their horses grazed and the game lived, and much of which furnished materials for manufactures. Thus all the necessaries of life were obtained in abundance from the lands of each tribe, and all the people had equal rights of access to everything they required. You will see the ranch of each tribe was the same as its life; without it the people could not have lived.

A Resolution to Affirm Our Nation to Nation Relationship with Canada

The Shuswap Nation Tribal Council passed this resolution in April. The St'át'imc Chiefs Council unanimously adopted this resolution during their regular meeting in April this year.

DRAFT RESOLUTION
Re: Proposed Provincial Recognition and Reconciliation Legislation

WHEREAS as Indigenous Peopleswe are nations who hold supreme authority over our land, resources, and all people in our territories. We have our own governance systems, laws, customs and traditions since time immemorial and therefore cannot be subject to the colonial doctrines of discovery, including *terra nullius*. It is based on these illegal doctrines that the Crown has claimed jurisdiction and ownership over our territories. The doctrine of *terra nullius* has now been rejected by the Supreme Court of Canada and international human rights bodies have challenged the doctrines of discovery. Still the Crown has not been able to reconcile or remedy their illegitimate title and jurisdiction.

WHEREAS as Indigenous Peoples we have never ceded, nor sold, nor surrendered our control over our territories, peoples, lands and resources. We have always asserted our right to self-determination and to engage with the federal Crown on a nation-to-nation basis.

WHEREAS the Canadian Constitution, in the British North America Act (1867) sets out the division of powers between the federal and provincial governments in Sections 91 and 92 respectively. This division of powers has been used to date by these governments to claim mutually exclusive jurisdiction over our territories, thereby violating our human rights as indigenous peoples, especially our right to self-determination under international law.

WHEREAS the scope of the proposed recognition and reconciliation legislation entrenches business as usual by not altering the division of powers between the federal and provincial government to recognize Indigenous Peoples as an equal power. Instead the current scope sets out that "nothing in this Act alters, or can be interpreted to alter, either negatively or positively, the federal and provincial division of powers or the jurisdiction of either the province of British Columbia or any indigenous nation under the constitution of Canada".

WHEREAS the courts have ruled that the province has no jurisdiction and control over Aboriginal Title lands and Section 91(24) lands. In turn the province is now seeking to justify such a claim through the consent of First Nations provincial political organizations to this proposed legislative process, although they are not the rightful title holders.

WHEREAS representatives of First Nations provincial political organizations, and the First Nations Leadership Council, do not have jurisdiction over indigenous territories and resources, since these are collectively held by Indigenous Peoples as the rightful title holders according to indigenous laws and based on our own inherent political governing systems. The First Nations provincial political organizations are not the agents of indigenous peoples, they have not even sought the consent of the rightful title holders and thereby violate indigenous peoples' inherent right to self-determination.

WHEREAS through this process set up between the province of British Columbia and First Nations provincial political organizations, they attempt to bestow upon each other jurisdiction and control that neither of them have.

WHEREAS the proposed provincial recognition and reconciliation legislation is an attempt to remedy, consolidate, reconcile, and recognize provincial title over indigenous territories. Through the process, endorsed by the First Nations Leadership Council, the province is attempting to usurp legislative power to control and narrowly define Aboriginal Title and Rights and make it subject to provincial jurisdiction. The proposed legislation does not provide any additional protection for indigenous rights, rather it ensures certainty for the province, industry and third parties.

WHEREAS as Indigenous Peoples we have international rights, including the right to self-determination that states are obligated to respect. Our ancestors have travelled to England to raise concerns with the King and Queen and our peoples have sought and achieved the recognition of our indigenous rights by the United Nations.

WHEREAS our ancestors understood the dangers of having our Aboriginal Title and rights abrogated domestically and having our peoples assimilated under the provincial government system. The Union of British Columbia Indian Chiefs was founded in opposition to the 1969 White Paper attempting to transfer authority over Indians and lands reserved for Indians to the province of British Columbia. Our elders organized under the theme "our land is our culture" and always reminded us not to recognize provincial title.

WHEREAS we also opposed the patriation of the Constitution of Canada in 1980 and 1981 by organizing the Constitution Express to Ottawa, the United Nations and Europe, asserting that there were three founding nations of Canada: Aboriginal peoples, the French, and the English.

WHEREAS we secured recognition and protection of Aboriginal and treaty rights in Section 35(1) of the Constitution of Canada (1982), which has since been used by the courts, but not implemented by the federal and provincial governments who continue to claim mutually exclusive jurisdiction and title over our territories. This violates the rule of law and constitutes a breach of the constitution of Canada, since the executive branch violates the highest law of Canada and the direction of the highest courts.

WHEREAS Canada is the only country in the world to twice have voted against the UN Declaration on the Rights of Indigenous Peoples(UNDRIP), adopted by the UN General Assembly on September 13, 2007, which sets out international principles and minimum standards for the protection of indigenous rights, including the right to self-determination, indigenous land rights and human rights.

THEREFORE BE IT RESOLVED that neither the province of British Columbia, nor representatives of First Nations provincial political organizations have jurisdiction or direct or delegated decision-making power over our Aboriginal Title and Rights.

THEREFORE BE IT FURTHER RESOLVED that provincial legislation on reconciliation and recognition will only consolidate provincial jurisdiction and undermine indigenous jurisdiction, since it violates the nation-to-nation principle that mandates that we engage with the federal Crown on a nation-to-nation basis, rather than with lower level governments that hold no powers under international law and have no jurisdiction in regard to our Aboriginal Title and Rights.

THEREFORE BE IT FURTHER RESOLVED that the first step has to be to secure federal legislative recognition of Aboriginal Title and Rights based on the adoption of UN Declaration on the Rights of Indigenous Peoples and the principles enshrined in it. This has to include the revision of the federal Comprehensive Claims Policy currently aiming at *de facto* extinguishment of Aboriginal Title.

THEREFORE BE IT RESOLVED that we reject the current scope of the proposed provincial legislation that entrenches business as usual by not altering the division of powers between the federal and provincial government to recognize indigenous jurisdic

THEREFORE BE IT FURTHER RESOLVED that we refuse to be coerced into the proposed process under the current timeline, dictated by the provincial government's election schedule and platform. The current process does not allow for any time to engage Indigenous Peoples as the rightful title holders. Neither can any informed decision be taken if any legislation affecting Indigenous Peoples is not tabled and open for amendment directly by indigenous peoples. The representatives of the First Nations political provincial organizations and the all-chiefs forums (2007-2009) organized by them do not have the authority and jurisdiction to make decisions over Aboriginal Title and Rights.

THEREFORE BE IT FURTHER RESOLVED that we will seek a legal opinion regarding the constitutional validity of the proposed provincial reconciliation and recognition legislation and the impact it will have on Aboriginal Title and Rights and on the ability of future generations to benefit from our territories and resources. The draft legislation will also be analyzed in light of the principles and minimum standards set out in the UN Declaration on the Rights of Indigenous Peoples.

THEREFORE BE IT FINALLY RESOLVED that we maintain a sacred duty to those yet unborn and our future generations to maintain our indigenous peoples' rights and to engage only in processes that are based on a nation-to-nation relationship and that ensure the recognition of indigenous peoples' rights rather than the legitimization of claims of the provincial government. We will therefore use the time in the lead-up to the 2010 Winter Olympic Games to pressure the government of Canada and the province of British Columbia to ensure full recognition of Aboriginal Title and Rights and the adoption of the UN Declaration on the Rights of Indigenous Peoples.

in the words of First Nations Leadership Council Chiefs

Grand Chief Doug Kelly, Sto:lo: "I don't need to be told how to listen and who to listen to. I don't even know enough about the Laurier Memorial. By continuing to reflect on documents from 1910, how does that stop the province of BC from doing what they want to do? It has not stopped them to date! We can assert our laws all we want, even create a court case, but they will not come. I think about money, my community is broke, because of the social housing programme and because of the fights we have with the province, we cannot take them to court, we do not have the money. *Delgamuukw* came down, we were dancing in the streets and nothing changed. *Haida* came down four years ago and we danced again and I said – wait a minute, we were there before; and we again waited for the province to change their laws and it did not work. So I do not know what do we do? Hit our head or go to court and celebrate an empty victory? The question is, do you want to keep your people in poverty? Look at the high-sounding principles (Declarations) and look at the (economic) opportunities available and you have the answer to these questions." The Chief was speaking at the first community meeting on the subject, hosted by Splatsin, and Secwepemc Chiefs.

The First Nations Leadership Council recently released three short, nearly identical, videos promoting the legislation. The First Nations Summit hired NATIONAL public relations and consulting firm to coordinate their communications strategy. **Grand Chief Ed John** is shown in the movie saying he believes that, "when the government said, you don't have to go to the courts, you don't have to drag your Elders through the courts, you don't need to hire lawyers and you don't need this inaccessible legal system to exist and have your rights recognized, it lifted a huge burden off my shoulders, personally."

The narrator picks up, saying, "fewer court battles – that will be better for everyone, including business."

Shawn Atleo, AFN regional Chief, adds, "I think the other side of the equation is, what kind of business has been lost due to this conflict? How many investors did not come to this part of the world because of the conflict that exists between First Nations and business and industry and government in Canada, in particular in British Columbia, this act will set a new tone of mutual responsibility and respect." The narrator of the six minute video, coordinated by NATIONAL, says, "Recognition and reconciliation – the promise of greater prosperity for all British Columbians…"

Chief Shawn Atleo, Ahousat

Poverty. will BC legislation change it?

Grand Chief Stewart Phillip:

"When I started out, I was a very angry young man with braids, red headband and fatigues. My worldview has changed, I have eight grandchildren; we have terrible conditions of poverty on our reserves and INAC comes nowhere near accommodating that.

"When I see the loads of logs going by without any revenue to our people, realize we need to take every opportunity to share in the revenue."

