

TITLE

Archive Quarterly

journal of the west wasn't won Special Issue #1 2026



**sixty
years
since
Native
title**

*was allowed in
a Canadian
court*

**Calder
Guerin
Paul
Blueberry
Okanagan
Andrew
Sparrow
Gladstone
Luuxhon**

**Ktunaxa
White and Bob
Delgamuukw
Tsilhqot'in
Haida
Taku
Douglas
Pena
Van derPeet
Nuu-chah-nulth
Cowichan**

Hunquminum Treaty Group

Tsimshian Tribal Council

Martin

Charley

Desautel

Alphonse

Oregon Jack Creek

Douglas

Kwitsel Tatel

Haines

Tthowgwelth

McIvor

Pitawanakwat

Smokehouse

Edmonds

Mountain

Apsassin

Blackwater

Gwasslam

Uukw

Klahoose

Kruger & Manuel

Musqueam

Skeetchestn

Gamlaxyeltxw

**clouding
nations older
than the last
Great Flood,**

the young province
of British Columbia
has bought time
and occupation
with bad faith
and violence.

From *White and Bob*, 1965
to *Cowichan*, 2025
colonial courts
force assimilation
by hollowing out their
own legal construct:
“Aboriginal title.”

ELECTROMAGNETIC PRINT



**Paulette
Ke-Kin-Is-Uqs
Dick
Adolph
Jack, John, & John
Nuchatlaht
Huu-ay-aht
Campbell
Cook
Kitselas
Kitkatla
Bob
Adams
Gitanyow
Ahousat
Derriksan
Pascal
Thomas
Discon & Baker
Halfway River
Squamish Nation
Lax Kw'alaams
Dennis & Dennis
William**

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*sixty years
since Native title
was allowed
in a Canadian court*

Dedicated to Peoples of the Land

everywhere
resisting colonization and assimilation;
and to their proud future generations.

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Nkukwa ta Tmukwa ~ Society for Our Grandmother Earth
BC ALPHA- Association for Learning and Preserving the History of WWII in Asia
Cove Cliff Community Partners
Skel7áqsten Skel7ántsut

The Archive Quarterly Banner

According to Elders, the Canadian flag is not supposed to be red.
The maple leaf in the center, to be green, represents “the great tree of life,”
the forest of grace and living. Or, as they said at Albany, New York, in 1698:
“...all of us sit under the shadow of that great Tree, which is full of Leaves,
and whose roots and branches extend not only to the Places and Houses
where we reside, but also to the utmost limits ..., which
Tree is now become a Tree of Welfare and Peace, and our
living under it for the time to come will make us enjoy
more ease, and live with greater advantage
than we have done for several years past.”

So the Onondaga sachem, Sadeganaktie, is quoted
as describing the terms of peace with England.

The shoulders of the Canadian flag should be blue,
representing the rivers, whose banks we all live upon, and
whose life-giving waters the treaties were sworn upon.
Why Canada made it all red is not well known.

On the AQ banner, running through the leaf is the Pacific coastline where Indigenous
jurisdiction and land title continue without treaties, despite colonial assumptions.



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in a Canadian court*

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A general map of Indigenous Nations. Union of British Columbia Indian Chiefs, c. 1990.

Acknowledgment

100% of British Columbia is Native Land.

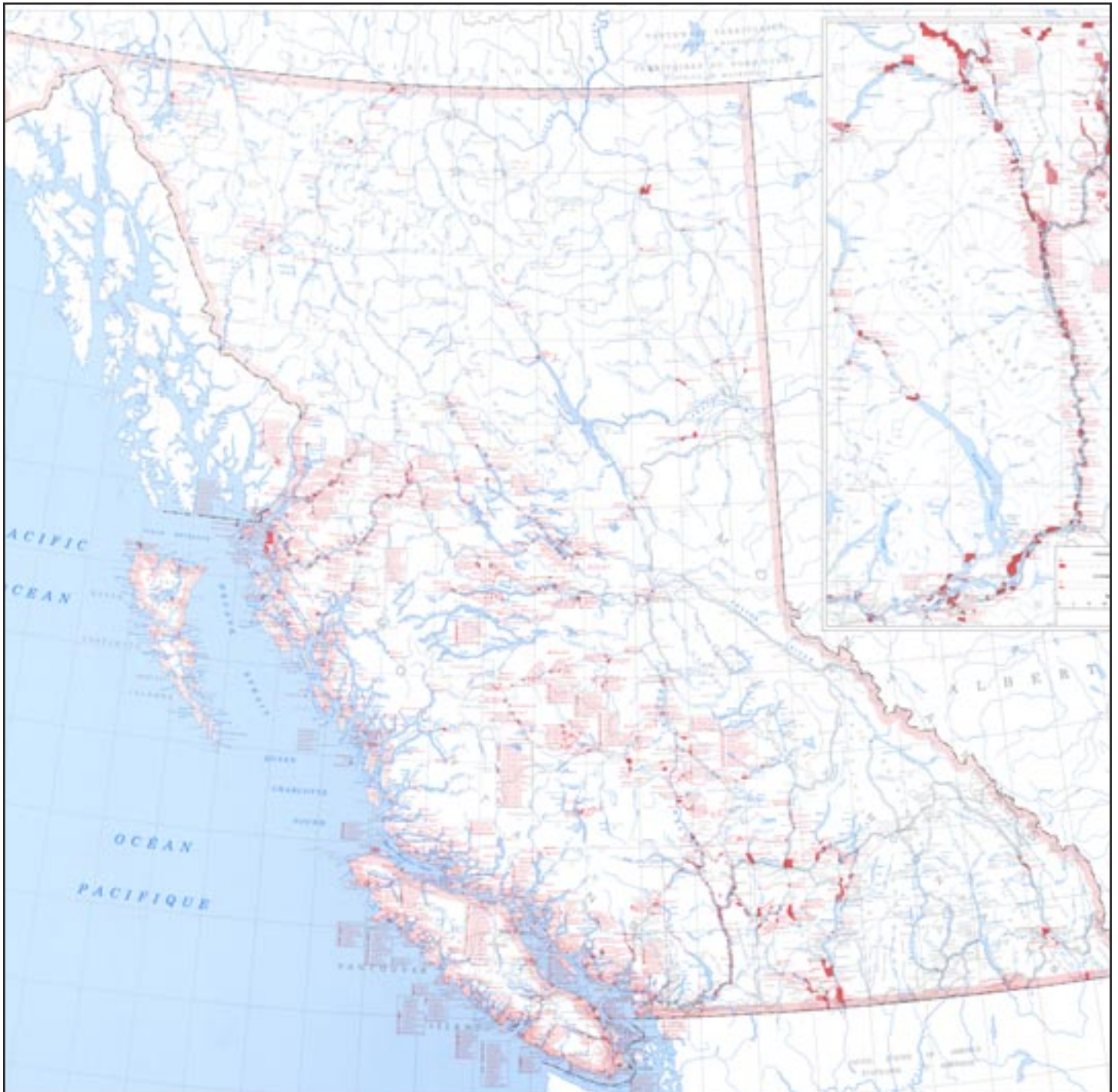
It has been 150 years since Canada's Attorney General allowed the unconstitutional assumption of jurisdiction in the *BC Lands Act*, 1875, "lest great inconvenience ensue" for settlers.

It is over 50 years since Native title was acknowledged to continue, unextinguished, by Supreme Court of Canada judges in *Calder*, and the federal government launched the Office of Native Claims.

30 years ago, the Royal Commission on Aboriginal Peoples recommended that Canada address long-outstanding land claims.

Now ten years since the report of the Truth and Reconciliation Commission, there is still no formal definition of the term "reconciliation" and the outstanding land issue is not among the TRC recommendations.

This note is to acknowledge the indomitable spirit of Indigenous Nations west of the Rocky Mountains, and the debt of restoration, restitution, reparation, and compensation, - and the future - that belongs to them.



*Map of Indian Reserves in BC by Energy, Mines and Resources Canada.
The dots are the Indian Reserves.*

About this book

When Native title to ancient homelands is an obvious and irrepressible fact, the question of land ownership is for the Imperial colonizer: what title do *you* have?

Indigenous communities mobilize and enforce their laws on the lands regularly: building and developing, harvesting food and medicine, restoring damaged areas and barring unsuitable industry, and maintaining traditional and ceremonial activities.

Whatever jurisdiction Canada and its courts might have over the newcomer population, colonial rights on the land are defined by the limits Indigenous Peoples place on them.

This book is concerned with the way colonialists push past the limits offered to settlers by Indigenous Nations, and the many ways the provincial and federal governments rationalize their ongoing denial of Native title, rights, and jurisdiction.

The power of the new colony's assumption of jurisdiction, enforced by its one-sided and foreign police, courts, and government laws, has only ever been weighted by the force of their numbers – the number of settlers – and the rationale of *might makes right*.

In spite of that, Native nationals act on their own laws, to access their natural wealth or to defend the country from irreparable harms, like mining, flooding, over-settlement, paving, spraying, logging, or from other social, civil, and political violations of their Peoples.

Indigenous Peoples have the jurisdiction to do so. What they don't have is the newcomer's recognition and respect for that.

Indigenous rights don't come from the crown, or the courts, or developments in international law. Indigenous Peoples have jurisdiction today because they never relinquished it.

Modern agreements between British Columbia, Canada, and Indigenous Peoples always include a "consent" provision.

The governments deny rights until original owners are forced to concede their land titles and jurisdictions under duress. In exchange, forms of Canadian fee-simple land title and delegated power from the crown are provided by agreement, extinguishing Indigenous title and rights. This is forcible assimilation - forbidden by international conventions.

Settler denial of the Original Peoples has been violent and often irreparably harmful in almost innumerable ways.

It continues to be so, with punishing agreements that gain far more for the non-native society than for the Indigenous.

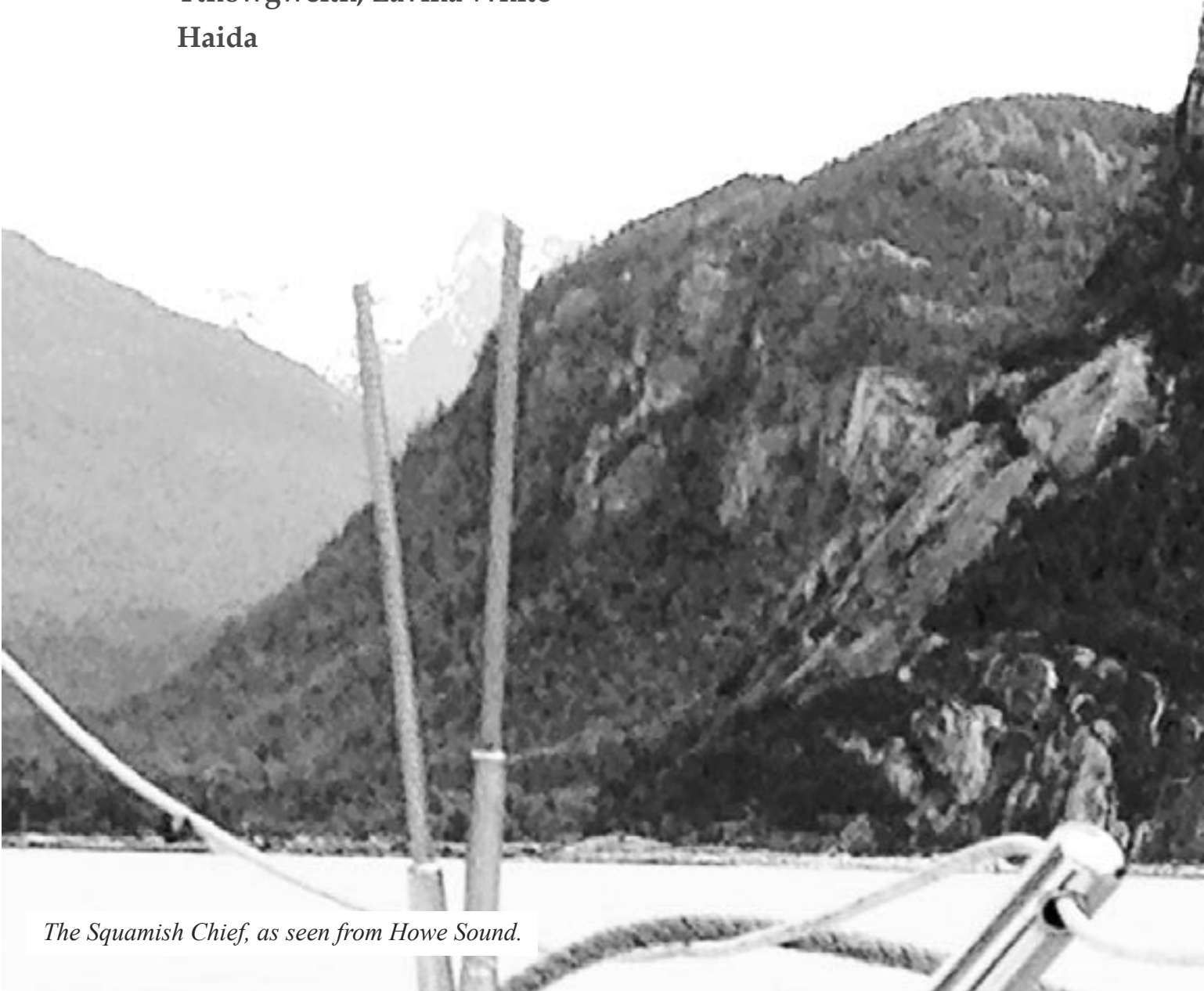
This book relies on suppressed and under-reported voices and events to improve visibility of the unresolved legacy. It also sheds light on the colonial legal establishment's part in an ongoing attempt to extinguish Indigenous titles and rights.

It is far from a complete history.

The history of BC has never been accurately presented. Here is a wide reference to events that allows the questions posed by "title" to clearly appear, and reveal what is required of settlers to get out of the way of self-determining Indigenous futures.

**“Our title
is not negotiable.
Co-existence is.”**

**Tthowgwelth, Lavina White
Haida**



The Squamish Chief, as seen from Howe Sound.

Introduction



What is “title”?

“Title”
refers to ownership of land.

National titles,
such as are held by Indigenous Nations,
include the whole country and provide for
governance of the people and the land.

This is jurisdiction.



*Chief Maquinna of Nootka,
and Chief Callicum,
c. 1788.*

*Maquinna’s hospitality
allowed for Spanish-British
peace negotiations in 1790,
while the Nuu-chah-nulth
people meaningfully controlled
European access to trade.*

**Ownership of land is an idea
that goes to the root of a
People’s cosmovision,**
and the expression of this idea
varies throughout the world.

Humanity has no way of prioritizing the value or importance of one People’s definition of “title” over another’s. Different Peoples and Nations have it, by virtue of their origins, roots, and histories in the land.

The word “title” is used in this book to mean ownership of land.

Laws concerning individual land holdings, or land titles, are part of any modern or historic nation’s character, and the way land is related to differs widely according to the Peoples and Nations west of the Rocky Mountains, south of the Alaska border, and north of the USA. That is to say, in what is called British Columbia today.

The way peoples and nations relate to their land titles is unique to their own way of being who they are as nations, made up of communities and families. It’s unique to a nation’s collective belief about what it is and who its people are, and their relationship to the land. Land title is often synonymous with a leadership title in a social or political role.

Still, “title” is only one expression of one mechanism of governance, within a much larger culture and world vision, within a system of laws that is grounded in history, language, culture, place, and spiritual presence. The “law of the land” is reflected there, imposing its own conditions for sustainability and wealth onto the ways of the peoples.

“Owning land” is always subject to the rules of the society which has

the overarching jurisdiction in the place where that land is. Jurisdiction – the right to make and enforce laws – comes with national, or even regional, title. The way people make decisions within those jurisdictions is their right and privilege.

For example, the Spokesman for the Tsilhqot’in National Government recently remarked on a non-native property owner within Tsilhqot’in lands. The owner had used heavy machinery to scoop the

Introduction



British merchants launch the re-fitted Northwest America from Nootka Sound, 1788, where they purchased supplies and timbers from the Nuu-chah-nulth.

spawning gravel out of a headwater salmon stream – so he could have better access to the water for agricultural purposes. The TNG spokesperson stated clearly that person should not be allowed to own such precious land. The rules of land ownership within Tsilhqot'in do not allow for wanton desecration of areas that are the sustenance of all our relations.

“Title,” among Indigenous traditions of law and governance, means something quite different from “land title” or “fee simple property” as the British Columbia Land Titles offices describe it.

Indigenous title today means more than owning plots of surveyed land under a foreign government, under a foreign court’s definition of “Aboriginal title,” or

“lands reserved for Indians,” allegedly held and owned by the crown of England.

Indigenous legal traditions – of which there are dozens in BC – provide laws and names and responsibilities associated with rights in particular areas. These values and laws have had no meaning to the settler colonizers, to the English crown, who used every means known to humankind to destroy the nations and thereby avoid the possibility of them enforcing those laws and values over settlers who would raze the lands of their timber, salmon, and minerals, and ship them back to Europe.

The fact that native nations had and have those titles, legal traditions and values, was and is well understood.

For example, the first British

Captain to visit the northwest coast of America, Captain Cook, wrote in his journal that the Nootka “have such high notions of everything the Country produced being their exclusive property...”. Cook relied on the Nuu-chah-nulth for provisions and ship repairs, and was happy to pay their price. The sailors were denied access to the lands, but they were traded fair for everything they needed.

This book is concerned with these National titles, first encountered by the British antecedents of the current Province of British Columbia in the 1780s. National titles are defined by international borders between distinctive lands and nations with great and different histories, languages, and traditions.

A nation’s jurisdiction over land

and people is synonymous with and dependent on title.

Indigenous Peoples and Nations have borders. They often have soft borders, through shared areas of either transit or key resources, and also often have mixed villages within these soft borders. They have hard borders, where the chain of custody of titles sometimes dates back 6,000 years. The evidence of that is in the names, which have been passed down all this time since “time out of mind,” or “time immemorial” – since Creation; or since the Great Flood.

The Peoples’ unique material cultures match the naturally-bounded landscapes. At the junctions of nations, climatic zones multiply. Desert, rainforest, interior alpine, sea-level, sub-alpine are across the river and around the mountain from each other, and, as Sam Mitchell of the St’át’imc said: “As the vegetation changes, so do the People.”

Indigenous traditions and values provide laws and names and responsibilities associated with each particular area. They are rooted to the land. Think of the crests and totems that mark the coast, or the interior. These are titles with all their articulated levels of status and divisions of powers; with names that carry on from individual to individual: the title remains over millennia.

Think of the family clans and crests: Raven, Eagle, Frog, Killer Whale, Beaver, Bear, Wolf, Deer, Salmon.

In another way, the Gitwángat chiefs said in an 1884 declaration: “We would liken this district to an

animal, and our village, which is situated in it, to its heart. Lorne Creek, which is almost at one end of it, may be likened to one of the animal’s feet. We feel that the whitemen, by occupying this creek, are, as it were, cutting off a foot. We know that an animal may live without one foot, or even without both feet; but we also know that every such loss renders him more helpless, and we have no wish to remain inactive until we are almost or quite helpless.”

Indigenous laws, traditions, and values are now in competition with a very different set of laws and values introduced by colonialists here in what has come to be called British Columbia. The legitimacy of the two systems is each denied by the other, to varying degrees.

The Province of BC never gained the Peoples’ consent to be governed by the foreign laws and courts which first empowered it as a colony of the British Empire, or later as a province of Canada.

The Province lacks jurisdiction, and this is in full display throughout its claimed borders: when the continuing title holders don’t want a development to happen, they act on their own jurisdiction to stop it.

These actions aren’t always successful: when business proponents have such a hold over the provincial government that it will not suffer defeat, and then the Indigenous are arrested and jailed, fined and tried, convicted; sometimes coerced to publicly betray their national position and accept a personal bribe; or they are physically overpowered or intimidated.

Power is not title.

**Think
of the crests
and totems
that mark
the coast,
or the interior.
These are titles
in exactly the
same way
that any other
houses have
titles,
with names that
carry on from
individual to
individual:
the title remains
over millennia.**

**Think of the
clans: Raven,
Eagle, Frog,
Killer Whale,
Beaver, Bear,
Wolf, Deer.
Salmon.
Same as
the sigils and
ancestral coats
of arms
anywhere.**

Introduction

Who has “title”?

**West of the Rocky Mountains,
most land titles have never been bought
from Indigenous Nations and very few
Indigenous communities have agreed to be
governed by the crown.**

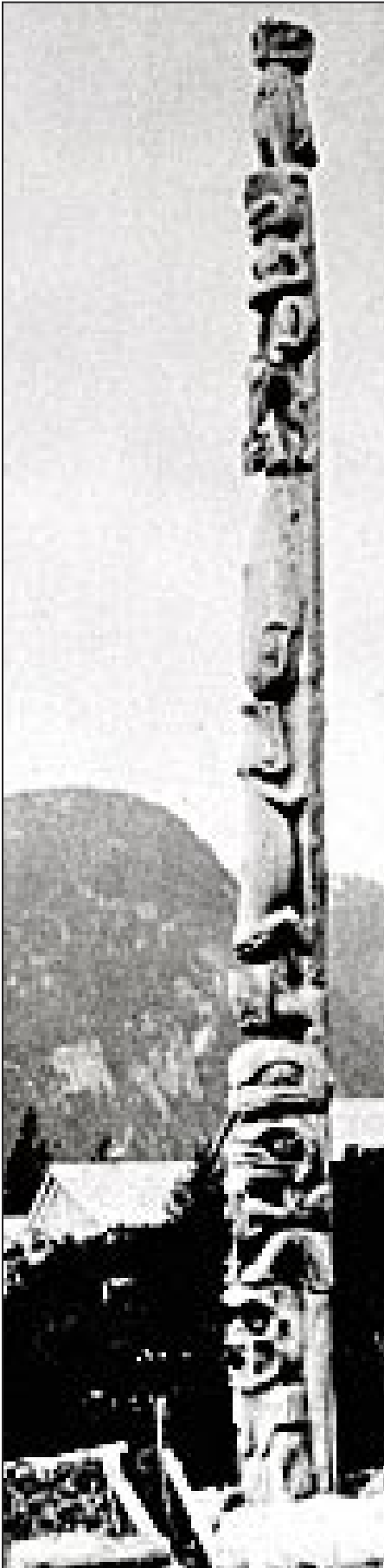
**Newcomers have simply come and taken
possession of lands, in the name of the King,
breaking promises made by the King
to ensure their safety in Indigenous countries.**

**To avoid the challenge of land title
and jurisdiction, settler society attacked
the Nations and criminalized the survivors.**

**“Aboriginal title” is an Imperial
construct that was invented
after the fact of Britain’s implanta-
tion of invasive colonies around the
globe. It refers to what becomes of**

the Original Inhabitants’ land rights under the flag of the invading power. It is not a normal or recognizable right, under that system: it is *sui generis* – according to the Romanized legal system and British improvisation – or, in English, something that is uniquely undefined, according to the invader who has an obvious interest in denying it in favour of their own title.

Furthermore, according to the colonizer, its self-imposed “fiduciary obligation” towards the Indigenous Nations solves the problem of their assumption of title and jurisdiction over entire nations,



*The Nispiq Pole, Wuikinuxv
(Oweekeno).
Owned by Chief Simon Walkus Sr.,
this landmark tells the origin
of the people.*

*Photo and caption: C. MacKay,
1952, from
“We Are The Wuikinuxv Nation,”
a UBC Museum of Anthropology
Pacific Northwest sourcebook series,
2011.*

What is Title?

*Kwakwaka - Xwamdasbe 1881
Nawhitti village.
Photo by E Dossetter.
American Museum
of Natural History*



annexing territory to the crown and subsuming citizens as subjects of the crown.

It's not a choice. The Imperial colonizers say: our crown is superior to yours, and so your lands naturally become ours now that we're here, but with this superiority we also vow to protect you from others and from yourselves, and treat you decently. This assertion also led to calling Native people "wards of the state," and treating them as such in civil and criminal matters under the new crown's laws.

Any review of BC history will show that the crown's self-imposed fiduciary obligation has not been honoured. As BC's Justice MacDonald stated in *Pasco v. Canadian National Railway Co.*, [1986] "We cannot recount with much pride the

treatment accorded to the native people of this country."

The crown's opinion as to its entitlement to take these actions against humanity – whether it pays for it or not – is clearly biased in its own favour.

Indigenous Peoples never asked to be "civilized" or governed" by Britain, and they certainly did not agree to pay for it with their lands and freedoms.

All the welfare programs on Indian Reserves, or First Nations, all the separate health and education and tax standards for Native people, used to be called the Department of Indian Affairs, or DIA. It has changed names many times, now it's Indigenous Services Canada, and Crown-Indigenous Relations

and Northern Affairs Canada.

These are provided to Indigenous Peoples as the beneficence ensured by the honour of the crown, when it took over all the land and settled foreign populations to reap the riches of the lands and waters and ship those back to Europe.

Obviously, the Indigenous Nations never agreed to this.

But Indigenous resistance to British encroachment was met with such force and violence, once there were 26 friendly and fair Hudsons Bay Company forts at every strategic trade junction west of the Rocky Mountains, and the British Navy with its gunships arrived on the coast.

The crown's representatives turned to war to gain access to the

Introduction



The Grandmothers' Healing Canoe Journey, 2024, connecting families and nations by the ancient waterway.

land and to retaliate against Indigenous enforcement of their own laws. The fur-traders who became governors, during fifty years of friendly and mutually beneficial trade, now employed biological warfare; subterfuge and sabotage; and sanctioned the massive gold rush invasions (which they couldn't control anyway) with specially-fitted gunships to navigate the big rivers.

The governors turned to total oppression of the smaller numbers who survived in the Native nations, and settled foreign populations as fast as possible to outnumber them.

Still, the Colony acted as if it had the moral superiority. It justified the invasion and the towering cost in Indigenous life by promoting the lie that it brought "civilization" and "Christianity."

This status of wardship, with its

empty promise of "fiduciary" care, was foisted on the ancient nations and their peoples. They were prevented from relying on their own authorities, incrementally; from fishing and hunting; from building their own houses in their family lands; and so much more.

Any review of Indigenous statesmen and their clear presentations to any level of government over the last century and a half will indicate that they don't agree to their nations' annexation; they don't believe themselves to be inferior; they cite their own laws and juridical jurisdiction; they rely on their god-given right to continue as they have done on their god-given lands; and they point out consistently that the first British or Canadian visitors to their lands were treated with sympathy and consideration, seen as equals, and assisted to learn the ways of the

land and survive – that both should benefit.

They didn't give up their title, they didn't give up their self-determination, and they didn't want to assimilate to the European worldview. It was often the Indigenous perception of Europeans that their dreadful behaviour was the result of mental illness.

One exceptional BC judge confirmed that sentiment this way: "...the Indian people have no wish to exchange their rights for welfare cheques or to abandon what remains of their culture for ours. These facts are not well understood by us but that is only because white North Americans have generally refused to take native cultures seriously, and British Columbians are no exception." Justice Barnett was addressing the racist BC Conservation Officers, in *R. v. Haines*, 1978.

Jurisdiction

**In societies governed by the rule of law,
a court loses jurisdiction
when its judges are partial to the result.**

Canadian judges are on Canada's payroll.

The BC land dispute is between Canada, BC, the UK, and the Indigenous Peoples, who have their own courts and governments.

When Canadians insist that they are going to absorb Indigenous land rights into a Canadian body politic, and call that space (that extremely tightly defined space) "Aboriginal title," then the argument about "land claims" and "Native title" and "the Indian land question" has been misdirected. It has been misconstrued and misaligned. It is no longer the same conversation.

To take a little step back, for perspective, why are today's discussions for the resolution of land titles across British Columbia not taking place in the local language? In Haida, in Salishan dialects, or Dené? Or any of the 26 languages here?

Because the English-speaking crown colonists have assumed jurisdiction.

This assumption of juridical jurisdiction – of decision and interpretation in law – is the first act of bad faith. It was the first of many, and continues to be the most relevant problem.

Having always relied on the British crown for a legitimate claim, the settlers of British Columbia remain at a total disadvantage for their extensive ignorance. For instance, "It is beneath the dignity of the crown to claim title by virtue of occupation," say British courts of old.

And, "If the King has power to make laws for a conquered country, ...he can make none which are contrary to fundamental principles."

But Imperial Britain assumed for itself all the lands it could sail to. The northern Pacific coast of America was the last frontier on the globe, after many others had been invaded and so assumed. Already by 1846 they were lodged in Africa, Australia, India, New Zealand, Asia, South America, and the Atlantic coast of America.

1846, the Canadian courts agree, is the effective date of British sovereignty here. That's because by then Britain had made treaties with Spain (1792), Russia (1825), and finally with the USA in 1846, concerning their "interests" or "influence" in the Pacific Northwest.

However none of those European

"Another year,
a warship came to
blow up our village,
Metlakahtla.
We said, all right;
we will stand by our
land, or die by
our land.
Three different times
war ships came
to fight us; but we
knew it was our land."

- Affidavit of
Chief Paul Legaic,
Tsimpshean, 1887.

countries had any interests in this land, not legal ones, unless you credit the idea that the Pope had the right to rule the world and his decision that whatever Christian Prince arrived in a non-Christian country first could have it. This was the Pope's decree in *Inter Caetera*, 1493: the supreme law for Christian monarchs.

That is the root of Canada's claim to "Canada." It is the source of the Canadian judges' authority, when they dismiss the claims of the Indigenous Peoples, while a portrait of the British monarch – God's representative on earth, first appointed by Rome – hangs on the

“We have all our old traditions about the laws of the past, but we have no story like this, of one people taking the land from another without an agreement.

So, if the white chiefs want our land, we ask them to go by the Queen's law and make a treaty with us.”

- Charles Russ, Tsimpsean, to Dominion Commissioners at Nass River, 1889.

court room wall behind them. It is the source of the second-class, sui generis, “Aboriginal rights” that are calculated to fail to protect the past, present, and futures of Indigenous Peoples.

To wit, Indigenous Peoples do not credit those ideas.

The supposedly god-given right to rule over others was perhaps not well enough explained by the Kings and Queens of Britain who licensed Charters and settlement, Governors General and a Parliament and law makers as a matter of supreme routine. They had a

license to kill, and it was vindicated every time the astonishing cruel and inhuman actions of “explorers” and “traders” was brought back to England for trial. In 1857, a judicial committee decided it did not have enough evidence to determine whether the Hudson’s Bay Company was guilty of crimes against humanity in its actions in the Pacific Northwest.

The right to rule was never a “right” – it was might. It was not jurisdiction, it was violent and tyrannical occupation. Occupation is not title, either.

Today, however, the resolution of international disputes over borders and occupations are at the center of international relations. These have led to instruments like the Vienna Convention on the Law of Treaties, and the Convention for the Prevention and Punishment of the Crime of Genocide, and the International Bill of Rights, and many more.

The Committees of the UN treaty bodies do have jurisdiction over state parties to the Conventions – what they don’t have is any more power than the member states are willing to leverage, maybe in sanctions or boycotts, to force compliance with international human rights standards.

In BC and Canada, the crown continues to rely on might and tyranny. The crown courts are performative, when it comes to this matter of competing jurisdictions between the crown and the Indigenous. A court must be impartial. Even Rome said so: *nemo potest actor et judex*. No one can be a judge and a suitor in his own cause.

Introduction

Because of the intense competition for control over the land, resources, and peoples, court decisions which could favour Indigenous Peoples are perceived by the crown’s judges as sure to ruin their reputations. Among their non-Native, settler family and economic communities – as well as the legal, economic, and political status of those peer groups – they are literally the guardians of the occupation, and they have the police and prisons to carry out their orders.

Therefore the judges have a personal interest in the result, and the crown itself has an interest.

Because of that conflict of interest, there is a lengthy, yet disregarded, legal lineage to resolve the problem of legal conflict between British colonists and the Indigenous nations in whose lands they find themselves.

This problem was so basic and obvious that a Standing Committee was empowered to solve it, some three hundred years ago, by the British Queen Ann. The entire purpose of the court was to hear matters of Native v. Settler conflict, and its creation was prompted by *Mohegans v. Connecticut*, 1703. The Committee has never yet been engaged.

The *Mohegans* case dragged on until 1777 without progressing, until the delay of justice ensured the denial of justice.

Several attempts to argue the crown court has no jurisdiction in BC, where land title and jurisdiction is at issue, are included in the Case Summaries section of this book.

Aug 2, 1868



ANNO VICESIMO PRIMO & VICESIMO SECUNDO

VICTORIÆ REGINÆ.

C A P. XCIX.

An Act to provide for the Government of *British Columbia*.
[2d August 1858.]

WHEREAS divers of Her Majesty's Subjects and others have, by the Licence and Consent of Her Majesty, resorted to and settled on certain wild and unoccupied Territories on the North-west Coast of *North America*, commonly known by the Designation of *New Caledonia*, and from and after the passing of this Act to be named *British Columbia*, and the Islands adjacent, for Mining and other Purposes; and it is desirable to make some temporary Provision for the Civil Government of such Territories, until permanent Settlements shall be thereupon established, and the Number of Colonists increased: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. *British Columbia* shall, for the Purposes of this Act, be held to comprise all such Territories within the Dominions of Her Majesty as are bounded to the South by the Frontier of the United States of *America*, to the East by the main Chain of the *Rocky Mountains*, to the North by *Simpson's River* and the *Finlay Branch* of the

Boundaries
of British
Columbia.

9 Q

Peace

Introduction

Power is not title.

Refusing to pursue legitimate methods of gaining title,

Canadians have tried to define “Aboriginal title” out of all practical existence in their own colonizing courts.

Denial is the first part of extinguishment.

The crown denied and ignored legal issues over jurisdiction and land title as soon as they were securely established. They bought that security for traders and colonists with promises of mutual harmony and co-existence.

“certain wild and unoccupied territories on the North West coast of North America... after the passing of this Act to be named *British Columbia*, and the Islands adjacent, for Mining and other Purposes...”

Then they employed gunboats and public executions; Indian Reserve Commissions, Orders in Council, and Joint Committees. The colonial crown passed laws to prohibit Native access to justice and litigation.

A hundred years later, the crown in right of BC and Canada allows disjointed aspects of “Aboriginal title” to be evaluated in the crown courts. This legal dislocation allowed the interim settler invasion to be rationalized and justified after-the-fact; then began to declare

residual, colonially-defined rights to the Original Inhabitants. Today, the colony and its judicial branch are embedded in the global economy with treaty promises to foreign nations: the courts and government withhold and deny Indigenous Peoples’s rights. The price of joining that economy, on any scale, is that First Nations surrender their own traditional and inherent rights in exchange.

“Consent” appears to be the last part of extinguishment in BC and Canada.



The August 2, 1858 Act to provide for the Government of British Columbia (opposite page) followed the discovery of gold in the Fraser River watershed.

Matthew Bailie Begbie (left) was a British lawyer. In 1858, the new “judge” Begbie arrived by sea to Fort Langley and proclaimed the Colony of British Columbia on behalf of his new employer, Queen Victoria. He named James Douglas (right) its Governor. Governor Douglas turned back to him and named him the Chief Justice.

“Title” according to British and Canadian legal norms, allows the title holder to sell, rent, use, take out speculative mortgages, rely on the value of the land to take out loans, and otherwise decide what to do with the land. That bears little semblance to the new “Aboriginal title” construct in colonial and Canadian common law. Canada has decided unilaterally that its courts will decide what “Aboriginal title” is; and they have developed a definition, over decades of successive, piecemeal rulings, to favour their new society’s titles at the expense of Indigenous Peoples’ titles.

For example, the crown courts have decided that Aboriginal title land can’t be registered in any Land Titles office. It can’t be sold, except to the crown, they say; and it therefore has no market value, they say.

