

The BC Government Recognition Act Does Not Recognize Aboriginal Title

Aboriginal Title is a Fundamental Property Right

Aboriginal Title has been recognized by the Supreme Court of Canada in the 1997 Delgamuukw decision and is protected under section 35 (1) in the Canadian Constitution (1982). Aboriginal Title is a real property right and a fundamental underlying Title of Aboriginal peoples in our territories; no federal and provincial government can create property rights that can extinguish Aboriginal Title.



Recognition of Aboriginal Title requires definite changes in the distribution of powers between the federal and provincial governments to accommodate our Title and Rights according to section 35 (1) of the Canadian Constitution (1982). This section is a third head of power and recognizes indigenous jurisdiction over our Aboriginal Title lands held by the people collectively as the proper title and rights holders. Aboriginal Rights, like hunting, fishing, self-government and Aboriginal Title are protected under section 35(1) of the Canadian Constitution 1982 and cannot be unilaterally extinguished or disposed of by the federal or provincial governments.

Judicial recognition of Aboriginal Title has caused the World Trade Organization (WTO) and the North America Free Trade Agreement (NAFTA) to recognize that the federal policy of not recognizing Aboriginal Title is a subsidy to the Canadian forest industry. Judicial recognition of Aboriginal Title has financially caused the province of British Columbia to have to account for Aboriginal Title as a contingent liability in the British Columbia annual financial statements since 1997.

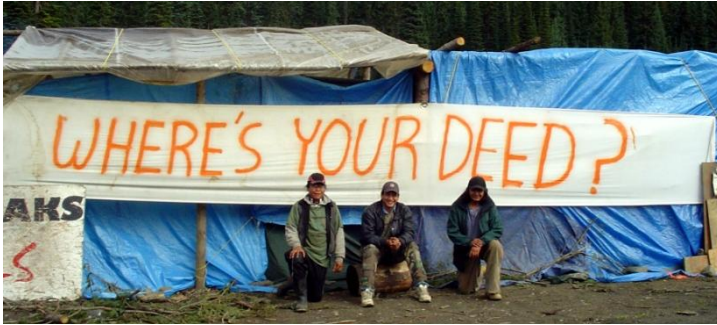
British Columbia – has no jurisdiction over Aboriginal Title lands resulting in imperfect, defective Crown Title

The proposed British Columbia Recognition and Reconciliation Act does draw out the fact that the province has been handing out defective or imperfect provincial property interests, like fee simple, forestry permits and mineral rights.

The Provincial government has made Recognition of Aboriginal Title, contingent on recognition of provincial Crown Title, this means we would have to perfect provincially created property rights like fee simple, forestry licences, mineral permits, etc. Indigenous Peoples will not benefit by perfecting these defective provincial government property rights, and it will only limit our decision-making power in our territories by recognizing provincial jurisdiction where currently the province has no jurisdiction over Aboriginal Title lands.

The Act also does not ensure fair and just compensation in regard to our inalienable Aboriginal Title and for past use and benefits and for the pain and suffering our families have experienced over the illegitimate use and theft of our resources.

The fact that the Crown has granted imperfect and defective property rights in our Aboriginal Title territories has created economic uncertainty for the provincial government and the corporations who invade our territories without our permission. We have the choice to either force Canada and British Columbia to genuinely recognize Aboriginal Title or by accepting this Act we would limit or extinguish Aboriginal Title with our own endorsement as Indigenous Peoples.



George Manuel Jr. Arnie Jack & Henry Sauls, Sun Peaks, 2004

British Columbia Proposed Recognition and Reconciliation Act

The proposed British Columbia Recognition and Reconciliation Act does not recognize Aboriginal Title according to the judicial definition by the Supreme Court of Canada in the 1997 Delgamuukw decision. It only creates a provincial government process through which Indigenous Peoples can receive limited benefits and be part of decision-making processes under provincial jurisdiction. This process will be as expensive and dysfunctional as the British Columbia Treaty Process. The proposed British Columbia Recognition and Reconciliation makes Aboriginal Title subject to provincial government legislation and limits decision making and benefit sharing regarding Aboriginal Title to mere agreements subject to provincial legislation, regulations and direction. The proposed British Columbia Recognition and Reconciliation Act is a public relations manoeuvre in the lead-up to the 2010 Winter Olympics and not a substantive effort to address recognition of Aboriginal Title based on indigenous jurisdiction.

Ratification of Aboriginal Title Matters

The majority of Indigenous leaders do not support the existing discussion paper on the British Columbia Recognition and Reconciliation Act and are withholding their support until the actual Act is produced. The proper title and rights holders of Aboriginal Title, are the people collectively who have a common language, customs, traditions and shared history.

The people have not been involved in ratifying the BC Recognition and Reconciliation Act and it cannot be legitimate unless the proper title and rights holders approve the BC government legislation by giving their free prior informed consent.

The Canadian Indian Act elected Chief and Council are not the proper title and rights holders of Aboriginal Title and cannot transfer a mandate to the BC First Nations Leadership Council to negotiate the BC Recognition and Reconciliation Act.

Federal Government Responsibility

Canada is the primary government with whom to enforce our nation – to-nation relationship, the federal government is responsible for recognition and reconciliation of Aboriginal Title and must be involved in any effort to genuinely recognize and reconcile Aboriginal Title and Crown responsibility. The federal government must abandon its existing unilaterally created policies on Comprehensive Land Claims and Self-government and adopt a mutually agreeable policy with Indigenous Peoples that is based on recognition and coexistence of Aboriginal Title and Rights.

International Standards

The proposed British Columbia Recognition and Reconciliation Act do not meet the minimum standards established in the United Nations Declaration on the Rights of Indigenous Peoples. The Canadian and British Columbia governments must accept the United Nations Declaration on the Rights of Indigenous Peoples as the minimum standards in terms of policies with regard to Indigenous Peoples in Canada and internationally.



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