Forest and Range Agreements are the only model of BC-led benefits sharing we have to look to as an example of what might come.

The poverty of aboriginal communities seems to be the cornerstone of the argument for recognition legislation. We are all very aware of how the Forest and Range Agreement style of benefit sharing has "helped." As this is the only model of BC government-styled benefit sharing, it is unclear where the faith in provincially moderated benefits sharing agreements comes from.

FRA's, now Forest and Range Opportunities, contribute $500 per on-Reserve head. This is compensation for all forestry activity on the traditional territory of the community, overlapping or not.

This is a blanket policy, regardless of the First Nation's situation within timber supply – coastal red cedar or interior mountain pine beetle kill. It is not based on the amount of timber removed.

The economic benefits calculations do not rely on the amount of timber harvested from the territory in question, only on the number of people living on the Reserve(s) in question.

One of the clauses in the agreement is that there will be no disruption of forestry activity, or else economic benefits will cease. The same goes for court action. Upon launching a court action, the given First Nation will be cut off from the provincially controlled revenues. As well, the agreements are a signed statement that all economic interests have been accommodated.

The agreements are not accompanied by an agreed statement of logging plans, nor a promise to keep within any five-year projections or agreements that may exist at the time of signing.

Minister Mike deJong, now Aboriginal Affairs Minister, was Minister of Forests and Range when the FRAs were initiated.

The report of the First Nations Forestry Council, itself an FNLC body, dated March 4, 2008:"It is true that a few first nations have achieved modest success in forestry. But this is not the case for the vast majority…. The job creation record of first nations…is about 3 percent of industry standards. Cash received from government was inadequate to the real cost of developing these tenures. These agreements in themselves have judicial and political origins."

look at this:

"As for the recognition legislation, I see the Union of BC Indian Chiefs has passed a motion to go along with it. That organization was started 40 years ago by Chiefs uniting to fight the White Paper Policy, which is effectively exactly the same as this recognition legislation, recognizing crown title."

– Hereditary and Elected Chief Don Harris, Xaxtsa7, St'át'imc

Alternative Approaches that truly recognize indigenous jurisdiction

By Nicole Schabus

The alternative approach is to secure fundamental change and recognize inherent jurisdiction of indigenous peoples. This is known as legal pluralism, wherein the national constitution foresees that state and indigenous jurisdiction coexist on equal footing.

This model has been recently implemented in a number of new Latin American constitutions, that provide constitutional protection for indigenous peoples and create a framework for the exercise of their jurisdiction and indigenous rights. The postulate of a true pluralist model is that indigenous peoples' jurisdiction and rights are recognized and protected in the constitution, creating a framework for their self-determination that is different from but equal to state powers, allowing for parallel jurisdiction and coexistence.

In this context even limiting clauses, introduced in many of the above mentioned constitutional provisions, recognizing indigenous rights as long as they conform with the constitution or national legislation, are problematic and have been fought by indigenous peoples. Even more so in the context of implementation legislation, when there were attempts to define indigenous rights in a limiting way or even more problematic to define or transcribe indigenous laws falling back into the discourse of the "recognition of customary law" of the 1980s, where indigenous laws would be defined or limited through Western laws.

Indigenous peoples in Latin America have fought clauses limiting their indigenous jurisdiction and have secured implementation of legal pluralism on the ground. Recently the government of Bolivia ratified the Declaration on the Rights of Indigenous Peoples into national law and announced a further reform of its constitution to secure full recognition of indigenous jurisdiction.

The proposed BC recognition legislation is an example of extremely limiting legislation. First and foremost we are only dealing with provincial legislation, which is at a much lower level in the Western legal system than constitutional law. The proposed model is not one of legal pluralism, it wants to maintain the current nation state system and stipulates that the legislation will not change anything in the current mutually exclusive distribution of powers between the federal and provincial government.

> "The alternative approach is known as "legal pluralism," where state and indigenous jurisdiction coexist on equal footing."

Take instead the example of Australia, where the High Court recognized Native Title in the 1992 *Mabo* Decision. Then Prime Minister Keating reminded Australians that for too long they had failed to ask themselves how would they have felt if this had happened to them; and announced legislative changes to implement Native Title.

The result was the 1993 Native Title Act, but the Labour government was defeated in the following election, by John Howard and his allies who promised "bucketloads of extinguishment." As Prime Minister, Howard announced his 10 point plan to roll-back and limit the Native Title Act, when he did not have the necessary majority to pass it, he ran a double-dissolution election and passed the amendments to the Act.

The revised legislation was condemned by the United Nations Human Rights Committee and Australia threatened to withdraw from it. Some describe the decade of Howard's rule as transporting indigenous politics back into the 1950's and the dark ages of assimilation and discrimination.

This serves as an example how legislation can easily be changed by a government opposed to indigenous rights. When the Howard government was defeated last year, the new Labour government under Prime Minister Rudd announced important changes. In April 2009 the Australian government signed on to the UN Declaration on the Rights of Indigenous Peoples, leaving the US, Canada, and New Zealand the only countries opposed. The government is now considering a proposal by Australian Chief Justice Robert French to reserve the burden of proof and no longer require indigenous peoples to prove their Native Title to their territories.

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look at this:

Canadian politicians at every level go on and on about how advanced Canada is at accommodating aboriginal title. They export the comprehensive claims process and the BC treaty process around the world, particularly to Africa. It's not really something to brag about.

"You say you want to sign something in the best interests of all the people. Well, the First Nations Education Steering Committee says we need more self-esteem, more pride, more language and culture, so sign on to that United Nations Declaration! That's what we need for positive relations."
- Laureen Weget Whitney, Gitxsan, St'át'imc
to Minister Strahl

Federal Minister of Indian and Northern Affairs Chuck Strahl was in Lillooet in December of 2007, shortly after Canada refused to ratify the UN Declaration on the Rights of Indigenous Peoples.

KC: When will Canada sign on to the Declaration?
Strahl: I don't know when. We had some problems with parts of it that were inconsistent with our Constitution and legislation. We were concerned with the balancing of rights with non-natives. For example, rights to traditional territory.

The courts have said there is aboriginal rights and title, and sit down and negotiate with the rest of the people. There's nothing about other people's rights in the Declaration.

Indigenous peoples here have never legally gained title to land.
KC: Tsawwassen settled for $14 a hectare, while local real estate starts at $200 per square foot.
Strahl: Who am I to say it's not a good deal? Tsawwassen Chief Kim Baird got up in the legislature and literally did a dance, she was so happy to have a treaty. Who am I to say she's wrong? And we are looking at other possibilities, possibly a beefed up treaty process, alternatives in land use planning. As for aboriginal title, I admit it's there, I agree it's there. When someone says, 'I want to deal with title,' I say, 'Let's talk.'"

In the words of

The Discussion Paper

This is the formal Discussion Paper regarding the proposed Recognition and Reconciliation Act. It was written by a First Nations Leadership Council working group over this year, with a budget provided by BC specifically for this purpose.
The Discussion Paper comes out of the legislative proposal that was developed by the First Nations Leadership Council and provided to BC Minister of Aboriginal Affairs and Reconciliation Mike deJong in February of 2008.

This Paper was endorsed by the participants at an All-Chiefs meeting held by the First Nations Leadership Council in March of this year. Each of the Council's member organizations voted to endorse this paper.
That is, the Union of BC Indian Chiefs, the Assembly of First Nations, and the First Nations Summit.

The representation at that meeting did not constitute 50% of the Indian Bands in British Columbia, all of whom would presumably be affected by the legislation.

Discussion Paper on Instructions for Implementing the New Relationship

Context

In 2005 the Province and the First Nations Leadership Council entered into a New Relationship based on respect, recognition and accommodation of aboriginal title and rights; respect for each others respective laws and responsibilities; and for the reconciliation of Aboriginal and Crown titles and jurisdictions. The parties agreed to establish new processes and institutions for shared decision-making regarding land and resources and for revenue and benefit sharing.
The Parties wish to further implement the commitments of the New Relationship. This will be accomplished through the enactment of a legislative package which includes the development of regulations, template shared decision-making and revenue and benefit sharing agreements and the issuance of a Proclamation.

The parties propose to move forward on the following basis:

Legislation

The Province will enact legislation consisting of the following elements:

Purpose

The purpose of the legislation will be to:

• recognize that Aboriginal rights and title exist in British Columbia throughout the territory of each Indigenous Nation that is the proper title and rights holder, without requirement of proof or strength of claim;
• enable and guide the establishment of mechanisms for shared decision-making in regard to planning, management and tenuring decisions over lands and resources;
• enable and guide the completion of revenue and benefit sharing agreements between Indigenous Nations and the Province;
• set out a vision of re-building Indigenous Nations and establish a new institution to support and facilitate the process;
• establish processes, mechanisms or a new institution to assist in resolving any disputes than may arise regarding the interpretation or implementation of the legislation, regulations or any agreements concluded pursuant to the legislation.

Implementation of the Act is intended to foster reconciliation, cooperation and partnership and contribute to certainty for Indigenous Nations and third parties.

Scope

The Act will apply to all ministries and provincial agencies, in particular those that have any direct or indirect role in the management of lands and resources in the province and will take priority over all other provincial statutes dealing with these subject matters.

The Act would make clear that:
• constitutional and common law of Aboriginal rights and title and treaty rights, including available remedies, are unaffected by the Act.
• the Act is not intended to affect the status of existing provincial crown granted interests or tenures in land or resources, including fee simple title;
• nothing in the Act creates any new constitutional rights or law-making authority; and
• nothing in the Act alters, or can be interpreted to alter, either negatively or positively, the federal and provincial division of powers or the jurisdiction of either the Province of British Columbia or any Indigenous Nation under the Constitution of Canada.