The courts have also decided that Aboriginal title land is subject to infringement by any “valid” legislative objective which serves the “legitimate interests” of the “broader public” (settlers) over the interests of Indigenous Peoples. It is also subject to “certain carve-outs” (Tsilhqot’in 2014) which were itemized in Delgamuukw in 1997, and will continue to be defined by the courts.

The quasi-legal, or extra-legal means by which these extensive descriptions were achieved, and the definition of “Aboriginal title” itself, are otherwise unknown throughout the world – except as imperial annexation. The crown has used its discretion, and its forces, to move definitions of “Aboriginal title land” out of the way of its most desired settlement lands, ports, and waterways – and then provide for

development of the lands and resources.

Again, even Roman law has a maxim to quash this practice: *quam ipse habet*. No one can transfer to another a larger right than he himself has.

One Tsimshian Chief, David McKay, put it this way in 1871: “how can the government say it is going to give us what is already ours?” while discussing the imposition of the Indian Act and Indian Reserves in his lands.

Yet the British crown allowed unchecked colonial interests to enjoy the protection of its Imperial power, all the while benefitting from an unrestricted trade in timber, fish, and mineral resources. The trade was entirely subsidized by the repression and denial of Indigenous Peoples, and their rights to control and sell the natural wealth of their lands.

The crown shut the land question out of every court room, Commission, and Legislative Assembly.

It was 1964 before a Canadian court heard the Indigenous argument that title is what provides for rights. It was the first time because neither the Province, Canada, nor the British Privy Council would allow the matter to proceed in court. It had already been 110 years since the government denied the treaty rights of Saalequin at Nanaimo. The Provincial crown denied it was a treaty.

In *White and Bob*, a young Thomas Berger defended hunters relying on those treaty rights. They had been charged for hunting deer

**Some ships which
patrolled this coast
came from the
Crimean War in the
Baltic Sea, with
68 pound cannons.
Steam wheelers
fitted with guns and
34 pound cannons
patrolled in-river, on
the Skeena, Fraser,
and Nass.**

in the exact lands the treaty had promised to ensure their rights “to hunt and fish as formerly.” The legal defense referred to the treaty, and it referred to their title.

The Supreme Court of Canada adopted a strategy to avoid addressing title directly. It just refused to hear the defense – and instead made a brief ruling that the 1854 land sale was a treaty, with the protective clauses included.

The Supreme Court adapted its avoidance strategy further in the Nishga title case, *Calder*, a few years later, and produced a split decision between seven judges in 1973 - so that didn’t resolve the matter.

While the provincial and federal governments denied Indigenous rights on the ground, the courts refused them justice. Justice delayed is justice denied.

When the Court was finally ready, judges began a process of

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The British Navy provided these ships and personnel to the Colonies.

Sitting at anchor, cannons trained on a beachfront village, the colonial representative on board might invite a chief to parlay, then keep him hostage; send a landing crew of 200 Marines with rifles, small arms, howitzers, and field artillery; shoot rockets into the village and surrounding forest to burn it down; seize or destroy all the canoes on the beach; or carry out public hangings.

True, we may let part of the land go in exchange for your technology. ...we're going to buy your technology. We buy that, with our land."

The crown's deliberate confusion about the meaning and application of "Aboriginal title" is a recent invention. It's a strategy.

~



H.M.S. Firefly destroying a Finnish village in the Gulf of Bothnia during the Crimean War, August 8, 1855. After that war, several of these Driver-class steam-powered wooden gunships of the British Navy brought smaller gunboats to the Pacific coast in convoy, like *Forward* and *Grappler* which could navigate into rivers such as the Nass and Fraser. Several classes of ships - from the Driver- to the Osprey-class to the smaller Albacore-class gunboats carried out the same actions depicted in this painting. There are almost no artist renderings of the shelling and fire-bombing of dozens of wealthy and strategic national centres on the coast, and no written history which thoroughly documents the full role of the Royal Navy on the BC coast.

The image above is kept at the National Maritime Museum, Greenwich, London. Photo ID# PAG9259.

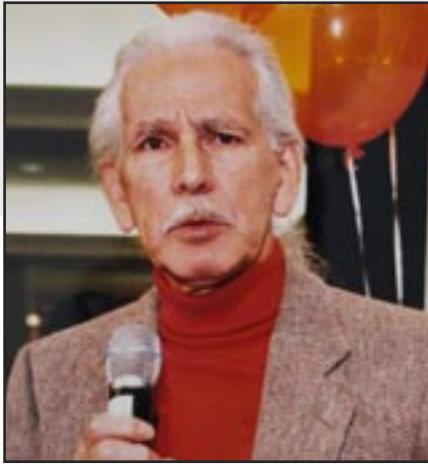
embracing "Aboriginal rights" as if it was their own invention; as if these titles and rights existed "at the pleasure of the crown" and not as indefeasible realities.

Judges have continued reducing the scope and meaning of "Aboriginal title" in successive judgments confirming and expanding upon the most unlikely, punitive, and minimalist interpretations.

"Aboriginal title and rights" had always meant, as Nishga's James Gosnell answered Prime Minister

Pierre Trudeau in 1984, that "The title as we talk about it, the aboriginal title, is our ownership of this land, and if you want me to put it, like, "lock, stock and barrel," or total ownership: whether it's the mountain, inside the mountain, up in the air, everything in that land was given by god for our use to survive."

Gosnell told an assembly of the National Indian Brotherhood, "I told the Minister, the Nishga tribe is not going to sign any agreements that extinguish our title. Period.



William Lightbown, Kutenai, 1927-2019, is the grandson of Theresa Kaius, who survived smallpox along with her younger brother, of all their family, and were eventually admitted to Indian Residential Schools in Alberta as orphans.



Baptist Ritchie, Líl'wat, carries his family's story of how their villages were emptied by smallpox after gloved HBC officers brought them blankets laced with sloughed human skin.



Lavina White, Tthrowgwelth, Haida, 1926-2017, was the grand daughter of Charles Edenshaw, one of three survivors from a Haida flotilla that left Victoria in 1862, carrying smallpox. Namgis people who had been warned not to receive them, and diverted them to Bones Bay. The Namgis left fresh water, wood for fires, and food for them there on the beach.

Surviving Smallpox 1862

Chief Nuximlayc, Lawrence Pootlass, was a hereditary Chief of the Nuxalk people. His grandfather married several women of displaced communities, securing to them and their families rights within the Bella Coola area. So few of their people had survived that they came together in a single village, instead of dozens, and re-formed as *Nuxalk*, which literally means to be gathered together as in a net. That history was compiled in *The Smallpox War in Nuxalk Territory*, by Tom Swanky.

Sto:lo Elder "A.C." told his visiting student, Gordon Mohs, in 1986,

"By the first bridge in Soowahlie, there used to be two smokehouses with about 300 winter dancers. The smallpox came and killed them all off."

The statements are recorded in Mohs' thesis, *Spiritual Sites, Ethnic Significance and Native Spirituality: The Heritage and Heritage Sites of the Sto:lo Indians of British Columbia*. 1987

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Dave Elliott Sr., Saanich, collaborated with the local School District to record untold histories. In *Saltwater People*, 1983, he explained: "There were Indians camped around Ogden Point, along Dallas Road. They were from all over - Tlingits from Alaska, Haidas from the Queen Charlotte Islands, Tsimshians from the Skeena, Kwagiulths, and Bella Coolas. When smallpox broke out in the Indian camp the city authorities gave

orders to set fire to camps. Can you imagine that? People already sick and dying and somebody comes and sets fire to your shelter. ... Those people had to leave. They spread out into those islands some of them and headed for home, wherever they came from, and they died all along the way. Wherever they stopped they spread the disease."

Detail from "Smallpox."
Print by Bill Reid, Haida.



New France, British North America

Indigenous Nations were “Allies,” until they could be overpowered.

The British were not confused about “title” in 1849.

Their royal grant of Vancouver Island to the Hudson’s Bay Company - for the company’s priority access - encouraged HBC to make arrangements for mining and settlement, and a budget allowed for land purchases. . . British Columbia was still not confused about “title” in 1861. They didn’t talk about “Aboriginal title” then. BC’s Legislative Assembly petitioned Britain

for money to buy land – that was the only way they could get any. Indigenous Peoples weren’t giving it away.

BC wasn’t confused about the right to self-determination of the Indigenous Nations, either.

But the British crown refused a grant of money to the Colony to buy land. Still, they expected the Colony of Vancouver’s Island to increase settlement.

In 1871, still no confusion: the

Dominion government took over all duties related to “Indians and lands reserved for Indians” in Article 13 of the Terms of Union, when BC joined confederation.

Canada wasn’t confused about “title” in 1874. Canada’s Attorney General, Tèlèsphore Fournier, explained it succinctly, when he reviewed BC’s attempt to give itself rights over all the lands.

“The New El Dorado.”

“A Complete View of the Newly Discovered Gold Fields in British North America, with Vancouver Island and the Whole of the Sea-Bord from Cape Flattery to Prince of Wales Island.”

“Compiled from Authentic Views, Plans, & Charts in the possession of Lieutenant Charles Barwell, United States Navy. London Publication, September 13, 1858, by Read and Johnson.”



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**In 1861,
the Colony of
Vancouver's Island
petitioned the
British government
for a grant of money
to buy more land.**

**Some small lands
had been bought
by the HBC from the
Peoples at Victoria,
Nanaimo, and at
Fort Rupert.**

**The request for more
funds was denied
by the British
government.
The Colonies were
instructed to use the
proceeds of land sales
and development
to buy their own
land.**

**No more land was
bought until 1985, in
the Sechelt Self-
Government
Agreement.**



The First Legislative Assembly of the Colony of Vancouver Island. Back Row: J.W. McKay, J.D. Pemberton, J. Porter (clerk) Front Row: T.J. Skinner, J.S. Helmcken, M.D., James Yates. Photo: 1914 Archives Edition, Canada and Its Provinces, Vol. 22, British Columbia.

The brand-new Province of BC declared in its various Lands legislation that all the lands in the described (but not yet seen by Europeans) boundaries of the Colony/Province belonged to the Crown in fee simple. But no such fee had ever been paid.

In its 1874 Lands Act, the BC legislators wrote: "...the words "Crown Lands" may, for the purposes of this memorandum, be considered to mean all lands in the Province vested in the Crown of which no grant has been made."

After 1867, the Attorney General of Canada was required to review all legislation passed by Provinces, to ensure constitutional legality. AG T  l  phore Fournier's 1875 report was concurred by the Minister of Justice and spelled the end of the 1874 BC Lands Act:

"considering... ...the Indian Tribes of the Province never surrendered their Territorial rights; ...the arbitrary Reserves are totally inadequate to their support and requirements, and without their assent; ...they are not averse to hostilities to enforce rights which it is impossible to deny them; ...the Act ignores those rights and prohibits them from recording or pre-empting Land: then, the BC Public Lands Act should be disallowed."

His report included a history of BC's legal rights to the land it claimed, and clarified the Province's legal position with respect to land. The Province did not have the power to take charge of unsundered, unceded, unsold Indigenous lands.

Fournier was immediately replaced as Canada's Attorney

General. Within months, British Columbia re-submitted its crown lands legislation to Canada's new Attorney General, Edmund Blake, who approved the same unconstitutional provisions that had been disallowed by Fournier, saying simply that "Great inconvenience and confusion might result from its disallowance." BC had already sold a great deal of land that it did not own, and every settler there was dependent on that bad title.

Given that Canada had just paid a lot in money and promises to bring BC into its confederation, the Dominion abandoned its Constitution and launched an era of forcible assimilation, combined with renegade, vigilante intimidation that has carried it through to the present day.

It was noted in 1875, February, in the Report of the British Columbia Indian Office:

"The Indian Reserves of British Columbia have for some time been, and are at present time in a most unsatisfactory condition..."

"I greatly trust that this unfortunate interpretation of our agreement will be of temporary duration, and that this vexed question, upon which depends the contentment of more than 30,000 aborigines, and the peace of the whole Province will be finally settled to the satisfaction of all concerned."

It was not settled.

BC had joined Canada in 1871. It brought with it all the Native Peoples, and their lands – without ever mentioning it to them.

Article 13 of the BC Terms of

Union provided a framework for the continued creation of Indian reserves. Canada accepted liability for "Indians and lands reserved for Indians," as per Section 24 of its 1867 constitution – the British North America Act.

Article 13: The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union. To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.

The Indian Reserve Commission for the North West Coast proceeded a few years later, once several Commissioners had been appointed.

Already by 1870, BC had set out terms by which land could be pre-empted. That is, surveyed and taken by settlers for a dollar or two. Among those terms were that native people could not pre-empt. Aboriginal people also could not act as an agent for settlers who held

Confederation Terms of Union, 1871 ARTICLE 13

The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union. To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies.

pre-emptions, in respect of those lands – and neither could Chinese settlers.

In 1874, the province’s first “Land Act” claimed for BC the right to dispose of:

“any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian settlement) not exceeding three hundred and twenty acres in extent, in that portion of the Province situate to the northward and eastward of the Cascade or Coast Range of Mountains, and one hundred and sixty acres in extent in the rest of the Province. Provided, that such right shall not be held to extend any of the Aborigines of this Continent, except to such as shall have obtained permission in writing to so record by a special order of the Lieutenant-Governor in Council.”

Indian Reserves were surveyed land, or settled land, and therefore not open to pre-emption, however the 1874 Act preserved every settler land claim made before 1874 – including many pre-emptions of lands which had already been “reserved to the Indians” by Governor Douglas, or his official surveyors, during his time in office.

Article 13 has been interpreted by the crown as a license to ignore colonial policies that were inconvenient – such as respecting fishing and hunting – and just continue the policies that suited them, like reducing and cutting-off Indian reserves. At best, Article 13 has been “reinterpreted” many times.

The Dominion had other laws to uphold as well, but did not.

One of these laws was in the British North America Act, 1867:

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

British Columbia was admitted into the Union pursuant to section 146 of the British North America Act, 1867, by Order in Council of May 16, 1871, effective July 20, 1871.

The Colonies of Vancouver’s Island (1849) and British Columbia (1858) had joined together as one Colony in 1866. This merger happened with the same indifference to Indigenous Nations that characterized the founding of the first Colonies.

But now, the western Nations had been shattered by smallpox.

The 1867 statute establishing the united colony of British North America followed almost a century of the re-settlement of “New France” and several treaties with eastern Nations from the Atlantic coast to the source of the St. Lawrence River.

In October of 1763, King George III addressed the people of the Thirteen Atlantic colonies in America as “Our Loving Subjects.” He delivered a Royal Proclamation,

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British North America Act, 1867 **Section 109**

“All Lands, Mines, Minerals and Royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick at the Union, and all such Lands, Mines, Minerals or Royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interests other than that of the Province in the same.”

an Imperial Order, that all lands which were “not ceded to or purchased for Us,” from the Indians, “are reserved to them or any of them.”

The settlers, however, were clearly not such loving Subjects that they were prepared to follow the King’s command. Most of them were then in open war against the King, to evade the duties of loving Subjects, within a decade. The American Revolution, the creation of the USA, and the border between the independent States and “British North America” was the result.

In 1763, the British monarch had no choice whatsoever in the matter

New France, British North America

of recognizing the “Indian nations with whom we are Allied,” as he called them in the Proclamation, because otherwise Pontiac was burning down all the encroaching British forts.

King George’s Imperial Order, 1763, is today known as Section 25 (not 35) of the Canadian Constitution, 1982.

The “Honour of the Crown” was supposed to guarantee the good behaviour of the Loving Subjects, and the fulfilment of all the Royal Promises to the Indigenous partners.

The way to this sweeping enactment of British statute concerning the eastern colonies of North America had been cleared by a European treaty a few months earlier.

Indigenous Nations of the world suffered a looming defeat in the European Treaty of Paris earlier that year. In February, what was arguably the real “first world war” came to a close after long and costly battles at sea and at new colonies. Grievances and disputes were settled, ended, forgiven, and resolved by a treaty of non-interference.

The Imperial European colonizers of the globe demarcated their areas of exclusive trade and sovereign colonial rule across Europe, Northern Africa, the Bay of Bengal, Atlantic North America, the Caribbean, and Atlantic South America.

The Treaty of Paris, February 1763, included the mutual promise among the “Most Christian Kings” of peace among themselves, and to refuse “assistance or protection, directly or indirectly, to those who

would cause any prejudice to either of the high contracting parties.”

The Christian Kings’ peace was founded on this pledge of non-interference in the exploitation of non-European, non-Christian Peoples.

With this promise of exclusion and immunity, the Americans proceeded to tear up the October 1763 Proclamation, just as the British soldiers and settlers had already torn up the Articles of Montreal they signed when the French surrendered New France in 1760.

British forms of government began in “the Canadas” in 1760, with the conclusion of the North American leg of their war on France, the Seven Years War.

France made it a condition of

Royal Proclamation, 1763

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds...

their surrender that the Shawnee, Algonquin, and all who were Allies to the French, would benefit by the terms of peace equally.

The Articles of Montreal, 1760, Article 40: “The Savage or Indian Allies of his Most Christian Majesty [of France] shall be maintained in the lands they occupy if they wish to remain there; they shall not be disturbed on any pretext whatever for having taken arms and served his Most Holy Majesty.”

The British traders immediately lowered the price they would pay for Native furs, now that they had no competition. They also reduced the amount of guns and ammunition for trade with the Indigenous Parties to long-time trade pacts with France. They also proceeded into lands which had been reserved

Articles of Montreal, 1760 *(France's surrender to Britain)*

ARTICLE 40

“The Savage or Indian Allies of his Most Christian Majesty [of France] shall be maintained in the lands they occupy if they wish to remain there; they shall not be disturbed on any pretext whatever for having taken arms and served his Most Holy Majesty.”

against them by The Articles of Montreal.

It was these violations of the peace which made it impossible for Pontiac, and the Confederacy of Shawnee, Iroquois, and others, to accept Britain as the successor to their arrangements with France.

In spite of Britain's capitulation to their retaliation – the Royal Proclamation of 1763 – the betrayal continued. After the hired assassination of Pontiac, reportedly paid in rum from a British fort, wars were ongoing between the British and Americans, in rising and falling significance. British betrayals of their new “Indian Allies” continued at the Battles of the Fallen Timbers, the Thames, Cypress Hills, and so on westward until Indigenous warriors, fighting for the promises of the crown, had held back American

advances all the way through the Great Plains to the conclusion of the War of 1812 and the Treaty of Ghent in 1814, and the final Canada-USA border through the Indian Territories of Oregon, in 1846.

When the Colony of British Columbia joined Canadian Confederation in 1871, they had almost no land. The Hudson's Bay Company had purchased some small tracts from Coast Salish nations between 1849 and 1851. British Columbia later argued that they had a power of governance which allowed the province to assume title of all.

Throughout legal challenges from the 1960s to the 1990s, BC has relied on 13 instruments of Imperial action and colonial legis-

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lation to justify its colonization and extraction of resources. Most well known are the 1858 Act to provide for the Government of British Columbia; the 1859, February 14th declaration by the Government of British Columbia that, “All the lands in British Columbia, and all the Mines and Minerals therein, belong to the Crown in fee;” the 1870 Lands Ordinances, Article 13 of the Terms of Union in 1871, and the 1875 BC Lands Act, which was only allowed by Canada after an abrupt change of the Canadian Attorney General.

BC now claimed ownership outright of the lands and waters “Of British Columbia,” and providing for pre-emption of land by foreign settlers, “Provided that no “aborigines of the continent” could pre-empt. The original inhabitants apparently had no recognized land rights at all, with no less than eighty forcible relocations of entire villages to make way for settlement and infrastructure. At times there was no new location designated for the Indigenous villagers.

Canada's own courts have since ruled that BC's exclusive ownership was not the case. The courts have ruled that, since 1867, or at least 1871, the Province could not have extinguished any Aboriginal rights because that power lay with the Dominion, or federal, government only.

On the other hand, as none of BC's famous thirteen documents ever fulfilled either the Indigenous or British governments' requirement to purchase land before settlement, the fact remains today of the “Indian Land Question” - or,

One single reference was made to Indigenous Peoples in the 1867 *British North America Act*, in Section 91-24.

This Act was the founding constitution of Canada, and was co-written by John A. MacDonald.

The only right provided to Canada concerning “Indians and Lands reserved for Indians” was to act on the *Proclamation of 1763*: to make treaties on behalf of the crown, and to keep settlers out of the Indian Territories.

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89. Repealed. (38)

6.—THE FOUR PROVINCES.

Application to
Legislatures of
Provinces
respecting
Money Votes,
etc.

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

Legislative
Authority of
Parliament of
Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to

(38) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). The section read as follows:

5.—ONTARIO, QUEBEC, AND NOVA SCOTIA.

89. Each of the Lieutenant Governors of Ontario, Quebec and Nova Scotia shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for the Electoral District.

Pages from the BNA Act, 1867

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schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House. (39)

- 1A. The Public Debt and Property. (40)
2. The Regulation of Trade and Commerce.
- 2A. Unemployment insurance. (41)
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.

Ten years later, the *Indian Act* was legislated in total denial of those statutory limitations.

(39) Added by the *British North America (No. 2) Act, 1949*, 13 Geo. VI, c. 81 (U.K.).

(40) Re-numbered by the *British North America (No. 2) Act, 1949*.

(41) Added by the *British North America Act, 1940*, 3-4 Geo. VI, c. 36 (U.K.).

We come to inform you
that we do not wish to celebrate the
Queen's day.

She has not been a good Queen to us.

She knows that the British Columbia
Government has deprived us of our
land. She has not yet said a word in
our favour.

- *Sto:lo Chiefs to Governor Seymour, 1874*



"British Columbia Coat of Arms" c. 1858
with the sun and rivers *above* Britain's
Union Jack, as per the HBC Governor's
agreements for trade and mutuality "as
long as the sun shines, the grass grows,
and the three rivers flow."

more accurately, the "BC Land Question."

Chief Am-Clamman of the Tsimpshean patiently explained it to BC and Canada's Commissioners in 1887, at Nass Harbour,

"You saw us laughing yesterday, because you opened the book and told us the land was the Queen's and not the Indians'. That is what we laughed at. No one ever does that, claiming property that belongs to other people. We nearly fainted when we heard that this land was claimed by the Queen. The land is like the money in our pockets, no one has a right to claim it."

All the leadership of all the nations west of the Rocky Mountains persevered in communications with colonial officials and Governors. They further travelled to Ottawa to

interview the leadership of Canada and to impress upon it the reality of the land situation. Chiefs further travelled to England, where they clarified the facts and reported the dishonourable conduct of the Crown's "loving subjects," along with their demands for reparation and settlement of the questions arising.

The Canadian government, the Governor General (the Crown's Head of State for Canada), England's highest court - the Privy Council, and every low-level provincial official then engaged in a conspiracy to distract, deflect, and derail Indigenous land rights. This conspiracy continues to date - through "Royal Commissions," through the patriation of a Canadian Constitution in 1982; and in

spite of the gradual establishment of international standards of law since 1967, in the International Covenant on Civil and Political Rights, through the United Nations Declaration on the Rights of Indigenous Peoples in 2007. The land question has grown to a question of survival for the speakers of some 26 distinct Indigenous languages west of the Rockies.

At the center of this conspiracy and question is the ongoing settler denial of Indigenous nations and their rightful place among the nations of the world. Indigenous Nations have longer, continuous histories. They have original languages and cultures. They have laws and cultures rooted in the lands they still occupy today. Instead of recognizing that Indigen-

From the time that British Columbia joined confederation with Canada in 1871, the Dominion and the Province have fought between themselves over who is responsible for respecting Native lands and rights.

ous land titles have never been satisfactorily purchased or received by the crown, as they could have done at any time – and then addressed the problem; judges in BC and Canada have cast aspersions on Indigenous Peoples themselves, as if their property rights do not really exist, or is an idea that depends on “the pleasure of the crown.” In law, the courts have deemed Aboriginal title to be *sui generis*, or, an unusual and undefined concept.

After 1906, and the multi-national delegation to Buckingham Palace, many Nations wrote a collective affidavit in the form of a Declaration, Petition, or Memorial statement.

There were signators from every Band which was part of the same tribal nation; and they represented all the people.

In 1910, the Chiefs of the Interior delivered their Memorial to Wilfred Laurier in person, in Kamloops: “...the Duke of Connaught, acting as His Majesty’s representative in Canada, gave positive written assurances that if the Nishga Tribe should not be willing to agree to the

findings of the Royal Commission, His Majesty’s Privy Council will consider the Nishga petition. In view of Sir Wilfred Laurier’s promise, and the Duke of Connaught’s assurances, both of which confirm what we regard as our clear constitutional right, we confidently expect an early hearing of our case.”

They did not get one. Canadians voted the Liberal Laurier out, and the Conservative Borden in.

From 1912 to 1914, the McKenna-McBride Joint Indian Reserve Commission visited every nation. It was a mutual venture between the Province and Dominion.

The number of people who had survived the first 50 years of disease and deprivation was small. Most of the usual village sites were not being occupied because of the need to move together to survive.

For example, in the Declaration of the Lillooet Tribe, the Chiefs noted their number as 1,400 people, among seventeen villages. Before contact, they had a population of 80,000 people in just one of their lush valleys.

Villages near Victoria were

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almost empty, with their populations numbering in the dozens.

The entire Nuxalk nation was reduced to 150 souls – where before some 2,000 people lived in that one little village that they all came together in, abandoning over 300 other villages until they could help each other to recover.

The governments used this population deficit to reduce every reserve even further, to a few acres of land, which the Reserve Commissioners often described as, “unsuitable for agriculture, livestock, or settlement,” or “on the flood plain,” or “out of the way” of the prime real estate.

In 1913, the Nisga’a were ready to go to court for judicial recognition of their title, to get the Privy Council’s fabled “British justice.” The courts wouldn’t let the subject of their Native land title in.

Instead, the government of Canada countered. The Superintendent of the Interior’s Order in Council would allow a hearing of the land question. It provided that the evaluation of land title could be heard by a special court, where the Indigenous would be represented by counsel of the government’s choosing, and they would agree ahead of time that, whatever the result of the hearing, they relinquish their land titles to Canada and the Province and content themselves with the awards in compensation and land that the court would decide to give them. The Superintendent of the Interior was Duncan Campbell Scott.

The Indigenous Peoples did not exercise this option.



In 1875,
Canada's
Attorney General,
Télèsphore Fournier,
disallowed
BC's *Lands Act*
on the basis that
it unconstitutionally
assumed ownership
of unsurrendered
Indian lands.

BC's *Lands Act*, 1874: *rejected*.

*An excerpt
from Fournier's report,
which was accepted
by the Minister of Justice
and Parliament:*

"Considering, then, these several features of the case - that no surrender or cession of their Territorial rights, whether the same be of a legal or equitable nature, has been ever executed by the Indian Tribes of the Province; that they allege that the reservations of land made by the Government, for their use have been arbitrarily so made and are totally inadequate to their support and requirements, and without their assent - that they are not averse to hostilities in order to enforce rights which it is impossible to deny them - and that the Act under consideration not only ignores those rights, but expressly prohibits the Indians from enjoying the rights of recording or preempting Lands, except by consent of the Lieu-

tenant Governor, - the Under-signed feels that he cannot do otherwise, than advise that the *BC Public Lands Act* in question is objectionable, as tending to deal with lands which are assumed to be the absolute property of the Province, an assumption which completely ignores, - as applicable to the Indians of British Columbia, - the honour and good faith with which the Crown has in all other cases, since its sovereignty of the territories in North America dealt with their various Indian Tribes.

The *British North America Act 1867* Sec. 109, applicable to British Columbia, which enacts in effect that, all lands belonging to the Province, shall belong to the Province "subject to any trust existing in respect thereof, and to any interest other than that of the Province in the same."

That which has been ordinarily spoken of as the "Indian Title" must, of necessity, con-

BC's *Lands Act*, 1875: *accepted*.

sist in some species of interest in the lands of BC.

If it is conceded, that they have not a freehold in the soil but that they have an usufruct, - a right of occupation, or possession of the same for their own use, then it would seem that these Lands of BC are subject, if not to a "trust existing in respect thereof," at least to "to an Interest other than that of the Province alone."

The Undersigned, therefore, feels it incumbent upon him to recommend this Act should be disallowed.

Within a matter of weeks, Fournier was appointed to the Supreme Court and replaced as Attorney General by Edward Blake.

Blake persuaded the cabinet not to disallow BC's Lands Act.

He explained, "Great inconvenience and confusion might result from its disallowance." The Governor General of Canada went along with Blake's approach.

That is to say, Canada's highest offices made a political decision to flout the constitution. BC was critical to Canada's future.

Blake became president of the Privy Council in 1877, the highest legal authority in Canada and answerable to the British crown.



Edward Blake replaced Fournier as Attorney General for Canada, a few months after BC's *Lands Act* was rejected by the federal government.

In 1875, BC presented their *Lands Act* for approval again. Blake approved it, "lest great inconvenience ensue."

In June 1916, almost all Indigenous nations “in BC” were represented at the BC Indian Conference, Vancouver. They documented their refusal of the Order in Council, made a statement to reject the Reserve Commission, and declared plans to pursue their land rights together with the Nisga’a. The Allied Tribes was formed.

The statement from the Conference was put into the hands of the Government of Canada and the Secretary of State for the Colonies, was published in the press of Vancouver, and was sent to each Indian Tribe:

“The Indian Tribes of British Columbia have always claimed tribal ownership of the lands of the Province as the lands of their forefathers, ...

All the Indians of the Province have for many years desired that this land question should be decided, and to that end in the year 1909 sent a petition to the late King Edward VII., and his Imperial Minister, the Secretary of State for the Colonies, asking that the Imperial Government refer the land question to the Judicial Committee of His Majesty’s Privy Council.”

It took ten years for the Canadian government to convene its own Judicial Committee, as a substitute for the King’s Privy Council or a judicial hearing.

The Allied Tribes fought the Dominion government’s adoption of the McKenna-McBride Commission’s Report, in urgent reports, petitions and delegations to Parliament for years, months, and even

weeks before it was adopted in 1925.

They pursued their legal claim by every available means. The Claims of the Allied Tribes of British Columbia, first written in 1919, was finally heard by a Committee of the Senate and House of Parliament – not a court – at the end of 1926.

In April of 1927, that Committee released its report. The politicians said the Allied Tribes had not made out any kind of serious claim. The government allocated a fund of \$100,000 per year to all the Nations of Peoples west of the Rockies “in lieu of treaties,” and made no further investigation, no follow-up.

At the same time, they amended the Indian Act to prohibit lawyers from taking any kind of payment, or raising any kind of fund, to pursue any case that would advance the rights of an Indian Band or its members.

More amendments prohibited “gathering to discuss the land question,” and being out after dark, and so on.

These prohibitions, which silenced pursuit of the land question, remained in place until 1951. Because communication from Ottawa to Indian Bands was filtered with prejudice by Indian Agents who liked their jobs, the 1951 changes were not widely realized until the late 1960s.

~

**“You saw us
laughing yesterday,
because you opened
the book and told us
the land was the
Queen’s and not
the Indians’.**

**That is what we
laughed at.**

**No one ever
does that,
claiming property
that belongs to other
people.**

**We nearly fainted
when we heard that
this land was claimed
by the Queen.**

**The land is like the
money in our
pockets, no one has a
right to claim it.”**

Chief Am-Clamman,
Tsimpshean,
to BC and Canada’s
Commissioners in 1887,
Nass Harbour.

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BC History revisited

Colonization of these lands and waters
has written over languages and names
that originated here;
spoken by the same people whose creation
stories place them here from the start.

The colonizers have made up a story
about how they themselves came here,
writing the Original Peoples - and what was
done to them - out of it.

**In all these seventeen decades
since the Colony of Vancouver
Island was formed by Imperial
decree in 1849;**

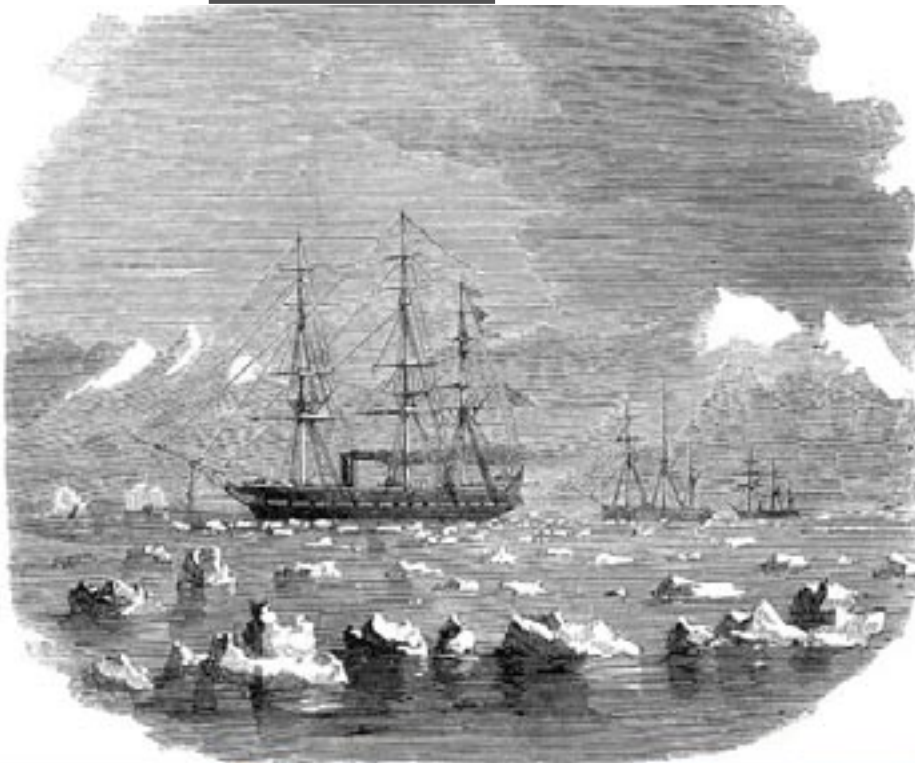
since it joined and became one with
the Colony and then the Province
of British Columbia, joining
Canada's Confederation in 1871,
very few Indigenous Peoples have
made agreements to sell any part of
title to their lands to the crown.

Very few have agreed to be
governed by the crown, and none
have fully relinquished their right
to self-determination.

Hudson's Bay Company

In 1821, the Hudson's Bay Company had just defeated their fur trading rivals, the North West Company, at Red River. By a British Imperial decree, the losing company and all its assets were merged and absorbed by HBC. BC owes many a place name to those first NWCo. visitors, Fraser, Thompson, and Mackenzie, because it was they who first figured out how to hire Cree guides to take them overland by the Grease Trails, the semi-continental highways from the Great Plains, to the west and the Pacific Ocean.

In 1824, the Hudson's Bay Company split its Governorship



“H.M.S. *Termagant* convoying the gun-boats *Grappler* and *Forward* through the Straits of Magellan,” from a sketch by C. Royle, R.N. 1860. *Termagant*, a 25-gun screw-frigate, towed the smaller 3-mast gunboats through the Straits of Magellan, Smyth, Sarmiento, Wide, and Messier Channels - over 450 miles through Chile - from the Atlantic to the Pacific Ocean, and up to BC. Photo: *Illustrated London News*, 1860.

BC history revisited

"Gathering of Indians at New Westminster on the Queen's birthday 1865," Royal BC Museum, C.S. Engle album.

It is unclear from the picture what flags they are holding. Given that smallpox had just ravaged all the nations, the invitation to hear Governor Seymour's speech, as he took over from Governor Douglas, would have been of great interest.

into two, and the new, young Governor Simpson was appointed to parts "North," or actually mostly west. He did a tour west of the Rocky Mountains to follow up the Company's new possessions. These included many trading forts, like at Rocky Mountain House, Fort St. James, Fort Astoria and Fort Vancouver in modern-day Washington State, USA.