Recognition Principles

The Province would adopt as a guiding standard for all of its conduct and negotiations with Indigenous Nations, including the creation and implementation of all enactments, policies and mandates affecting lands and resources, the following recognition principles:

• That Indigenous Nations and peoples pre-existed and continue to exist today and have their own laws, governments, political structures, territories and rights inherited from their ancestors. The Crown recognizes this without requirement of proof;
• That Aboriginal rights and title exist in British Columbia throughout the territory of each Indigenous Nation that is the proper title and rights holder. The Crown recognizes and affirms this without requirement of proof or strength of claim;
• That Crown title exists with Aboriginal title throughout British Columbia;
• That both Aboriginal and Crown title come with obligations and responsibilities;
• That Aboriginal title is a pre-existing interest in land, is held collectively and includes a jurisdictional and economic component;
• That there are existing treaty rights that exist in British Columbia and these must be honourably implemented; and
• That the relationship between Indigenous Nations and the Crown is a government-togovernment relationship in which both parties exercise authority to make decisions including about how the lands and resources will be used and the resources shared.

Indigenous Nation-Rebuilding

The reconstitution of Indigenous Nations and the identification of the proper title and rights holders are keys to achieving certainty and the effective functioning of the framework for shared decision-making and revenue and benefit sharing contemplated by this Act.

In the Tsilhqot'in decision, the Court identified the proper title and rights holder by reference to the four common threads of language, customs, traditions and shared history. In that case, the proper title and rights holder was the Tsilhqot'in Nation and not an Indian Band.

Where the proper title and rights holders of an Indigenous Nation are represented by one political structure with a mandate to enter into shared decision-making and revenue and benefit sharing agreements with the Crown, the Indigenous Nation will be considered to be reconstituted for the purposes of this Act.

The Act will support and facilitate the reconstitution of Indigenous Nations by providing for the establishment of an Indigenous Nation Commission.

Indigenous Nation Commission

The legislation will establish the Indigenous Nation Commission, developed collaboratively with the First Nations Leadership Council.

The Commission will facilitate the identification, formation or reconstitution of the political structures of Indigenous Nations and confirm that such political structures have mandates

from the proper title and rights holders to enter into shared decision-making and revenue and benefit sharing agreements with the Crown. The Commission could also work with Indigenous Nations to resolve issues of overlaps and shared territories.

Shared Decision-Making and Revenue and Benefit Sharing

The Act would enable three levels of engagement between the Province and Indigenous or First Nations: Comprehensive, Interim, and Default. The three levels would have different elements in terms of: statutory triggers, forms of Indigenous Nation building, shared decision-making outcomes and revenue-sharing outcomes.

(a) Comprehensive

The Comprehensive Level of engagement would involve the comprehensive application of recognition principles through shared decision-making and revenue-sharing agreements throughout an Indigenous Nation's territory. Engagement at the comprehensive level would be triggered by reconstitution of an Indigenous Nation and put into affect by agreements respecting planning, management, tenuring and revenue and benefit sharing.

The purpose of the agreements would be to achieve the harmonization of Crown and Indigenous Nation processes and decisions. Agreements will be based on templates/models to be adopted by regulation and collaboratively developed.

(b) Interim

Prior to comprehensive agreements being in place with an Indigenous Nation, the Interim level of engagement would involve the application of the recognition principles through shared decision-making and revenue-sharing agreements to certain specified categories of development projects and defined "strategic decisions". The categories of decisions which will trigger this level of engagement will be agreed upon by the First Nations Leadership Council and the Province, and listed in regulation. The agreements will be guided by the principle that processes and mechanisms for making decisions will be designed to accommodate and not compromise the interests of the parties.

At the interim level statutory decision makers will be enabled to exercise their discretion in accordance with agreements with an Indigenous Nation.

The Province is committed to revenue-sharing for sharing portions of provincial revenues related only to the specific projects or decision.

(c) Default

The Default Level would apply in all other cases where the courts would now apply honour of the crown principles. In this level the Province would engage on the basis of a consistent cross government approach to the application of the recognition principles respecting Aboriginal rights and title and treaty rights. The objective is a clear improvement in the status quo.

A Policy Framework would be jointly developed with FNLC representatives. The Framework would prescribe how provincial engagement would focus on analyzing impacts on aboriginal rights and title and treaty rights, and not on the strength of rights or title claims.

Enabling Statutory Decision Makers to Honour the Engagement Principles

Notwithstanding any other enactment, statutory decision makers can enter into agreements or take any actions to give effect to the recognition principles in making agreements and acting within agreements. Statutory decision-makers may enter into agreements with other statutory decision-makers who have authority respecting related subject matters connected to a land or resource development so that the decision-makers can together carry out a unified decisionmaking process with, or enter into a decision-making agreement with, an Indigenous Nation or other First Nation entity respecting the matters.

Council of Indigenous Nations

The BC Constitution Act will be amended to enable the Lieutenant Governor in Council to create a Council of Indigenous Nations. The Council of Indigenous Nations would have a mandate agreed by the FNLC and the Executive Council and implemented by regulation. The Council of Indigenous Nations would be comprised of leaders of reconstituted Indigenous Nations and initially may include representatives of the member political organizations of the First Nations Leadership Council.

Dispute Resolution

The legislation would enable dispute resolution. Dispute resolution processes should reflect the mutual expectation that most disagreements would be resolved through informal or political discussions. In the event that formal mechanisms are required the parties should undertake a graduated approach from local to more senior levels of authority until resolution is achieved. Mediation of a dispute arising from the interpretation and implementation of the Act, any regulations or agreement made hereunder may be undertaken, including establishing a tribunal for such purposes.

Proclamation

A Proclamation will be issued that speaks to the history of the Province of British Columbia, from pre-contact times through to the implementation of colonial policies that have had longstanding negative impacts and have served to create adversarial provincial Crown-Indigenous Nation relations.

The Proclamation would describe how we are at a point in our collective history where there is huge opportunity to turn the page of history and establish a new relationship of respect and recognition.

The Proclamation would serve to set out a joint vision of the future and future Crown-Indigenous Nations relations. As well, it would envision the rebuilding of Indigenous Nations as a key part of the decolonization process, and as a necessary element of improving Crown-Indigenous Nation relations. Appended to the proclamation would be a listing and description of key historical events. (An attached map portrays the Indigenous Nations of British Columbia.)

The Proclamation should be eloquent and poetic. It should serve the purposes of fostering reconciliation and educating the broader population.

Ratification of Instructions

This Discussion Paper on Instructions for Implementing the New Relationship is the result of work undertaken by representatives of First Nations political organizations and senior representatives of the Government of British Columbia. The two parties must now take it to their Principals for review and consideration.

"Notwithstanding any other enactment, statutory decision makers can enter into agreements or take any actions to give effect to the recognition principles in making agreements and acting within agreements. Statutory decision-makers may enter into agreements with other statutory decision-makers who have authority respecting related subject matters connected to a land or resource development so that the decision-makers can together carry out a unified decisionmaking process with, or enter into a decision-making agreement with, an Indigenous Nation or other First Nation entity respecting the matters."

In the words of # Arthur Manuel

Former Chief of Neskonlith, Secwepemc
Indigenous Network on Economies and Trade, Spokesperson

"True recognition would be to have indigenous territories recognized and to provide for exclusive use areas that will not be under either the federal or provincial governments because they will exclusively be held under section 35 of the Canadian Constitution 1982."

To: Indigenous Peoples
From: Arthur Manuel, INET
Date: 29 February 2009
Re: First Nation Leadership Council British Columbia Recognition Legislation

If this provincial legislation is adopted, it will have a very serious impact on your Human Rights as Indigenous Peoples and how land and resources are managed in your traditional territories. The First Nations Leadership Council did get mandates from their respective organizations to "pursue the enactment of provincial recognition legislation".

Endorsing Provincial Legislation

The real striking matter about the Recognition Act is that it is proposed as a provincial legislation. The federal government is not even mentioned in this legislative scheme. Our Elders always made it clear that our relationship is with the federal Crown, that the province is a lower level government. BC does not have power to sign international treaties and does not have sovereignty like Indigenous Peoples.

Nothing the province ever did extinguished Aboriginal Title. That includes issuing "fee simple" titles. Endorsing the Recognition Act would change this and clearly put the province in control of defining Aboriginal Title and Rights. The First Nation Leadership Council does not seem to know the history of why Indigenous Peoples have always engaged with federal and not provincial governments.

Vaughn Palmer in an interview with Premier Gordon Campbell asked about the "New Relationship" and the change in his position, and Gordon Campbell answered that his position on Aboriginal rights had not changed at all, the ones to be commended are indigenous leaders who have started working with the provincial government and who are sticking their head out.

Federal Devolution

Indigenous Peoples' issues ("Indian and Lands Reserved for Indians") are federal matters because our proprietary interests are in direct competition with the provincial government. The old Treaty relationships are with the federal government because only they can sign treaties under international law. The federal government has always been trying to shift their responsibility to Indigenous Peoples to the provincial government in order to make us ordinary Canadians. This was the purpose behind the 1969 White Paper Policy. In fact the Union of British Columbia Indian Chiefs (UBCIC) was formed in Kamloops in 1969 to fight against our federal Indian reserves becoming provincial municipalities. Therefore it is very contradictory that the UBCIC is proposing the Recognition Act which would give the province the power to define Aboriginal Title and Rights.

We Got Recognition

The Recognition Act does not offer more than what has already been judicially recognized by the courts. In fact judicial recognition has resulted in a number of other decisions which resulted in the "Referral" and "Consultation and Accommodation" processes. The fact that BC government has not been recognizing Aboriginal Title despite judicial recognition makes them look stupidly stubborn and out of touch with reality. The Recognition Act is really a political plus for the province especially if they can get us to give them control so they can narrowly define what Aboriginal Rights really mean. The real question is: What will Indigenous Peoples get out of it?

Comments

On the Discussion Paper on Instructions for Implementing the New Relationship

Context:

The context of the Recognition Act is to pick up where the BCTC Treaty Process failed to "secure" a major settlement with regard to Aboriginal Title and Rights.

It is ironic that the term "New Relationship" was first introduced in the first annual report of the BC Treaty Commission in 1994. Ten years later the newer New Relationship served as life support for the stalled treaty process and as window-dressing in the lead-up to the 2010 Winter Olympics.

I suppose the only striking difference between the present New Relationship and the past New Relationship is that the Union of BC Indian Chiefs and the BC Assembly of First Nations are involved in present New Relationship. It is also important to think about the present New Relationship in view of the past New Relationship because some of the parties in past New Relationship are involved in the present New Relationship. The present New Relationship will be manifested through a provincial legislative package that "includes the development of regulations, template shared decision-making and revenue and benefit sharing agreements and the issuance of a Proclamation" regarding Aboriginal Title and Rights. The latter will not take the form of a law and will therefore serve more as a political publicity stunt than a substantive commitment.

Purpose:

The primary purpose of the Recognition Act is to provide economic certainty by giving the province the power to establish an engagement framework for recognition of Aboriginal Title and Rights. This framework concedes that British Columbia can continue on with business-as-usual and that under some specific circumstances a recognition process may be triggered that will decide if Aboriginal Title and Rights will apply on the ground for specific Indigenous Nations. Establishing the trigger point for Aboriginal Title will require research, proposal writing and negotiations even though the Discussion Paper says that no proof is necessary.

The implementation of the Recognition Act is supposed to "contribute to certainty for Indigenous Nations and third parties". It is very slick how the province has shifted provincial government uncertainty to certainty for Indigenous Nations and third parties. In fact third parties are putting pressure on the provincial

government because third parties are the bodies that took defective title under provincial government laws. Provincial government uncertainty actually equals the value of Aboriginal Title because this kind of uncertainty cannot be economically dealt with by provincial law making powers. The cost of removing provincial government uncertainty and the benefit Indigenous Peoples get will define in economic terms the value of Aboriginal Title in terms of establishing access and benefit to our traditional territories.

The real question is do you want the provincial government determining what your Aboriginal Title and Rights are? The province really limited the possibility of success in negotiations at the British Columbia Treaty Commission by limiting indigenous rights and aiming at their extinguishment and it will take a similar position in negotiations regarding implementation of the Recognition Act.

Scope

The scope of the Recognition Act is very limited. It basically gives the province a foot in the door when it comes to legislatively or legally talk about what Aboriginal Title and Rights but it does not change the status quo. True recognition of Aboriginal Title would require real and substantive changes to existing provincially created property interests including fee simple and the distribution of powers between the federal and provincial governments to include Indigenous Peoples. The fact that the Recognition Act clearly does not include these kinds of changes means that the province is not really interested in substantively recognizing Aboriginal Title and Rights. The downside of agreeing to exclude these essential aspects of recognizing Aboriginal Title and Rights means we have agreed *de facto* to limit the scope of our Aboriginal Title and Rights to conform to the process.

The scope of the Recognition Act looks a lot like the federal and provincial mandates that Aboriginal treaty negotiators have recently been complaining about, namely that the federal and provincial governments are coming to the table with "fixed bottom line positions". The reason the federal and provincial governments come to the table with fixed bottom line positions is because they have agreed to maintain the existing distribution of powers under the Canadian Constitution 1982. This means that Aboriginal Title and Rights that are protected under section 35 of the Canadian Constitution will not increase because the federal and provincial government powers will not correspondingly decrease and allow recognition of Aboriginal Title and Rights to proportionately increase. We are talking about our traditional territories and recognition of Aboriginal Title and Rights means that the federal and provincial governments need to give up power over our land in order to achieve real recognition, otherwise it is counterproductive and dangerous to endorse a provincial government Recognition Act that is purely symbolic in scope.

Recognition Principles

These Recognition Principles really do not even go as far as the courts have gone in recognizing Aboriginal Title and Rights but in turn the Province has us endorsing provincial Crown title as existing in our Aboriginal Title territories. Provincial Crown title does not exist where federal Crown title exists nor does it exist in our exclusive use areas. True recognition would be to have indigenous territories recognized and to provide for exclusive use areas that will not be under either the federal or provincial governments because they will exclusively be held under section 35 of the Canadian Constitution 1982.

These Recognition Principles are affirmed "without requirement of proof or strength of claim". This may sound like you are getting something for nothing, but everything has its price. Good research and being prepared is always essential when fighting to get your land back. This kind of promise makes us sound a little elementary. This provision also contradicts the provision of establishing the research that will be needed to identify the "proper title and rights holders" under the Indigenous Nation-Rebuilding section of the Recognition Act.

Indigenous Nation "Rebuilding"

This aspect of the Recognition Act would actually be funny if it wasn't real. The Recognition Act will give the provincial government the right to define what our Indigenous Nations are.

The Recognition Act will define what an Indigenous Nation is according to the " four common threads of language, customs, traditions and shared history". In the Tsilhqot'in case the Nation and not the Band were considered the rightful title holders. Under the Recognition Act the province will be looking to create "one political structure" or "nation" to enter into recognition agreements with.

Rebuilding our Nations is our business, not the responsibility of the provincial government.

Indigenous Nation Commission

The recognition act will create an Indigenous Nation Commission which would "facilitate the identification, formation or reconstitution of the political structures of Indigenous Nations". Our nationhood is an Aboriginal Right and cannot be subject to provincial legislation.

The Canadian Constitution 1982 section 35 (1) states that the federal and provincial governments will recognize and affirm existing Aboriginal and Treaty rights. This would mean that establishing the Indigenous Nation Commission would be unconstitutional especially since it clearly involves the internal constitutions and governments of Indigenous Nations based on Aboriginal Rights.

Shared Decision-Making and Revenue and Benefit Sharing

The Recognition Act will establish three levels of engagement under Comprehensive, Interim and Default processes. The specific policies for the engagement processes were not elaborated in these documents, except to say that they will be developed by the First Nation Leadership Council and British Columbia government in a top down approach.

"Enabling Statutory Decisions Makers to Honour the Engagement Principles"

The Recognition Act would allow provincial bureaucrats that follow the recognition principles to make decisions and take action so that they can make agreements with Indigenous Nations.

look at this:

One of the serious results of our self-determination as Indigenous Peoples is that our choices will be binding on our children, grandchildren and children yet unborn. British Columbia and the First Nations Leadership Council have put recognition of Aboriginal Title on the table. We need to now make a choice about standing up for our inherent Aboriginal Title to our traditional territories or the province will impose their power over our Aboriginal Title and territories. You can either: let the province take control and exploit our land; or you can take control and ensure the economic security for our people forever. That is your choice! - *Arthur Manuel*

Will recognition legislation really help our grandchildren?

The Latest Power Grab

This overview is provided for your consideration by the editorial and legal team at The BC Treaty Negotiating Times.

As Indigenous peoples we have inherent jurisdiction - and the province wants to use this legislation to claim jurisdiction over our territories. Our right to self-determination does not need provincial recognition.

Indigenous peoples in British Columbia and worldwide have the right to self-determination. This means we have sovereignty and jurisdiction over our territories, lands and resources.

This distinctive political status is rooted in our inherent rights, which grow from our ongoing connection with our land. We have inherited this status from our ancestors who never ceded our land and stood strong against exploitation of the land by governments and third party (business) interests. The province of British Columbia has been a historic adversary to indigenous peoples, because they claim jurisdiction over the same territories.

Under Canada's constitution, Aboriginal peoples have a unique constitutional status and distinctive jurisdictional powers. Section 35 protects Aboriginal and Treaty Rights and forms the basis for an independent and equal, but coexisting, third head of power for indigenous peoples. This means that we stand on equal footing with the federal government and have constitutional powers.

The province has no constitutional power to legislate and regulate indigenous rights. "Indians and lands reserved for Indians" fall under Section 91(24), the federal head of power. Aboriginal Title is the only property right that is protected under the constitution of Canada. The Supreme Court of Canada has ruled that Aboriginal Title is protected by Section 35 and that the Province of British Columbia has no jurisdiction over Aboriginal Title lands. This goes directly against the province's claim of exclusive jurisdiction over lands and resources under Section 92(13) and (16) (the provincial head of power) and Section 109.

Our inherent rights survive today.

As indigenous peoples, we have an inherent political status that comes from our relationship to the land. It is not granted by any state, nor do we have to get recognition at the national level.

We have governed our peoples and controlled our territories since time immemorial. Our indigenous sovereignty has not been diminished by unilateral attempts of governments to claim exclusive jurisdiction over our territories or to colonize us.

Rather states have illegitimately denied our sovereignty and attempted to consolidate their power by seeking extinguishment of our land rights and assimilating us into mainstream society.

We have been discriminated against politically by governments claiming exclusive jurisdiction over our lands and resources and not recognizing us as indigenous peoples with inherent rights to maintain our indigenous governing structures and to benefit from our territories.

Our indigenous right to self-determination has been internationally recognized and most recently enshrined in the UN Declaration on the Rights of Indigenous Peoples. Canada is the only country in the world to twice have voted against the UN Declaration on the Rights of Indigenous Peoples, because their laws and processes, especially in regard to land rights, are not consistent with the minimum guarantees enshrined in the Declaration, including free prior informed consent.

Our relationship with Canada is bilateral. Our relationship with the province is only indirect, through Canada.

The relationship of indigenous peoples and states like Canada is a bilateral relationship. This means Canada must respect our territorial rights and our ownership and jurisdiction over land.

The province is not part of this relationship. At the international level this is recognized through the right to self-determination and the requirement of free prior informed consent, which stipulates that we have full decision-making power over any developments that happen in our traditional territories.

Free prior informed consent is a substantive, not a procedural right. This means that indigenous peoples can exclusively make final decisions about what can and cannot happen in their territories.

How we make those decisions is enshrined in our indigenous laws. Indigenous rights are collectively held and all decisions have to be taken collectively by indigenous peoples according to their inherent decision-making authority and traditional governing structures.