Simpson set out west from York Factory with a mission to make fort trading posts more profitable, and to test the west coast Indigenous Peoples' receptiveness to Christianity: to introduce it and recommend it. A Company-and-King minded man, Simpson noted the profit that religious conversion would bring.

Christian Missions came to the west coast via the HBC trading parties. For various reasons, among varying Peoples, the Missionaries were unevenly welcomed. Between the several different Christian factions there was rivalry for government favour and access to "converts" for "flocks." The similarity between geographical licenses to proselytize religious conversion and other government corporate licenses is hard to overlook. The differences resulting among the Peoples were that some were Methodist, some Catholic, some Protestant, and some French-speaking.

At some of the darkest times of imperialism, the Fathers

**"The land in common,
between the reserves
and the white houses,
will be like an orchard,
where both Indians
and White men can
enjoy the fruit."**

- James Douglas, Governor
of Vancouver's Island and
British Columbia, 1851-64
*as recalled by the Chief of
Sqewlets to the McKenna-
McBride Indian Reserve
Commission, 1913*

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“Governor Seymour addressing a group of Indians at Lillooet 1865.” Royal BC Museum, C.S. Engle album.

One-third
of all proceeds from
the development of
British Columbia is
promised to the
Indians, while
one-third is
for the crown, and
one-third is to be
re-invested in
maintenance and
infrastructure.

- Frederick Seymour,
Governor of BC
1864 - 1869,
in his May Day speeches

and Reverends occasionally wrote strongly worded letters of protest. In a few instances, they provided effective vaccination from small-pox and other illnesses, and medicine specific to the exotic and heretofore unknown diseases. This must have distinguished them from the government, which provided precious little medical aid or intervention – usually only at the request of the Missionaries, and sometimes not even then.

The more visible Christian Ministers’ passive moral support, letter writing, educational offerings, and, at its peak, the formation of organizations like Friends of the Indians, should not be misconstrued.

The churches’ interest in

land and material contributions was the same as the government’s, if on a smaller scale of labour, food, taxes, tithes, and fines for liquor offences, and church land-holdings in Indian reserves today is considerable. Those lands would have been appropriated to them by the government, which continued to see Simpson’s profit-minded point of view.

The “pacifying” influence of the missionaries is candidly described in this 1971 interview with Sam Mitchell, a longtime leader in Xaxlíp at Lillooet.

“Of course, when these religious peoples came in, that’s called the priests, they started to tell the people where the best place to go,

to go up. They talk about heaven. I used to hear them preach myself. I heard them priests, especially the older ones. They used to preach to us. They told us, “Never mind what’s here. Never mind horses, cattle; that’s no good. You just pray you’ll go to heaven. All cattle and your land, it’s no good; it will send you to hell.” I heard this myself, so I say it.”

Chief Mitchell was 77 years old at the time of the interview; he was born in 1894.

More recently, Nlakapa’mux Chief Byron Spinks recalled the attitude of the Indian Agent when he was first elected in 1970, continuing the promotion of dependence:

“In the old days, the Indian Agent gave out rations. I remember them saying, “You don’t have to farm, here’s some food you can have. You don’t have to cultivate or grow any beans or any vegetables – here’s some money and here’s some food for you.” That’s how we lost a lot of our value system. That was a part of our community.”

In one case, the Methodist Missionary William Duncan removed his Tsimshian Christian converts to their village of Metlakatla. There, the people created a unique enterprising Christian society, where they were industrious, economically mobile, and had an actual school for western education.

The results of Missionary influence spanned a wide range. Some Chiefs accepted Christianity, not displacing their own traditions, and made use of the church-men’s access to information and legal recourse. Other Chiefs converted

with zeal, helping the church to destroy their “heathen” regalia and ceremonial items – often in unsteady political climates among their Clans, rattled by gunboats, and with the promise of preferment by colonizing forces.

According to Grand Chief George Manuel of Secwepemc, the effect of Christianity was to ostracize Indian Doctors and ceremonial aspects of governance. Manuel ranked Priests alongside Indian Agents and Game Wardens in the assault on Native society and self-determination.

Modern Native history keepers point to the overwhelming psychological effect that the smallpox war had on the survivors. Priests leveraged the mental harm by promising protection from disease through Christ.

Simpson was correct overall, in his time-tested theory that sympathy for the teachings of the Bible would be transferred to the colonizer generally, however little the colonial government regarded it.

HBC Governor George Simpson is the one who put a young James Douglas in charge as Chief Factor of Fort St. James, apparently because he was “fastidious.”

Douglas was efficient; he certainly wrote a lot, constantly checking the details of his assignments to keep a clear channel of communication with the colonial franchise. Douglas was also in no doubt about the meaning of the Native nations’ titles.

After becoming the second Governor of Vancouver’s Island in 1850, he made fourteen small

“No one will ever
bother you in your
fishing and hunting.”

- Gilbert M. Sproat,
Indian Reserve
Commissioner
1870s - 1888

*in his notes of meetings
with the Nlaka’pamux,
to determine their Reserves.*

treaties on Vancouver Island. He asked Britain for more money to make more treaties because the colony would want more land. When he didn’t get any, he marked off reserves, “as much land as they should want for themselves” to be made under the instruction of the appropriate Indigenous authorities.

In 1861, most of the lower Fraser Valley was marked off for the Sto:lo, from what is now Hope to Abbotsford. Later, the Pemberton Valley was almost entirely reserved for Lil’wat – not just the floodplains above Lillooet Lake, where they are today. The current battle over a small ski resort municipal expansion at Neskonlith, Sun Peaks, was formerly just a small part of the exclusively reserved Secwepemc national places.

Because Douglas kept to his original instructions, to reserve all the lands to the Nations where they did not want to receive foreign settlement, a delegation of 109 chiefs from the coast to Bute Inlet and down to Tsawwassen referred to themselves collectively as “The Douglas Tribes,” in their 1874 petition against the latest reductions of reserves. “Our hearts have been wounded,” they said, “by the arbitrary way the Local Government of British Columbia have dealt with us in locating and dividing our Reserves.”

Somehow, the fastidious James Douglas lost the contents of the 1861 reserve discussions. Or maybe someone else lost them, later. Someone else also lost the post markers in the ground at the corners of the giant “reserves,” and the cast-bronze disks that were set on the peaks of such border mountain peaks as Blackdome and had arrows and names denoting the direction of the surrounding countries: SHUSWAP, CHILCOTIN, LILLOOET, TAHLTAN, etc., marking the changes in jurisdiction on the ground.

Having the benefit of exclusive trade on the northern Pacific coast, after treaties with Spain, Russia, and the USA by 1846, wasn’t enough for Britain and its Hudson’s Bay Company. Part of the HBC Charter was settlement and exploitation of minerals. Ultimately, the Imperial work of the HBC was first domination of trade and then colonization for exploitation of resources, leading to extension of the British Empire.

Indigenous jurisdiction was complete from (and beyond) the new Alaska border with Russia, down to the Oregon territory.

Tsimshian, Tlingit, Haida, Nisga’a, Wet’suwet’en, Gitksan, Nuxalk, Heiltsuk, Kwakiutl, Kwak’wak’awakw, Nuuchaltnulth, Maa-nulth, Sliammon, Qw’utsun, Sechelt, Squamish, Musqueam, Tsawwassen, and Sto:lo peoples were ancient, powerful, numerous, in full control of the transport of goods through their territories from the interior to the coastal highway, and hadn’t the least intention of changing any of that. Why would they?

They were not averse to trade, innovation, development, or trans-Pacific arrangements. Why would they be?

The Songhees negotiated for a British trading Fort to be built at Camosun, what is now Victoria. Haida allowed for a copper mine to be built at Skincuttle. Although they were more interested in developing iron, of which there was plenty at Harriet Bay, the Queen Charlottes Mining Company was actually a colonial ruse to gain access and intelligence, which was used against them to devastating effect at the end of 1862, in the smallpox war.

A coal mine was welcomed and supported at Nanaimo; a fort and beach mines at Rupert, in Tsimshian; trading posts with several nations in the interior; lease of lands to individuals such as to Mr. Banfield among the Huu-ay-aht.

Tlingit, Haida, Kwakiutl and others exacted their laws on trading ships and gunboats, while doing a brisk

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trade in supplies to the sailors, and the valuable furs. The HBC was obviously not in control or even able to defend the trade route. The trade route did not belong to HBC.

The coastal trade route – well established, amply populated, effectively regulated and controlled in bay-to-bay jurisdictions – was an international arena of commerce, travel, and abundant living.

It had not escaped the notice of the Original Peoples of these lands that there was something very different about the newcomers. According to Haida accounts, they were presumed mentally ill, and the idea was that they might recover, now being exposed to abundance and civilization. Every nation gave the whites a name, and it invariably translates to “the insatiably hungry ones.”

Sage and formidable leaders counseled restraint in numberless instances to prevent conflict; many more quarrels were resolved peacefully than by scuttling sharp-dealing ships. They had the benefit of millennia of memory and governance, and who-knows-how-many encounters with seafarers and would-be invaders before 1800. Anyone who arrived in a ship, looking for water and food, was a person in a certain situation: far from home.

The British had barely 200 years of rapid transformation into a culture which was bent to support maritime imperialism; a culture forged from comparatively recent Roman, German, Viking, and French occupations.

Soon unrivaled by other European navigators, the HBC had the Navy's steam-powered gunboats adapted their fur trading business to trade-monopoly and subversive warfare, and adapted their foreign mandate to make settlements as part of an unannounced takeover. The unwary European individuals who answered the call for their labour on these ships and in these forts, pursuing the promise of land and bright futures, sometimes trespassed and provoked incidents when they tried to take things for themselves.

In open combat on the water, gunboats could lose a fight against hundreds of mighty warriors in agile canoes, and crack-shot riflemen on nearby shores. The gunboats were meaningfully subject to entrenched navigational and commercial rules.

The HBC undertook a campaign of destroying coastal villages. Between 1828 and 1890, the Company / Colony / Province attacked, looted, burnt and destroyed dozens of wealthy and strategic national centres with gunboats of the British navy and the Royal Marines they carried, and with men employed by the Company, then Colony, then Province, when coastal nationals occasionally enforced their jurisdictions against invasion by executing unauthorized people at unauthorized forts, scuttling ships, or killing robbers and looters.

The Company Governor sent gunboats to sit at anchor, cannons trained on the beachfront village. In this position, the colonial representative on board proceeded along a line of "getting to yes." Sometimes beginning with parlay, these gun-

boat crews might take a chief hostage; flog people on the beach; send a landing crew of Marines with rifles, small arms, howitzers, and field artillery; shoot rockets into the village and surrounding forest to burn it down; seize or destroy all the canoes on the beach; or carry out public hangings of whomever the village leaders would relinquish as guilty of "crimes" against the British Empire. Several villages were spared decimation, at least for the moment, by complying with rituals of submission.

Fort Government

The HBC Company received, on top of its trading charter, a "grant" of Vancouver's Island in 1849 and Haida Gwaii (the Queen Charlotte Islands) in 1853. This grant included the right to make settlements, buy land and sell it to settlers, to provide governance for the settlers; and to raise money by taxing the lands and settlers it acquired. This grant was given by the British Crown, which was only ever represented to the visible and unmistakable leaders of the nations by people, like Douglas, who they now knew as traders.

The Colony of Vancouver's Island came into being. The direct transfer of political and economic power to the Company raised more than a little ire back in England, because the benefits of the grant and Governorship would accrue to the royal shareholders of the HBC, but, here on the west coast, the dynamic between Douglas and his servants was a minor shift from HBC Governor to Governor of the Colony. The Colony had a mandate

to advance settlement.

Whether "HBC" in 1848 or "colonial government" of Vancouver's Island in 1849, they had acquired no real land rights except what was within the massive barricades of their forts. These little lands were allowed to them by the host nations in exchange for their valuable service in trade. Fort sites were invariably located by agreement, and most often protected by the nationals who enjoyed the guns, liquor, and practical items brought there.

The idea that the HBC forts were somehow autonomous, or on British soil, or subject to any other jurisdiction than that of the nation they were in, was tested and fought on many occasions. For instance, the Songhees built a new village adjacent to the fort at Camosun (Victoria). When people from Whidbey Island came to trade at the Fort without discussion or permission, Songhees intercepted them on their way out and relieved them of their purchases.

A fort was an undeniable form of economic power for the village and locals who protected it. The Governor made several treaties for them as well, from 1850-1854, around Victoria, at Nanaimo, and at Fort Rupert. The meaning of these treaties seems to have varied significantly between the Native and colonizing parties to them (even to this day).

Attracting wayward miners, hunters, pillagers, rum-runners, traders, and fugitives, including escaped slaves, to the news of British dominion, the HBC couldn't

defend the newcomers – it couldn't defend the forts' neighbouring Natives – from getting into trouble with the actual landlords, and it certainly couldn't support would-be settlers in Native lands.

The only purchase they had on the situation was to try to deny the exercise of Indigenous national laws with the British Navy's gunboat firepower. This was obscenely effective.

The Royal Navy answered every the Colony's every call for violent repression. Local nationals took actions under their own laws that were considered crimes under Imperial British law – which was never explained to them except after-the-fact at a command assembly to witness an execution. The Governor assumed juridical jurisdiction over Native lands and punished the people for acting on their own unsundered autonomy: looting an American trading ship that was beached and broken on village shores; killing criminal trespassers; exacting retribution for punishable insult (beating up a man who made off with the Chief's fiancée). The Governor also ordered punishment for crimes that were denied, and for which no evidence could be produced.

In the winter of 1852, there was the murder of an HBC employee at some distance up-island from the fort at Victoria, where he had been grazing sheep for the Company. Although Douglas does not provide the Cowichan point of view in his copious journals or diaries for those days, the murder was undoubtedly carried out for trespass, desecration, or refusal to comply with remedy.

In January 1853, Douglas approached the suspected murderer's home Cowichan village with two gunboats, support vessels, and hundreds of Navy marines and hired French Canadian guns – “Voyageurs” turned “Voltigeurs.” The boats anchored within cannon shot of the beachfront houses. By this time, the ultimatum was well understood. Douglas and his protective Captains in the British navy had established a pattern: Chiefs would be invited on board to provide evidence against the accused. If the Chiefs did not board, the village would be turned to kindling by the gunship cannons and the surrounding forest lit up by fiery rockets. If they did board, they would be kept there as hostages until the accused were presented, or hostages more valuable to the fugitive (his wife and children) were presented in exchange.

It was a Chief's son who was blamed, and he denied it. A second man was later pursued at Nanaimo for the same crime. Both were captured by a ground invasion and brought on board the gunboat. They were given the first “trial by jury” in the new colonies. They were found guilty of the murder, by a half dozen seamen, and taken home to be executed in front of their families and village while the gunboats assumed the familiar position. The poised gunboats and hundreds of soldiers ensured the execution would not be disrupted.

James Douglas told the people assembled on the beach to witness an execution, according to his journals, that he and his navy would protect the people from any other

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nation who came and tried to harm them, as long as they flew the British flag, but they must never kill any newcomer and they must obey British law: “I informed them that the whole country was a possession of the British crown, and that Her majesty the Queen had given me a special charge, to treat them with justice and humanity and to protect them against the violence of all foreign nations...”

A year later he sent his royal naval gunboats to Puget Sound, where the Americans were winding up a new treaty by open war against the Indigenous party to it. Douglas sent a gunboat to Alaska too, to fortify Americans against Indigenous.

Within the same epoch, the Americans in Washington state murdered 27 Haida, in transit to one of their many coastal camps between shopping and trading, and brought the surviving number to Fort Victoria as prisoners. There was no retaliation in defense of these people who Britain claimed were her subjects, and to whom Douglas had been professing his protection. For years, and year over year from at least 1860, the Colony had attempted to proof Victoria and other mid-points from Haida presence.

The last event of gunboat “justice” was meted out in 1879, according to the official record. After the course of that one-generation-long rule of terror and destruction, and the smallpox war in the middle of it, Indigenous resistance turned entirely to diplomatic and legal confrontations.

Potlatches are not “in perpetuity.”

Fort Victoria Treaties, 1850-54

The idea that the “treaties” negotiated by Governor James Douglas displaced local authority and underlying ownership – or at least their power of the equal partner to the treaty – is hard to credit.

The Potlatch was the dominant form of land governance and international treaty making. The coastal nations were the authors, under writers, and confirming power of that governance and those treaties.

Potlatches are not “in perpetuity” – they are renewable at regular intervals, especially when circumstances change. The Fort Victoria Treaties, 1850-1854, appeared to be potlatches.

Douglas distributed blankets, a small amount of money, molasses and biscuits in exchange for grazing leases and settlement locations. That much was understood. The disagreement over the result of the “treaties” comes in where “all the lands” except the Indigenous “village sites and enclosed fields” became “the property of the whites forever.” That is the *written* wording that was put down, (sometimes after the fact) on papers marked with the Chiefs’ signatory exes. That “potlatch” was never renewed. Douglas and Co. took over village sites and lands whether molasses and money were exchanged or not.

The accompanying rights “to hunt and fish as formerly” were immediately violated and denied by the colonizer, to the point where they are, today, all but meaningless.

~

1857 and the Hudson’s Bay Company’s “crimes of inhumanity”

The interesting contents of Governor James Douglas’ journals and correspondence with London are too often sifted by academic students for proof of some kind of “honour” that somehow rationalizes what happened next.

The proof of the Imperial agenda, and Douglas’ role in it, however, does not bear interpretation.

In 1857, the Hudson’s Bay Company was brought up on charges of criminal inhumanity towards the Peoples of the north-west “Indian Territory.” An “Aborigines Protection Society” had formed in Britain, as atrocities against Indigenous Peoples throughout the self-proclaimed “British Empire” spiked proportionately to colonization and settlement. A committee reviewing the charges against the HBC, five thousand miles away in Britain, was unable to find satisfactory evidence of the allegations. The Company was relieved of its governance-related duties the next year, by completing the transformation of its infrastructure and personnel into the Colony of British Columbia.

When Douglas accepted the promotion from HBC Governor to Governor of the Colony, he was expecting a £5,000 annual salary. He got £1,500, with a note that the remainder would depend on showing a little more progress.

To put his wages in context, the Governor had applied to London for cash to buy out Indigenous interests on Vancouver Island, and

told them that £3,000 should be enough. That request was famously – and incomprehensibly – denied: the HBC Charter was supposed to allow him to sell the lands for profit, but he didn’t have any lands. Indigenous demands for rents, tariffs, evictions, and compliance were a daily reality.

Fortified by their unique natural legacies, the nations west of the Rocky Mountains had each been inviolable in their countries for thousands of years. The rugged coastlines, wild ocean tides, steep mountain ranges, narrow river canyons and dynamic terrain could not be entered with any advantage by European colonizers.

For instance, even the gold-hungry force of tens of thousands, in the 1858 gold rush, was soon rebuffed. At Grouse Creek in the Fraser Canyon, Nlaka’pamux warriors sent dead miners back downstream and brokered a peace on their own terms.

In the Fall of 1858, it was the personnel and infrastructure of the HBC forts which were transformed into the government of the Colony of British Columbia.

The Colony of British Columbia, 1858

Starting in 1858, the Fraser gold rush, the Stikine, Cariboo, and Yukon gold rushes, blew many tens of thousands of foreigners through a series of countries that previously would have intercepted travellers at their borders. Many of those miners, or the businessmen facilitating the miners, became permanent residents, ranchers, and

founders of towns and cities. Hope, Barkerville, 100 Mile House. The rush receded, however, leaving settlers few, far between, and meaningfully under the jurisdiction of the nation they lived in.

Later that year, 1858, Queen Victoria decided that, “WHEREAS, divers of Her Majesty’s Subjects and others have, by the Licence and Consent of Her Majesty, resorted to and settled on certain wild and unoccupied Territories on the North-West Coast of North America, commonly known by the Designation of New Caledonia, and from and after the passing of this act to be named British Columbia, and the Islands adjacent, for Mining and other purposes; it is it is desirable to make some temporary Provision for the Civil Government of such Territories, until permanent Settlements shall be thereupon established, and the Number of Colonists increased...”.

The Colony of the Queen Charlotte Islands was made part of it, and soon the Colony of Vancouver’s Island as well, so that BC included all the lands and waters west of the Rocky Mountains and north of the USA border.

Positioned at trading forts throughout the interior nations and along the coast, the Company / Colony was prepared. The role of HBC officers evolved. Originally fur traders and fort-minders, many had been promoted to agents of the Colony and then, eventually, with the Province in 1871. They were the only colonial human resources available.

The change of name and position did nothing to improve

colonial legitimacy on the land. It merely followed what was, by that time, for England, a familiar colonial development: transforming company men into local rulers.

Before joining with the new BC Colony, the House of Assembly of the Colony of Vancouver Island (its Legislature), sent a Petition to the Imperial Government, via the Secretary of State for the Colonies, advising that they could not continue settlement without more money to buy more land. They explained the danger settlers were in, if they should continue moving into non-treaty areas, particularly Saanich and Quw’utsun, and that many would-be settlers – arriving in the Fraser Gold Rush – had left the Colony because of the lack of certainty and lack of political will to achieve it.

Governor Douglas included a cover letter with the Petition, explaining, among other things: “As the Native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain Districts, they would not fail to regard the occupations of such portions of the Colony by white settlers, unless with the full consent of the proprietary Tribes, as national wrongs...”.

Lord Newcastle, Colonial Secretary, replied: “I am fully sensible of the great importance of purchasing without loss of time the native title to the soil of Vancouver Island; but the acquisition of the title is a purely colonial interest, and the Legislature must not entertain any expectation that the British tax-

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payer will be burdened to supply the funds or British credit pledged for the purpose.”

Britain refused to send more money, but did not reduce the settlement mandate and colonial expectation proportionately.

Smallpox 1862

In 1862, colonial agents began a biological war that would alter the balance of power well into the future and even to the present day. The introduction of smallpox, and the calculated expulsion of infected Indigenous people from Victoria – at two-week intervals coinciding with the incubation and contagious stages of the disease – decimated areas and Peoples which the Imperial forces could otherwise never hope to access with any advantage.

The smallpox epidemic reduced most of the Indigenous nations in relation with the HBC to a fraction of their former number. The survivors’ memories of the sources of infection vary by nation and by community: some were infected by blankets given by gloved HBC officers, laced with sloughed human skin; some were parties of foreign visitors that stopped at every household and engaged in visits for no discernible purpose; some were “inoculations.” The results that followed were the same.

This biological war was the tsunami that followed fifty years of economic and jurisdictional waves and ripples, and twenty years of colonial attempts to gain supremacy on the west coast.

This war is a historical fact which is no longer deniable,

although the colonial version of history persists as a polarity to the Indigenous one. What academia has perpetuated as the myth of a 30% decline in the Indigenous populations by accidental spread of the disease is unassailably contradicted by the Peoples' own accounts, which put the smallpox effect up to a 90% drop in many areas.

In a matter of weeks and months, colonial surveyors, land speculation companies, roadbuilders and settlers followed the trail of devastation up the coast. They staked claims, sold lots, and settled in. A wave of immigration followed.

Sir James Douglas was knighted in 1863. He resigned as Governor the next year, and died in 1877 with \$70,000 Canadian dollars in the bank. For context, in 1927 the Canadian government allocated \$100,000 for *all the Tribes* "in" BC, "in lieu of treaties."

The Governor's Picnic and the Chilcotin War, 1864

To mark Douglas' retirement from office and introduce Governor Seymour as his replacement, chiefs of all the nations were invited to a picnic in New Westminster at the time of Queen Victoria's birthday. Most of them came. Memories passed down adjudge thousands of visitors making a tent city along the river there.

The content of the new Governor's message was never forgotten, although written records of it appear to have been misplaced.

Governor Seymour announced the 30/30/30 agreement: one-third

of revenues from development of land would go to the Nations, one-third for the Colony, and one-third for the Queen.

Exact details are reported with slight variations. "The late Grand Chief Sam Douglas says his grandfather, Charlie Douglas, used to talk about the Chiefs going to New Westminster for meetings with the Queen's representative: *He says we were supposed to get \$0.25 out of every dollar and that was his exact wording that he told me.*" A recent report for the Sto:lo Land Titles office reported that interview.

Days before the Picnic, the Tsilhqot'in War broke out. Eighteen men in a privately employed party of roadbuilders were killed as they attempted to survey and build a road (mostly over existing trails) from Bute Inlet into the Tsilhqot'in plateau. The Chiefs had never allowed an HBC Fort in their territory, and now defended their borders in the wake of the smallpox epidemic that had been introduced by the last party of non-Natives admitted to visit them. The Colony launched an invading force to capture the leaders of the country. Although this took a year, they eventually brought the Tsilhqot'in Chiefs to "trial." That is, they invited them to *come into the tent* without their weapons to what was described as a peace summit, and then shackled and executed them after a summary trial.

Six months after the Picnic, Naval Commanders interpreted their instructions to apprehend an Ahousaht man suspected of murder: they burnt nine villages to the ground, destroyed over sixty

canoes, and killed at least four Ahousaht on the beaches while landing their Royal Marines and "Voltigeurs" militia. The Ahousaht managed to keep their "suspect fugitive" safe, and therefore considered the staggering loss a successful resistance.

The province, with a Canadian negotiator, attempted its first treaty with the Tsilhqot'in in 1872, promising, in exchange of access through their meaningfully closed borders, money and technology, among other terms related to Tsilhqot'in control of the activities of settlers. It lasted five months before the BC's parliament voted to "open up the Chilcoten for settlement," in January of 1873.

The Colony becomes a Province, 1871

The Colony of British Columbia was in desperate need of non-native land-holders. The device of pre-emption offered land the Colony did not own, for little more than the price of the paper it was written on.

In 1870, whereas it was, "expedient to amend and consolidate the laws affecting Crown Lands in British Columbia," the laws of pre-emption enacted therein provided any comer with title to an initial plot of hundreds of acres: "Provided that such right of pre-emption shall not be held to extend to any of the Aborigines of this Continent, except to such as shall have obtained the Governor's special permission in writing to that effect."

By the next year, BC told Canada it

had a population of 30,000. This number was a little inflated, according to later checks; probably in order to increase the yield of the federal per-capita transfer payment that came with joining the Canadian confederation in 1871.

The old Douglas reserve boundaries sunk under waves of hostile and self-righteous immigration. The indelible mark of those constructive arrangements, however, continues to cause ripples to date. Why else, if there had not been some strong bond of allegiance or promise between themselves and the Governor, would 109 Chiefs sign a petition protesting the Indian Reserve process, and call themselves the “Douglas Tribes”?

In the year of that petition, 1875, the break in solemn relations with the new province’s Governor signalled the last of the May 24 “picnics” at New Westminster to celebrate Queen Victoria. The Chiefs of the “Douglas Tribes” boycotted it, sending a message instead:

“We have heard that you have obtained from the Dominion some money in our name in order that we should celebrate properly the Queen’s Birthday. We come to inform you that we do not wish to celebrate the Queen’s day. She has not been a good mother and Queen to us, she has not watched over us that we should have enough land for the support of our families. She knows that the British Columbia Government has deprived us of our land leaving but few acres and in some cases not even one acre per head; she knows that we have made a petition nearly one year ago pray-

ing that eighty acres [go] to every family. She has not yet said a word in our favour. If she is so great as we have been told, she must be powerful enough to compel the British Columbia Government to extend our present Reserves so that every Indian family will have eighty acres of land. We come to tell you to send back the money the Dominion allowed for the celebration of the Queen’s day. We do not wish it to be spent for us as long as our land question is not settled according to our wishes. We are in sadness and our sadness is growing to an irritation of feelings and to despair and you know despair is a bad advisor. White men are coming in great numbers and take all the land around our villages. If our land question is not settled immediately there will be no possibility to extend our present insufficient reserves. We will be forced to act as Seashell Indians have done with just reason this winter, drive out every whiteman who would try to pre-empt the lands we wish to have outside our present Reserves...”

By 1874, a new approach to Indian reserves had been established. Indian Reserves had only been surveyed across less than one-third of the land mass of “the Province,” and all of them were now disputed by the Chiefs, having become tiny fractions of their countries by subsequent Agent surveyers – after smallpox – on the instructions of the Colony’s government following Douglas’ retirement.

Douglas was asked to clarify his approach to reserving Indian lands, by officers of Indian Affairs in BC, in 1875. He wrote to them that his

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instructions were: “to leave the extent and selection of lands entirely optional with the Indians who were immediately interested in the Reserves, the surveying officers having instructions to meet their wishes in every particular, and to include in each Reserve the permanent village sites, the fishing stations and the burial grounds, cultivated land, and all the favorite resorts of the Tribes,”

and in short to include “every piece of ground to which they had acquired an equitable title through continuous occupation, tillage or other investment of their labor.”

That was presumably the basis on which Native Nations had entertained future discussion of foreign settlement, roads and rails, and development generally. The demarcation of areas where foreign settlers were not welcome was not a surrender of the lands and jurisdictions where they were allowed entry.

The Indian Affairs office for BC reported in 1875 that the province’s officials “...at the request of White settlers, who in some localities were envious of the fine tracts given to the Indians, cut them down or reserved other lands not so valuable as those originally laid aside for them.” And, “...many of these lands [reserves] do not contain two acres to each family of the Tribe interested.”

In 1875, Canada’s Attorney General and Minister of Justice attempted to arrest BC’s disposal of unsurrendered land, disallowing the province’s 1874 *Land Act*.

The only provision against pre-emption – the only recognition of

BC history revisited

Indigenous land rights at all – was for existing villages and surveyed Indian reserves. They did not adhere to those rules either, and a great deal of inconvenience now faces the City of Richmond as a result: the Cowichan never gave up, and won judicial declaration of their Aboriginal title there in August of 2025.

The Cowichan village in question was purchased by Richard Moody, who was the first Chief Commissioner of Lands and Works for the Colony of British Columbia, and was tasked with ensuring that Indian reserves were created at sites of Indian settlements. Moody's purchase was made after Confederation in 1871, at which time Indian settlements came under the Dominion protection, as with all matters concerning "Indians and lands reserved for the Indians." The

sale was made without statutory authority.

At the time, Commissioner Gilbert Sproat of the Joint Indian Reserve Commission noted the powerlessness of the Canada-BC "Commission" in a letter to the Lieutenant Governor in 1878: "The ancient fishing ground on the Lower Fraser of the Cowichan nation ... has been sold and now belongs to a white non-resident. What can be done in such a matter?"

The "Indian Reserve Commission" process preoccupied leaders up the coast, with the promise of "British justice," until 1888.

The rogue action of Attorney General Blake, throwing out Indigenous land rights along with the *Terms of Union* had to be followed up by legislation to control –

and criminalize – the inevitable Indigenous reaction.

The 1876 *Indian Act* criminalizes Indigenous ways of life and government

On April 12, 1876, the Dominion Government passed *An Act to amend and consolidate the laws respecting Indians*: the Indian Act. It included special instructions for Manitoba, BC, and the North West Territory. During one period of about 60 years, from the 1890s to 1951, an "Indian" could be arrested, fined, or detained for just about anything.

But it was not just an "amalgamation." The 1876 legislation added many dozens of paragraphs prescribing rules of self-government on Indian Reserves; duties to

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Page 40:

Chipewyan Chief and headmen who accepted Treaty 8 at Fond du Lac, 1899. Left to right: Laurent Dzieddin, Chief Moberly, and Toussaint. Photo: Glenbiw – Alberta Institute; in “As Long as This Land Shall Last,” Rene Fumier, OBI.

This page, map:

Treaty 8 was made in 1899. It was the last treaty to be made concerning “BC” land, until the Nisga’a Final Agreement in 1998.

the Registrar; extensive restrictions of rights that would be withheld unless individuals surrendered their Indian Status and “enfranchised” as a Canadian citizen.

Native people were not considered Canadian citizens from the start; not until after World War II, when citizenship was assigned unilaterally.

The Indian Act was amended many times over the years, incrementally increasing the pressure on Indigenous Peoples to assimilate.

In 1884, traditional Indigenous governance in BC was criminalized in the anti-Potlatch laws; an amendment to the Indian Act.

The potlatch system continued through that very real adversity, and

survives today, by going underground and being carried out in strategic secret. “When potlatching was outlawed, this was when we lost control of teaching the children proper behaviour in the Indian way of life. We were told if we didn’t move from our original home to a place with a school, we wouldn’t get better. We did, and look what it has done for us - NOTHING.” - Jack Peters, an Elder of the Ohiaht Band (Nuu-chah-nulth), as quoted in the *Aboriginal Rights Position Paper*, UBCIC, 1979

The attitude of the BC government and settlers was already fixed. Disputing the Indian Reserves, Tsimpsen leaders repeatedly visited Victoria. They were denied

meetings with the Premier. Eventually, Premier Smithe committed his position to paper. Among other things, it said: “The land all belongs to the Queen. The law provides that if a white man requires a piece of land, he must go to the land office and pay for it, and it is his. The Indian is placed in a better position. A reserve is given to each tribe, and they are not required to pay for it. It is the Queen’s land just the same, but the Queen gives it to her Indian children because they do not know so well how to make their own living the same as a white man, and special indulgence is extended to them, and special care shown. Thus, instead of being treated as a white man, the Indian is treated better.”

1875 report of the BC Indian office

1875, February, in the Report of the British Columbia Indian Office:

"The Indian Reserves of British Columbia have for some time been, and are at present time in a most unsatisfactory condition both to White settlers and Indians. To the former from the fact of being so small and insufficient in many instances as to occasion constant disputes as to their limits; and to the latter, because the Indian, who is now beginning to understand the value of land, looks with envy on the large possessions of the Whites, and with discontent upon the small areas allowed to himself, as the primitive and original possessor of all, and to which his rights have been ignored by past Colonial Governments.

"I have also forwarded to you the statement kindly given me by Sir James Douglass, the first Governor in this Province to deal with this subject, showing that no basis of acreage had ever been established in respect to determining the quantity of land to be reserved for each Tribe, but on the other hand "to leave the extent and selection of lands entirely optional with the Indians who were immediately interested in the Reserves, the surveying officers having instructions to meet their wishes in every particular, and to include in each Reserve the permanent village sites, the fishing stations and the burial grounds, cultivated land, and all the favorite resorts of the Tribes," and in short to include

"every piece of ground to which they had acquired an equitable title through continuous occupation, tillage or other investment of their labor."

"This system was highly satisfactory to the Indians during the Government of Mr. Douglass; but since that time his successors have, from time to time, at the request of White settlers, who in some localities were envious of the fine tracts given to the Indians, cut them down or reserved other lands not so valuable as those originally laid aside for them. In this way they have become generally discontented, especially in the interior of the Province, where the system of leasing large pastoral tracts to White settlers at a nominal rate has very much curtailed their means of gaining subsistence, by having sufficient grazing lands for their numerous bands of horses and cattle.

"Some time after union the charge and trusteeship of Indian lands were assumed by the Federal Government, and the natives looked for a far more liberal treatment in regard to the quantity of land to be allowed them than the terms of confederation would seem to have justified.

"On this ground, and owing to the scarcity of arable land in some localities, the request of the Dominion Government to grant eighty acres of average land to each Indian family was declined, and after much correspondence it was finally conceded and approved "that, throughout the Province, Indian

Reserves shall not exceed a "quantity of twenty acres of land for each head of a family."

"The Indians in possession of Reserves having very generally expressed a wish to have the same apportioned to them upon the basis agreed upon, and with a view to putting an end to disputes among themselves as to their agrarian rights, I commenced at once, under your authority, the survey of and allotment of all existing Reserves. Subsequently, and upon my first application for lands to display the deficiency in Reserves surveyed, I was informed by the Honorable Provincial Secretary that the basis of twenty-acres agreed upon, referred only to future reservations of land, and that existing Reserves were to remain as at present.