In Canada, the courts have interpreted the proper rights holder for Aboriginal Title to be the present generations of indigenous peoples connected to their territories through their ancestors. It introduces a cultural definition of indigenous nations that looks mainly at language, culture and history.

Indigenous Peoples have standing under international law, provinces do not.

We know that proof of Aboriginal Title is a jurisdictional ouster for the province, because Aboriginal title is an exclusive right with both a jurisdictional and an economic component. It is constitutionally protected under Section 35 and the province has no jurisdiction over Aboriginal Title lands.

As indigenous peoples are getting closer and closer to proving Aboriginal Title in the courts, the province is running out of time and legal wiggling room. Their solution: the provincial recognition act which would secure that: "Crown title exists with Aboriginal Title throughout British Columbia". This is not how the courts have defined Aboriginal Title, which is an exclusive right.

Through this new legislative definition the province tries to patch up its claim of jurisdiction throughout the province. But from an international, indigenous and constitutional perspective the province is in no position to claim jurisdiction over indigenous territories.

> "This is an attempt to domesticate indigenous rights, deny our international standing and lower our decision-making authority to a lesser level than the province."

The provincial recognition act is a fraudulent attempt to overextend provincial jurisdiction and constitutionally the act would be *ultra vires*. Indigenous peoples have inherent jurisdiction on an equal footing with the federal Crown. We have sovereignty and standing under international law. Provinces do not have standing under international law, they are merely sub-units of the state.

The federal government has been complicit in the attempt of the province to claim jurisdiction over indigenous territories. This is in violation of their fiduciary and international obligation to protect the rights and interests of indigenous peoples. The federal government does not want to recognize that indigenous peoples are a third head of power, with independent, inherent jurisdiction over our territories.

The federal government has long tried to delegate responsibility for indigenous issues to the province, because that would assimilate indigenous peoples under a lesser constitutional power, where all authority is delegated and not inherent.

This is an attempt to domesticate indigenous rights, deny our international standing and lower our decision-making authority to a lesser level than the province.

Indigenous Peoples, not Aboriginal political organizations, have authentic governance structures with decision making authority regarding our territories.

Indigenous peoples are the collective decision-making authority and this authority cannot be taken from them by Aboriginal political organizations that are organized provincially and comprised of *Indian Act* chiefs that hold only delegated authority under the federal *Indian Act*.

Indigenous peoples are not First Nations, a misleading term adopted by the government and the First Nations Leadership Council to refer to Indian bands and pretend that they are nations. These organizations or bodies, are not traditional governing structures, they do not represent or have the mandate to represent indigenous peoples. They are not organized according to indigenous laws and do not follow inherent indigenous decision-making processes.

Much rather they mimic Western political organizations and bureaucracies. Aboriginal political organizations are also not founded in indigenous sovereignty; rather they are funded by the provincial and federal governments. It is a conflict of interest for them to pretend to represent indigenous peoples in dealings with the province, by setting up the New Relationship and the First Nations Leadership Council.

Aboriginal political organizations cannot exercise the indigenous right to self-determination, nor are they the proper rights holder. It is therefore illegitimate for them to engage with the provincial government and negotiate the proposed provincial recognition legislation.

Indigenous peoples have exclusive final decision-making authority, Aboriginal political organizations illegitimately claim to represent us in dealings with the province.

International law stipulates the requirement of free prior informed consent of indigenous peoples to the development and enactment of any legislation that affects indigenous rights.

Indigenous peoples in British Columbia have never given their free prior informed consent to allow for the development of the proposed provincial recognition legislation. Indigenous peoples are the exclusive final decision-making authority regarding any such legislation. Still Aboriginal provincial political organizations, namely the First Nations Summit (FNS), the Union of British Columbia Indian Chiefs (UBCIC) and the British Columbia Assembly of First Nations (BC AFN), re-inventing themselves as the First Nations Leadership Council (FNLC), have covertly pushed for this so-called provincial recognition legislation, to further consolidate their power and take it away from indigenous peoples, the proper rights holder.

These organizations are positioning themselves, through the proposed provincial recognition legislation, to set up an indigenous bureaucracy that mirrors provincial administrative processes and economic development models that replicate corporate exploitation regimes. These organizations effectively undermine the inherent jurisdiction of indigenous peoples or nations, and are ready to claim the jurisdiction rightfully held by indigenous peoples, just to turn around and collaborate with the province through mainstream administrative and corporate processes that undermine indigenous rights.

The legislation and processes it will set out will take away power from the people on the ground and consolidate power in the Aboriginal political organizations and the province.

Canada's constitution instructs it to respect our title and rights, in Section 35. The province of British Columbia must follow Canada's constitution, as well as international human rights law. Instead of ever doing that, BC passes meaningless acts and proclamations to legitimize its actions, like what it is doing right now with the recognition legislation.

Louise Mandell, counsel for the FNLC, at the Splatsin community meeting, argued that the province is operating under Section 35 when engaging in shared decision-making. Contrary to that, many indigenous peoples see Section 35 solely as the basis for indigenous jurisdiction. The province is not operating under Section 35 or implementing it when they engage in joint decision-making and revenue-sharing, they are just trying to solidify/justify their claim of jurisdiction over lands and resources under s. 92 of the constitution.

The proposed provincial recognition legislation is not going to result in indigenous peoples regaining lands and resources that have wrongfully been taken, but will only dictate how the Province will behave while continuing to control them and decide who ultimately benefits from development.

Once you analyze this proposed framework in detail you will see that it offers recognition of provincial crown title and no affirmation of the constitutionally protected Aboriginal Title and rights under Section 35.

LEGAL POINTERS ON THE PROVINCIAL RECOGNITION LEGISLATION

So why are the provincial government and the First Nations Leadership Council pushing for provincial recognition legislation?

The province is not the constitutional body to recognize indigenous rights. Indigenous rights are collectively held by indigenous peoples and are defined through indigenous laws; they cannot be defined through provincial legislation.

In turn the province has no interest in recognizing and protecting indigenous rights. They want to set up processes that secure access to indigenous territories through provincial legislation. Once First Nations become involved in the processes, they subject themselves to the provincial legislation and they do not have the final say, or veto as industry has been saying.

These are just consultation and accommodation processes. There is no requirement for free prior informed consent of indigenous peoples to any developments taking place or impacting our traditional territories as stipulated under international law.

Under these processes agreements will be made that in effect break open indigenous territories for development and that will lead to privatization of our lands, waters and resources by corporate entities. Aboriginal political organizations are becoming corporate players in the mainstream economic system, thereby undermining indigenous peoples' economic diversity and traditional and current land use.

"Recognition and Reconciliation" is not an accurate title for the proposed legislation.

The province and the First Nations Leadership Council have been pushing for provincial recognition legislation. The name of the legislation, entitled the "Recognition and Reconciliation Act", is misleading. It is promoted as an act to recognize indigenous land rights, when in reality it is about setting up provincial processes that secure corporate access to indigenous territories.

After indigenous peoples have long been calling for full recognition of our Aboriginal Title and Rights, the use of the terms "recognition and reconciliation" is meant to (mis)lead you to believe that there will be meaningful change and reform. All the Act really does is set up self-serving processes for the province and Aboriginal political organizations, that cannibalize the land and undermine our rights as indigenous peoples.

The proposed 'enabling legislation' is an empty shell.

Little is known about the content of the proposed provincial recognition act, because we have not seen the draft legislation that the "Recognition Working Group" has been elaborating. This means that the lawyers have a draft in hand, but indigenous peoples have not seen it. All that has been officially tabled is a discussion paper on the implementation of the new relationship.

It sets out "recognition principles" amongst them that: "Aboriginal Title and rights exist throughout the territory of each Indigenous Nation that is the proper rights holder. The Crown recognizes and affirms this without the requirement of proof or strength of claim." Although made to sound like one, this is not a real concession, because the courts have already recognized Aboriginal Title.

In turn the discussion paper stipulates that Aboriginal Peoples have to recognize that "Crown Title exists with Aboriginal Title throughout British Columbia", this would be a big concession, one that indigenous peoples have never made to date. Until now we have fought provincial jurisdiction over indigenous territories and have been successful in court.

Legal Points *continued from previous page*

The scope of the act is so limited, it does not recognize indigenous jurisdiction.

How limited the scope of the provincial recognition act is, is also made clear in the discussion paper, which sets out that:

constitutional and common law of Aboriginal rights and title and treaty rights, including available remedies, are unaffected by the Act;

the Act is not intended to affect the status of existing provincial crown granted interests or tenures in land or resources, including fee simple title;

nothing in the Act creates any new constitutional rights or law-making authority; and

nothing in the Act alters, or can be interpreted to alter, either negatively or positively, the federal and provincial division of powers or the jurisdiction of either the Province of British Columbia or any Indigenous Nation under the Constitution of Canada.

The Province will not recognize Section 35 as an independent third head of power for indigenous peoples and interact with us on an equal footing. You will either participate in their provincial processes under the provincial head of power or you will have to fight the province like before. The province is not stepping away from claiming exclusive jurisdiction over lands and resources throughout the province. They continue to claims that only the provincial and federal governments have mutually exclusive jurisdiction. The discussion paper says as much when it sets out that the act will not alter the federal and provincial division of power, still leaving no room for an independent indigenous head of power.

If you assert your Aboriginal Title and rights outside the provincial processes, the province will still deny that you have Aboriginal Title rights in court.

Louise Mandell, as legal counsel for the First Nations Leadership Council, in their response to the memorandum of Arthur Manuel on the Recognition and Reconciliation Legislation, goes even further to say that those provisions on scope only constitute non-derogation clauses:

> "meaning that if a nation wants to go to court to seek a remedy based on exclusive Aboriginal Title, or its constitutional consequences,... the Non-Recognition Act functions like a "without prejudice" clause, in the sense that making arguments before the court, neither party can rely on the passage of the Act or what is says to argue for an outcome one way or another."

So on the one hand the First Nations Leadership Council is telling you, you will no longer have to prove your Aboriginal Title in court, the province will recognize it without the requirement of proof, but on the other hand as soon as you decide to take a matter to court that is off the table. You will still be required to prove your Aboriginal Title.

Really the province only pretends to *pro forma* recognize your Aboriginal Title and rights to lure you into their provincial processes. If you want to assert your Aboriginal Title on the ground or implement your indigenous laws outside those provincial processes, the province will fight you in court like before and deny your existence as indigenous peoples and that you have Aboriginal Title and Rights.

What will happen if indigenous organizations become involved in the provincial processes and do not like the outcome? In the end the final decision will always be with the Minister, since the legislation does not provide for the substantive requirement of free prior informed consent of indigenous peoples. Provincial legislation is under the control of the provincial government and can be changed and amended by the province.

The province will also administer and remain in control of the processes established under it they will be the ones collecting all the revenue and deciding, at their discretion, which amounts are to be shared with indigenous peoples. Due to the non-derogation clause, meaning that you cannot raise the Act in court, agreements reached under the act might not even be subject to judicial scrutiny or challenge.

Take a closer look at the supposed recognition principles together with the non-derogation clauses and all the limitations in the scope of the act set out above, and it becomes clear, that the proposed recognition legislation – or the recognition shell – is empty. She says as much in her response to the point raised by Arthur Manuel that the Act does not offer more than what has already been judicially recognized by the courts. She said: "It is correct that the content of Aboriginal rights and title recognized by the proposed legislation will not be greater than what is protected by section 35 and the courts. However, the key advantage of the proposed legislation is that the province will engage in processes for shared decision-making and revenue and benefit-sharing."

So there you have it. The legislation is not really about rights, it is all about processes. The legislation is not about recognizing your rights - it is about processes that legitimize BC access to your territories for development.

All the details to do with revenue and benefit-sharing will be left to provincial regulation, they have not even been discussed yet!

Now you will say – well how would those processes for shared decision making and revenue and benefit-sharing work?

Some of those questions were raised at the Splatsin community meeting and Louise Mandell as legal counsel for the FNLC said: "some of the questions you will raise will be: What streams of revenue will be shared? What are the distribution principles among First Nations communities? What is the policy framework if no shared decision making or comprehensive arrangement is in place? What models will we work with? Who will control the commission (for nation rebuilding) and how will it work? How will nations be identified as being available and ready to go on the comprehensive level?

"These are the questions we have not sat down and worked on, this is what will have to be determined through regulations and we have not had any discussion with the government about that at all yet. We do not know the answer yet. If the legislation passes, what will be passed is, what I call a recognition shell, the shell of recognition principles, the principle that there has to be a realignment with other provincial laws and policies and negotiating mandates; commitment to shared decision-making and revenue and benefit-sharing at the three levels I talked about and also a commitment in terms of the Commission. That is what the act will look like and then there will have to be another process, to go back to the chiefs in assembly, to go back to the other features which we have not done yet."

So the processes will not even be inscribed in the provincial legislation, they will be defined through and relegated to provincial regulations and agreements. On top of it the First Nations Leadership Council proposes to pass the "recognition shell" legislation before ever even working out the substantive details like the revenues to be shared.

So they want indigenous peoples to agree to pass the empty recognition legislation and recognize that Crown title exists throughout Aboriginal Title territories, in exchange for the unsecured promise that processes for shared decision making and revenue sharing will be put in place later.

So you would provide the province with economic security and then leave it to their discretion what will be put on the table in terms of revenue sharing.

If those processes are the "key advantage", is it not absolutely reckless and self-defeating in terms of negotiating dynamics to propose to sign off on legislation that secures recognition of the province, before they ever put their cards on the table regarding revenue sharing?

In the words of # The People

Here is what people had to say to the Leadership Council at the Splatsin community meeting:

Chief Judy Wilson
of Neskonlith Indian Band,

"Critical questions are being raised. My mother is Minnie Kenoras, my father is Joe Manuel and George Manuel is my uncle.

We have been taught to debate and talk with each other and to work together. We know the laws of our land and those are the laws of creation that we have, we cannot get rid of those laws. They are what we are as a people, it is embedded in our laws and culture.

We just talked about that today at the Lakes Arrowhead division meeting and considered question around regulation and jurisdiction. We are creating our own regulatory framework that pushes the ministry and industry to our table.

We are dealing with Ministry of Highways about the 4-laning of the highway and CPR regarding double-tracking (they call it side lining but same thing); and also with BC Hydro (dam at Revelstoke) about the transmission lines and independent power of the river facilities and alternative energies and biofuels.

The question we are debating goes to jurisdiction, we have inherent title, I grew up with that, I cannot question that, no one can take it away from us or our children, that is why the government is at the table, I do not want anything diluting that.

I do not want our title diluted in any way shape or form.

When we negotiate we talk to the Queen, the federal Crown, nation to nation, not the provincial Crown with only delegated authority. Will this be certainty for all parties or is it really certainty for the province who has been trying to get access to our land and resources? And you have seen that slide that showed the territories that are unceded. My people took a very strong position against the treaty process because of some of those principles.

So I want clarification on those, our nation is standing up for those now. The First Nations Leadership Council, nor the UBCIC, have the right to take our inherent rights away from us. The Secwepemc people are always very cautious because we have the generations in front of us to think about. If this was all about money, you do not see any deals that anyone signed just for money, we want to make sure, it is about cleaning up our overdeveloped Lakes.

It affects everyone, all walks of life are impacted, our customary laws and spiritual ways have a lot of meaning, we do not want to be a mirror of the government, we assert our governance and jurisdiction.

We do not want to be a reconstituted government, we want to realign our own government and jurisdiction. We have already forced recognition into regulatory frameworks. We have analyzed a lot of the comprehensive agreements in our territory and a lot of that language is already recognizing Aboriginal Title in those documents. Why are we asking for something we have already, rather than going to the next level, and getting full recognition for indigenous laws not diluting any of our title.

Eric Mitchell,
Okanagan Indian Band

I do not want recognition and reconciliation put together and pushed down our throat; that does not go down my throat. The two things have to be pulled apart; we are talking recognition here (forget reconciliation for now); go back to the date when the province joined confederation. The province has to recognize who we are and look at me and who I am.

I want them to say I am sorry as a white government and I recognize who you are, what we are in now. The Laurier Memorial sets out the principles, we gifted people when they came here and in our culture something has to be given back. They have to say thank you for feeding us when they were starving; thank you for showing us the way.

You three leaders (FNLC) have to start to listen and take some direction. You have been talking about this Recognition act in the news, before you even come to talk to us, there is something wrong with that.

The Recognition Act talks about 20 nations, but we have 25 nations and languages, you guys have been around long enough to make sure they do not miss anyone. Old Tommy (Gregoire) talked about the flag, the flag is just one thing, but it is about every time the sun comes up and every time we breathe to live we have to remember that. When they say I recognize your title, they recognize me and everything in this universe that belongs to us lock stock and barrell– the ground my grandfather stood on.

Not only will they share, I do not even want to talk about that yet, they first have to recognize that they stole the land and resources and they are even sucking the air out of us. That is all wrong, I do not want you guys (First Nations Leadership Council) to give away anything that is ours.

When they say share they mean 50% is theirs, no I do not want that. Until we have an apology there is no point talking about sharing, once we accept it, we might. You guys (FNLC) can tell them what it means to apologize and help them apologize but do not give them anything.

They have to recognize 100% otherwise we are no better off than before, they have to recognize us for who we are. Then bring up the Laurier Memorial – we fed them, we brought them into families – they have to learn to live together in a better way.

Let them do the recognition and then we will let them know if we will accept it. Then we will take time to talk to each other.

There are too many assumptions in what you propose: they talk about chiefs; who says we will agree to elect a leader? Wayne might still come out on top as a leader but through our traditional system. Some will come to the top, others will not.

Indian Act band elections do not work, very few participate, in band councils they go by majority vote under their law. Should we keep the thinking (ways) that kept us here for thousands of years or the 150 year way that damn near killed us – there is no contest there!

The white man's way is not working not even for them. The world needs us, the teachings are in our languages! It is time to move to the next part of the meeting that you talked about, when you listen and we give you direction. You guys put your names up, you have done enough talking; now you listen and we tell you what to do.

I would expect that we back off from that stuff and recollect ourselves, take the time we need to be able to stand up to any government. This is what we want you to do. The white people owe us clean water, good air and at the same time I know the people are the same as the elders in 1910 and 1911. The white people who came here do not have country to go back to, this is why they are here, we have to teach them. I thank you from the bottom of my heart.

in the words of

Guujaw

Haida
Elected President and Hereditary Chief

"Aboriginal Rights and Title are already recognized and affirmed in Canadian Constitutional Law, therefore there is no need for new legislation in BC."

In an effort to understand the motives and consequence of this thing, the most telling part is that the 'title' Legislation as stated, doesn't affect Aboriginal Rights and Title. Consider having 'title' that doesn't affect 'Title;' and a 'small t' title, because it doesn't even affect "fee simple" and "third party interests," which we already do without even having established Title.

With no burden of proof, there is a real danger of mischief and confusion as to the true Title holder.

A good guess is that this is an attempt to pacify us with a similar, and yet far lesser degree of small t 'title'.

Consultation Standards in BC
- or -
The Trilogy of Despair

Halfway River, Taku River Tlingit, and *Douglas* have brought consultation standards spiralling down to a single unreturned phonecall

By Kerry Coast

Participating in consultations with government is a double-sided sword for Aboriginal peoples. We already know that the government and the courts find aboriginal laws of upholding the sustainability and sacredness of the land to be "unreasonable conditions.' If we do not participate, or walk away, Aboriginal peoples are described as unreasonable - and if we do participate, we are stuck within a process that the government dominates.