"As many of these lands do not contain two acres to each family of the Tribe interested, and pending instructions from yourself, most reluctantly I have, for the time, been obliged to terminate the prosecution of further surveys which had otherwise been so satisfactory and popular with the Indians concerned.

"I greatly trust that this unfortunate interpretation of our agreement will be of temporary duration, and that this vexed question, upon which depends the contentment of more than 30,000 aborigines, and the peace of the whole Province will be finally settled to the satisfactory of all concerned."

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James Douglas died with \$70,000
in the bank, August 2, 1877.

For context, the total cash
allocation by the Dominion
government for “the Indians
of British Columbia”
in lieu of treaties in 1927
was \$100,000.

James Douglas. Portrait by Savannah.

Since Indians were specifically not allowed to buy land by BC’s laws, and since the Premier was well aware that the ceremonial fee of a dollar or two that white men paid for their pre-emptions of land was no barrier, Smithe’s statement is the original standard for the bad faith and outright lies that met every Indigenous attempt to secure their survival.

The Premier lied, further: “But you wish to have the exclusive right of hunting over these lands, which is more than any white man claims or desires. If you have not got land enough reserved for your purposes, I am quite sure that Mr. O’Reilly’s one wish is to make such a reserve as he is satisfied is requisite and necessary for any of the tribes, whether of the Naas or of Port Simpson. And if, in the past,

Mr. O’Reilly has made any mistake, and mis understood any of their wants and wishes, he is perfectly ready to go again and hear what you have to say; and if you can show him that your reserve is too small, he will be prepared to ask the Provincial Government to give you more land. But, in so far as that goes, there need be no difficulty at all.”

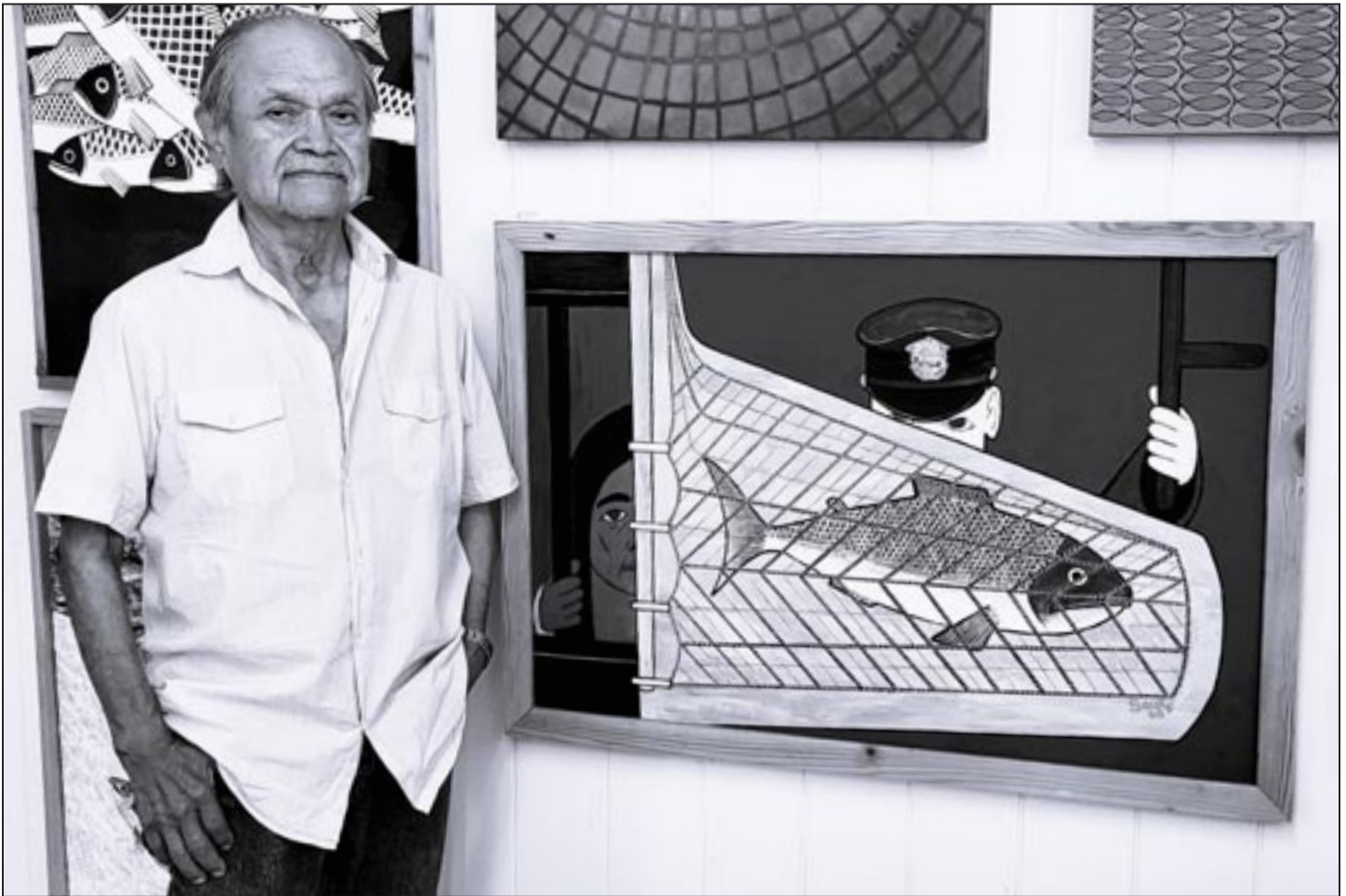
The Reserve Commission of the Northwest Coast simply attached the Premier’s letter to their report, as a final word, and no further meetings were held.

No land was ever added to the Tsimpsonian reserves until 1998, and that was achieved by the four Nisga’a Bands surrendering the other 92% of their claims in favour of a Final Agreement.

On the mainland, the Indian Reserve Commission began in 1912, with one Commissioner from the Dominion, one from the province, and one they appointed together.

Seeing the same mandate as had been applied before, on their coast, the Nishga launched their Petition to the privy Council in 1913:

14. Your Petitioners are aware of the provisions of the agreement made in the year 1871 and set out in Article 13 of the “Terms of Union”, and they are also aware of the provisions of an agreement made between a Special Commissioner of the Government of Canada and the Premier of British Columbia on the 24th day of September, 1912, relating to the matter of the so-called reserves, and approved by the Government of Canada on the 27th day of November, 1912, subject to a certain

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Grand Chief Saul Terry, Xwisten, St'at'imc, in his Lillooet art gallery with his painting of the fishing prohibitions, 2025. Photo: AQ.

modification mentioned in the Order in Council made on that day. Your Petitioners humbly submit that nothing contained in either of the said two agreements does or can take away any of the rights which they claim.”

Nishga lawyers advised their clients, and the alliance of other nations supporting the Nishga, to avoid the Reserve Commission. But many Indigenous individuals and chiefs engaged it in good faith.

The Commissioners told the people that their participation would not canvas matters of land title, and Indian Reserve selection would not prejudice such issues if they went to resolve them with government at a later date. There

was no satisfaction.

Parliament legislated the new little reserves over and above and in spite of their protests, Declarations, countless visits to Victoria, visits to London, Allied Tribes Claims, and Privy Council actions.

As described above, the alliance among the Tribes did not proceed with the 1914 Order in Council, allowing them access to court – from which they would emerge with only the rights determined by the court. They replied with a counter-proposal, including that:

“when the findings of the Royal Commission are known, each tribe that may consider such findings insufficient shall have opportunity of making application for additional lands to be reserved..., in pursuance of the principle embodied in Article 13 of the ‘Terms of Union.’” And, “That in fixing compensation regard shall be had to all the terms and provisions of any treaty made between the Crown and any Tribe of Indians in Canada,” and “to all restrictions and disabilities imposed upon Indians by Provincial Laws and by

Commercial salmon canneries in British Columbia started up in 1873. They began to decimate Fraser stocks in a decade. The government blamed Native fisheries, and began to criminalize them.

In 1888, the first *Fisheries Act* for BC initiated restrictions on Native fisheries: “Indians shall, at all times, have liberty to fish for the purpose of providing food for themselves but not for sale, barter or traffic, by any means other than with drift nets, or spearing.”

Canadian regulations relating to the fisheries.”

The 1915 union of the Allied Tribes in Spences Bridge, and their conference in Vancouver, 1916, permitted no doubt as to their commitment to their position. They formally adhered to the Nishga Petition of 1913, as a trial case of their situation, to be heard by the Privy Council.

In 1918, the further and final reply of the Privy Council to the Nishga was signed by Almeric Fitzroy. “If however the claim of the Indians does not rest on any legal basis, but is, in effect, a complaint of the executive action of the Provincial or the Dominion Government, it would appear that, in accordance with constitutional principles governing relations between the Crown and the Colonial Governments a special reference to the Judicial Committee to consider the action of the Dominion or Provincial Government could only be ordered on the recommendation of the Secretary of State for the Colonies, and that he would only advise such a reference after consulting, and in accordance with the advice received from the Dominion Government. In these circumstances His Lordship cannot see his way to take any further action on the Petition.”

In 1919, the Claims of the Allied Tribes was formalized in a Petition to Ottawa. It was passed off with the same bureaucratic dismissal as met the Nishga petition.

In 1920, Parliament debated an amendment to the Indian Act proposed by Canada’s Superintendent General, Duncan Campbell Scott.

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Compulsory enfranchisement of Indians, at the discretion of government through the Registrar, would now be enabled in the Act. One type of individual who would be targeted by this unilateral enfranchisement scheme – to remove people from their Bands – was political leaders. Scott said, “Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question and no Indian Department. That is the whole object of this Bill.”

That provision lasted only about a year on the books before it was removed again, but the “whole object of the Bill” continues to date.

The federal government’s power to unilaterally strip Indian Status from individuals, however, remained a crucial part of the Indian Act’s usage to splinter communities: for many decades, a Non-Status Indian could not enter an Indian Reserve, much less live there.

As the government of Canada put it, in the Supreme Court of British Columbia, *McIvor v. The Registrar*, 2006, the purpose of the Indian Act is: “to retain Indian registration as a means of continuing the federal government’s relationship with individuals of sufficient proximity to the historical population with whom the Crown treated or for whom reserves were set aside.”

The registration provisions were intended to continuously minimize the recognized Status Indian population, and thereby minimize the state’s obligations.

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Chief Capilano Joe is leaving for London to see King Edward VII, 1906.

Image 216A, "Conversations with Khahtsahlano 1932-1954" The City Archivist, Vancouver, British Columbia, 1955.

Finally the Allied Tribes in 1924 attempted a last-ditch Petition to Parliament to prevent the final reserve maps from being legislated. They failed.

In June of 1926, the 1919 Claims were re-framed as a Petition. It read:

"To the Superintendent General Of Indian Affairs: The Allied Tribes

submit that the Dominion is under obligation for providing all funds already expended and all funds requiring hereafter to be expended by the Allied Tribes in dealing with the Indian land controversy in establishing the rights of the Allied Tribes, and in bringing about final adjustment of all matters relating to

Indian affairs in British Columbia.

"The Allied Tribes so submit upon grounds briefly stated as follows:

1. Well established precedent relating to judicial proceedings intended for establishing the rights of Indian tribes and in particular that of the Oka case, which was carried independently to the

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North Vancouver Ferry wharf, Wallace Shipyard in left background, McRae's Sawmill next. Chief Joe, robe on right arm, fifth from left. The story as told, is that Chief Joe proceeded to Buckingham Palace arrayed in formal Indian attire. He speaks of Indian grievances to H.M. the King (Edward VII), who attentively listens. The Chief then continues, "There is another matter too. The Policemen fine my people for doing wrong, (i.e. in the King's name); make Indian pay. Now what we want to know is, do you get the money?" His Majesty replies, "Yes. I do. And thank you very much."

Judicial Committee of His Majesty's Privy Council by the Indians interested and of which the total cost was provided by the Parliament of Canada.

2. The fact that the Dominion of Canada being by virtue of the

British North American Act and the "Terms of Union" trustee for the Indian Tribes of British Columbia and under all obligations arising from such trusteeship has by entering into the compact with British Columbia rendered itself incom-

petent for taking effective action establishing the rights of the Indian Tribes of British Columbia, as is clearly shown by the Opinion of the Minister of Justice issued in the month of December 1913, and moreover has put itself in the

*BC history revisited***Squamish Leader****Andrew Paull,**

Xwechtáal ("the Serpent Slayer") 1892-1959, was appointed at a young age to learn the English language and laws in order to protect Squamish. He and Peter Kelly worked closely in the Allied Tribes and other organizations. They are said to have grown apart in their vision for Indigenous Peoples, on the question of autonomy or political assimilation.

**Haida Reverend****Peter Kelly**

1885-1956, was minister throughout hundreds of miles of coast, traveling mainly by canoe. He was a leader of the Allied Tribes and supported each organization that advanced the cause of Native people.



position of a party in the case upholding the contentions of the Province of British Columbia, ...”

In December of 1926, there was a “hearing”, *To Inquire into the Claims of the Allied Tribes of British Columbia*. A Joint Committee of the Senate and House of Commons, supplemented by the presence of the Superintendent of Indian Affairs, Duncan Campbell Scott.

What the politicians and superintendents did not mention, in their role as Committee members, was the Imperial Conference Britain had just held: where the crown invented the legal philosophy of “the divided crown” – where its colonies, just about to be joined under the British Commonwealth in the League of Nations – would have domestic ‘crowns’ of their own. This was to end legal recourse against the Imperial crown.

At the Parliamentary hearing were the calm, cool, and somewhat resigned Haida Reverend, Peter Kelly; the Squamish lawyer with-

out a law degree (he wasn’t enfranchised), Andy Paul; and Chiefs Johnny Chilihitz and Basil David of the Secwepemc and Okanagan, who could speak to the Governors’ promises going back to 1861.

They made Canada an offer that really should not have been refused. They asked for compensation for lands taken without their consent; other lands to be returned; and for recognition of the land rights they wished to keep.

This situation remains virtually unchanged one century later.

Instead of a constructive response, the Committee dismissed the Claims out of hand. There was no right to appeal. The Indian Act was amended – immediately. From 1927 to 1951 it was illegal for a lawyer to receive or raise funds to work “to advance the cause of any Indian Band.”

The “Indian Band” construct was now forced on and entrenched over Indigenous Peoples. Their administration was to be recognized only through a single elected Chief, which requirement was added by

another Indian Act amendment in 1935. An Indian Agent or the elected Chief could create a Band Council Resolution on behalf of the band without any vote or meeting at all. Indian Agents are recalled to have had Chiefs sign several of these resolutions at once, blank, for efficiency of action when the governments required an urgent approval. But the Superintendent of the Interior maintained absolute control of “Indians and lands reserved for Indians,” anyway.

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When Nations, Peoples, and their titles survive colonization

...a reign of terror, murder, criminalization, exclusion, and oppression dogs them, in: “conditions calculated to bring about the destruction of the group, in whole or in part.”

But the groups were not destroyed.

The Flag

The British flag was originally offered to every Indigenous Nation west of the Rocky Mountains in the time of first contact, from 1790 to the 1830s. The flag was to be displayed as a signal for trade, and for protection from other Europeans. It was understood by Indigenous Nations to signal an alliance.

Within decades, however, the other Europeans had signed treaties to abandon the Pacific Northwest to

the British. The new British colonialists reinterpreted the presence of the flag. They told their Indigenous trading partners, with whom they lived as guests, that the flag was a sign of British sovereignty. Not one Indigenous nation agreed with that.

Unilaterally declaring sovereignty over another nation is the quintessential act of war.

Indigenous Peoples all made Declarations, Statements, or memorial

documents to record and forward their situations in relation to their lands and to the British flag, which was now thrown out along with its new assigned meaning.

In the Declarations and Memorials, the appointed Chiefs and representatives of Indigenous Peoples claimed their titles and declared they had never sold or surrendered them.

Since then, the Canadian courts have gradually built up a definition of “Aboriginal title” and “Aborig-



This notice was photographed recently, still posted at the entrance to a Secwepemc community.

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“Dr. Powell came to see us in 1877. He said we need not trouble, because it was our land, and that the Queen would see that we had our rights.

This is what our missionary had told us for years.

We thought those words were true.

Not long after, a land surveyor came here, and we wished to know what he had come for.

Afterwards, we found out he had come secretly to mark out land for some white chiefs, some say government chiefs.

Afterwards, we saw it in the newspaper.

It was called the land grab.”

- Affidavit of Louis Gosnell, recorded by T. Crosby, Interpreter, December 3, 1888, at Port Simpson.



After canneries at the mouth of the Fraser had devastated Fraser River salmon by seine-netting mixed-stocks as they entered the river, terminal fisheries were smashed by the colonial Fisheries officers.

In 1910, the “Fort St James Barricade Treaty” was agreed between the Province and Nak'azdli and Tlazten to remove their weirs on the Stuart Lakes river systems. In exchange, the Province would provide a school, agricultural capabilities, gill nets, and relief in times of hardship. The Crown did not provide. For a school, they built Lac Lejeune Residential School. Extensive criminal abuses were committed there, but not the expected education. Most years the government did not provide gill nets. In some years, they provided twine. The one bull and several cows did not meet the needs of 60 families. The one plow was also inadequate. The seeds they gave, only on one occasion, were not suitable for the climate. The Bands, after many attempts to rectify the situation, sued for damages in 2008.

inal rights” to refer to Indigenous rights *within Canada*. But these courts have refused to consider the initial problem – the constitutional question – that neither the UK nor Canada made any treaties or constructive arrangements to gain jurisdiction over these “Aboriginal Peoples,” which are defined unilaterally in Canada’s *Constitution Act 1982*.

After that preliminary coup, definitions of rights and title have

been splintered, limited, and hollowed out by the courts, in denial of the obvious conflict of interests, in case after case progressively, to the point that the early Indigenous documents have to be read with the understanding that their original meaning was their own full and undiminished “title and rights” – not defined by Canada.

~



Daniel Wiigak, High Gitksan Chief, surrounded by furs for sale to the HBC. Registration of traplines and sale of furs was the single economic activity allowed to Indigenous Peoples in respect of their lands - except perhaps for cedar root baskets and berries sold door to door, and wage labour. Cutting wood was prohibited; hunting and fishing were closely monitored and often punished criminally as sales, which was illegal. Photo: c. 1923, Canadian Museum of Civilization.

The Indian Act

The impact of the forced “Indian Reserve answer” to the “BC-without-treaties” land question cannot be overstated.

It was not a lawful action to mark out tiny plots of a few acres here and a few hundred acres there: the instructions to the Colony were to mark out “as much land as they themselves” – the peoples – described, and refuse the new settlers entry to those areas, and respect the limitations and duties on settlement defined by Indigenous Nations and Peoples. To the British, that had meant making treaties.

The colonial license to interact with Indigenous Peoples was rein-

terpreted as a mandate to displace, decide, and delimit Indigenous living spaces, and settle or extract the rest. This same illegal process was used against the Peoples, as if they had agreed and were bound to them.

For example, in 1985, in the question of Meares Island and the Tla-o-quiaht (Clayoquot) blockade of logging, the Province of BC lodged in its defense that Nuuchah-nulth people lived on Indian Reserves and accepted minor additions and changes to them, during or around the time of the Reserve Commission, therefore the Nuuchah-nulth had accepted crown sovereignty and released their titles and rights. That is, the province

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continued in their submission, “IF they ever had any rights and titles,” which the province denied that they did, “THEN those rights were released in exchange for the reserves and *Indian Act* programs.” BC used this argument in court many times – that acceptance of Indian Reserves defeated all and any other claim to title or rights.

The 1876 *Indian Act* wasn’t just “an amalgamation” of the handful of *Acts* in eastern Canada, as the formal title of the legislation suggests. The only existing legislation regarding Indians was a handful of laws which defined who was an Indian – based on their own self-determination, and which embargoed trespassers on their land.

The 1876 Act followed the 1875 *BC Lands Act* crisis, and it was a massive new document which described the complete subjugation of every Indigenous man, woman, and child, and their national organizations as well, to a set of race-based rules that criminalized basic human activities. It defined civil, political, economic, and social rights to the point of disallowing bonded employment and ownership of land, and, eventually, unsanctioned travel. It criminalized such actions as being in possession of liquor, and provided for Indian Agents and church leaders and police to each fine and/or detain the guilty party.

A study of the *Indian Act*, as well as the ways it was enforced, is a subject too vast and varied to be included within a book on any other subject. Suffice to explain that, to this day, the *Indian Act* pre-

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scribes the uses of reserve lands; forbids private enterprise to be backed by reserve land holdings; and the only way that Native communities can get out from under it is to *formally adopt Canadian law over themselves*, displacing their own jurisdictions and titles, in order to access rights the occupying crown will agree to. The most outrageous aspect of the *Indian Act* is that it has been enforced over Peoples who never agreed to be governed by Canadian law, with or without treaties.

The assimilation process launched by the *Indian Act* continues today, under Sectoral Agreements and “negotiated” settlements under the Comprehensive Claims Policy, 1973. None of the fundamental requirements of these agreements are negotiable. The same policy of “voluntary” extinguishment and assimilation continues, just like the offer made by the Privy Council in 1914, to exchange what the courts call “undefined Aboriginal rights” for money and small parcels of land to be held in fee-simple title under Provincial land laws, and decision-making rights which are prescribed by the agreement. It is better known today as the BC treaty process, or Recognition and Reconciliation Agreements, or delegated jurisdiction agreements, or any of a number of other *ad hoc* legislative “accommodation” of the rights which are won, so slowly, in the modern courts. There are Forest and Range Agreements; the Abo-



“NO SURRENDER. Graveyard at Cheslatta Lake which is flooded twice a year by Kemano 1 since 1952.” Photo and caption: Ideas Unlimited, The Cheslatta Redevelopment Fund.

iginal Fisheries Strategy; logging licenses; and so on. Each one requires a First Nation to declare that their Aboriginal rights in an area have been accommodated by the legislation, and either surrender their “undefined” rights or promise not to assert them.

~

Forced relocation

The Governors of Vancouver Island and British Columbia used to explain their own encroaching settlements to Indigenous leaders by promising that they would always have everything they needed, and not lose anything they wanted to keep. Everything would be negotiated, they agreed.

Then the Indian Reserve Commissioners told the Chiefs that the

reserve boundaries weren’t the end of the world – they could always go out anywhere beyond an Indian Reserve. They promised the Chiefs that their people would hunt and fish “as formerly.” They said, “no white man is ever going to stop you from fishing.” They said, “as long as land is settled in an Indian village, it can’t be pre-empted.” They said, in the McKenna - McBride Commission’s mandate, that no pre-emptions would be approved until the Commission’s report was complete. They said that the “fenced lands and cultivated fields” of Indigenous villages and surrounding areas would be protected from settlers, and settlers could never take it.

None of these promises were kept. Not only that, but entire native villages were removed even after

Relocation also meant this:

**“When potlatching
was outlawed,
this was when we lost
control of teaching
the children proper
behaviour in the
Indian way of life.**

**We were told if we
didn’t move from our
original home to a
place with a school,
we wouldn’t get
better.**

**We did move, and
look what it has done
for us - NOTHING.”**

**- Jack Peters,
Elder of Ohiaht Band,
Nuu-chah-nulth,
in the Aboriginal Rights
Position Paper,
UBCIC, 1979.**

the land was officially reserved. Indian reserves were cut off the map by later Commissioners. Reserves were pre-empted, stolen, and appropriated to provincial uses. Reserved lands were “taken up” by the railways; harbour commissions; highways; dyking systems. Entire Indian Reserves were flooded to make reservoirs for hydroelectric facilities. They were washed away by flash floods following upstream dyking of marsh land and straightening of rivers. They were sold to the Department of Veterans Services and given out as plots to soldiers from all over the globe, after World Wars One and Two.

Even at the beginning, while Indian Reserve Commissions visited the people in their ancient communities in 1877 as well as in 1913, when they heard Native testimony of private, occupied, cultivated property being encroached or taken over by new settlers, the Commissioners acted to manoeuvre or minimize Indian Reserves to accommodate the white settlers who had moved in. When it comes to the final result after several testimonies about this encroachment, there are more than a few pages missing from the Joint Commission’s report.

In a very rare instance, at Clayoquot, one settler had pre-empted the entire area of Flores Island, including an inhabited village and a key fishing place of the Ahousaht. What was rare was that Reserve Commissioners cut off 12 acres of that pre-emption to secure the ancient village site at Kut-co-us Point in an Indian Reserve.

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The following examples are typical of transactions made at *every single meeting* the Indian Reserve Commissioners held and recorded.

At the Williams Lake Agency, during the McKenna-McBride Commission:

Mr. McKenna: This place is described as four miles up the Halfway Ranch, half way between the Reserve where we held the meeting and the reserve. The wife had died and he had a brother living with him as well as his wife’s family, and his brother had 17 or 20 head of horses. ... he had a plow, harrow and a wagon there. Then he says he was working on the upper place until a white man came and threw him out of there, and now this white man is there. ... What would you recommend?

Mr. C. H. Gibbons (Secretary): I would recommend that they should get 80 acres, in such a way as not to interfere with what the white man has taken up.

On the north shore of Burrard Inlet: The old Reserves, however, in the immediate vicinity of the Sawmills, are so hemmed in by the settlements, that it was seldom in our power to increase them in any way to useful purpose.

In Songhees territory, around Victoria, as reported by BC anthropologist Wilson Duff in his article, “The Fort Victoria Treaties,” in *BC Studies*:

The main Songhees village grew up directly across the harbour from the fort and was to become their first reserve, where they lived until 1911 when they were

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moved to the present reserve on Esquimalt Harbour. A second village was situated near the present site of the Parliament Buildings, but some time before 1855 its occupants were persuaded to move out (or back) to Esquimalt Harbour, where a reserve was laid out for them; they became the present Esquimalt band.”

The word “persuaded” here refers to relentless pestering, badgering, and some economic embargoes by the surrounding Victoria residents, as well as building projects that came up to within inches of the reserve edge.

At Adams Lake, Secwepemc, the Hustalen Reserve was cut-off in November, 1913, and put-back in May of 1915.

Before and after the Indian Reserve Commissions, there does not seem to be any difference in the colonizing approach to forcible removal.

In Treaty 8 territory:

Members of the Doig and Blueberry reserves used to live on Indian Reserve #172, comprising 18,168 acres. In 1948 the Department of Indian Affairs sold this land to the Department of Veterans Affairs and bought three small parcels of land, totalling 6,194 acres instead, without securing mineral rights. - From *Indian World*, July 1980, “Breach of Treaty 8.”

and,

In 1914, the Fort St. John Beaver Band (composed of what is now Blueberry River and Doig River First Nations) selected a reserve. The reserve was set aside for the Band in 1916. That reserve,

“...we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary to protect the fish and fur bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it. We assured them that the treaty would not lead to any forced interference with their mode of life...”

Treaty Commissioner David Laird, reporting on events at the Treaty 8 signing, September 22, 1899.

I.R.#172, is known as the place where happiness dwells and was a very important place both ecologically and culturally to Blueberry’s ancestors and to its members today.

Blueberry and Doig River were provided with replacement reserves, including Blueberry’s main reserve, IR 205.

In the late 1970s, a sour gas leak [from adjacent oil and gas drilling] forced the evacuation of the Blueberry community from IR 205.

- From the judgement in *Yahey v. British Columbia*, 2021, BC Supreme Court.

Forcible relocation is achieved by “coercion — in the form of withheld or eliminated funding for housing, schools and services — coupled with promises of improved

housing, health and education facilities, and economic opportunities, ensured Aboriginal ‘consent’ to the move.”

This quote and incident was reported in the 1996 report of the Royal Commission on Aboriginal Peoples, Canada.

In Kwakwakawakw, two villages were forced out of their desirable locations: the Gwa’Sala were removed from Takush, on Smiths Inlet, and the ‘Nakwax-da’xw from Bahas, at Blunden Harbour.

But, “When 100 people arrived in Tsulquate [the new village site] in 1964, only three houses were ready to be occupied, and 20 to 30 people were forced to cram into a single dwelling. Some families resorted to living on their boats. However, safe anchorage had not been provided, and many boats

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“Caribou numbers have been reduced to such extent in West Moberly preferred Treaty territory that the woodland caribou are a threatened species under the federal Species at Risk Act.

Ever since I came of age to hunt, I have never been able to hunt caribou in West Moberly's preferred Treaty area. West Moberly members have not hunted caribou since the 1970s, when caribou became scarce, as our Elders put a moratorium on all our members hunting caribou because their numbers are so few.”

Chief Willson's affidavit of October 19, 2009.
West Moberly First Nations v. British Columbia, 2020

were soon damaged or destroyed. Furthermore, discrimination from surrounding non-Aboriginal communities was severe, limiting employment and other economic opportunities and counteracting the twin goals of assimilation and integration. As well, the original Kwakwaka'wakw residents resented the newcomers and the problems relocation was causing in their community. To keep people from leaving the depressed and unhealthy conditions and moving back to Smiths Inlet and Blunden Harbour, the government ordered the two abandoned communities burned down.”

RCAP concluded that report by mentioning recent “attempts by community members to reclaim their former communities, including the construction of a cabin at the ‘Nakwaxda’xw village site at

Blunden Harbour in 1991.”

The Cheslatta Carrier Indian Reserves, named for the river and lake they sat upon, were flooded without warning by a dam across the Nechako River, for the Kemano 1 project to provide the Alcan smelter with hydroelectric facilities in 1952. A BC newspaper article from 1987 mentioned the authorities were still involved in identifying a suitable replacement reserve.

Indian affairs records show the Cheslatta voted unanimously to surrender these flooded lands. However, the Cheslatta claim they did not assent to the surrender, and the Chief and Band Council had no authority because they had not been elected by a majority, and the signatures on the resolution were forged, anyway.

The Kitsilano Indian Reserve, at Kits Beach in Vancouver, was sold in 1946 for a payment of about \$40 per Chief. The Lillooet Reserves at Pemberton were appropriated by the government for WWI soldiers, and the Lil'wat People moved downstream onto the floodplain near the head of Lillooet Lake. Two Indian Bands near Port McNeil, on Vancouver Island, were given the same Indian Reserve – apparently a clerical error. The Bands had to litigate for a resolution.

The Kenney Dam flooded gardens and fishing spots along the Nechako River, previously the breadbasket of the Stellat'en and Saikuz'. The Seton reservoir flooded access trails to two Indian Reserves set on hillsides above the lake, both of which were then abandoned, effectively cut off. At Kelly Lake, an entire village was removed and an electric substation put in its place.

These are only a few examples of a subject which BC universities and Indigenous Studies have yet to take an interest in.

Unoccupied village sites – at least, unoccupied at the season the Commissioners dropped by for the day – never became Indian Reserves. All of these were in ideal locations for living, and soon were overtaken by farmers, homesteaders, developers, or British subjects who were promised lands for service in war.

Relocation also meant this: “When potlatching was outlawed, this was when we lost control of teaching the children proper behaviour in the Indian way of life. We

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were told if we didn't move from our original home to a place with a school, we wouldn't get better. We did move, and look what it has done for us - NOTHING." - Jack Peters, Elder of Ohiaht Band (Nuuchah-nulth), in the Aboriginal Rights Position Paper, UBCIC, 1979.

In modern times, illegal relocations are finally confirmed by settlement agreement. For example, Lyackson of the Cowichan Tribes has accepted, in principal, an \$8million acreage as compensation for the entire location of Ladysmith – they were removed from the waterfront spot, next to a productive salmon river, a hundred years earlier and shipped to Lasqueti Island.

Other types of final settlement examples are like the Whispering Pines Band, which was compensated (poorly) for its place at Kelly Lake; the Pemberton municipal boundary extension over Indian Reserves was compensated by the right to participate in the 2010 Winter Olympics; and grievances over some cut-off reserves have been bought out through the comprehensive claims process.

Individual Bands with no economy of their own have little alternative but to accept paltry sums: they have no recognized right to return, and they cannot afford the court case.

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International Law

For many European and Asiatic nations, their own full, Indigenous or Native nations were already ravaged, displaced and eroded by

invasions when a European arrived on North American shores for the Pope.

But we have developed since then: since the inhuman annexation and genocidal colonization of entire nations, and global regions of nations, by European Empires; since two world wars. Independence movements have created republics and plural states, and moved out from under foreign monarchies and empires. We have an imperfect but elaborate international system of treaties and conventions to mitigate, rectify, and account for the preceding centuries of imperialism. Humanity has clearly decided against ongoing genocide. Canada is a party to these international agreements – and participates under the jurisdiction of their commissions, treaty bodies, and court mechanisms.

Notwithstanding the United Nations Charter, 1945, which no Indigenous Nations helped write, and the Declaration on the Rights of Indigenous Peoples, 2007, with its internationally calming paragraphs about respecting the “territorial integrity” of the UN member states, an Indigenous People's right to their natural wealth – their lands and waters and resources – is an internationally recognized right. It has been since 1966.

In 1966, the International Bill of Rights was completed by the two International Conventions on the Civil and Political Rights of peoples, and the Economic, Social and Cultural Rights. Article One says:

1. All peoples have the right of

self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. – and their civil and political development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

When the 1981 *Canada Bill* to create an independent Canadian constitution was being discussed in the British government, the elected parliamentarians referred to these international covenants:

“... the provisions of section 35 are inadequate for the protection of Canada's native peoples and are inconsistent with the provisions of the covenant. Parliament has an obligation, which the United Kingdom accepted under the covenant, to ensure that the provisions of any law which we have the power to enact are consistent with the covenant.”

Member of Parliament Sir Bernard Braine, Essex-South, February 23, 1982.

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People will downplay the significance of international treaties, particularly when they wish to make a career in administering the Indian Act, or engineering the new assimilation process of municipalization of Indigenous nations. There are many reasons why Canadians would like to ignore international law when it comes to the Rights of Peoples, such as continuing to exploit Peoples under duress for their lands and resources.

However, two delegations from Peoples occupied by BC have already been admitted to the Inter-American Court of Human Rights. Their complaints were accepted for hearing because, said the Court, *there is no domestic remedy available within Canada*. One of these delegations was the Cowichan, who then turned back after the Tsilhqot'in title case in 2014, and recently won judicial recognition of their title to a few acres on the Fraser River.

Most of the lawyers in most of the cases in this book abandoned their clients' international rights at the outset of the proceedings. They set aside the need for even an appearance of a fair trial – with the Parties to the complaint at issue being closely related and aligned with the judges deciding the case. They accepted *all* of the colonial conditions of procedure, whereas the Petitioners of the Qu'wutsun, Nisga'a, Allied Tribes, and many others had appealed to a court *outside the colony*.

Even in the famous case of *Delgamuukw*, where the plaintiffs sought a Declaration to recognize their land title and their jurisdiction,



The scene outside the Band office polling station for the Tla-amin (Sliammon) vote on a Final Agreement. Photo by Sliammon Anti-treaty Society.

legal counsel recognized the court's jurisdiction over their clients in opening motions. Al McEachern, Chief Justice of BC, turned to them and said something to the effect, "Thank you: without that, this case could not proceed." When the Gitksan and Wet'suwet'en Elders and leaders later discovered the presence and meaning of that concession, sometime after the trial verdict, some of them attempted to strike out from the case. In 1995, Chief Justice Lamer of the Supreme Court of Canada refused to hear their motion; refused to let

Xsgogimlahxa strike out and raise a preliminary constitutional question.

In other cases, Native defendants took unilateral actions on their own lands, to be charged under BC law and brought before the courts by RCMP and bailiffs where they conducted their legal claim as defendants. They disputed the court's jurisdiction over them and on their unsurrendered lands, and they referred the court to a suitable independent, impartial, third-party international tribunal. Others, in

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their defense, pushed the definition of title, after *Delgamuukw*, and insisted on a full recognition of the scope of “Aboriginal title” – including making decisions on the land and carrying them out, and using their own natural resources.