"Political participation by the marginalised cannot make sense when the rules of engagement are determined by the powerful." - *Obyerodhyambo*.

Even when Bands or First Nations bring court cases following "negotiations" that disregard their input, their assertion of their own laws and duty to uphold them are unacceptable in BC courts. *Halfway River, 1999,* gives us this.

Halfway River contested that logging had infringed their way of life to an unjustifiable extent. The *Halfway* casefound the province free to infringe their Treaty 8.

Halfway also concluded in an obligation on the part of Aboriginal peoples to participate in the consultation process, and not frustrate it with such "unreasonable" demands as those of sustainability, regardless of the foregone-conclusion nature of such BC-led procedures.

In *Taku River Tlingit, 2005,* the people were suing BC for going ahead with permitting a mining access road over their sacred mountain, right through the hunting grounds. Taku had participated extensively in consultation procedures and the environmental impact assessment. The government did not respect their position that the road had to be redirected, and permitted it as preceded the legal challenge. The court found that Taku had been adequately consulted and accommodated, since they had been part of the development process, and that their proper course of action was to continue in negotiations to mitigate the impact of the road at a site-by-site specific level. This was the first case to test the duty to consult and accommodate, it came down at the same time as *Haida.*

We have a final angle in *Douglas, 2007.* It was found that the Department of Fisheries and Oceans had not only fulfilled their duty to consult, but also upheld their obligation to the aboriginal food fishing priority when they opened a sports fishery on Early Stuart sockeye in the Fraser, five years earlier.

The Department had faxed and telephoned a few invitations to meet on the subject to the Cheam Band prior to the openings. Cheam had not been able to participate in the processes on the schedule DFO offered. Nevermind, the fact that DFO offered them meetings fulfilled their duty to consult and accommodate, ruled the judge. And since the Department has the privilege of managing the fishery, no notices of later management changes were necessary.

"The combined effect of these three cases would seem to mean to BC that: First Nations must participate in the BC consultation process; once they have been consulted, anything goes; and as little as an unanswered fax and a phone call can accomplish the consultation and justify the decisions made by government ministries."

What this would seem to mean to BC is that: First Nations must participate in the consultation process; once they have been consulted, anything goes; and as little communication as an unanswered fax and a phone call can accomplish the consultation and justify the decisions made by government ministries. The "meaningful" part of this "consultation and accommodation" is that *BC is the boss, anyway.*

Are these the parameters of the "shared decision making" contemplated by the recognition legislation?

"I'll see you in court!"

In the words of # Russell Diabo

Kahnawake, Mohawk

"The Crown governments know that most First Nations can't afford to go to court, so they make these "take it or leave it" offers."

Continued from Page 2

At the national level the National Indian Brotherhood was formed, and in 1982 it was re-organized into the Assembly of First Nations. In B.C. the Union of B.C. Indian Chiefs was formed to defend the Aboriginal Title and Rights of First Nations.

Years later the coastal First Nations led a number of communities out of the UBCIC and formed a separate organization, which had a number of names but eventually became the "First Nations Summit".

In the face of widespread opposition from First Nations and sectors of the Canadian public, the federal government publicly announced it wasn't going to proceed with the "1969 White Paper." But internal documents from within the Department of Indian Affairs bureaucracy at the time revealed the federal government still believed in the objectives of the "1969 White Paper", and simply adopted a policy of implementation by stealth where possible.

In 1973, the federal government announced its land claims policies, which were:

Specific Claims:
These types of claims are based upon "lawful obligations", such as illegal disposition of Indian lands, mismanagement of Indian trust funds, breaches of historic treaties.
Comprehensive Claims: These types of claims are based upon claims made by "Native Groups" of unsurrendered Aboriginal Title in parts of Canada where no historic treaties were made.
Claims of Another Kind:
These types of claims are based upon claims arising from the Royal Proclamation of 1763.

The land claims policies were designed to end outstanding land claims. The Comprehensive Claims policy had the objective of extinguishing Aboriginal Title in order to give the federal-provincial-territorial governments clear title to the land and resources.

In 1980, the federal government announced it was going to change the constitution of Canada. In 1982, a new constitution was adopted based in part on the efforts of the UBCIC's Constitution Express train. In the 1980's there were four constitutional conferences on Aboriginal Matters between the four national aboriginal organizations, the Prime Minister of Canada, the Premiers of the provinces and the Leaders of the territorial governments.

Unfortunately, these constitutional talks ended in failure. There was no political agreement on the meaning of "aboriginal and treaty rights" between the Aboriginal organizations and the federal or provincial governments.

This is the main source of the problem of non-recognition of aboriginal title today: in Canada there is no legal or political certainty on the scope and content of "existing aboriginal and treaty rights" within section 35 of Canada's constitution. With no political agreement on the meaning of section 35 rights, the Supreme Court of Canada, starting in 1990 with the Sparrow case, began to set out legal tests for interpreting section 35 when "aboriginal rights" are claimed. The Supreme Court of Canada has gone on to issue a number of court decisions that have created a legal framework for analysis of claims rights under section 35.

It is costly and risky for First Nations to collect the evidence to prove their rights in court and sustain a constitutional legal challenge to the Crown governments in defense or protection of "aboriginal or treaty rights".

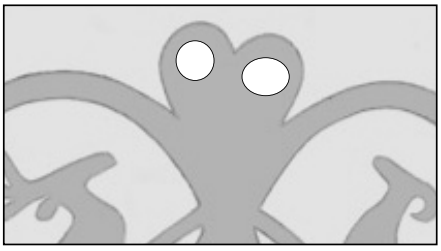
Ever since the new constitution was adopted in Canada the federal government has been engaged in a protracted war to wear down First Nations and their leadership to negotiate under unfair, one-sided land claims and self-government policies. These are written to obtain agreements from First Nations to compromise their section 35 rights, in exchange for watered down rights under federal and/or provincial agreements.

The Crown governments know that most First Nations can't afford to go to court, so they make these "take it or leave it" offers.

As was the case in 1969, the federal objective is to empty out section 35 of any significant legal or political meaning by getting First Nations to sign land claims or self-government agreements that transform them from being "Indian Act" bands into ethnic municipalities or subordinate regional governments to the Crown governments in Canada.

If one were to look closely at the terms and conditions of the so-called "modern treaties", one would see that this is essentially what has happened in Canada from the 1975 James Bay Agreement to the recent Nisga'a and Tsawwassen Final Agreements.

look at this:



"...this undertaking is not about changing ownership or jurisdiction... crown title is expressly protected."

How can action by the province of British Columbia certain up third Party interests? Only the title holders can do that. BC is saying the Leadership Council has authority.

Geoff Plant,
"Certainty and Fairness for All"
May 11, 2009, The Vancouver Sun

"...while the constitution is clear that aboriginal rights must be recognized and affirmed, it is also clear that they are not absolute. Government may infringe them, if it acts honourably.

That leads us to the discussion paper and its proposal for a new approach. The paper is the first time that a process for land and resource decision making has been mutually negotiated and agreed to. This by itself represents a significant movement away from uncertainty and conflict towards greater certainty."

"... in practical terms the significance of this recognition will be to focus on the impact of development, rather than on the legalistic question of whether particular aboriginal groups have specific rights towards the question of what."

"Shared decision-making does not automatically mean that both parties have to agree before some action is undertaken. ... These processes will also provide fairness and certainty to third parties. ...this undertaking is not about changing ownership or jurisdiction..."

In the words of the

The New Relationship document

The New Relationship 2005

I. Statement of Vision

We are all here to stay. We agree to a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights. Our shared vision includes respect for our respective laws and responsibilities. Through this new relationship, we commit to reconciliation of Aboriginal and Crown titles and jurisdictions.

We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing, recognizing, as has been determined in court decisions, that the right to aboriginal title "in its full form", including the inherent right for the community to make decisions as to the use of the land and therefore the right to have a political structure for making those decisions, is constitutionally guaranteed by Section 35. These inherent rights flow from First Nations' historical and sacred relationship with their territories.

The historical Aboriginal-Crown relationship in British Columbia has given rise to the present socio-economic disparity between First Nations and other British Columbians.

We agree to work together in this new relationship to achieve strong governments, social justice and economic selfsufficiency for First Nations which will be of benefit to all British Columbians and will lead to long-term economic viability.

II. Goals

Our shared vision includes a celebration of our diversity, and an appreciation of what we have in common. We recognize the vision of First Nations to achieve the following goals:

1. To restore, revitalize and strengthen First Nations and their communities and families to eliminate the gap in standards of living with other British Columbians, and substantially improve the circumstances of First Nations people in areas which include: education, children and families, and health, including restoration of habitats to achieve access to traditional foods and medicines;
2. To achieve First Nations self-determination through the exercise of their aboriginal title including realizing the economic component of aboriginal title, and exercising their jurisdiction over the use of the land and resources through their own structures;
3. To ensure that lands and resources are managed in accordance with First Nations laws, knowledge and values and that resource development is carried out in a sustainable manner including the primary responsibility of preserving healthy lands, resources and ecosystems for present and future generations; and
4. To revitalize and preserve First Nations cultures and languages and restore literacy and fluency in First Nation languages to ensure that no First Nation language becomes extinct.

The strategic vision of the Province for British Columbians is:

1. To make B.C. the best educated, most literate jurisdiction on the continent;
2. To lead the way in North America in healthy living and physical fitness;
3. To build the best system of support in Canada for persons with disabilities, special needs, children at risk and seniors;
4. To lead the world in sustainable environmental management, with the best air and water quality, and the best fisheries management, bar none; and
5. To create more jobs per capita than anywhere else in Canada.

All Our Relations

Somehow the Recognition Legislation has been confused with the strength of this Declaration. It was passed at an all-Chiefs Assembly in November of 2007, where 80 chiefs were present, immediately following the landmark title case, *Williams,* or sometimes called *Tsilhqot'in,* by the Xeni Gwetin community. Because of the similar timing between the legislative proposal, this resolution and the development of a strategic action plan - direct, communications and legal strategies; people have come to think they are related. Unfortunately, the principles put forward in the Declaration will not be much help in resource activity consultation frameworks that are determined by British Columbia, as per the Recognition Legislation.

A Declaration of the Sovereign Indigenous Nations of British Columbia

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

Continued from over, The New Relationship

This vision can only be achieved if First Nations citizens attain these goals. To achieve these strategic goals, we recognize that we must achieve First Nations economic self-sufficiency and make First Nations a strong economic partner in the province and the country through sustainable land and resource development, through shared decision-making and shared benefits that support First Nations as distinct and healthy communities. All British Columbians will benefit from a richer understanding of First Nations culture and from economic, political and cultural partnerships with First Nations. We therefore agree to the following principles and action plan.

III. Principles to Guide the New Relationship

We will mutually develop processes and implement new institutions and structures to achieve the following:

• integrated intergovernmental structures and policies to promote co-operation, including practical and workable arrangements for land and resource decisionmaking and sustainable development;
• efficiencies in decision-making and institutional change;
• recognition of the need to preserve each First Nations' decision-making authority;
• financial capacity for First Nations and resourcing for the Province to develop new frameworks for shared land and resource decision-making and to engage in negotiations;
• mutually acceptable arrangements for sharing benefits, including resource revenue sharing; and
• dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts.

This vision statement to establish a new relationship has been written as a measure of good faith by the parties to put into words our commitment to work together to explore these concepts and develop their full meaning.

IV. Action Plans

We agree to work together to manage change and take action on the following:

1. Develop new institutions or structures to negotiate Government-to-Government Agreements for shared decision-making regarding land use planning, management, tenuring and resource revenue and benefit sharing;
2. Identify institutional, legislative and policy changes to implement this vision and these action items;
3. Develop additional protocols or accords to further the implementation of the vision, as required from time to time;
4. Identify processes to ratify agreements;
5. Establish funding and distribution structures/institutions to support First Nations' capacity development and effective participation in the processes established through these action items;
6. Establish effective procedures for consultation and accommodation;
7. Appoint a joint working group to review Forest and Range Agreements and make recommendations to the parties on options for amending those agreements, in order to make them consistent with the Vision and Principles above;
8. Identify and develop new mechanisms on a priority basis for land and resource protection, including interim agreements;
9. Develop impartial dispute resolution processes and work towards a decrease in conflicts leading to litigation; and
10. Create an evaluation process for monitoring and measuring the achievement of this vision and these action items.

V. Management Committee and Working Groups

The parties will establish a joint management committee of senior officials to:

• develop terms of reference, priorities, and timelines for the management committee and the working groups by May 31, 2005;
• identify current issues of substantial concern, and consider short and long term steps the parties could take to facilitate their resolution;
• jointly develop policy frameworks;
• establish joint working groups and provide direction, timelines and co-ordination to further the implementation of the action items;
• identify and allocate financial and technical resources for the work of the management committee and the working groups;
• make recommendations to the parties to address problems as they arise in the implementation of the vision; and
• engage the Government of Canada.

a brief Timeline

2004, the Haida ruling found that government has a duty to consult with aboriginal people whenever it "contemplates action" that might infringe an aboriginal right.

"In **February 2005** we went to the First Nations Summit's meeting and presented some resolutions for developing our formal relationship. It was at that point we found out about their work with the province on this new approach. That became the new relationship." - Grand Chief Stewart Phillip, UBCIC President, May 19, 2009

February 2008, Minister deJong received a copy of the draft legislative proposal. The province had been funding the FNLC, $2m, for the working group to do so.
- Hansard, May 2008

Westbank, **March 12-13, 2008** Louise Mandell and Stewart Phillip present on legislative proposal at a title conference to discuss *Williams*

November 2007, at an all-chiefs meeting called by the Leadership Council, 80 elected chiefs endorsed the "All Our Relations" declaration, asserting and affirming aboriginal title to all the tribal territories.

March 2009, FNLC membership resolved to endorse the legislation.

The BC Treaty Negotiating Times

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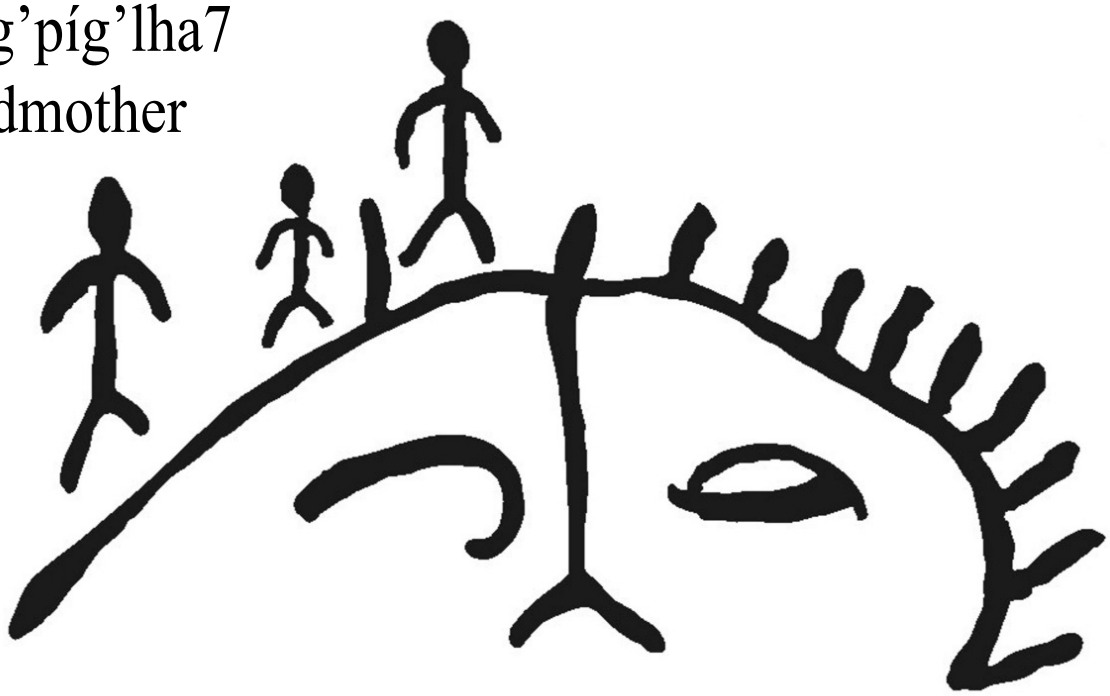
For additional information and updates on the Recognition and Reconciliation Act go to: www.splatsin.ca . Some additional documents and complete versions of some of the articles are available there.

In the words of

A Peg'píg'lha7 Grandmother



This pictograph tells the story of the coming of newcomers to the land.
The land is plentiful.
The circles under the figures show plentiful water.
As the newcomers cross the land and mountains, they take, and take, and take, and take until awareness happens.
The lone dash between the figures walking up the mountain shows the awareness.
The other side of the mountain still has the resources on the land. The water is still plenty in the lakes and rivers.
Under the figures who have taken all the resources from the land, one water feature is almost empty or destroyed.
The other is still clean and plentiful.
Between the water and mountain is a line that represents the awareness of the destruction.
This awareness is shown in the joining of two ways of thinking or two groups of people; an awareness to ensure that further destruction does not occur.
The line represents an event that brings our attention to something. Our attention to the matter of the destruction of the land will raise our awareness of which is the right thing to do, which is the right way to go.
-Marie Barney, T'ít'q'et Grandmother, St'át'imc Peg'píg'lha7 Traditional Council

There are two pictographs like this in St'át'imc territory, and more in other places in North America, including in North Dakota and in Iroquois Confederacy lands.

Is recognition legislation a symbol of a new awareness of the sacredness of the land? Or is it the seismic event which brings all our attention to the importance of protecting what we have left?

Negotiating?

From the discussion paper on the proposed Recognition Legislation, it seems that in order to boost the BC treaty process and get more "modern treaties" out of it, the B.C. First Nations Leadership Council are looking for a short-cut. Instead of following the legal and political process, they want a provincial law and regulations.

Provincial recognition of Aboriginal Title and Rights may sound good on the surface, but what are First Nations giving up in this process?

Under Canadian constitutional law there are legal principles and tests the court has issued regarding the interpretation of section 35 aboriginal and treaty rights. Keep in mind that the federal land claims and self-government policies of assimilation and termination are still in place.

Until the proposed legislation and regulations are released publicly, no one can say with precision how much the proposed Recognition Act and Regulations will impact on section 35 rights.

However, there is enough in the discussion paper for concerned First Nation peoples to demand community level consultations and opportunities for serious joint drafting of the proposed law and regulations from the bottom up, not the top down.

In December of 2000, then Minister of Indian Affairs, Bob Nault, asked why the federal government should change its Comprehensive Land Claims Policy when there were First Nations prepared to negotiate under it, as it is currently written.

Those First Nations across Canada who have agreed to negotiate under the federal Comprehensive Land Claims policy and have collectively borrowed hundreds of millions of dollars from the federal government, using their Aboriginal Title and Rights as collateral, are among the weakest First Nations in the country to be negotiating anything to do with Aboriginal Title and Rights with Crown governments. This is true of the members of First Nations Summit who are negotiating under the BCTC process with both B.C. and Canada.

Under the circumstances, First Nations peoples should be demanding the brakes be put on the proposed Recognition Legislation. To examine the state of Aboriginal Title and Rights in B.C. will take more than "leading lawyers. . . scholars and a jurist," that the First Nations Leadership Council has consulted.

In order for there to be Free Prior Informed Consent, First Nations peoples will have to enter into a broad information gathering process about the state of their lands, waters and traditional territories. How can First Nations expect to have a proposed law and regulations developed when they don't even have basic information about what the B.C. and federal governments has allowed to occur on First Nations territories?

Russell Diabo