But the Province always insisted there as no “title” argument, or that the right to go logging (or hunting or fishing) was a single Aboriginal right that could be heard separately from title. Some judges wouldn’t let defense counsel speak to enter an argument. Still others threw the cases out, especially when the defense was exceptionally strong.

Many modern lawyers in Canada will say that these rulings have led to a responsibility in the crown court to consider what “title” and “rights” mean to Indigenous Peoples, at least since the 1996 Sto:lo fishing ruling, *Van derPeet*, and SCC Chief Justice Antonio Lamer’s idea about “reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the crown.” The level and scope of consideration is yet unconfirmed and inconclusive, and at the discretion of the judge in question.

In 1990, the crown court decided – arbitrarily – in *Sparrow*, that the sovereignty of the crown was never in question:

It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands ...there was never any doubt that sovereignty and legislative power, and indeed, the underlying title to such lands vested in the crown.

This presiding judge, Chief Justice Dixon of the Supreme Court of Canada, then went on to say Canadians and their courts and Parliament can infringe any Aboriginal rights implied by Section 35 of their new Constitution, when they can justify doing so for the “greater good.”

This idea embodies the concept that Aboriginal rights exist “at the pleasure of the crown.”

No Canadian judge has ever contradicted that sentiment in the last 35 years. They call it “justifiable infringement,” and they have shown dozens of times that they can justify denying Indigenous peoples their self-determination; they can justify desecrating and demolishing areas of essential religious and environmental importance; they can justify the extinction of species which they formerly promised the Peoples they would have ongoing rights to, in exchange for permitting settlement.

There are few cases where the judge found that infringement was not justified. One of them is the *Cowichan Tribes* decision of 2025, where land reserved for Indians was sold off by the first Chief Commissioner of Lands and Works for the Colony of British Columbia. That, said Madame Justice Young, was unjustifiable. She did not remark on the unjustifiable action of the province assuming ownership of the entire area.

Many modern lawyers in Canada will say that “the honour of the crown” is yet to be fully reckoned with. And, presumably, when the honour of the crown comes to bear on these legal matters, honour will

be satisfied. And apparently that will be done step by step, case by case, for the conceivable future, at an average 40 years per legal point.

But what satisfies honour? What satisfies the crown’s “honour”? Does the crown really have honour? And does the satisfaction of it translate to justice? Will it satisfy Indigenous Peoples?

The “honour of the crown” does not appear to exist.

The British crown has had since at least 1906 to give a beneficent determination of title, when a delegation of three national Chiefs travelled to Buckingham Palace to address it. It has had since 1858, when Queen Victoria declared these 26 nations belonged to her – although she had just a few years before been buying lands around Fort Victoria in treaties.

It has had since 1981, when its Indigenous “Allies” and treaty partners rejected the unilateral devolution of treaty promises to the colonial state of Canada, and the Alberta Tribes went to the Privy Council against the Secretary of State for Foreign and Commonwealth Affairs, and revealed that no one had ever sought their permission to do so. Treaty nations of Alberta, New Brunswick and Nova Scotia brought that application for a declaration that treaties and “other obligations entered into by the Crown to the Indian Peoples of Canada are still owed by Her Majesty in right of Her Government in the United Kingdom.” The application was dismissed by the High Court of Justice, Queen’s Bench, and again at Appeal, since:

...the Crown was not single and

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RCMP attended a peaceful demonstration along the Olympic torch run in February 2010. Here in Lillooet, officers photographed all the demonstrators, standing on the side of the road, and used an electromagnetic pulse to disable cell phones and recording equipment.

reluctance, nay, the revulsion, of many honourable Members at being party to placing this measure on our statute book. Not only does the Canada Bill put us in breach of our international obligations to protect the rights of minorities but I fear that history's verdict will be that we, albeit unwillingly, have endorsed legislation which breaches obligations that are binding on the Crown.

...Prime Minister Trudeau's speech in 1969 in Vancouver, and all succeeding policy statements by his Government and the Governments of the provinces, lead us to the unavoidable conclusion that treaty and aboriginal obligations are not going to be allowed to stand in the way of assimilation of the native peoples, the termination of their land rights and of their right to self-determination.

... If any native rights survive at all, they will be as defined by the authors of the assimilation policy and the provincial Governments who want to control Indian resources which have previously been outside their legislative control.

- Sir Bernard Braine, March 3, 1982, UK House of Commons. "Business of the House," vol.19 (1982).

The protest of the *Canada Bill* was epic and forceful in the UK Parliament and in the House of Lords, going until midnight on most of the six or seven days that was all the presiding government would allow for discussion. In the end, the "political reality" – which was used by other elected members, and the Chairs, to push the Bill through,

indivisible but separate in respect of each self governing territory within the Commonwealth; ... since 1930 ...the obligations of the Crown to the Indian peoples of Canada were those of the Crown in right of Canada and not of the Crown in right of the United Kingdom and any liability of the Crown to those peoples was not a liability "in respect of Her Majesty's Government in the United Kingdom"

It is interesting to note, later, in 2014, that Canadian judges decided to reunite their provincial and federal crowns, which they had also divided in order to place Aboriginal

rights in a contentious void of jurisdiction and delay the title question by eight decades. It was also interesting to note British politicians' outrage when they discovered, in early 1982, that the "divisibility of the crown" was never mentioned to their treaty partners.

At that time, in 1981, when Prime Minister Pierre Trudeau requested the UK government to pass the *Canada Bill*, many in the House of Lords argued against leaving its honourable treaties to be upheld by Canada. They were ultimately disciplined by the Chairman to sit down and shut up – but not before saying things like:

The record should reveal the

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although the reality was not fleshed out with a description of all the natural resources the UK relied on coming cheaply from Canada — prevailed and the Lords and MPs quickly changed their position from striking down the Bill, to passing it.

But not without a persistent dissent which shades Canada's statehood to date.

The Indian peoples have a great deal to offer our civilisation, a great deal that they have developed for us in the past. What they need from us is protection for their lifestyle. There is no way that any society can be totally immune from the pressures surrounding it but obviously it has to devise a structure to allow it to co-exist with a different lifestyle and a different culture, which is what most of the native peoples wish to see.

They wish to have their rights preserved. What are these rights? As one judge has said in the *Calder* case, when the settlers came the Indians were organised in societies and occupying the land as their forefathers had done. Aboriginal rights are much broader than simply land title and title to hunting and fishing; indeed aboriginal rights would include native law and government. Those rights were embodied in the royal proclamation. What the proclamation in 1763, and the *St. Catherine's milling* case two centuries later did, was to make clear that rights could be extinguished by the Sovereign. In fact, they have been extinguished by the Government of Canada and the process continues.

After 400 years of international law, the concept of aboriginal rights cannot be cast aside, which is what the constitution of Canada seeks to do.

If there is to be extinguishment of aboriginal title—and my amendment seeks to prevent this—it must be done with genuine consent and generous compensation. However, there is real evidence that the federal Government of Canada is granting leases to companies to explore aboriginal land without the aboriginal people's consent. The Indians have a very good case for compensation for lands taken in the past, and I shall discuss this shortly.

- Member of Parliament Mr. Bruce George (Walsall, South), debate of Canada Bill, second reading, February 1982.

—

Title in court

1964 was the first time that a Canadian court heard the Indigenous argument that their Aboriginal title is what provides for their Aboriginal rights. It was the first time because neither the Province, Canada, nor the British Privy Council would allow the matter to proceed in court when the Cowichan and Nisga'a brought it in the beginning of the 20th century; when the Allied Tribes brought it in 1919; and since access to lawyers was prohibited from 1927 to 1951.

Once the matter in 1964 *White and Bob* did proceed, 110 years since the government had been denying their rights under the treaty agree-

ment, the Supreme Court of Canada adopted a strategy to avoid addressing it directly. The Supreme Court adapted that strategy further to the Nishga title case, *Calder*, a few years later, and produced a split decision between seven judges in 1973.

While the provincial and federal governments denied Indigenous rights on the ground, the courts refused them access to justice. *Justice delayed is justice denied*.

When the Court was finally ready, judges began a process of embracing "Aboriginal rights" as if it was their own invention; as if these titles and rights existed "at the pleasure of the crown" and not as indefeasible realities.

Judges have continued reducing the scope and meaning of "Aboriginal title" in successive judgments confirming and expanding upon the most unlikely, punitive, and minimalist interpretations.

The deliberate government confusion about the meaning and application of "Aboriginal title" is a recent invention.

Recalling that British Columbia was the final frontier for the British Empire, colonial Governors and colonizing systems around the globe had become increasingly efficient at removing the hospitable, business-minded Peoples of the "new" world from their lands, and replacing them with industrial resource extraction colonies.

BC followed in the same tradition as notably dishonourable colonial acts like the unilateral rewriting of the Waitangi Treaty in Aotearoa, or New Zealand; or the

Introduction



In 1969
when the government
introduced the
White Paper Policy,
I read that policy over and over.
It had a lot of flowery words,
and the third time I read it,
I realized there were a lot
of hidden words, too.
In short, it would make all our
Reserves into municipalities.
So I thought, how can we talk to
all the Chiefs about this?
We started fundraising to get
them all together.

- Grand Chief Dr. Rose Charlie

Grand Chief Dr. Rose Charlie married into Sts'ailes, originally from Washington State. She started the Indian Homemakers Association of BC at her house, in 1950. The Homemakers fundraised and organized to bring about the first Chiefs Conference since the Indian Act prohibited gatherings in 1927. The UBCIC and BCANSI were founded at that meeting, in Kamloops, August 1969.

de-barking of the food-producing trees in Australia; or the wars of attrition against those two Pacific Islanders waged by boatloads of England's surplus population. The Colonies west of the Rocky Mountains repaid the Indigenous Peoples with smallpox, prohibitions on fishing and hunting, a host of curable diseases – but not the cures, institutions of confinement, Indian Reserves, and eventually a judicial branch to rationalize and sweep away the whole thing.

BC and Canadian judges have maligned Indigenous Nations in many ways, in their written rulings and in their comments at trial, and one of the deepest insults is their refusal to accept the national character of the tribes.

In the *Delgamuukw* ruling, the trial judge said there was no semblance of an organized society within the Gitksan or the Wet'suwet'en, except that they may have grouped together for survival at various times. But no one else even

speaks either of those languages. In their Declarations, the full complement of authentic representatives were there – and none who didn't belong.

~

1951

There are no Native rights court cases before 1951 in British Columbia: only prosecutions under the Indian Act, for potlatching or drinking alcohol, or vagrancy; and

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At the founding of the Union of BC Indian Chiefs, Kamloops, November 18-22, 1969.

charges under the *Fisheries Act* and *Wildlife Act* for fishing and hunting. Oakalla prison was full of Native men.

In 1951, the Indigenous population in BC was an estimated 20,000 souls. Every one of their children is in Indian Residential School, except the few that are in the Indian Hospital at Coqualeetza, or the teenagers in service in colonial households, or the very few who had been successfully hidden away from the Indian Agents and Game Wardens (former British soldiers who were given their lands and those jobs), and Priests-on-reserve.

In 1951, a significant amendment to the *Indian Act* was made. The change came about, in part, because of the gallant and phenomenal military capability of Native soldiers in the Second World War. They could not vote or own land, but they could go to war and thousands did – to both World Wars.

Their non-Native brothers-in-arms often owed their survival to the Indigenous warriors who flew planes, drove trucks through ten feet of water to land at Dieppe, and provided the best sharp-shooters on

the front lines. Some non-Native Veterans of WWII lobbied for more recognition of Indigenous rights.

The prohibition against lawyers working to advance an Indigenous cause was repealed from the *Indian Act*. In 1949, Native people could vote in BC – and they did: electing Frank Calder, of Nisga'a, to the Skeena riding.

In the same suite of amendments, however, provincial laws of general application were made to apply to “Indians and lands reserved for Indians,” in a sharp counter-measure to the gain in civil rights, and in a legislative coup against the provisions of Canada’s constitution: the *British North America Act 1867*.

A new federal office for Native welfare, an economic development commission concerning Indian Reserves, started soon after the 1951 *Indian Act* amendments. The late Grand Chief George Manuel became one of those officers, and began working for Indian Reserves on Vancouver Island.

However, for that half-century

when Indigenous Peoples’ ceremony, governance, doctors – even singing – were driven underground by law and vigorous criminal prosecution by ever-present Game Wardens, Indian Agents, and Fathers of the ubiquitous churches; while all the Indigenous children were locked out of sight in the Indian Residential School institutions of forcible assimilation; while they were denied access to the fullness of their lands and the fish, timber, and resources they needed there; BC and Canada’s book publishers began to print their stories in the past tense.

Now Native people had been made Canadian citizens, in the 1951 *Indian Act*.

In the 1960s, the shocking poverty and accompanying social conditions on-reserve prompted government action. The federal government conducted a survey to see how it could delegate its responsibility to the provinces.

A Federal-Provincial summit concerning the “Administration of Indian Affairs” in 1964 began to mobilize the process of facilitating an exodus from the reserves, thereby cancelling federal obliga-



Frank Calder, Nisga'a, at a press conference February 1, 1973, in Ottawa.

tions to those people, and absorbing them in the “broader society.” A background paper for that conference contains the most comprehensive review of legal liabilities for Aboriginal rights throughout the Commonwealth and the USA.

One of the expressions of provincial empowerment was in the area of Child Welfare. It is now known as the 60s Scoop. Whole van loads of Native children were seized from community playgrounds, when no adult was present. Children were being seized from public schools, on as little basis as teachers reporting that they had a dirty Band-Aid on their finger. Since attendance at public school became legal for Indigenous children, their removal *en masse* from home and community was picked up by social workers where enforced attendance at Indian Residential School left off (although many continued to attend the latter, into the 1980s).

What do children have to do with title? “The centrepiece of the federal government’s exercise of jurisdiction from 1867 to the 1950s and 60s was the residential school system. Generations of Indian families were negatively affected by this process of forced cultural and social genocide.” That was the report of the Coldwater Indian Band to a review of the BC child protection legislation in 1992.

The amount of time Indigenous families spend in court, to get their kids back, would power several province-wide industries. In fact, the apprehension of Native children – with the social workers, lawyers, Ministry office jobs, court dates, foster parents, and travel and supervision roles – *is a provincial industry*, employing tens of thousands of non-native people.

The demoralizing effect of having children removed, with police officers attending the social workers, was (and is) not possible

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to exaggerate. The inter-generational transmission of language, knowledge, and culture continued to be disrupted: it is very difficult for a person to testify in court to their ancestral rights if they have not engaged in the particular activities themselves, nor lived out on those lands, nor have a name entrusted to them within the family pantheon, because they were hundreds of miles away in a non-Native household. In court, the destruction of inter-generational land-based ties spells the end of title cases.

At the end of the 1960s, just months before the anticipated BC Supreme Court ruling in the *Calder* case, the Statement of the Government of Canada on Indian Policy proposed to dissolve the Department of Indian Affairs entirely.

~

The Void

People left the reserves. People lost Indian Status. There was no provision for a Status Indian off the reserve, anyway, except perhaps manual labour or jail. No one could be a Status Indian and go to university; be bonded for business purposes; vote; drink alcohol; or own land. Some enfranchised, or were struck from the Indian Registrar without explanation.

Status Indians were supposed to be the recipients of the famous “fiduciary” care and protection of the crown in right of Canada, the federal government, dating from the first Canadian Constitution in 1867: Section 91/24 of the British North America Act. It continues in

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the 1982 Canadian constitution.

For at least fifty years, since the 1950s, the growing Indigenous population has faced a forced out-migration, from their little reserves into what's been described as "The Void." The lack of housing on reserves is the single most significant factor, and is in itself a legacy issue. It will be proven, in time, that this housing crisis was manufactured and maintained deliberately to achieve the result of de-populating the reserves – an objective that crown lawyers articulated in their defense of stripping Sharon McIvor's grandchildren of Indian Status, in *McIvor* 2007. It also had the debilitating effect of ensuring that those individuals who left the reserve to travel, for education or experience, had no address to move back to.

Off-reserve, paying taxes without representation, people far from home were consistently exposed to racist violence. People were (and are) treated shockingly badly by non-native professionals in health-care, education, public service, law, and everyday commerce. This has had a profound effect on people's quality of life, to say nothing of their civil and political rights.

It was in the 1970s that the proportion of Native people living off-reserve became the majority of their Band membership, in the case of most First Nations. Living off-reserve was used as a reason for band administrators, seeking to stretch their inadequate resources, to cut people off the band list, or, in some cases, to complete enfranchisement paperwork on behalf of individuals and deliver them the federal compensation cheque for...

twelve, twenty, sixty, a thousand dollars – which bought out their entitlements.

Women bore the brunt of Canada's fiduciary population-control measures, from the earliest versions of the *Indian Act*. For example, women who married non-native or non-Status or enfranchised men lost their own Indian Status, and so did their children. Many of these women were not enfranchised, however, so they could not participate in many settler economies or professions. They also could not return home, because non-Band members could not live on a reserve.

The plight of these women was summed up vividly by Mary Two-Axe Earley for the 1982 Standing Committee on Aboriginal Peoples: "We are stripped naked of any legal protection and raped by those who would take advantage of the inequities afforded by the Indian Act.

...We are raped because we cannot be buried beside the mothers who bore us and the fathers who begot us, although dogs from neighbouring towns are buried on our reserve land: because we are subject to eviction from the domiciles of our families and expulsion from the tribal roles; because we must forfeit any inheritance or ownership of property; because we are divested of the right to vote; because we are unable to pass our Indian-ness and the Indian culture that is engendered by a woman in her children: because we live in a country acclaimed to be one of the greatest cradles for democracy on

earth, offering asylum to refugees while, within its borders, its native sisters are experiencing the same suppression that has caused these people to seek refuge by the great mother known as Canada."

It was not until 2013 that the "On-Reserve Matrimonial Property Act" changed some of the profound disadvantages of Native women.

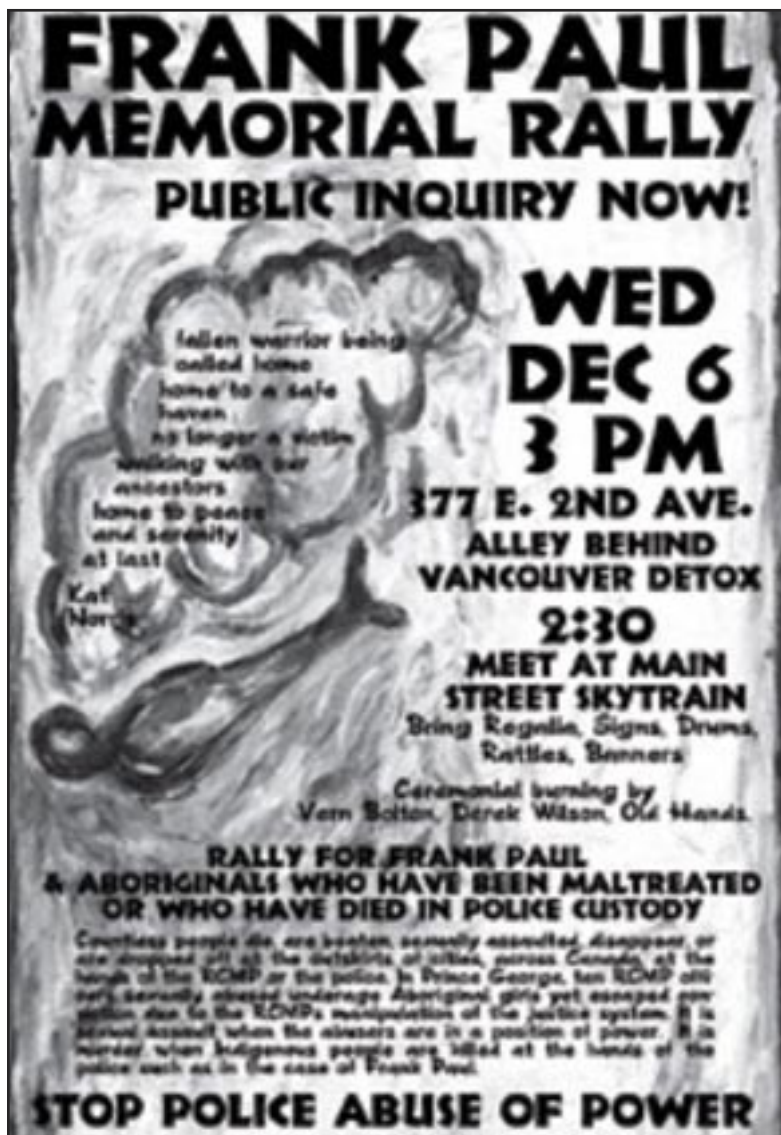
Off-reserve, no mechanism was in place for access to healthcare, education funds, housing, tax exemption, et cetera. This point does not mean that there was adequate care and protection on-reserves, because there was not and demonstrably there is not yet today in most cases.

For brief but essential examples, it was not until the 1980s that the United Native Nations formed BC Native Housing – and then, they were not supposed to build within twenty miles of a city. It was not until 1999 that a Status Indian Band member living off-reserve could vote in Band elections.

It was not until 2007 that Jordan's Principle was legally established: urgent medical care must be provided first, and the question of whether to bill the federal or provincial government must come second. Jordan, a Native child, died in The Void. As recently as 2021 the federal government has been found criminally negligent of this principle and ordered to implement a \$40billion settlement, in conjunction with child and family services.

It was not until 2017 that the creation of Indigenous Services Canada existed, and began to plug The Void.

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An Inquiry into the death of Frank Paul in police custody came about after years of advocacy. The Davies Commission made its first report in 2009, over ten years after Paul's death in Vancouver.

Policy, the 1969 white paper, would not go ahead.

The BC Supreme Court's ruling in the Nishga title case, *Calder*, followed within weeks of this unity movement: Justice Gould's decision in BC Supreme Court was dated October 17, 1969. He wrote in this case that crown sovereignty, "over the delineated lands came by exploration of *terra incognita*, no acknowledgment at any time of any aboriginal rights, and specific dealings with the territory so inconsistent with any Indian claim as to constitute the dealings themselves a denial of any Indian or aboriginal title.

As the Crown had the absolute right to extinguish, if there was anything to extinguish, the denial amounts to the same thing, sans the admission that an Indian or aboriginal title had ever existed.

There is nothing to suggest that any ancient rights, if such had

All of these manufactured crises were only ever changed by social, political, and legal action on the part of Indigenous individuals and communities. None of the solutions involved respecting the Peoples' rights *as Peoples*; none of the solutions involved land or self-determination; but the problems forced three generations to fight for basic individual rights as a matter of survival, and that drained or divided Indigenous Peoples' national, land-centered movements substantially.

~

1969

In 1969, Status Indians on-reserve realized they would shortly be in the same position as the Non-Status Indians. Since they had already lost everything, Non-Status individuals joined in one coast-to-coast-to-coast uprising of single political will, all Indigenous Peoples drowned out the bureaucratic chatter in Ottawa with huge conferences and the formation of province- and territory-wide organizations. The Statement of the Government of Canada on Indian

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ever existed prior to 1871 and had been extinguished, were revived by British Columbia's entry into Confederation and becoming subject to the *British North America Act, 1867*."

Action dismissed.

Clearly, at this stage, there was little that could phase the indomitable spirits of Indigenous Peoples: they simply pressed on, appealed the decision, began to hold meeting after meeting among themselves, and organized multi-faceted approaches to consolidating their power and supporting each other.

The Union of BC Indian Chiefs repeated the claim and offer made by the Allied Tribes in 1926 – virtually identical – in 1971. It was ignored again. They hand-delivered the Claim Based on Native Title to the Lands and Waters forming British Columbia to Prime Minister Trudeau in 1972. Neither the Province nor Canada replied to it.

In 1973, the *Calder* ruling at Canada's Supreme Court was released on January 31. Three judges wrote their reasons for judgment in favour of the Nisga'a position:

"..it is clear that Indian title in British Columbia cannot owe its origin to the Proclamation of 1763, the fact is that when settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done. This is what Indian title means and it does not help one in the solution of this problem to call it a "personal or usufructory right." What they are asserting in this action is that they

had a right to continue to live on their lands as their forefathers had lived and that this right has never been lawfully extinguished."

The Court avoided a clear decision: they ruled three in favour of Nisga'a, three against, and one refused to rule. Days later, the former Prime Minister John Diefenbacher asked the government, in assembly, to staff a full bench of nine Supreme Court judges and proceed with a reference case on the question of Aboriginal title. They did not.

The government's answer came instead by the formal renewal of the 1914 Order in Council, in new clothes: the Comprehensive Claims Policy. An Indigenous People could (and still can) make out a claim, negotiate compensation for sold or damaged land, negotiate a final land settlement, and then cede, release and surrender (extinguish) any other claim in perpetuity concerning their lands, waters, Aboriginal rights – and release and indemnify the governments and anyone else for past harms – in order to receive compensation to be decided by Canada.

~

1974

In 1974, a flood of actions overtook British Columbia. Beginning with the largest rally ever held in front of the Victoria Legislature, on June 25, leaders from many nations, some from east of the Rockies, spoke out their confirmation of the signs and placards carried by many hundreds of Indigenous demonstrators: BC is Indian Land; Let Us

Fish and Hunt in Peace; We Need 5000 Houses NOW; Stop Unfair Taxation; Less WELFARE More WORK; Cultural Revival Means Survival; We Want Justice; We Are JAILED for Being POOR; Respect OUR HERITAGE; Indian NOW Indian FOREVER; END ASSIMILATION.

By the end of the summer, an armed reoccupation of Two Springs, at the Bonaparte Reserve in Secwepemc, stopped Highway 12 traffic to collect a \$5 toll per-passenger. The month-long encampment disbanded peacefully, without prosecutions, on September 2, and the Native Peoples Caravan to Ottawa embarked on September 15 from Vancouver, joining with the Ojibway Warriors Society, Mohawk, Atlantic, and Great Plains peoples. After getting his meeting with the Minister of Indian Affairs – and a commitment to improve the deadly housing conditions which sparked the highway-toll action to life – Two Springs Chief Mackenzie Basil observed to media, "It has been proven that the only way to create positive change is for there to be an armed confrontation, so I predict there will be a lot more armed confrontations in the future."

Armed or not, direct confrontation is the only thing that has ever advanced the situation of Indigenous Peoples in Canada. As Deb Mearns recalled the culminating event on September 30, on Parliament Hill, "It was a huge eye-opener for the Canadian public because we were an invisible people, and all of a sudden they were faced with us, the Caravan to Ottawa, and how we were treated

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when we went to Parliament Hill to demonstrate. It was all over the media in Canada and the United States. It was a real awakening – they didn’t know anything about us. There was racism, and there was also a real shock for people to find out that we exist, and the conditions in which people lived.”

With this introduction, we can look at how the Supreme Courts of British Columbia and Canada have managed that revelation. As the rate of resource extraction accelerated and threatened – or devastated – entire national ecological systems, the roadblocks began.

The *Case Summaries* section shows the courts’ progress in defining and delimiting Aboriginal title and rights. It is followed by a brief study, in *Contrasting Titles*, of what principles the judges have decided, set across from some typical characteristics of the “title and rights” that countless Indigenous people have spent their entire lives protecting. That latter title is more fully illuminated by the next section, on *Declarations*, which follows.

In a brief *Summary*, some modern repercussions and applications of the court rulings are explored, in the various interim agreements,

settlements and Final Agreements.

Finally, a *Timeline* of significant events is provided, a *Glossary* of terms in their legal context, and a list of *References and Sources*.

This information is brought forward to aid the state, through its citizens, to come to constructive arrangements that do not extinguish Indigenous title and rights, but respect their title lands so that the Peoples can move forward with a self-determining economic future.

As it was said during the Constitution Express:

“The authority of Indian nations does not depend on the Canadian constitution.

A Canadian constitution can only accommodate Indian rights - it cannot diminish, alter or eliminate them. Such power rests only with the citizens of the various Indian nations.”

- From,

“*Indian Nations and The Constitution - A Position Paper*,”
Union of B.C. Indian Chiefs. November 15, 1980.

~

Throughout the 1970s, 80s, and 90s, the incredible impact of resource extraction became intolerable and hundreds of roadblocks resulted as last-ditch efforts to prevent further damage - when all other avenues (if there had been any) of communication or negotiation failed.



**“find means
and ways
to establish
titles
over their
lands,
and respect
their treaty
rights”**

- UN treaty body for the
Convention on the
Elimination of all forms
of Racial Discrimination,
2007, addressing Canada



Case Summaries



RCMP approach a roadblock in Líl'wat, 1990.

The following cases were several lifetimes in the making.

They come at a towering cost to Indigenous Nations, in blood, sweat, tears, money, lives, and generations.

Yet, the colonial rulings don't provide justice. Key cases weaken the meaning of "Aboriginal rights," and judges keep driving the Plaintiffs toward assimilation.

The following case summaries highlight the courts' progress in minimizing Aboriginal title and rights; circumscribing their expression; and opening exceptions into their rules.

When new rulings on Indigenous cases are announced in the courts, the media or public reports of them are concerned with the perception of advancements in Aboriginal rights. That's what resource extraction companies are concerned with – their reactions are focused on the ways that licenses and tenures could be negatively affected.

Law firms which sell legal services to Indigenous groups present the appearance of advancement and rarely point out the damages, dangers, or losses in the results. The mainstream media, ever the creature of the colonist and not the Native, loudly decries any perceived inconvenience to the public's private property, or right to go hiking, hunting, fishing, or berry picking.

The progress of the courts in defining Aboriginal title and rights down to a minimum, therefore, does not get a lot of print. The media has faithfully ignored the repression that is being cobbled together, case by case.

Most rulings are long and involved: judges cast the net wide over a large area of legal and philosophical landscape. Each successive ruling pulls in the notions introduced in previous cases, as they are needed, and bends them in service of caging the Aboriginal rights being tried at the time.

Judges give their opinions, they add previous rulings together to establish a colonial legal whole that is far greater than the sum of its parts, which have been notched case by case..

The following case summaries highlight singular judicial encroachments as they are advanced, case by case, until they have travelled from unextinguished Native title, in 1973, where the

burden was on the crown to prove extinguishment; to a modern, heavy burden of elaborate proof sits on Indigenous Peoples – even while their titles, rights, and jurisdiction has long been impracticable, for generations, due to the exact injustice which leave them seeking a legal remedy.

Indigenous Nations today face a slim prospect of compensation and less hope of restoration. They now must prove their rights to a standard set by title case precedents that took 20 years to complete and over 40 million dollars in legal fees - for the Indigenous side alone.

And they are going to a court that has already concluded, "Let us face it, we are all here to stay," and then recommends that the Nations negotiate with British Columbia and Canada under a Comprehensive Claims Policy originally designed specifically to extinguish Aboriginal rights by agreement.

Case Summaries

BCCC - BC County Court
 BCPC - BC Provincial Court
 BCCA - BC Court of Appeal
 BCSC - BC Supreme Court
 FCTD - Federal Court
 Trial Division
 FCA - Federal Court of Appeal
 SCC - Supreme Court of Canada

**“Aboriginal title”
 was invoked
 in 1964,
 defending the right
 to hunt deer
 at Nanaimo.**

**White and Bob
 relied on their 1854
 treaty**

and

**on the
Royal Proclamation
 1763,**

and

**on their own
 Native title.**

***R. v. White and Bob*
 SNUNEYMUXW
 [1964] BCCA**

Clifford White and David Bob of Nanaimo were charged under the *BC Game Act*, for having six deer in their possession, in the “closed season.” They were convicted by a Magistrate on September 25, 1963, and each ordered to pay \$103, or serve 40 days in jail.

The men retained legal counsel, which was unusual because the Indian Act had made it illegal for lawyers to do business with Indigenous people needing legal assistance that might “advance the cause” of their Band; until 1951.

White and Bob were acquitted in County Court, March 4, 1964. “...the accused are entitled to the benefit of the exception contained in s. 87, of the *Indian Act*. I also hold that the aboriginal right of the Nanaimo Indian tribes to hunt on unoccupied land, which was confirmed to them by the Proclamation of 1763, has never been abrogated or extinguished and is still in full force and effect.”

**government
 regulations
 of general application
 are excluded by
 treaty rights,
 and aboriginal rights**

***R. v. White and Bob*
 SNUNEYMUXW
 [1965] SCC**

BC appealed the County Court ruling of Swencisky J., but the BC Court of Appeal confirmed that decision on December 15, 1964.

The Province then appealed to the Supreme Court of Canada, which granted them leave to appeal on the following questions of law:

Was the operation of the BC *Game Act*, in the circumstances of the charge, excluded

a) by reason of the existence of a treaty within the meaning of S. 87 of the Indian Act, or

b) by reason of aboriginal hunting rights enjoyed by the Respondents and recognized by a Royal proclamation, 1763, and otherwise?

The Nanaimo hunters filed a 150-page Respondent’s Factum, explaining their title, and gave overwhelming evidence of continuing, “unextinguished” rights. But the Supreme Court would not hear them. A unanimous oral judgment came on November 10, 1965: “the Game Act was excluded by reason of the existence of that treaty...” and left Aboriginal rights unconsidered.

**provincial
 Game Laws
 are excluded by
 proven
 treaty rights**

Because
the
Supreme Court
of Canada
refused
even to hear
White and Bob's
arguments -
concerning the role
of the *Royal
Proclamation 1763*,
and that hunting
rights flow from
their title -
only
“treaty rights”
were judicially
recognized in
respect of
“Aboriginal rights”
west of the
Rocky Mountains
- where there were
almost no treaties
at all.

Discon and Baker

SQUAMISH

[1968] BCCC

County Court Judge Schultz said that hunting rights are no longer important. He quoted the Manitoba decision in *R. v. Daniels*, which said:
“... hunting for food no longer means the difference between life and death for the Indian and his family, especially nowadays, with all the social security measures available for all Canadian citizens, as well as others available only to Indians.” Relying on the SCC ruling in *White and Bob*, where the only recognized right to hunt came from the 1854 Douglas Treaty, Schultz found the two Squamish hunters guilty; they had no treaty.

There is no Aboriginal right to hunt

Schultz addressed BC Supreme Court's recognition of the broader title and right question in *White and Bob* - and decided that the *Royal Proclamation 1763* did not apply to the Squamish Valley because Squamish was, at that time, unknown to the British Crown, and so the Squamish men had no Aboriginal right to hunt, either.

It was 1993 when the BC Court of Appeal accepted that the 1763 Proclamation must apply, because it formed the basis of Imperial Policy.

Calder v.

***Attorney General of
British Columbia***

NISGA'A [1969] BCSC

No Aboriginal rights survived Crown sovereignty

Following the *White and Bob* case, the Nisga'a sought a declaration from the courts that their title continued as a legal right to the land. They said that was confirmed by the *Royal Proclamation of 1763*.

They claimed title to all their traditional lands, excluding private property and licenses from their claim, to avoid distraction and to show good faith.

Justice Gould ruled that crown sovereignty... “over the delineated lands came by exploration of *terra incognita*.” He said, obviously in error, that there had been “no acknowledgment at any time of any aboriginal rights, and specific dealings with the territory so inconsistent with any Indian claim as to constitute the dealings themselves a denial of any Indian or aboriginal title.”

“As the Crown had the absolute right to extinguish, if there was anything to extinguish, the denial amounts to the same thing, without the admission that an Indian or aboriginal title had ever existed.”

He said BC's entry into Canada did not revive any “ancient rights” that had thus been extinguished.

***Calder v.
Attorney General of
British Columbia***
NISGA'A [1973] SCC

Six of seven judges agreed that Aboriginal title had existed. They did not all agree that it continued to exist, surviving over crown declarations and assumptions of sovereignty.

With seven judges attending, this case was ultimately decided on a procedural point – not on the question of continuing Aboriginal title.

Three judges relied on the governments' denial of Native title as evidence, and that it therefore must not exist. They had about ten pages of reasons.

**The case is not
properly before the
court.
*Action dismissed.***

Three judges said that any Native title is protected by constitutional instruments, and the crown didn't prove that it ever extinguished the Nisga'a title. These judges gave 50 pages of reasons.

The most famous is, "...it is clear that Indian title in British Columbia cannot owe its origin to the Proclamation of 1763. The fact is that when settlers came, the Indians were there, organized in societies and occupying the land

as their forefathers had done. This is what Indian title means and it does not help one in the solution of this problem to call it a "personal or usufructory right". What they are asserting in this action is that they had a right to continue to live on their lands as their forefathers had lived and that this right has never been lawfully extinguished."

So said Justice Hall, finding in favour of Nisga'a's continuing title – since the provincial crown had not proven extinguishment.

However, the seventh judge refused to give any opinion on title, and said no declaration of any kind could be made because the case was improperly before the court. The BC government had not given its permission to be sued.

The three judges who denied continuing title all adopted the seventh judge's position, and no ruling was made except on that procedural point - with four in favour of it and three against.

In the opinion of Judges Hall, Spence, and Laskin, the Provincial crown failed to prove extinguishment of native title and rights. They gave their opinion that the suite of Aboriginal rights identified in the *Calder* claim had never been extinguished by any lawful means.

That is, all Aboriginal rights survived "crown sovereignty," and that Native title, once proven, continues to exist until lawfully extinguished.

**Because
there was
no decision
by the Supreme
Court of Canada
on the title question
in *Calder*,
BC judges
relied on either side
of the
contradictory
opinions,
depending on their
own personal
or political
interests.**

**Lawyers
for the crown
opposed every claim
to title or rights,
relying on the
BC Supreme Court's
Calder decision,
1969,
and ignoring
White and Bob,
1964.**

Paulette and Registrar of Land Titles

**Northwest Territories
[1973] NWT SC,
[1977] SCC**

Within weeks of *Calder*, Chief Francois Paulette and fifteen other chiefs claimed an interest in some 400,000 square miles of land in the Northwest Territories. They attempted to register a caveat on unpatented Crown land, at the NWT Land Titles Office, to prevent transfer of title and/or licensing on those lands - subject to their rights and interests.

The Registrar referred this request to a judge. *A prima facie* case was made out that the caveators had certain aboriginal rights in the land, constituting a registrable interest that may be protected by caveat under the *NWT Land Titles Act*. Judge Morrows ordered that the Registrar had a duty to enter the caveat into the day-book.

The Attorney General of Canada brought a writ of prohibition to bar Judge Morrows from further involvement in the case. The government appealed the *technical* finding that the caveat could be registered - and Morrows' ruling was overturned in *Paulette 1977* - but made no argument as to the validity of the claim.

This case launched negotiations that ended in the Yukon Settlement.

**Aboriginal title
cannot be filed as a
caveat on land**

Derriksan v. The Queen

OKANAGAN [1976] SCC

In *Kruger*, and *R. v. Discon and Baker*, the BC court had ruled that, without a treaty, there was no aboriginal right to hunt which could displace provincial legislation.

In *Derriksan*, the Supreme Court of Canada recognized unextinguished Aboriginal rights *on par* with unextinguished land title and treaty rights. That is, neither federal nor provincial legislation could interfere with Aboriginal rights.

**Aboriginal rights to
hunt and fish are not
subject to provincial
regulation**

Kruger v. The Queen **OKANAGAN [1977] SCC**

The decision overturned *Derriksan*, finding that provincial laws of general application apply to Indians in the absence of a treaty or federal enactment.

**Rights which are not
protected in treaties
are subject to
provincial regulation**

“However abundant the right of Indians to hunt and to fish, there can be no doubt that such right is subject to regulation and curtailment by the appropriate legislative authority. Section 88 of the *Indian Act* appears to be plain in purpose and effect. In the absence of treaty protection or statutory protection Indians are brought within provincial regulatory legislation.”

Jacob Kruger and Robert Manuel, Penticton Band members, were hunting for food in September 1973, within the traditional hunting grounds of the Penticton Indian Band. The BC Wildlife regulations dictated that hunting for deer was closed. Neither hunter had a permit of any kind. They were convicted in county court; then cleared of the hunting charges in BC Supreme Court. The crown appealed, and their convictions were restored by the BC Court of Appeal. Kruger and Manuel appealed to the SCC, where the conviction was upheld.

Case Summaries

R. v. Haines
TSILHQOT'IN [1978]
BCPC

Mr. Haines was apprehended at his home, butchering a moose and putting it away for his family's use. The Game Warden would have known he could not have had a license because, as the judge in this case revealed:

“the provincial officials in reality had sought to deny and extinguish the hunting rights of the Chilcotin people”

“I now realize that for the past few years the conservation officers at Alexis Creek have deliberately ignored Indian hunting rights and the cumbersome procedure they make you go through when you do apply for a permit is really just a smokescreen to disguise the fact that no permits are granted at all. All the Indian people knew this, and, therefore, Indian hunting did not stop.”

Mr. Haines was acquitted.

This is one of many cases where BC judges rely on their own discretion to research or invite evidence into a case. They were not typically as sympathetic as in this case. Based on Barnett's leanings, later cases were removed from his court room - such as *Pena* in 1995.

Jack et al v. The Queen, COWICHAN
[1979] SCC

Eight Cowichan people were charged with fishing for food, on the Cowichan River, at a time when DFO had closed the river during a record-low salmon return. They were convicted. They appealed.

They did not rely on any aboriginal title or rights; and they had no treaty rights. They argued that Article 13 of the *Terms of Union* (when BC entered confederation with Canada in 1871) protected their right to “a policy as liberal” as previously afforded by the Colony.

Before Confederation, the Cowichan's right to fish without regulation was the Colony's policy.

They were fighting for standing to invoke constitutional provisions in their defense. The SCC recognized that, over BC's objections.

Aboriginal rights are constitutionally protected

But the Cowichan fishermen's lawyer made a critical concession: conservation would limit Indian fishing rights, and the federal government would define and enforce conservation. The SCC found “any limitation upon Indian fishing that is established for a valid conservation purpose overrides the protection afforded by article 13.” No harm had been done to aboriginal rights, said the decision; conviction was upheld.

Hamlet of Baker Lake v. Minister, Indian Affairs
INUIT
[1980] FCTD

This case was the first finding of Aboriginal title in Canada.

It was brought by the inland Inuit Peoples of Baker Lake - 112 Inuit individuals on behalf of all. The judge relied on *Calder*, and the view that Native title exists in common law, but also incorporated damaging Imperial rulings from other British colonies, like *In re. Southern Rhodesia*, 1919, arising in different circumstances.

This case began to define Aboriginal title in ways that continue today:

Aboriginal title depends on exclusive occupation, and:

- that the claimant group were members of an organized society;
- that they were occupying the territory where they assert title.
- they did so to the exclusion of other organized societies, at the time England asserted sovereignty.

This ruling furthered the opinion in *Calder* that the source of Aboriginal title was not the *Royal Proclamation*, 1763, but the Peoples' own history. It denied, however, political rights, finding instead that Acts of Parliament can abridge Aboriginal rights.

The title claim was registered in maps of the area, and the negotiations which led to the creation of the Nunavut Territory began.

***The Queen v.
The Secretary of State,
Foreign and Commonwealth
Affairs,
ex parte: Indian Association
of Alberta, Union of New
Brunswick Indians, Union of
Nova Scotian Indians
[1982] United Kingdom***

The Native Parties applied for a declaration that treaty and other obligations between the Crown and the Indian peoples are still owed by Her Majesty in the UK.

Lord Denning held:

1. The Royal Proclamation of 1763 and the Indian treaties created obligations which were binding on the single and indivisible Crown of the UK.
2. However, at the Imperial Conference of 1926 it was recognized that, as a result of constitutional practice, the Crown was no longer indivisible. Thereafter the Crown was separate and divisible for each self-governing dominion or province or territory.
3. The obligations which were previously binding on the Crown simpliciter were also divided. As a result, the obligations of the Crown became the obligations of the Crown in respect of Canada.
4. It is, therefore, not permissible for the Indian peoples to bring an action in the United Kingdom to enforce these obligations. Their only recourse is in the courts of Canada.

**there is no recourse
to the UK courts**

***Guerin v. The Queen*
MUSQUEAM
[1984] SCC**

**Aboriginal interest
does not amount to
beneficial ownership**

“...aboriginal peoples have a “legal right to occupy and possess certain lands, the ultimate title to which is in the Crown.” In dealing with the Aboriginal interest, the Crown is subject to a fiduciary obligation to treat aboriginal peoples fairly. “Any description of Indian title which goes beyond these two features is unnecessary and potentially misleading.”

**the crown’s
fiduciary duties
include consultation**

The court relied on two rulings from early 19th century USA: *Johnson v. M’Intosh*, 1823, and *Worcester v. Georgia*, 1832, where the principle of “Discovery” was said to justify European claims to “sovereignty.”

The *Guerin* ruling found the government would be liable to Native people if it breaches the fiduciary duty which results from the assertion of sovereignty.

Musqueam’s Chief Delbert Guerin and Councilors sued the government after its agents leased Band reserve lands to a golf course on less favourable terms than what the people had approved. They rejected a \$10million settlement from a BC court in favour of pursuing judicial recognition of the principle at the SCC level.

***Martin v. The Queen*
TLA-O-QUIAHT
[1985] BCSC**

On April 21, 1984, the Clayoquot Band made a Declaration of law and jurisdiction at Meares Island. With extensive Indigenous support and with environmental groups joining the action, they staged what’s considered the first modern logging blockade. BC Supreme Court denied their application for an injunction to stop logging, but in 1989 the BC Court of Appeal granted it, and it’s in place to date.

**the injunction against
logging was granted;
the title case
was suspended**

The Queen’s legal defense of the logging license to Macmillan Bloedel was aggressive: “if an aboriginal title or right could be established by the Plaintiffs through use and occupation from time immemorial or otherwise, that title and any rights alleged to appertain thereto, including the right to use, possess, harvest, manage and conserve the forests within Meares Island, were reduced, diminished or extinguished by the Colony of Vancouver Island and the Colony and Province of British Columbia through the making or enactment of laws of general application and the following ordinances and proclamations...”

Case Summaries

Dick v. The Queen
SECWEPENC [1985]
SCC

Section 91(24) of the British North America Act protects “Indians and lands reserved for Indians” from provincial laws of general application when it comes to matters touching on “Indianness” or the “core of Indianness” - and that includes hunting rights.

This decision elaborated on the 1976 and 77 *Kruger* and *Derriksan* precedents, and upheld the operation of Section 88 of the *Indian Act* as importing provincial and territorial laws of “general application” into the federal statute affecting Indians.

provincial laws
 can address matters
 which go to
 “Indianness”
 or the
 “core of Indianness”
 such as
 hunting and fishing

Uukw v. The Queen
WET’SUWET’EN [1987]
BCSC

Uukw was one of the early judgments in the series of motions that accumulated in the *Delgamuukw* case, with rulings from BCSC in 1991; BCCA in 1993; and the SCC in 97.

In 1997, when the *Delgamuukw* decision was made at the Supreme Court of Canada, this case and its question were not specifically addressed, and this early decision remains a precedent.

Aboriginal title cannot
 be registered as a right
 in property because
 it has no value:
 it can only be sold to
 the Crown

Canadian Pacific Ltd.
v. Paul

MALISEET [1988] SCC

“The Court’s analysis of Indian title up to this point is that the Indian interest in land is truly *sui generis*. It is more than the right to enjoyment and occupancy although, as Dickson J. pointed out in *Guerin*, it is difficult to describe what more in traditional property law terminology.”

Aboriginal rights,
 and titles,
 are *sui generis*

The Supreme Court upheld the original New Brunswick trial judge’s injunction against the Band members blocking the traintracks. The SCC decision rests on the concept that the Woodstock Indian Reserve belongs to the crown, it was set aside for the use and enjoyment of the Maliseet, and as such the crown had the right to grant and ensure part of the reserve as a right-of-way on the land to the Canadian Pacific Railway.

This case from Nova Scotia is relevant on the west coast, and throughout Canada. It further entrenched the court’s view, in *Guerin*, for instance, that Aboriginal land titles will not be treated as land titles but as a set of rights of usage and rights of consultation about that usage, that is, usufructuary rights of *sui generis* legal status.

R. v. Sparrow,
MUSQUEAM
[1990] SCC

Ronald Sparrow of Musqueam was fishing with a wider net than government regulation allowed. He was charged in 1984, and convicted in a BC court where the judge ruled he had no treaty rights, so Section 35 did not apply to him or protect an Aboriginal right to fish.

He appealed, maintaining that his Aboriginal right to fish cannot be infringed by provincial or federal legislation. However, his lawyers conceded in pre-trial motions that “conservation” takes priority over any kind of fishing, as had just been contemplated in the Cowichan fishing case, *Jack*, 1999.

The court now found a general principle: that infringement of Aboriginal rights can be justified, if there is a valid objective.

Sparrow’s conviction was set aside; his appeal was dismissed; and the case was sent back to trial, to answer the question of whether the government legislation could be *justified* in its *infringement* of his Aboriginal right, according to the new test the court defined.

Still, in an improvement from the see-saw of food gathering rights recognized and then denied in hundreds of provincial and federal courts, the SCC determined that Aboriginal rights to fish for food, social and ceremonial purposes are recognized, without a treaty. Since the province had for a

century criminalized native people for fishing for food, previous courts had held that this right was extinguished. In *Sparrow*, the ruling reads: “The test of extinguishment to be adopted, in our opinion, is that the Sovereign’s intention must be clear and plain if it is to extinguish an aboriginal right.”

And, “Historical policy on the part of the Crown can neither extinguish the existing aboriginal right without clear intention nor delineate that right.”

**Aboriginal rights
 can be infringed
 with “justification”**

“The phrase “existing aboriginal rights” in S. 35 of the Canadian Constitution, 1982, must be interpreted flexibly so as to permit their evolution over time.”

**Aboriginal rights
 will be proven
 on a case-by-case basis**

And, “The constitutional nature of the Musqueam food fishing rights means that any allocation of priorities after valid conservation measures have been implemented must give top priority to Indian food fishing.”

***Attorney General of
 BC and the Queen
 v. Chief Andrew, and
 the Mount Currie
 Indian Band***
LÍL’WAT [1991] BCSC

In the summer and Fall of 1990, hundreds of Líl’wat people blocked a road through their reserve for 116 days. The Lillooet Lake Road is also considered part of Highway 99 from Squamish to Lillooet. Two actions resulted: an injunction against the people blocking the road, and an injunction served to the Mt. Currie Indian Band, as Canada’s legal representative of the Líl’wat people confined to reside there.

More than 100 logging trucks per day were transporting logs harvested in Líl’wat territory by this road, through the village of Mount Currie, in 1990.

The Líl’wat were charged with nuisance. The issue they brought before the court, in their defense, involved a challenge to BC jurisdiction in unceded Líl’wat territory. All were convicted.

When several of the accused later filed a Motion to appeal, Harold Pascal and others, the BC Attorney General intervened. The AG had their motion struck, and the appeal didn’t proceed, on the basis that it was “vexatious” and “embarrassing.” The appeal named

Case Summaries

Delgamuukw & Gisdaway
v. The Queen
 GITXSAN, WET'SUWET'EN
 [1991] BCSC

**BC courts deny
 legal access when
 Indigenous people
 challenge BC's claims
 to jurisdiction**

judges, RCMP, lawyers, and the AG as “abusing the court process in order unconstitutionally and fraudulently to extort unceded territory: the non-native legal system is usurping jurisdiction so non-native society can convert the unceded territory, and in furtherance of this fraud the pretence is that the preliminary jurisdictional issue can not be resolved...”

BC's Court of Appeal found that the allegations made in the impugned notices of motion were an abuse of process, intended to intimidate, and did not constitute proper appeals, thereby leading to their dismissal.

To enforce the court's injunction against the Lil'wat people blocking the road, 60 RCMP officers, some armed with automatic weapons, and 15 ERT officers, assisted by several helicopters and several attack dogs, descended on the peaceful reoccupation and removed everyone in handcuffs.

The Gitksan and Wet'suwet'en House Chiefs, representing 51 land titles and spanning 57,000 square kilometers, sued for recognition of their land titles and their jurisdiction over those lands. The legal actions that started this case began in 1984, with disputes of logging activity, then an attempt to register claims as property right with the Land Titles registry, in *Uukw*.

Over about a year's worth of trial days, the leaders of the Gixsan and Wet'suwet'en governments shared their elaborate systems of governance; the histories of their peoples; and the ancient evidences of their connection to the lands. Many Elders also testified.

BC's Supreme Court Justice McEachern accepted that the appellants' ancestors lived within the territory, but predominantly at the village sites. He accepted that they harvested the resources of the lands, but only to an extent compatible with bare occupation for the purposes of subsistence. He saw no system of governance relating to land outside villages. He refused to accept that the spiritual beliefs exercised within the territory were necessarily common to all the people. He was

not persuaded that the present institutions of the plaintiffs' society were recognized by their ancestors.

He said, “they more likely acted as they did because of survival instincts.” He stated that the maintenance and protection of the boundaries were unproven because of intrusions into the territory by other peoples. The oral

**the colony
 fully extinguished
 Aboriginal land
 rights**

histories, totem poles and crests were “not sufficiently reliable or site-specific to discharge the plaintiff's burden of proof.” The judge did not accept the feast system's role in the management and allocation of lands.

He concluded, “I cannot infer from the evidence that the Indians possessed or controlled any part of the territory, other than for village sites and for aboriginal use, in a way that would justify a declaration equivalent to ownership”.

The judge found in favour of the Province's plea that the Plaintiff's claimed rights were extinguished by the operation of thirteen Colonial Instruments (the same as in *Martin*, 1985), enacted prior to the entry of British Columbia into Confederation in 1871. This is the same judgment rendered in BC Supreme Court in *Calder*, 1969. It is referred to as “Blanket extinguishment.”

***Delgamuukw and
Gisdayway
v. The Queen***
GITXSAN, WET'SUWET'EN
[1993] BCCA

Both the Plaintiffs and the Province of BC appealed the 1991 decision of BC Supreme Court.

In preliminary procedures, the Province's Attorney General retained special counsel on "blanket extinguishment" of Aboriginal rights, as the trial judge had found the case to be, and as the Province had previously argued. Now it changed positions.

The Province's new position was that some specific Gitksan and Wet'suwet'en Aboriginal rights continued, unextinguished. The BC Court of Appeal ran a very substantial consideration, and gave a 300-page ruling.

It found some unextinguished, non-exclusive aboriginal rights.

The Plaintiffs' appeal was allowed, pending a two-year period of negotiations which failed almost immediately - see the next case. They continued to the Supreme Court of Canada for a 1997 ruling.

**not all
Aboriginal rights
were extinguished
by colonial actions
and
land rights continue
as *sui generis***

***Ryan v. Ft. St. James
Forest District M'ger***
GITXSAN [1994] BCCA

After winning the right to appeal the 1991 decision in *Delgamuukw*, the Gitksan and Wet'suwet'en both agreed to negotiate with BC towards a lands management agreement - instead of progressing immediately to the Supreme Court of Canada. They both entered the BC treaty process.

During negotiations, BC continued to license logging in the claimed title areas. The Gitksan refused to meet with forestry officials, to be consulted on a permit-by-permit basis, until the overall lands management process had reached a workable level of agreement. They also blocked the BC rail line into the area to prevent the unwanted logging.

**the Province can force
consultation
to fulfill procedural
duties required to
allow logging**

The judge ruled in favour of logging, saying the balance of convenience was with them, basing his decision on the District Manager's attempt to fulfill the fiduciary duty identified in *Delgamuukw* 1991, which included the obligation to consult.

Gitksan Chiefs knew that consultation would not stop the logging. The meetings and information sharing were being conducted as a procedural justification.

Xsgogimlahxa
GITXSAN [1995] SCC

Chief Xsgogimlahxa, for himself and his House, attempted to secure new legal counsel and introduce a new constitutional question in the *Delgamuukw* matter: suing for a declaration of jurisdiction and title. At the outset of that action, there had been a dispute between the Plaintiffs' counsel whether to go for the court's jurisdiction or just court land.

They wanted and did assert jurisdiction over land. They also had the right to contest the jurisdiction of the non-native court system at the same time.

In the perspective which Xsgogimlahxa attempted to introduce, the day the writ was issued in the *Delgamuukw* case, returning to the jurisdiction of the court, the case was lost by the plaintiffs by conceding the jurisdiction of the court. Instead, identifying the

**the Supreme Court
may refuse to hear a
constitutional
question
of jurisdiction**

jurisdictional problem as a constitutional question, the court could refer the case to an independent court.

When asked to act in the interest of this 'sacred trust of civilization,' Chief Justice Antonio Lamer said, "Oh my God. I did not swear to that." and refused to hear the motion.

Case Summaries

The following three cases were decided together on August 21, 1996. Together, they are known as the “Van der Peet trilogy.”

***R. v. Van der Peet* STÔLO [1996] SCC**

Mrs. van derPeet sold ten salmon to a family friend. She was charged with illegally selling fish, contrary to state legislation. She argued that she had a right to sell the fish, for \$10 each, as a form of food, social, and ceremonial uses - the household she sold the fish to was

The court must determine the precise nature of the claim being made, taking into account such factors as the nature of the action said to have been taken pursuant to an aboriginal right, the government regulation said to infringe the right, and the practice, custom or tradition relied upon to establish the right.

Aboriginal rights are frozen at the time of European contact

An aboriginal right must be part of a practice, custom or tradition which was an integral part of the distinctive aboriginal society, prior to contact with Europeans.

The case was sent back to trial on the question of whether infringement of the Aboriginal commercial fishing rights could be justified in each case.

***R. v. NTC Smokehouse* TSHESHAHT [1996] SCC**

A question of the Opetchesaht and Sheshaht right to sell their salmon to the NTC Smokehouse Ltd. seafood company drove this case to the Supreme Court of Canada.

commercial fish sale is not a Tseshaht Aboriginal right

***R. v. Gladstone* HEILTSUK [1996] SCC**

“...confirming the existence of an aboriginal right of the Heiltsuk to sell herring spawn on kelp for sustenance purposes.”

Heiltsuk Aboriginal rights to sell fish allow for subsistence harvest, enough to buy bare necessities.

When subsistence rights are limited by government closure, the people should be compensated.

The following two cases arise from fishing without a license. They were decided together on October 3, 1996.

***R. v. Adams* MOHAWK [1996] SCC**

Aboriginal title is an Aboriginal right *therefore* Aboriginal title is constitutionalized as such in S. 35(1)

The court appears to have used a semantic logic to subvert Native “title” below “rights.”

They achieved this by finding that the phrase “existing Aboriginal and treaty rights are hereby confirmed” in S.35 of the 1982

Constitution Act, doesn’t mention “title” but only “rights.” It is a point of interpretation that highlights the inherent problem with one nation assuming the power to make binding judgements on a nation it is in competition with for land rights.

The court then charged the government with the responsibility to structure modes of administering land decisions such that Aboriginal rights can’t be infringed by the unguided, cumulative effects of many land use applications.

R. v. Côté
ALGONQUIN [1996]
SCC

“Section 35(1) would fail to achieve its noble purpose of preserving the integral and defining features of distinctive aboriginal societies if it only protected those defining features receiving the legal recognition and approval of European colonizers. Such a static and retrospective interpretation of s. 35(1) cannot be reconciled with the noble and prospective purpose of the constitutional entrenchment of aboriginal and treaty rights in the *Constitution Act, 1982*. Indeed, the respondent’s (crown’s) proposed interpretation risks undermining the very purpose of s. 35(1) by perpetuating the historical injustice suffered by aboriginal peoples at the hands of colonizers who failed to respect the distinctive cultures of pre-existing aboriginal societies.”

**Aboriginal rights
 need not be grounded
 in an underlying
 claim to
 aboriginal title**

R. v. Pena et al
SECWPEMC [1997]
BCSC

Criminal charges against Secwepemc people and others stemmed from an armed confrontation with police and Canadian Forces at Ts’peten, or Gustafsen Lake, in 1995.

Eighteen people refused to leave the Sundance grounds, in the face of a heavily armed militarized police force of 400 officers with assault weapons, six Armored Personnel Carriers, helicopters, and no communications except with negotiators, including Mike Webster who had just finished work at the Waco, Texas massacre.

They refused to leave without their petition of January 1995 being heard, and eventually made a negotiated withdrawal from the camp. They were arrested, detained, charged, and tried for attempted murder, weapons, mischief, and so on, in the longest criminal trial in Canadian history. The judge instructed the jury to disregard weeks of testimony explaining the constitutional defense of Secwepemc title and jurisdiction. Their legal question was never heard.

**The petition
 for a fair trial
 in a third-party
 independent tribunal
 was met with violence**

***Delgamuukw and
 Gisdayway***
v. The Queen
GITXSAN, WET’SUWET’EN
[1997] SCC

In only the second case for native title to reach the Supreme Court of Canada, the Gitxsan and Wet’suwet’en house Chiefs sued Canada for recognition of their jurisdiction and title over unalienated Crown land, appealing from BC Supreme Court’s damaging ruling in 1991.

**Aboriginal title
 furnishes
 the rights to use
 and occupy the land;
 the right to choose
 what uses
 land can be put to;
 and to benefit
 economically from
 the use of that land.**

The SCC’s decision was elaborate. “...the rights of self-government encompassing a power to make general laws governing the land, resources, and people in the territory are legislative powers which cannot be awarded by the courts. Such jurisdiction is inconsistent with the *Constitution Act, 1867* and its division of powers. When the Crown imposed English law ... the Aboriginal people became subject to Canadian (and provincial) legislation. *The claim to jurisdiction failed.*”

Case Summaries

**the claim to
jurisdiction
fails**

because

**aboriginal people
are subject to
Canadian
and provincial
legislative authority**

“In the context of the present case, the general economic development of the interior of British Columbia, including agriculture, mining, forestry, hydroelectric power, as well as the development of infrastructure and the settlement of foreign populations are valid legislative objectives that, in principle, satisfy the first part of the justification analysis. Under the second part of the justification test, these legislative objectives are subject to accommodation of the aboriginal peoples’ interests.” “This accommodation must always be in accordance with the honour and good faith of the Crown. ...not a simple matter of asking whether licences have been fairly allocated in one industry, or whether conservation measures have been properly implemented for a specific resource. .

**Another aspect of
accommodation
is fair compensation**

“Rather, the question of accommodation of “aboriginal title” is much broader than this. Certainly, one aspect of accommodation in this context entails notifying and consulting aboriginal peoples with respect to the development of the affected territory.”

Another aspect of accommodation is fair compensation. The treatment of “aboriginal title” as a compensable right goes back to the *Royal Proclamation, 1763*.

The highly anticipated ruling did not make any finding of title, no declaration of title. In the claim to self-government and jurisdiction over land, the Court found none.

Instead, the court identified justifiable infringements.

Chief Justice Antonio Lamer said that it is “ultimately by negotiation” that “the prior existence of Aboriginal societies will be reconciled with the sovereignty of the crown,” and, “Let us face it, we are all here to stay.”

**Aboriginal title is
held communally.
Aboriginal title
cannot be held
by individual
Aboriginal persons.**

The *Delgamuukw* trial ended in no declaration of title for the Gitksan and Wet’suwet’en, but said that in a re-trial, then the Plaintiffs’ claim could be argued in light of these new descriptors of Aboriginal title. Chief Justice Lamer remarked on this re-trial, “I’m not recommending it.”

**agriculture
mining
forestry
hydroelectric power
as well as the
development
of infrastructure
and
settlement of
foreign populations
are all
valid provincial
objectives
which meet
the first test
to justify
infringement of
Aboriginal rights.**

**However,
Aboriginal people
cannot use their title
lands in a manner
that is irreconcilable
with the nature of
their attachment to
those lands.**

**Aboriginal title is a
sui generis interest
that is distinct from
“normal”
proprietary
interests.**

Halfway River v. BC **BEAVER / TREATY 8** **[1999] BCSC**

The Halfway Nation are descendants of the Beaver People who joined Treaty 8 in 1900.

The petitioners claimed a treaty right to hunt on the Crown land adjacent to their reserve, the "Tusdzuh" area, where logging plans - C.P. 212 - were approved. Among many other arguments, the petitioners said the logging would infringe their hunting rights under the Treaty, unjustifiably, as the Province's approach to their treaty was to take up as much land as they wished, depleting it and extracting resources, to the point where the hunting and gathering rights of the People became useless: the land and animals being destroyed. The ruling confirmed, however, that:

**Aboriginal peoples
cannot
*frustrate the
consultation process*
or impose
"unreasonable"
conditions**

The judge decided Halfway River First Nation wasn't adequately consulted about CP 212. He said, "It is also clear from the evidence that the conduct of the Ministry of Forests with regard to this matter has been characterized by bad faith, bias, incompetence, unprofessionalism, and errors of fact, law and jurisdiction so numerous that to summarize would require several pages."

Campbell v. BC **[1999] BCSC**

Members of BC's opposition Liberal Party sued to get an injunction against the Nisga'a Final Agreement, in the part concerning rights of self-government. They lost.

**The right to
self-government,
not having been
extinguished, was
expressly preserved
by section 35 of the
*Constitution Act 1982***

United States v. ***Pitawanakwat* [2000]** **US District Court, Oregon**

James Pitawanakwat was arrested in Oregon pursuant to a warrant of arrest seeking his extradition to Canada. He had been imprisoned in Vancouver for his participation in the 1995 Gustafsen Lake incident, in the *Pena* case, and 702 days remained in his three-year sentence. He was released on parole, and then violated the terms of his parole: he fled to the USA.

**The American court
found political
partiality in the
Canadian judicial
system regarding the
territorial land dispute**

At trial in Oregon, he successfully opposed extradition to Canada based on Article IV(1) (iii) of the Canada-US Extradition Treaty, the "political offense" exception. Judge Stewart viewed the Gustafsen Lake incident as an "uprising or violent political disturbance," meeting the *political offense* exception to extradition. Pitawanakwat proudly admitted the political goals at Gustafsen in '95, namely sovereignty of native people over sacred tribal land.

Canada submitted no evidence concerning the 1995 incident. Uncontradicted evidence showed the Canadian government engaged in a smear and disinformation campaign to prevent the media from learning and publicizing the true extent and political nature of the events.

Case Summaries

Westbank v. BC

**OKANAGAN
[2000] BCSC**

**as long as a claim of
Aboriginal title
remains
unadjudicated,
the land is not
burdened thereby.**

Cheslatta v. BC

**CHESLATTA CARRIER
[2000] BCCA**

Cheslatta sought a declaration of their Aboriginal right to fish.

Counsel showed that Aboriginal peoples find themselves in a ‘Catch-22’: they may have valid rights requiring consultation by the Crown, but the Crown is not bound to recognize those rights until the aboriginal claimants have been put through the time and expense of a full trial of the four elements enunciated in *Sparrow*.

By the time the trial process is completed and the aboriginal rights determined, the threatened governmental infringement may have proceeded and the issue may well be moot, since the Crown is under no duty even to consult before taking many administrative actions affecting the land or resource in issue - until an asserted aboriginal right has been found to exist by a court of law.

The judge ultimately confirmed this complaint by refusing to adjudicate rights in the absence of a conflict.

**The “catch-22”
of Aboriginal rights
is that only a
“live controversy”
is justiciable:
development happens
while Plaintiffs are
years in court**

Kitkatla Band v. BC

**TSIMSHIAN
[2002] SCC**

The village of Lax Klan (Kitkatla /Gitxaala), is considered one of the oldest village sites on the coast.

In consultation, Kitkatla reps identified dozens of Culturally Modified Trees which should not be cut in a proposed logging plan. The District Manager approved a plan to cut half of them. The judge defended his decision.

**BC District Managers
can take decisions
to infringe
Aboriginal rights**

***Paul v. BC (Forest
Appeals Commission)*
AHOUSAHT [2003] SCC**

“...it is constitutionally permissible for a validly enacted provincial statute of general application to affect matters coming within the exclusive jurisdiction of Parliament.”

The BC Forestry Commission “has the power to decide questions relating to aboriginal rights arising incidentally to forestry matters and ...[the] aboriginal right to harvest logs for renovation of his home.”

**a provincial
Commission
can make binding
decisions concerning
Aboriginal rights**

The following two cases were decided together in November 2004, concerning application of previously established government duties to consult and accommodate.

***Haida Nation*
v. British Columbia
[2004] SCC**

The province transferred a forestry license without consulting Haida, and over their strenuous objections. In a double-edged ruling, the SCC confirmed the BC court's proposal that the provincial crown can infringe Aboriginal rights, with justification, and consultation is one of the tests the government must meet in order to justify that infringement.

**consultation
is required by
government
when action can
affect unproven
Aboriginal rights**

They said, "the duty to consult and accommodate, prior to proof of interests, is proportionate to the strength of the claim, and the seriousness of the potentially adverse effect upon the right or title claimed." The government has an obligation to consult at every stage where a test to justify infringement would require effective consultation.

***Taku River Tlingit*
v. British Columbia
[2004] SCC**

The People were consulting with Ministers and proponents regarding mining and access road building in their hunting grounds. Their interests were not being accommodated. They took legal action to improve their position, and the court articulated the crown's duty, while enforcing Indigenous participation in this process which, by now, had a very bad reputation. Remarking on the evidence in *Taku*, the court wrote:

"The Province's submissions present an impoverished vision of the honour of the Crown and all that it implies. ... the principle of the honour of the Crown grounds the Crown's duty to consult and if indicated accommodate Aboriginal peoples, even prior to proof of asserted Aboriginal rights and title. The duty of honour derives from the Crown's assertion of sovereignty in the face of prior Aboriginal occupation. It has been enshrined in s. 35(1) of the *Constitution Act*, 1982, which recognizes and affirms existing Aboriginal rights and titles. Section 35(1) has, as one of its purposes, negotiation of just settlement of Aboriginal claims. In all its dealings with Aboriginal peoples, the Crown must act

**Aboriginal peoples
must engage in
consultation
and respect the results
of the process
and
accommodation
of Aboriginal interests
will be decided in that
same process**

honourably, in accordance with its historical and future relationship with the Aboriginal peoples in question. The Crown's honour cannot be interpreted narrowly or technically, but must be given full effect in order to promote the process of reconciliation mandated by s. 35(1)."

The test to determine when consultation must occur was described as follows: "The duty to consult arises when a Crown actor has knowledge, real or constructive, of the potential existence of Aboriginal rights or title and contemplates conduct that might adversely affect them."

Case Summaries

Luuxhon v. BC
GITANYOW
[2005] BCSC

Gitanyow Hereditary Chiefs, on behalf of all their members, were suing for a judicial declaration that the province had a duty to negotiate with them, and that they must negotiate in good faith. The province argued that since the Gitanyow had agreed to negotiate under the BC Treaty Commission, crown negotiators had no more obligation of the common law fiduciary duty of care to the Aboriginal party. At the time, the province and Canada were implementing agreements with Nisga'a over the same areas that they were negotiating with Gitanyow.

**The Crown
 is under
 no obligation
 to enter
 negotiations**

Huu-ay-aht v. BC
MAA-NULTH
[2005] BCSC

Huu-ay-aht exposed, in this case, the high-jinks involved in order to receive any economic benefits from logging on its territory, under the Forest and Range Agreement (FRA) scheme (a government program launched to mitigate crown duties identified in *Haida* and *Taku*). Under the scheme, the Province requires a First Nation to agree that the requirements of consultation - a long list of decisions which authorize the infringement of title and rights - has been met. After entering into a FRA, the Ministry makes administrative decisions that affect the title and rights of the First Nation without further consultation.

**the government
 program created a
 false impression
 of consultation**

"The fact that some First Nations have accepted the FRA offer indicates only that those groups made a business decision to accept the offer in a practical sense. It is not reflective of the sufficiency either of the consultation process or of the accommodation offered." - *from the judgment.*

R. v. Marshall; R. v. Bernard **MIKMAQ**
[2005] SCC

These two cases arose from criminal charges against Mikmaq people logging on "crown lands." Convictions were made in lower courts, then set aside on appeal, then restored in this SCC decision.

The people fought the case to get a beneficent decision on whether Mi'kmaq peoples in Nova Scotia and New Brunswick have the right - without provincial authorization - to log on Crown lands for commercial purposes based on their treaty *or* aboriginal title.

The judges rejected the claim to Aboriginal title, and denied that logging was protected in treaty.

**commercial forestry
 is not accepted as the
 "logical evolution"
 of a traditional
 trading activity**

At the same time that the court said Aboriginal treaty rights are not "frozen in time," the court confirmed that the acceptable modern expression of treaty rights will be decided by the courts.

***Cook v. BC (Minister of
Aboriginal Affairs and
Reconciliation)***
**SEMIAHMOO, TSARTLIP,
TSAWOUT, PAUQUACHIN
[2007] BCSC**

This petition came on the eve of the signing of the Tsawwassen Final Agreement, the first to be negotiated under the BC Treaty Commission. Chief Cook and the adjoining petitioners had very strong claims to title and rights in areas being negotiated in the Tsawwassen First Nation's Final Agreement, but the judge decided the Minister's duty to consult would be activated by implementing the Final Agreement, not while negotiating it, and, "If the results of that consultation identify infringement that requires accommodation, the Crown will have to seek acceptable forms of accommodation."

"Failing all this, the petitioners will still be able to seek the appropriate remedy from this court." The petition was dismissed.

**the modern day
treaty does not affect
Section 35 rights of
any aboriginal people
other than
Tsawwassen
First Nation**

***Tsilhqot'in Nation
v. B.C. [2007] BCSC***

Lawyers for the Crown advanced ten pre-trial motions to terminate this case on technicalities without a trial. This may have resulted in the "defect in the pleadings," which led Justice Vickers to find he could not rule on most of the question, but instead recognized Aboriginal title to "small spots" throughout the claimed area, and Aboriginal rights throughout the title claim area. Vickers did write a 500-page *dicta*, or opinion.

**"BC has been
violating
Aboriginal title
in an
unconstitutional
and therefore
illegal fashion
since it joined
confederation."**

Many unusual events transpired during this case which began in 1989, in the Brittany Triangle. For instance, Chief Roger William was asked 11,042 questions by crown lawyers during examinations for discoveries - before the trial started. Lawyers for the crown never referred to a single one of his answers during the trial.

***Hul'qumi'num Treaty
Group v. B.C. [2009]
Inter-American Court
of Human Rights***

**"there is no
domestic remedy"**

The treaty group representing six First Nations had joined the BC treaty process in 1994. Since then, it had reached a stalemate in being unable to realize its minimum demands, and it even engaged in direct action with dozens of other First Nations in the BCTC process.

Failing to improve BC's negotiating mandate, to include lands appropriated for the E&G Rail Company, the Group petitioned the Inter-American Commission on Human Rights.

The International Court found their petition admissible on the basis that the HTG had exhausted the domestic remedy to the state's violations of its rights under the American Declaration on the Rights and Duties of Man, since HTG had participated as far as possible under the BC Treaty Commission, and because of Canadian courts' ongoing failures to recognize reasonable realities of Aboriginal title - only to recommend these same negotiations which also would not respect their rights. These rights include the right to property, the right to culture, and the right to equality before the law.

Case Summaries

British Columbia v. Okanagan Indian Band
[2011] BCSC

This would have been the first test of “Aboriginal Title” by logging, after *Delgamuukw*.

It began in 1999 when four Chiefs authorized tribal logging on Okanagan and Secwepemc lands. BC got a court injunction to stop them, and charged them. The Chiefs sought a court order to provide the cost of their legal defense in advance. They won this funding in 2003, at the Supreme Court of Canada, because their defense was that their Aboriginal title allowed them to go logging - and the court agreed that Aboriginal title is an urgent public issue.

The Province requested a severance order, to separate the trial of the Aboriginal rights issues from Aboriginal title. BC Supreme Court, in a 2007 decision (B.C. T.C. Uned. D86), severed the title issue and directed that trial of the aboriginal rights issues proceed first. Okanagan appealed - they won advance costs on the basis of the title issue - but were denied.

**Aboriginal title
can be severed
from legal defense
of Aboriginal rights**

Articulating the obvious takeaway, “We, as Aboriginal People, must decide what Aboriginal Title means on the ground,” said Arthur Manuel, Secwepemc, supporting the meaning of the title case and future work.

Lax Kw’alaams Indian Band v. Canada
TSIMSHIAN
[2011] SCC

The community spent one year in trial and a million dollars aiming to prove their continuing right to commercial harvesting and sale of “all species of fish” within their traditional waters.

They showed the only Reserves made out for them were located at their fishing places, on the salt water. They showed that eulachon grease was key to their commercial and cultural economy.

The courts refused their evidence and did not find any liability on the part of the government to protect their mainstay - on the coastal waters, where their reserves are - except to allow a communal fishing license for food, social and ceremonial purposes.

**commercial fishing
is not
an Aboriginal right of
Lax Kw’alaams**

The judge stated that, “the Coast Tsimshian were not a trading people.” In 2017, Lax Kw’alaams turned down a \$1billion offer from Petronas to build a Liquefied Natural Gas terminal in their waters. “The salmon is worth more than that to our people,” said community member Eric Gray.

**In 1704,
Queen Ann of England
created a new court
to hear questions
between Her settlers
in the Americas
and the Peoples
of those lands.**

**She did this because of
a well-established rule
of British law:
*nemo poteste actor
et judex*
- no one can be a judge
in their own cause.**

**The settler courts
were then, and are now,
in a conflict of interest
where they *have an
interest* in the outcome
of land title claims.**

**The settler courts
favour the crown,
and settler society,
as these case summaries
show.**

**But it is essential
to the rule of law that a
court must be impartial.
If not,
it loses jurisdiction.**

***West Moberly v.
BC (Ministry for
Energy, Mines, Petrol)
[2011] BCCA***

In 2009, BC officials amended permits to allow First Coal Corp. a 50,000 tonne bulk sample of coal, and an Advanced Exploration Program with five trenches and 173 drilling holes.

West Moberly, and their neighbours, sued for inadequate consultation, and a lack of accommodation of the caribou herds' restoration needs. They showed cumulative impacts to their hunting grounds and other fishing and gathering areas, and that "consultation" was pointless and "accommodation" has led to a state where there is not enough wildlife, fish, or food plants to support the people.

West Moberly's right to fishing, hunting and sustenance - as well as their way of life generally - was enshrined in Treaty 8.

**Judge: the Province's
approach to
"consultation"
is nothing more than
a chance for
the First Nations
"to blow off steam"**

The BC Court of Appeal found inadequate consultation; although the three appeal court judges all disagreed with each other. BC appealed the decision to SCC but was dismissed in 2012.

***Tsilhqot'in Nation
v. BC
[2014] SCC***

The first ever declaration of Aboriginal title on the ground was made 41 years after *Calder*; in *Tsilhqot'in*. The Tsilhqot'in established Aboriginal title in the Xenigwetin community's claim area.

The court undertook substantial developments in describing

**Aboriginal title
is not confined
to specific sites of
settlement, but
extends to tracts of
land that were
regularly used**

Aboriginal title.

Some of these descriptions were:

"Aboriginal title flows from occupation in the sense of regular and exclusive use of land."

"Evidence of occupation sufficient to ground Aboriginal title is not confined to specific sites of settlement, but extends to tracts of land that were regularly used for hunting, fishing or other resources over which the group exercised effective control at the time of assertion of European sovereignty."

**"Aboriginal title is
subject to certain
carve-outs"**

This case began to discuss compensation that may be due to Indigenous Peoples where Aboriginal title lands have been impacted by development or settlement, where those infringements are proven to be unjustifiable.

"Once Aboriginal title is confirmed, the lands are "vested" in the Aboriginal group and the lands are no longer Crown lands."

**provincial laws
of general application
apply on
Aboriginal title lands.**

and

**Aboriginal title lands
may be infringed with
justification**

and therefore

**the question of
federal / provincial
jurisdiction is of
no consequence**

Case Summaries

Edmonds v. Canada **LÍL'WAT [2014]** **Inter-American Court** **of Human Rights**

In 2007, the Líl'wat petition to the IACHR was accepted as an appeal from a live case involving the BC Ministry of Children and Families, and the apprehension of six children from one family which resided on-reserve.

The case concerned the extensive violation of Líl'wat rights, leading up to the impoverishment of community and family economies and recourse to traditional law and support for families. The removal of the children from the community, under the provincial legislation, was the key complaint

the jurisdictional challenge leads to international court

as it violates Líl'wat jurisdiction.

In 2014, the petition was forwarded from the Inter-American Commission to the Inter-American Court, where the requirement to prove exhaustion of the domestic remedy was waived. Although the case itself had not been tried in a BC court, corroborating evidence of the colonial courts' refusal to allow litigation which challenges provincial and federal jurisdiction over an Indigenous community.

The case has progressed little due to Canada's refusal to submit to the court's jurisdiction.

Ktunaxa Nation ***v. British Columbia*** **[2017] SCC**

"The Minister's decision is reasonable, however, because it reflects a proportionate balancing between the Ktunaxa's s. 2(a) *Charter* right and the Minister's statutory objectives: to administer Crown land and dispose of it in the public interest."

The Minister's decision does not violate Ktunaxa's s.2(a) right to freedom of religion

"while claims are resolved, consultation and accommodation are the best available legal tools for achieving reconciliation."

Since winning the right to infringe Aboriginal and Charter rights against the interests of the broader society, in the case of this ski resort, the Province has instead agreed with Ktunaxa to make the area a park.

William **TSILHQOT'IN** **[2019] BCCA**

Continuing to reject the Prosperity gold and copper mine at Fish Lake, the Xení Gwetin community was required to continue to attend meetings of consultation.

The proposed mine, expected to produce millions of ounces of gold and copper, is in the heart of this community's breadbasket; in an area that the 2007 BCSC ruling found the Tsilhqot'in people have Aboriginal rights throughout.

Aboriginal rights holders must abide consultation processes

There is no version of the proponent's mining plans which accommodates Tsilhqot'in interests. Consultations have been ongoing since at least 2007.

In 2019, the BC Supreme Court granted Tsilhqot'in national Government an interlocutory injunction barring Taseko Mines from undertaking its drilling program at Fish Lake, while TNG's lawsuit for infringement of rights is underway.

In 2020, the Supreme Court of Canada denied Taseko's right to appeal its mine's earlier rejections by federal environmental panels.

Gamlaxyeltxw v. BC
GITANYOW
[2020] BCCA

Gitanyow Chiefs, including Chief Lhuuxon, contested the Province's right to exclude them from annual plans for moose hunting on their traditional territory.

BC completed a “modern day treaty” which substantially includes Gitanyow lands: the Nisga’a Final Agreement, 2000, without discussing the shared or overlapping claims with Gitanyow - while negotiating with Gitanyow over the same lands

In 2016, Gitanyow asked for the Nisga’a moose hunt to be reduced. Gitanyow claims of Aboriginal rights in thier *Lax'yip* are well known to the Province and Nisga’a, as they overlap. The treaty was completed without consideration of overlapping claims, contrary to the recommendations of the 1991 BC Claims Task Force, and the mandate of the BC Treaty Commission. The judge:

**the Province may not
 abrogate the rights of
 modern Treaty First
 Nations in favour of
 other Aboriginal
 rights holders**

The Minister, Nisga’a, and judge decided that Nisga’a harvest of moose in the Nass Wildlife Area (which is most of the Gitanyow *Lax'yip* - traditional territory), would not affect Gitanyow rights and they therefore need not be consulted.

West Moberly v. BC
TREATY 8
[2020] BCCA

Along with Halfway River, Saulteau, Prophet River, and Doig River First Nations, the plaintiffs sought a declaration of the boundary of Treaty 8.

Written in 1898, signed in 1899 and adhered to by several more Peoples until 1912, Treaty Commissioners used as many as four different maps to identify the lands that were “surrendered to the crown.” The largest discrepancy was 50,000 square miles.

The trial judge's declaration of the boundary was upheld by the BC Court of Appeal. McLeod Lake, BC were denied leave to appeal to the SCC in 2021.

**For 120 years,
 the map of Treaty 8
 was in dispute.**

Desautel
SINIXT [2021] SCC

Canada recognized the American defendant as being part of the group holding Aboriginal rights. Mr. Desautel was charged with hunting elk. He successfully relied on his membership within the rights-holding group.

**Aboriginal rights
 in Canada may be
 held by nationals on
 the American side**

***Ahousat Indian Band
 and Nation v. BC***
[2021] SCBC

Originating in a 2005 action, and set back to re-hearing by a subsequent precedent in *Lax Kwalaams*, this case proceeded to win recognition of Aboriginal rights to fisheries on a commercial scale.

At the outset, the Plaintiffs explained, “After years of frustrating and unproductive fisheries negotiations at the Treaty table, Nuuchahnulth Chiefs decided to take their fight to the Canadian courts to prove their fishing Titles and Rights.”

Although the ruling did not break through the “frozen right” condition established in *van der Peet*, the people were able to prove a traditional commercial practise.

**Aboriginal rights to a
 commercial fishery
 exist aside from
 treaty or title**

During the many stages of this matter (as early as 1983 in *Peters*), Nuuchahnulth People attached a title claim to their pleadings. It was stripped from the case and set aside to be tried separately.

That case has not begun.

The court reserved to the federal government the right to regulate this commercial fishery. So far, the Nuuchahnulth observe their own laws of catch and conservation.

Case Summaries

Yahey**BLUEBERRY
[2021] BCSC**

Marvin Yahey, on his own behalf and for all Blueberry members, beneficiaries of Treaty 8, made a claim against the crown for breach of the treaty.

The plaintiffs showed that BC authorized industrial development so widespread that the cumulative effects have seriously impacted the meaningful exercise of their treaty rights: they cannot support themselves by the hutning, fishing, and gathering which were all supposed to be protected by the treaty.

The judge found the province has breached the terms of the Treaty, and showed no justification of the infringement of the treaty rights.

**cumulative impacts
of resource extraction
licensed by BC have
bankrupted the
Blueberry Claim Area
and Treaty lands.**

Sadly, the only result of this unique, long and expensive case was for the judge to declare BC cannot *continue* to authorize activity that breach Treaty promises, and to direct the First Nation and the Province to “diligently” consult and negotiate to create “enforceable mechanisms” to manage industrial impacts.

Treaty 8 members have had to sue BC for breach of the treaty at least as far back as September 1978.

***Nuchatlaht*
v. British Columbia
NUU-CHAH-NULTH
[2023] BCSC**

The Nuchatlaht were accepted by the BC Supreme Court Judge as the proper rights holders in the area. However, the judgment departed from the new precedent in *Tsilhqot'in*, 2014, where a continuous area was declared Aboriginal title lands. The BC court regressed to accept the longstanding Crown argument that Aboriginal title must mean “small spots” of settlement and continuous occupation - even in the face of government policy that caused widespread dispossession and displacement.

The judge offered to review specific sites and potentially declare small-spot title. The Nuchatlaht appeal.

**the test for
Aboriginal title in
coastal areas may
need to be adapted**

The Nuchatlaht claim here is to an island. They showed themselves to be the continuous and exclusive designers, occupants, and rights-of-use holders to *all* the coastal landings to access the island - but the judge found there was a lack of evidence like trails and landmarks to prove exclusive Aboriginal title within the island.

***Thomas*
v. Rio Tinto Alcan Inc.
SAIK'UZ, STELLAT'EN
[2024] BCCA**

First Nations have been attempting to mitigate the harm caused by the Kenney Dam, ever since it was built in 1952 for the Alcan aluminum smelter. The reservoir flooded their villages and they were forced to leave with a few days, even hours, notice.

Previously, legal action against Rio Tinto Alcan in 2010 resulted in the Supreme Court of Canada sitting on a decision that the people can't be consulted on, and effect change to, impacts that have already happened.

The *Thomas* case aimed at the ongoing effect that this hydropower operation has on the Nechako River, the fish, and the impact on the rights of the people.

They won judicial recognition of their Aboriginal right to fish throughout the watershed.

**governments have a
fiduciary duty
to protect established
Aboriginal rights
by consulting**

With the newly declared right Aboriginal right to fish in the watershed, the duty to consult arises each time the Environmental Assessment Agency engages in processes to approve a water use plan for the dam.

***Watakhayetsxw
v. BC (Environmental
Assessment Office)
GITANYOW
[2024] BCSC***

Hereditary Chief Deborah Good, and seven more Hereditary Chiefs all representing the Gitanyow, have filed a petition for a judicial review of the effect of the Nisga'a Final Agreement, 2000.

BC's Chief Executive Assessment Officer concluded that BC has no duty to consult Gitanyow with respect to the Ksi Lisims LNG Natural Gas Liquefaction and Marine Terminal Project, which is set to be built in the migration path of salmon stocks which Gitanyow depend on. They were offered the chance to attend public consultations.

The Provincial Crown is well aware of the Gitanyow's asserted right to manage, catch, and sell salmon, as essential practices. Denial of their right to participate amounted to a prejudgment of their rights and interests.

**Are the rights in
Final Agreements
under the BC Treaty
Commission
displacing the
“unproven
Aboriginal rights”
of others?**

***Cowichan Tribes
v. Canada
COWICHAN
[2025] BCSC***

A thousand Cowichan people would go to T'luqtinus, a village on the Fraser River to harvest salmon in summer. They crossed the Salish Sea from their main territory on “Vancouver Island” to live here for the season, and did so well into the 20th century.

Early colonists and naval captains made reference to the village, included a map of it in navigational charts, and even a photo or sketch of it was made. The evidence of the village, and its protection after 1875 as a reserved land for an Indian village, was well-established in court.

The first purchase of these lands was made by Richard Moody, the first Chief Commissioner of Lands for BC, whose job was to ensure that reserves were created at sites of Indian settlements. Occupied Indian villages could not be sold, according to the law governing BC's Confederation with Canada in 1871.

This is the first case for Aboriginal title to involve such a heavily developed urban area. It is also the first case to provide such extensive non-Native evidence of occupation.

It is the first title case about an area that was mapped and specifically set-apart from “crown land,” for Indians, by statute.

It is the first case to find titles and licenses issued by crown authorities to be “defective and invalid.”

The judge decided, “With respect to the Cowichan Title Lands, Canada owes a duty to the descendants of the Cowichan Nation, including the Cowichan Tribes, Stz'uminus, Penelakut, and Halalt, to negotiate in good faith reconciliation of Canada's fee simple interests in the YVR Fuel Project lands... the Crown granted fee simple interests held by third parties, and the Crown vesting of the soil and freehold interest to Richmond, with Cowichan Aboriginal title, in a manner consistent with the honour of the Crown.”

And, “The descendants of the Cowichan Nation, including the Cowichan Tribes, Stz'uminus, Penelakut and Halalt, have an Aboriginal right to fish the south (i.e., main) arm of the Fraser River for food purposes within the meaning of s. 35(1) of the *Constitution Act, 1982*.”

Gitxaala v. BC (Gold Commissioner)

TSIMSHIAN

[2025] BCSC

The Province's sale of the Cowichan's occupied village lands is an unjustifiable infringement of Aboriginal title

The judge suspended the effect of her declaration for 18 months, to provide time for transition. All levels of settler government have appealed the decision and declared their intention to have it reversed – as they have after every declaratory recognition of Aboriginal rights since 1875.

As of this decision, the Cowichan are one of only five Indigenous Peoples west of the Rocky Mountains to have a judicial declaration of their right to fish salmon for food.

In 2005, the BC Ministry of Mines started up an online registration process for placer and subsurface mineral claims. Anyone can purchase these without consulting Indigenous rights holders.

After many kinds of protest, including by a Chief who went online and bought the mineral rights to the Minister for Mines' private house, the Gitxaala and Ehattesaht Nations got a judicial ruling that BC is in breach of the crown's duty to consult.

Later, the plaintiffs shored their case with the BC UNDRIPA, but the judge replied:

BC and Canada's UN Declaration on the Rights of Indigenous Peoples Acts are not legally enforceable

In March 2024, the province agreed to interim measures restricting claim registrations and mining activities in Gitxaala and Ehattesaht territories, while the B.C. Mineral Tenure Act is updated.

In December 2025, the finding that BCDRIPA is unenforceable was overturned in the BC Court of Appeal. One judge dissented, maintaining that the BC *Declaration Act* has no effect on the issue - but the Ministry for Mines had failed to consult and accommodate correctly and reasonably.

In its statements to the court, the Province of BC said it did not intend the Act to be enforceable.



Contrasting Titles



The Constitution Song

We don't need your constitution.

Canada is all Indian land.

We are all sovereign nations.

Canada has no jurisdiction.

RCMP out of Shuswap territory.

You'll never ski in Melvin Creek.

United we stand, divided we fall.

You'll never defeat Indian People.

We will fight until we win.

Contrasting Titles

Aboriginal Title as a Legal Construct in colonial courts

Aboriginal Title is *sui generis* ~ unlike any other kind of land title known to the western world.

Aboriginal Title is a collective right held in common by the members of a Band, or First Nation. *Tsilhqot'in Nation v. British Columbia*, 2007.

The Aboriginal title holders are the members of the Band, which are the descendants of the people who lived there at the time of British sovereignty.

A First Nation, once incorporated, may become the title holder of First Nation Lands.

A BC Treaty First Nation is the title holder of Treaty Lands identified in the Final Agreement, and registered to the First Nation. *Nisga'a Final Agreement Act*, 2000.

Traditional and International perspectives

Land Titles are clearly defined and recognized within Peoples and nations, and recognized between Peoples and nations.

Independent Clans and Families own their lands. No one can speak for another or release another's rights and interests. This was recognized in the *Royal Proclamation 1763*, where the hunting grounds were reserved to "them *or any of them*"

In assigning Indian Band membership to individuals, sometimes Clans and Houses have been divided into different Bands. A Status Indian person can't enjoy federally-recognized rights of membership in more than one Band.

A "First Nation" is a colonial construct used to isolate and divide Indigenous Peoples internally, originally as "Indian Bands" in the Indian Act.

This construct serves to define and limit Aboriginal rights as well as crown liability, and to facilitate assimilation by an imposed form of administration. The mode of assimilation served, ultimately, is to incorporate the First Nation as a municipality inside the Canadian body politic, by decision of the elected leadership. The election of leadership is also defined and enforced under the Indian Act.

Canada recently selected the term "First Nation" to replace the term "Indian Band." Most Indian Band reserves west of the Rocky Mountains were located, and relocated, to suit settler convenience and preference.

Contrasting Titles

Aboriginal Title, colonial Legal Construct

Traditional and International perspectives

Aboriginal title must be exclusive of other Peoples. *Baker Lake*, 1980, referencing *In re Southern Rhodesia*, 1919 and *Amodu Tijani* 1921.

Many areas are the subject of land-use agreements between Nations, where mutual usage is commonplace – or – depends on trade, or circumstances of extreme abundance or shortage. It is a land-based economy. Shared areas can be occupied by both nationals, at a highly diplomatic border crossing.

Aboriginal title depends on *continuous* exclusive occupation. *Baker Lake*, 1980.

The status of lands may change from time to time, with ownership changing hands for periods, or by various laws and protocols, or even by war.

Change in ownership and seasonal changes in occupation do not negate ownership.

Aboriginal Peoples' use of lands is a personal and usufructuary right, depending on the good will of the Sovereign – the crown – which holds underlying title. *Canadian Pacific Ltd. v. Paul*, 1988.

Indigenous Peoples' relationship to their lands is a function of their own title.

Their use of, and responsibility for, lands is decided in accordance with their unique cosmovision and sacred compact, confirmed by authentic representation in ceremony, tradition, language, and government.

Aboriginal use of title land cannot be inconsistent with the traditional use of that land, or, with the exercise of traditional rights there. *Delgamuukw*, 1997

All Peoples have the right to development.

The crown in right of Canada has sovereignty over and jurisdiction to decide the status of all lands, including Aboriginal title lands. *Paulette*, 1977; *Uukw*, 1987; *Skeetchestn*, 2011.

Indigenous Peoples have never consented to be governed by the foreign crown, and never sold, ceded, or surrendered their lands or their right to govern those lands (and themselves) according to their own laws.

In many recent cases, Peoples have signed agreements and surrenders under duress and in circumstances of blatant coercion and crises of leadership. Canada permits no access to “undefined” lands and resource rights without such coerced agreements and surrenders.

Crown courts have jurisdiction to define the nature and existence of Aboriginal title and rights, which will be determined on a case-by-case basis. *Sparrow*, 1990; *van der Peet*, 1996.

Lands may be used, sold, shared, or leased at the discretion of the individual title holder – as per the title holder's interpretation of their responsibility to the lands, others who rely on the lands, to future generations, to ancestors, or otherwise.

Aboriginal Title, colonial Legal Construct**Traditional and International perspectives**

Aboriginal title is inalienable except to the state government. *Royal Proclamation, King George III, 1763; Worcester v. State of Georgia, 1832, USA; An Act respecting Indians, 1886, Revised Statutes of Canada.*

Indigenous Peoples have always made treaties and constructive arrangements among themselves. This has always involved mobility of land rights, citizenship, access to resources, and other rights of property.

Aboriginal title is an Aboriginal right within Canada. *Paul, 2003.*

Rights flow from titles. They are exercised, regulated, and interpreted by the title holders; if in council with related title holders.

Aboriginal rights on the land may be practiced without Aboriginal title, and assigned to different Aboriginal groups, to be determined by Canada on a case-by-case basis. *van derPeet, 1996; Powley, 2003; Ahousaht, 2009.*

Jurisdiction flows from title. Title holders determine how lands and resources will be used, when and by whom. “No man can give a title better than he himself has.”

Aboriginal title, as a constitutional right under the 1982 *Canada Constitution Act*, forms the basis for negotiations with the Canadian and Provincial crowns as to the expression of that right. Without judicial *and* political recognition and agreement to such expression, land use activities – and interfering with land use licensed by the province – are liable to criminal prosecution. *Delgamuukw, 1997.*

The Canadian constitution was not ratified or imported by Indigenous Peoples into their own laws as a result of its creation by other Parties. At the outset of (eleven periods of) negotiations between Britain and Canada (beginning in the 1930s) as to the nature of a Canadian constitution, Indigenous nationals – from major leaders to grassroots people – embarked on long, costly, dangerous missions to intervene in the transfer of obligations and powers under historic agreements from Britain to Canada; individually putting themselves between their People and a Canada that assumed ungiven rights over them.

The Canadian Governor General, with Parliament, are the determining and highest powers of government across the land, including Aboriginal title lands. *Delgamuukw, 1997; Tsilhqot'in, 2014.*

Consent is sacrosanct. Legal pluralism and mutual recognition is the basis of international cooperation and peace. Recognition of separate jurisdictions form the entire subject of international treaties, conventions, justice, and commerce, lest military power determine the face of the globe.

As such, Aboriginal rights and titles are subject to Parliament and the courts, i.e., at the pleasure of the crown, because the crown is the sovereign. *Sparrow, 1990; Delgamuukw, 1997.*

Colonialism is disavowed by the UN Charter: it is a threat to world peace.

Contrasting Titles

Aboriginal Title, colonial Legal Construct

The Supreme Court of Canada is the highest law of the land. The nature of Aboriginal and treaty rights, including title, will be determined by that court. There is no appeal from rulings of the Supreme Court of Canada. Attempts to access procedural rights to courts constituted by Britain have been met with force. *Marshall* and *Bernard*, 2005. Gustafsen Lake, 1995. Cheam, 1995. Wet'suwet'en, 2021, *et cetera*.

The Canadian government has often decided that the Canadian public has the right to vote on the self-government capacities and land rights of Aboriginal Peoples, such as at the Meech Lake and Charlottetown Accords, 1990 and 1992, and the British Columbia Treaty Referendum, 2002, on government negotiating mandates concerning land settlements and other negotiations under the BC treaty process.

Aboriginal title is subject to certain carve-outs. This includes infringement of rights, including title, for the purposes of logging, mining, hydroelectric production, settlement of foreign populations, and economic development. *Delgamuukw*, 1997; *Tsilhqot'in*, 2014.

Provincial and Federal governments have jurisdiction on undefined, unsurrendered Aboriginal title lands. *Tsilhqot'in*, 2014.

A fiduciary obligation arises from the crown's assumption of sovereignty. This includes the duty to consult before licensing activity which might impact Aboriginal rights.

Traditional and International perspectives

International courts have jurisdiction over states engaged in genocide.

International tribunals have severally identified the fact that there is no "domestic remedy" to the problem of Canadian violations of Indigenous Peoples' rights within the Canadian border, and many instruments of international peace at the disposal of the United Nations have been used to recommend Canada recognize Indigenous titles.

Indigenous Peoples have the internationally recognized right of self-determination: ICCPR Article 1, 1969. Authentic Indigenous governance structures are sophisticated, rooted in ancient relations, and appropriate to the lands and peoples they govern.

The Canadian public is not empowered nor capable of making legal decisions, nor displacing Indigenous Peoples' internationally recognized rights; only giving instructions on government policy.

When a court – the members of a court – have an interest in the outcome of the decision, they lose jurisdiction as a fact of their partiality.

Indigenous Peoples have the right to a third-party, independent, impartial tribunal.

Provincial and Federal governments wilfully refuse and deny definition of Indigenous titles, relying on policies - not law - which have resulted in BC "violating Aboriginal title in an unconstitutional, and therefore illegal, fashion ever since it joined confederation." *Tsilhqot'in* 2007

Indigenous Peoples reject the assumption of crown sovereignty, and typically rely on their internationally recognized rights not to be dispossessed of their natural wealth, and not to be coerced.

Aboriginal Title, colonial Legal Construct**Traditional and International perspectives**

The courts must consider the “Aboriginal perspective” when making determinations of Aboriginal rights. *van derPeet*, 1996.

Canadian courts have demonstrated an inability (or unwillingness) to consider and “weigh equally” the “Aboriginal perspective.”

The legal burden of proof of Aboriginal rights is on the Aboriginal peoples in question to prove the right in question was part of a practice, custom or tradition which was an integral part of the distinctive aboriginal society, prior to contact with Europeans: usually 1846. *van derPeet*, 1996.

The legal burden of proof of crown title is on the crown, to show that it acquired title by legal means consistent with international norms. The burden of proving jurisdiction is on the crown, to show that it gained jurisdiction in a process marked by free, prior, and informed consent of the Peoples over whom it would govern.

The effective date of British sovereignty, west of the Rocky Mountains, is 1846. This follows from treaties excluding Spain (1792), Russia (1825), and the USA (1846) from the lands and waters now forming British Columbia.

Treaties between European nations concerning their competitions among each other for rights to trade and navigate exclusive of each other were made without Indigenous participation, and without rights provided by Indigenous Nations. “Discovery” (arriving to Indigenous shores from across the sea) does not convey rights or title.

Indian Reserves, or Lands reserved for Indians, are owned by the King in right of Canada, for the “use and benefit” of the Aboriginal people who occupy them. *An Act respecting Indians*, 1886; *Ontario Mining Co. v. Seybould*, 1901.

Indian reserves were not the subjects of sale or surrender to the crown. Indigenous Nations hold the underlying land titles in their reserves.

When an agent of the crown contemplates action that will affect Aboriginal rights, it must consult and, where appropriate, accommodate Aboriginal interests. First Nations must not frustrate this process with unreasonable demands. In case of disagreement, the consultation process and means of accommodation will be settled by the crown’s courts. *Haida*, 2002; *Taku River Tlingit*, 2004.

Indigenous authorities require informed discussion and assessment before deciding whether to allow developments in land use to occur. Indigenous Peoples will decide what happens on their lands, and how that will be determined.

Occupation is proof of possession. *Delgamuukw* 1997, describing “common law on Aboriginal rights. Note: in post- *Magna Carta* Britain, *to claim title by virtue of occupation is beneath the dignity of the crown*.”

Occupation is proof of occupation. There are many reasons and rights beyond “possession” which might allow temporary, seasonal, or even extended terms of occupation by one group at the pleasure of another title holder.

Contrasting Titles

Aboriginal Title, colonial Legal Construct

Traditional and International perspectives

Proof of aboriginal title must show physical, exclusive “occupation” - including construction of dwellings; cultivation and enclosure of fields; regular use of definite tracts to exploit resources. - *Delgamuukw 1997*

Indigenous title extends to areas which were deliberately unoccupied, and protected as such, for *all our relations* as well as the spirit of the land, such as at Sutikalh and Q’atmuk.

Aboriginal title is held communally.
Delgamuukw 1997

There are very few, if any, examples of all the members of an Indigenous People having all the same rights as each other in all the land titles and resources of their nation. Extensive protocols governing resource access, and even transit, stand out in contradiction.

In constructing the device of “Aboriginal rights” over many decades, even centuries, the Imperial Crown has insisted on this “communal” attribute in order to consolidate power in singular, elected Councils which are then recognized by the government as capable of making binding decisions concerning the whole group, and all their assets, such as in the BC treaty process ratification procedures; surrenders of reserve lands; “consultation” agreements; and so on.

As a matter of law, aboriginal title does not subsist over water or land covered by water.
Nuchatlaht 2023

Indigenous title and rights continue into bodies of salt water, and foreshores, and lands covered by lakes or streams.

Aboriginal rights fall along a spectrum. The scope of consultation and accommodation is relative to the strength of claim recognized by the court.
Taku, 2004

Indigenous Peoples’ rights cannot be arbitrarily splintered, scheduled and graded in order of importance as admitted by the colonial court.

“Aboriginal title is a legal riddle wrapped in a constitutional enigma inside a moral conundrum.”
- Brian Slattery, the most quoted Canadian academic in Aboriginal rights cases.

Canadian academics are not educated by Indigenous Peoples, but by crown institutions. Their opinions on the nature of “Aboriginal title” are limited to their interpretation of crown constructs, based on their education and upbringing in colonial institutions.

“A modern aboriginal right is a contradiction in terms.”
Delgamuukw 1993, BC Court of Appeal

The device of “Aboriginal rights” was largely designed by the Imperial crown to freeze Indigenous Peoples and Nations in a state of colonially-defined second-class citizenship.

Aboriginal Title, colonial Legal Construct**Traditional and International perspectives**

Aboriginal rights are “frozen” at the time of British sovereignty (est. 1846). Aboriginal rights are practices, customs and traditions that existed from time immemorial and that continued to exist at 1846. The burden of proof is on the Aboriginal people claiming the right, to show the practise was essential, distinct and central to their unique culture.

Indigenous Peoples enjoy the internationally recognized right to development, and to evolve their own manner of regulating the application of this development.

“Aboriginal rights fall along a spectrum... At the one end, there are those aboriginal rights which are practices, customs and traditions that are integral to the distinctive aboriginal culture of the group claiming the right. ...At the other end of the spectrum, there is aboriginal title itself.” *Ahousaht*, 2009, BC Supreme Court re. *Adams* 1996; *Delgamuukw* 1997

Title is the source of rights.

In Canada, “Indigenous Peoples’ rights” will mean “the rights of Aboriginal peoples in Canada” - and not the other way around - as defined in the *BC DRIPA, 2019*; and the *Canada UNDRIP Act, 2021*

Indigenous Peoples in Canada are the same as “Indigenous Peoples” within the meaning of UN Declarations, and enjoy the protection of international human rights law in all their rights as Peoples.

“...common law property regimes have been incapable of understanding Indigenous land tenure systems and do not capture the essence of how indigenous peoples understand their relationships and responsibilities to the territories; rights discourse does not necessarily translate into responsibilities that indigenous peoples have to their people or their territories...”

- June McCue, *Treaty Making from an Indigenous Perspective: A Ned’u’ten-Canadian Treaty Model*, 1994

Genocide Indicators

UNITED
NATIONS
**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

CERD

Distr.
GENERALCERD/C/67/1
14 October 2005
**Decision on follow-up to the
declaration on the prevention
of genocide: indicators of
patterns of systematic and
massive racial discrimination**

At its 66th session, the Committee adopted a declaration on the prevention of genocide for the consideration of the States parties to the Convention, the Secretary-General, as well as the Security Council.

In this declaration, the Committee committed itself to:

- Developing a special set of indicators related to genocide; ...

I. Indicators

The following key indicators may serve as a tool for the Committee, when examining the situation in a State party under one of its procedures, to assess the existence of factors known to be important components of situations leading to conflict and genocide.

If one or more of the following indicators are present, this should be clearly stated in the concluding observations or decision, and the Committee shall recommend that the State party report, within a fixed deadline, to the Committee under the follow-up procedure on what it intends to do to ameliorate the situation.

In the following list of indicators,

the word “group” shall cover racial, ethnic and religious groups:

1. Lack of a legislative framework and institutions to prevent racial discrimination and provide recourse to victims of discrimination.
2. Systematic official denial of the existence of particular distinct groups.
3. The systematic exclusion - in law or in fact - of groups from positions of power, employment in State institutions and key professions such as teaching, the judiciary and the police.
4. Compulsory identification against the will of members of particular groups, including the use of identity cards indicating ethnicity.
5. Grossly biased versions of historical events in school textbooks and other educational materials as well as celebration of historical events that exacerbate tensions between groups and peoples.
6. Policies of forced removal of children belonging to ethnic minorities with the purpose of complete assimilation.
7. Policies of segregation, direct and indirect, for example separate schools and housing areas.
8. Systematic and widespread use and acceptance of speech or

propaganda promoting hatred and/or inciting violence against minority groups, particularly in the media.

9. Grave statements by political leaders/prominent people that ...dehumanize and demonize minorities, or condone or justify violence against a minority.

10. Violence or severe restrictions targeting minority groups perceived to have traditionally maintained a prominent position, for example in business, or in political life, or State institutions.

11. Serious patterns of individual attacks on members by private citizens which appear to be motivated by the victims' membership of that group.

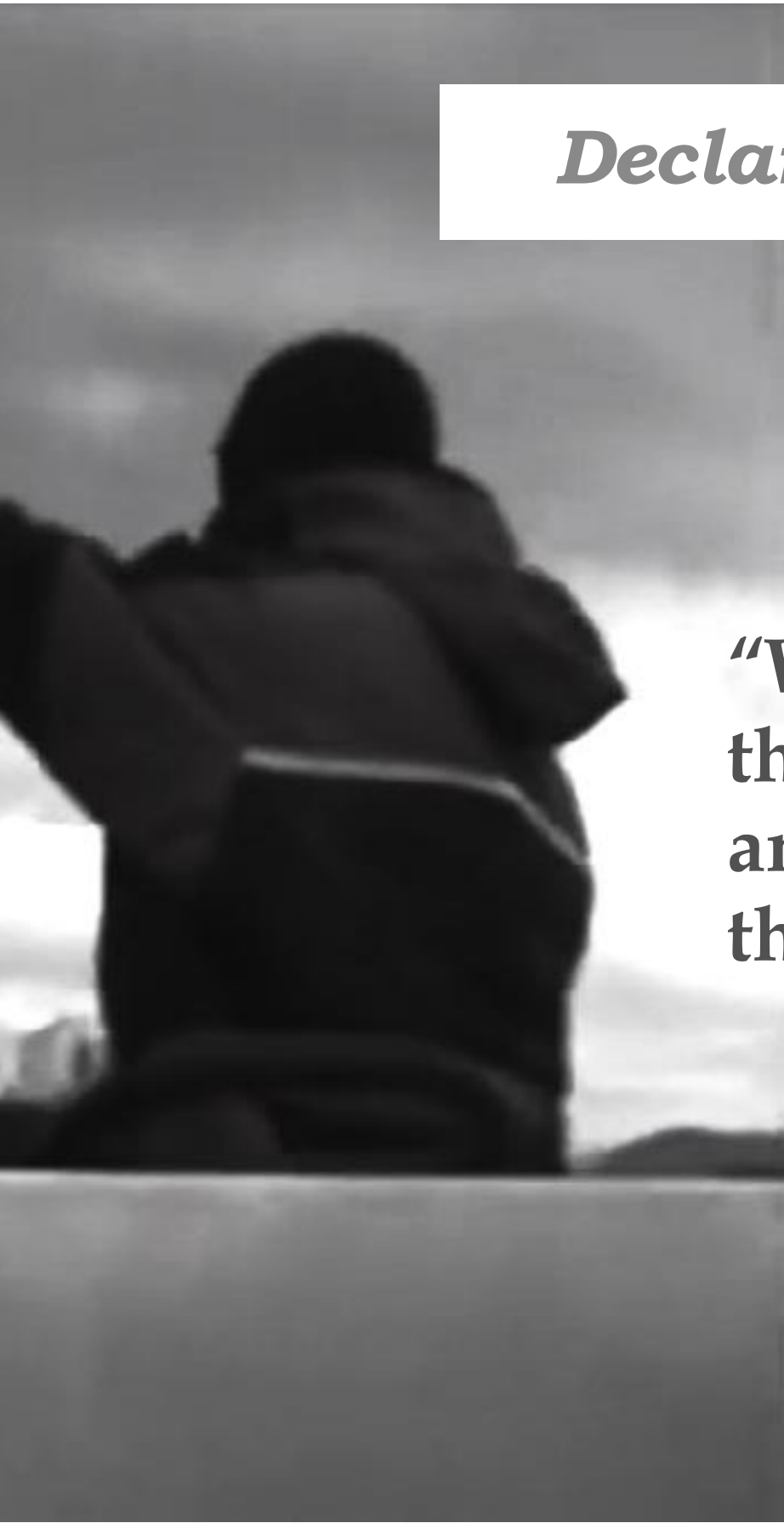
12. Development and organization of militia groups and/or extreme political groups based on a racist platform.

13. Significant flows of refugees and internally displaced persons, especially when those concerned belong to specific groups.

14. Significant disparities in socio-economic indicators evidencing a pattern of serious racial discrimination.

15. Policies aimed at the prevention of delivery of essential services or assistance, including ... access to food, water, sanitation or essential medical supplies in certain regions... .





Declarations

**“We don’t want
them out here
and they know
that.”**

**Defending Lelu Island
from Petronas gas,
at Lax Kwalaams,
Tsimshian, 2017**

Declarations

The following statements are excerpts from important Declarations made by the Nations, to contradict colonial assumptions on their lands and titles

Petition of the Cowichan Tribe of Indians MARCH, 1909

From time immemorial the Cowichan Tribe of Indians have been the possessors and occupants of the territory including the Cowichan Valley containing a large area and situate within the Territorial limits of the said Province of British Columbia.

**The title
of your Petitioners
has been wrongfully
repudiated and
ignored by the
Government of the
Province of British
Columbia.**

Your petitioners have waited patiently for long years in the hope and expectation that their rights would be recognized and justice done to them by the Government of British Columbia but have at length exhausted all other constitutional means known to them.

Your Petitioners humbly pray that steps be taken to protect the usufructuary right of your petitioners in all of the said lands, or, that in the alternative the whole question of the rights of the said Tribe be submitted to the Judicial Committee of the Privy Council for decision and determination.

The Declaration of The Indian Chiefs in the Southern Interior of BC

JULY 16, 1910

First,

**we stand
for treaty rights
with the dominion
government,**

the same as all the Indian tribes in the other provinces of Canada, and that all matters of present importance to the people of each of our tribes be subject to these treaties, so that we shall have a definite understanding regarding lands, water, timber, game, fish, etc., and we consider such matters as schools, doctors, aid to the aged, Indian funds, etc., and general assistance by the government should also be included in these treaties.

Second, we stand for compensation to us by the British Columbia government for all lands of ours appropriated, or held by them, including all lands preempted or bought by settlers, miners, lumbermen, etc.

Third, we stand for the enlargement of our reservations wherever we consider it necessary, by having a sufficiency of land allotted to us

so as to enable us to compete on better terms with whites in the way of making a living.

Fourth, we stand for the obtaining of a permanent and secure title (to be acknowledged by the government as such) of our ownership of our present reservations, and of such lands as may be added thereto.

Fifth, we stand for the carrying of our claims before the Privy Council of England for settlement, and in the event of our obtaining justice as we expect, we ask such compensation as may be awarded us for our lands, etc., shall be paid to us, half in cash, and the other half to be retained by the dominion government, and used as occasion may require for our benefit.

Sixth, we ask for and expect the dominion government to support us in our claims, and help us to obtain our rights to the best of their ability.

Seventh, we believe the Indian Rights Association of BC (which has been formed by other Indians of this country) has the same object and claims that we stand for, therefore we declare our agreement with the members of the same, and our resolve to join them, and support them in the furtherance of our mutual interests, and the attainment of our rights.

“All Our Relations”

A Declaration Of The Sovereign Indigenous Nations Of British Columbia **NOVEMBER 29, 2007**

We, the Indigenous leaders of British Columbia, come together united and celebrate the victory of the Tsilhqot'in and Xeni Gwet'in peoples in securing recognition of their Aboriginal title and rights – and all those Indigenous Nations and individuals that have brought important court cases over the years resulting in significant contributions in the protection and advancement of Aboriginal title and rights, including the Nisga'a, Gitksan, Wet'suwet'en, Haida, Taku River Tlingit, Musqueam, Heiltsuk and Sto:lo - shining light on the darkness of years of Crown denial of our title and rights.

After pursuing different pathways, we now come together to make this solemn Declaration out of our common desire to be unified in affirming our Aboriginal title.

As the original Peoples to this land, we declare:

We have Aboriginal title and rights to our lands, waters and resources and that we will exercise our collective, sovereign and inherent authorities and jurisdictions over these lands, waters and resources,

We respect, honour and are sustained by the values, teachings and laws passed to us by our ancestors for governing ourselves, our lands, waters and resources.

We have the right to manage and benefit from the wealth of our territories.

Declarations

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.

Signed by Chiefs of the
Union of BC Indian Chiefs

Gitksan-Carrier Declaration 1977

Since time immemorial, we, The Gitksan and Carrier People of Kitwanga, Kitseguecla, Gitanmaax, Sikadoak, Kispiox, Hagwilget and Moricetown, have exercised Sovereignty over our land. We have used and conserved the resources of our land with care and respect. We have governed ourselves. We have governed the land, the waters, the fish and the animals. This is written on our totem poles. It is recounted in our songs and dances. It is present in our language and in our spiritual beliefs. Our Sovereignty is our Culture.

Our Aboriginal Rights and Title to this Land have never been extinguished by treaty or by any agreement with the Crown. Gitksan and Carrier Sovereignty continue within these tribal areas.

We have suffered many injustices. In the past, the development schemes of public and private enterprise have seriously altered Indian life and culture. These developments have not included, in any meaningful way, our hopes, aspirations and needs.

The future must be different. The way of life of our people must be recognized, protected and fostered by the Governments of Canada and the Laws of Canada. Only then will we be able to participate fully in Canadian society.

We, the Gitksan and Carrier People, will continue to exercise our Sovereignty in the areas of Education, Social and Economic Development, Land Use and Conservation, Local and Regional Government.

We have waited one hundred years. We have been patient. Through serious negotiation, the basis for a meaningful and dignified relationship between the Gitksan and Carrier People and the Governments of Canada and of British Columbia will be determined. These negotiations require mutual and positive participation by the Federal Government and the Provincial Government.

Today, the Governments of Canada and British Columbia undertake a bold new journey to negotiate with the Gitksan and Carrier People. During this journey, we will fulfill the hopes and aspirations of our ancestors and the needs of future generations.

Let us begin negotiations.

**Recognize
our Sovereignty,
recognize our rights,
so that we may fully
recognize yours.**

At Kispiox

The Best Of All Titles Gitwangat Chiefs, 1884

We would liken this district to an animal, and our village, which is situated in it, to its heart. Lorne Creek, which is almost at one end of it, may be likened to one of the animal's feet.

We feel that the whitemen, by occupying this creek, are, as it were, cutting off a foot. We know that an animal may live without one foot, or even without both feet; but we also know that every such loss renders him more helpless, and we have no wish to remain inactive until we are almost or quite helpless. We have carefully abstained from molesting the whiteman during the past summer. We felt that, though we were being wronged and robbed, as we had not given you the time nor opportunity to help us, it would not be right for us to take the matter into our own hands. Now we bring the matter before you, and respectfully call upon you to prevent the inroads of any whiteman upon the land within the fore-named district.

In making this claim, we would appeal to your sense of justice and right. We would remind you that it is the duty of the Government to uphold the just claims of all peaceable and law-abiding persons such as we have proved ourselves to be.

**We hold these lands
by the best of all titles.
We have received
them as the gift of the
Creator to our
Grandmothers and
Grandfathers,
and we believe that
we cannot be
deprived of them by
anything short of
direct injustice.**

In conclusion, we would ask you, would it be right for our Chiefs to give licenses to members of the tribe to go to the district of Victoria to measure out, occupy, and build upon lands in that district now held by whitemen as grazing or pasture land? Would the whitemen now in possession permit it, even if we told them that, as we were going to make a more profitable use of the land, they had no right to interfere? Would the Government permit it? Would they not at once interfere and drive us out? If it would not be right for us so to act, how can it be right for the whiteman to act so to us?

A Declaration of B.C. Indian Rights Union of BC Indian Chiefs NOVEMBER 17, 1970

That Indians have survived the first one hundred years of Canada's history is miraculous indeed.

This struggle has been handicapped by an apathetic, intolerant and now intolerable Federal government and by totally incapable and ruthless Provincial governments. Governments generally have been disinterested in our problems and

**now the Federal
government proposes
to absolve themselves
of any responsibility
for our people by one
stroke of the pen:**

the final stroke to cover all sins of omission and commission.

The principles and policies outlined herein are a record upon which our people believe overall legislation affecting Indians should be based without prejudice to our claims generally. These principles are suggested in good faith to avoid the kind of mistakes frequently made in the past by the Federal government for decisions and policies made without our direct involvement. These principles will benefit our people and are intended to improve Canadian unity, to bring the Indian and non-Indian peoples closer together.

Areas of concern to which

Declarations

governments must now address themselves are:

1. Settlement of claims for the province of British Columbia.
2. Recognition of the various Indian nations.
3. Recognition of all rights due Indians such as: land title, foreshore, water and riparian rights, forest and timber, hunting and fishing on a year-round basis, mineral and petroleum, and all other rights basic to Indian life that are acquired hereditary, historical; usufructuary, moral, human or of legal obligation.
4. Establishment of an unbiased claims commission which will recognize these native rights and prepare just compensation awards for settlement of all land and other native claims.
5. Reconciliation of injustices done by the imposition of restrictions by all forms of Federal and Provincial legislation.
6. Complete and continued consultation with us during revision of pertinent legislation, and in setting policy on all matters affecting Indians by both senior governments including revision and alteration of existing programs.

... We propose that ..the administration of our lands and of our peoples, .. be performed by our own method of self government. ...

Note that this Declaration follows the damning ruling of Justice Gould in BC Supreme Court in the Calder case, 1969.

Union Of British Columbia Indian Chiefs Declaration

*as adopted by the
U.B.C.I.C. General Assembly held
in Courtenay, British Columbia
MAY 17, 1976*

We, the Native people of the tribes of British Columbia, openly and publicly declare and affirm to the people and governments of Canada and British Columbia:

That the Indian Tribes have held and still hold Native title, Aboriginal rights and ownership to all lands and resources of British Columbia, within our respective tribal territorial boundaries,

That the Indian tribes have held and still hold Aboriginal rights to hunt, fish, and trap and gather food, resources, and goods within our respective tribal territorial boundaries,

That the Indian tribes have held and still hold inalienable and Aboriginal rights to self-government within our respective tribal territorial boundaries,

That we, the Native People of the Tribes of British Columbia, have never reached any agreement or treaty with the governments of Canada and British Columbia concerning the occupation, settlement, sovereignty, and jurisdiction over our native lands,

That such Native title and Aboriginal rights have never been extinguished, purchased, or acquired by treaty, agreement or by any other means by the government of Canada and the government of British Columbia,

That such Native title and Aboriginal rights exist today and shall continue to exist for all-future-time,

That the governments of Canada and British Columbia shall immediately recognize the existence of Native title and Aboriginal rights and shall enter into tripartite negotiations with representatives of the Native people of British Columbia,

That such negotiations will be based on the principle that Native title and Aboriginal rights exist and will continue to exist, and that compensation benefits, resource royalties, or payments will not be a purchase or extinguishment of Native title or Aboriginal rights but will be a part of an ongoing and perpetual recognition of Native title and Aboriginal rights, that such negotiations will determine the specific methods of putting Native title and Aboriginal rights into practice,

That in recognition of Native title and Aboriginal rights there will be land, monetary, and other compensation for lands and resources held by the Indian people of British Columbia under Native title and Aboriginal rights that have already been irretrievably encroached upon, sold, or otherwise used under provincial or federal grants of title or licence; that such compensation will be negotiated on the principle of perpetual and continuing recognition of Native title and Aboriginal rights,

That lands that have been unjustly, arbitrarily, and capriciously taken from Indian reserves shall be returned; that if return of these cut-offs and "lost reserve lands" is not possible, then alternate lands of equal value shall be set aside as Indian reserve,

That in recognition of Native title and Aboriginal rights there will be protection for Indian participation in royalties, use and management of all lands and resources within our respective tribal territorial boundaries; that such Indian participation and monies paid under agreement will not be construed to be purchase, or extinguishment of Native title and Aboriginal rights,

That in recognition of Native title the inalienable and Aboriginal rights of hunting and fishing shall not be abridged, restricted, curtailed or regulated by any act or regulation of the government of Canada or the government of British Columbia; that if any regulation of such Aboriginal rights of hunting and fishing are deemed necessary by the Indian people themselves, such regulation shall be administered by the Indian people themselves, or their representative,

That all development, regulation, land sales, and resource extraction from or on so-called "crown lands" held by the Indian people of British Columbia under Native title and Aboriginal rights shall immediately cease until agreement is reached between the government of Canada, the government of British Columbia, and the Native people of British Columbia on recognition of Native title and Aboriginal rights,

Declarations

That all forest tenures, mineral claims, land leases be declared in moratorium after expired dates of such licences and leases until agreement is reached between the governments and the Native people on recognition of Native title and Aboriginal rights, that the government of British Columbia does not renew any resource licence, mineral claims, tree farm licences, timber sale harvesting licences, timber sale licences, and pulp harvesting licences when they expire and that the government of British Columbia cancel old crown grant timber berths, that no new provincial or federal park be established until after such agreement on recognition of Native title and Aboriginal rights,

That all lands presently designated “federal crown lands” within British Columbia shall be immediately turned over to the Indian people of British Columbia, as a show of good faith in recognition of Native title and Aboriginal rights under terms to be negotiated by the Indian people of British Columbia,

We, the Native people of the tribes of British Columbia, hereby declare and affirm our inalienable right of Native title and Aboriginal rights to the land, the minerals, the trees, the lakes, the rivers, the streams, the seas, and other resources of our native land. we declare that our Native title and Aboriginal rights have existed from time immemorial, exists at the present time, and shall exist for all future time,

We, the Native people of the tribes of British Columbia, declare that we shall do all in our power to see that the governments of Canada and British Columbia recognize, in law, and in practice, our Native title and Aboriginal rights.

**That all development,
regulation, land sales, and
resource extraction from or on
so-called “crown lands”
held by the Indian people of
British Columbia under Native title
and Aboriginal rights shall
immediately cease until agreement is
reached between the government
of Canada,
the government of British Columbia,
and the Native people
of British Columbia
on recognition of Native title
and Aboriginal rights**

Declaration of the Lheit-Lit'en Nations

JUNE 16, 1991

We, as a Nation, have been lost for a long period of time, where

**we were subjected to
other people's laws,
values, and beliefs.**

As a result our Nation broke up under the subjection, and our people drifted through time living in another world.

...We agree that in order to determine our future direction, we must take from the past, we must set aside our learned subjected "values and beliefs," set aside our differences and combine the past with the present.

We declare;

to preserve our distinct identity, our lands and resources, and our ways of being for future generations, and

reaffirm our place in the global community of nations with dignity, and

to establish the conditions necessary for a just and equitable relationship within Canada, founded on recognition and respect for our aboriginal title, rights and treaty rights, and the fundamental right to self-determination, and...

...Accordingly, our peoples do hereby establish through this declaration, the foundation of "The Lheit-Lit'en Act."

Lil'wat Nation Declaration

JANUARY 14, 1983

We, the People of the Lil'wat Nation declare that our land and rights as a Nation have never been relinquished by ourselves. The Creator placed us here on our land with the right to self-determination. The right to self-determination and the right to exist as a people is sacred in our way, and we believe we have that right.

Canada's unilateral action in patriating its constitution without the consent of the Indian people and its blatant disregard of rights to self-determination of Indian People is regarded by the Lil'wat Nation as a bold and callous act against sovereign people.

To ensure the protection of our Lil'wat Nation against any aggressive action by another nation or infringement by any colonial power or government,

**we, the Lil'wat
Nation, shall never
agree to assign our
rights to any person
or colonial power of
government,**

Thus, we will not be invitees to a conference where our rights as a sovereign people is to be discussed. Our attending such a conference will be as equal participants.

Signed by Chief Leonard Andrew

Memorial to Frank Oliver

Minister of the Interior, Ottawa,
by Chiefs of the Shuswap,
Couteau *or* Thompson, Okanagan,
Lillooet, Stalo *or* Lower Fraser,
Chilcotin, Carrier and Tahltan
Tribes:

MAY 10, 1911

"...now that the country is being more and more settled up, and we becoming more restricted in our liberties year by year, we are very far from satisfied. Why should we be satisfied? What have we received, and what has been done for us to make us satisfied? All the promises made to us when the whites first came to this country have been broken. Many of us were driven off our places where we had lived and camped from time immemorial, even places we cultivated, and where we raised food, because these spots were desirable for agriculture, and the Government wanted them for white settlers. This was done without agreement with us, and we received no compensation. It was also in direct opposition to the promises made to us by the first whites, and Government officials, that no white men would be allowed to locate on any place where Indians were settled or which were camping stations and gardens. Thus were we robbed by the Government and driven off many of our places by white settlers (backed by the Government), or coaxed off them with false promises. Then we were promised full freedom to hunt, fish and travel over our country unrestricted by the regulations of the

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whites, until such time as our lands were purchased or at least until treaties were made with us. Another promise broken, and so on with all.

...We claim these things are rightfully ours, and yet we are made to pay for using them.

Good trails we had in plenty before the whites came. The whites are indebted to us for having them ready made when they came, and allowing them to use them without charge. The wagon roads benefit us but little, for most of them do not go to our reserves, and besides, we

have no chance to have much produce to haul over them. Railroads have not helped us much. They cut up our little farms, and give us no adequate compensation. They have killed many of us, and also many of our horses and cattle since advent. Besides they act as highways for robber whites, and all kinds of broken men who frequently break into our houses and steal from us.

We never asked that any of these things be built so we could share in them, and we well know they were not built for our benefit. Government utilities such as the police, for instance; we see no benefit in, for they are used to force laws on us we never agreed to, and some of which we consider injurious and unjust. This, then, appears to be all the British Columbia Government can claim to have done for us..."

See signature pages, over:

**Had we never assisted in the making
of these railways and roads:
had this Government paid us
for all the timber that was used, and all our
millions of gold taken out of this country,
and all our salmon that has been caught,
and destroyed,
and many other things which might be
mentioned that went into the making
of these roads;
had we been paid only a small share
of all this wealth derived from the destruction
(in most cases), not the improvement
of our country; or had the country
been bought from us, so it were actually
the property of the whites to destroy
or do with as they pleased,
then the British Columbia Government
might speak of our sharing
in the benefits of roads
to which they infer we are in no way entitled.**

Signators to the Memorial to Frank Oliver

JOHN CHILAHITSA, Chief Douglas Lake Band, Okanagan Tribe.
 BAPTISTE CHIANUT, Chief Nkamip Band, Okanagan Tribe.
 JOHN LEKOMAGHEN, Chief Ashnola Band, Okanagan Tribe.
 CHARLES ALLISON, Chief Hedley Band, Okanagan Tribe.
 FRANCOIS PAKELPITSA, Representative Penticton Band, Okanagan Tribe.
 BAPTISTE LOGAN, Chief Vernon Band, Okanagan Tribe.
 JOHN INHAMCHIN, Chief Chapeau Band, Okanagan Tribe.
 ALEXANDER CHILAHITSA, Hereditary Head Chief, Okanagan Tribe.
 LOUIS CHLEGHLEGHKEN, Chief Kamloops Band, Shuswap Tribe.
 BASIL DAVID, Chief Bonaparte Band, Shuswap Tribe.
 FRANCOIS BELPAHEN, Chief Shuswap Lake Band, Shuswap Tribe.
 BAPTISTE WILLIAM, Chief William's Lake Band, Shuswap Tribe.
 RANSON SOGHOMICH, Chief Alkali Lake Band, Shuswap Tribe.
 JAMES CAPEL, Chief Clinton Band, Shuswap Tribe.
 THOMAS PETLANITSA, Chief Deadman's Creek Band, Shuswap Tribe.
 MAJOR CHESCHETSELST, Chief Leon Creek Band, Shuswap Tribe.
 ANTOINE CHELAHAUTKEN, for Chief Etienne, Chase Band, Shuswap Tribe.
 JOSEPH ISTCHOKWAKST, Chief High Bar Band, Shuswap Tribe.
 FRANK TAIHIESKET, for Chief Samuel, Canim Lake Band, Shuswap Tribe.
 LOOSHOM, Chief Soda Creek Band, Shuswap Tribe.
 AUGUST JAMES, for Chief Maalmin, Malawi Band, Shuswap Tribe.
 ANDRE, Chief North Thompson Band, Shuswap Tribe.
 LOUIS CHUIESKA, Captain Spallumcheen Band, Shuswap Tribe.
 JOHN INROIESKET, Acting Chief Canoe Creek Band, Shuswap Tribe.
 JOSEPH TSEOFIKEN, Chief Dog Creek Band, Shuswap Tribe.
 ADOLPHE THOMAS, for Chief Dennis Skepenautkan, Fountain Band.
 ROBERT KUSTABELKWA, Chief Pavilion Band.
 JOHN NELSON, Chief Quenel Band, Carrier Tribe.
 JAMES ENRAITESKET, Chief Lillooet Band, Lillooet Tribe.
 JAMES JAMES, Chief Scaton Lake Band, Lillooet Tribe.
 JOHN KUIUSTGHEH, Chief Pasulko Band, Lillooet Tribe.
 DAVID EKSIEPALUS, Chief Zestil No. 2, Lillooet Band, Lillooet Tribe.
 JAMES STAGER, Chief Pemberton Band, Lillooet Tribe.
 CHARLES NEKAVIA, Chief Nkempts Band, Lillooet Tribe.
 JAMES SMITH, Chief Tessa Lake Band, Lillooet Tribe.
 HARRY INKASUBA, Chief Samakwa Band, Lillooet Tribe.
 PAUL ROITELANOGH, Chief Skookum Chuck Band, Lillooet Tribe.
 AUGUST AKSTONKAIL, Chief Port Douglas Band, Lillooet Tribe.
 JEAN BAPTISTE, Chief No. 1, Cayuse Creek Band, Lillooet Tribe.
 DAVID SKWINSTWAUGH, Chief Bridge River Band, Lillooet Tribe.
 PETER CHALAL, Chief Silexton Band, Lillooet Tribe.
 THOMAS BULL, Chief Slaboon Band, Lillooet Tribe.
 THOMAS JACK, Chief Anderson Lake Band, Lillooet Tribe.
 SIMO NIZDE, Representative Ansham Band, Chilcotin Tribe.
 DICK ANAHEN, Representative Risky Creek Band, Chilcotin Tribe.
 NANOK, Head Chief Tahltan Tribe.
 PIERRE KENPESKET, Chief of the Kinbaskets, Kootenay, Shuswap Tribe.
 WILLIAM MAKELTSE, Chief Thompson Band, Couteau or Thompson Tribe.
 ANTOINE YAAPSKINT, Chief Coldwater Band, Thompson Tribe.
 MICHEL SHAKOA, Chief Quilchena Creek Band, Thompson Tribe.
 WILLIAM LUKLUKPACHEN, Chief Pettit Creek Band, Thompson Tribe.
 GEORGE EDWARD INKWOITUNEI, Chief Potatoc Garden Band, Thompson Tribe.
 CHARLES KOWETELLST, Chief Kanaka Bar Band, Thompson Tribe.
 HENEDICT INCHAULETS, Chief Keeler's Band, Thompson Tribe.
 SHOOTER SUTPACHEN, Chief Nicola Lake Band, Thompson Tribe.
 PAUL HEHENA, Chief Spuzzum Band, Thompson Tribe.
 GEORGE SROI, Chief North Bend Band, Thompson Tribe.
 JONAH KOLAGAHNT, Representative Couteau Band, Thompson Tribe.
 JOHN WHISTAMNITSA, Chief Spence's Bridge Band, Thompson Tribe.
 SIMON WAUESKS, Chief Ashcroft Band, Thompson Tribe.
 JOHN TEDLENITSA, Chief Pekalet Band, Thompson Tribe.
 MICHEL INHUTPESKET, Chief Maria Island, Stalo or Lower Fraser Tribe.
 PIERRE AYESSEK, Chief Cat's Landing and Hope Band, Lower Fraser Tribe.
 JAMES KWINTCHEL, Chief Yale Band, Lower Fraser Tribe.
 HARRY YELENITSA, Chief Agassiz Band, Lower Fraser Tribe.
 HARRY STEWART, Chief Chilliwack Band, Lower Fraser Tribe.
 JOE KWOKWAPEL, Chief Quoquepol Band, Lower Fraser Tribe.
 CHARLES JACOB, Chief Matsqui Band, Lower Fraser Tribe.

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CHARLES ALLISON, Chief Hedley Band, Okanagan Tribe.
 JOHN LEONOMAGIEN, Chief Ashcroft Band, Okanagan Tribe, per Alexis Sklun.
 FRANCOIS PAKELPITSA, Representative Penticton Band, Okanagan Tribe.
 BAPTISTE LOGAN, Chief Vernon Band, Okanagan Tribe.
 JOHN TEDLENTSA, Chief Pekaist Band, Couteau or Thompson Tribe; for self,
 Chief Wm. Nakelise, Chief Thompson Band, Couteau or Thompson Tribe.
 PAUL HEHENA, Chief Spuzzum Band, Couteau or Thompson Tribe.
 WILLIAM LUKLUKPAGHEN, Chief Pettit Creek Band, Couteau or Thompson Tribe.
 MICHEL SHAKOA, Chief Quilchessa Creek Band, Couteau or Thompson Tribe, per
 Stephen Matthew Michel.
 CHARLES KOWETELLST, Chief Kanaka Bar Band, Couteau or Thompson Tribe.
 BENEDICT BIPPELEST, Chief Kewfers Band, Couteau or Thompson Tribe.
 GEORGE RANDY, Representative Coldwater Band, Couteau or Thompson Tribe.
 SHOOTER SUTPAGHEN, Chief Nicola Lake Band, Couteau or Thompson Tribe.
 JOHN WHISTANNITSA, Chief Spruces Bridge Band, Couteau or Thompson Tribe,
 per William Yelamugh.
 KIMON WASKIE, Chief Ashcroft Band, Couteau or Thompson Tribe.
 JONAH KOLAGIAMT, Representative Cooten Band, Couteau or Thompson Tribe.
 JOSEPH STEUKWAKST, Chief High Bar Band, Shuswap Tribe.
 ANHIE, Chief North Thompson Band, Shuswap Tribe.
 THOMAS PETLANITSA, Chief Deadman's Creek Band, Shuswap Tribe.
 MAJOR CHIESCHITSELLST, Chief Leve's Creek Band, Shuswap Tribe.
 ADAM TAGHOLEST, Chief Chase Band, Shuswap Tribe.
 HASIL DAVID, Chief Bouspartie Band, Shuswap Tribe.
 BAPTISTE, WILLIAM, Chief Williams Lake Band, Shuswap Tribe.
 SAMSON SOGHOMICH, Chief Alkali Lake Band, Shuswap Tribe.
 FRANCOIS SLPAGHEN, Chief Tappen Band, Shuswap Tribe.
 GABRIEL AHANULAGH, Representative Spallumcheen Band, Shuswap Tribe.
 MAXIMIN, Chief Malowt Band, Shuswap Tribe.
 JAMES CABLE OR CAPEL, Chief Clinton Band, Shuswap Tribe.
 LOGHSON, Chief Soda Creek Band, Shuswap Tribe, per Charles Chawania.
 CAMILLE, Chief Canot Creek Band, Shuswap Tribe, for self and Chief Tscopiken,
 Hog Creek Band, Shuswap Tribe.
 SAMUEL, Chief Canim Lake Band, Shuswap Tribe.
 PIERRE KENPESKET, Chief of Kinbaskets, Shuswap Tribe, per Chief Francois and
 William Pierriab.
 LOUIS GHLEOHLECHKEN, Chief Kamloops Band, Shuswap Tribe.
 JOHN NELSON, Chief Quersel Band, Carrier Tribe.
 JAMES STAGER OR ETATZIE, Chief Pemberton Band, Lillooet Tribe, for self and
 Chiefs William Hakos, James Smith, Harry Nhasusa, Paul Koltelamugh, August Aklim-
 nail and Charles Nekaula, of same tribe.
 DAVID SKWINETWAUGH, Chief Bridge River Band, Lillooet Tribe.
 THOMAS DULL, Chief Shahoos or Stalo Lake Band, Lillooet Tribe.
 JAMES NRAITASKET, Chief Lillooet Band, Lillooet Tribe, for self and Chiefs
 Thomas Jack, David Ekselpalus, Peter Chalai and Jobo Kolustgben, of same tribe.
 JEAN BAPTISTE, Chief Cayuse Creek Band, Lillooet Tribe.
 THOMAS ADOLPH, Chief La Fountaine Band, Lillooet Tribe.
 ROBERT KUSTASEL'WA, Chief Pavilion Band, Lillooet Tribe.
 FRANCOIS XAVIER, Her. Head Chief (St. Mary's Band), Representative Kootenay
 Tribe.
 ABEL ST. PIERRE, Church Chief Creston Band, Kootenay Tribe.
 ALEXANDER, Gov. Chief Creston Band, Kootenay Tribe.
 PIERRE THUNDER-HORE, Her. Chief Fort Steele Band, Kootenay Tribe.
 ABEL NOT-DEAR, Chief Windermere Band, Kootenay Tribe, per Ignatius Eagle-
 head.
 MATTHIAS YELLOWEAGLE, Second Chief, Windermere Band, Kootenay Tribe.
 PAUL, DAVID, Chief Tobacco Plains Band, Kootenay Tribe.
 FRANCIS PLASWA, Second Chief Tobacco Plains Band, Kootenay Tribe.
 DOMINICK SALISH, Sub-Chief Creston Band, Kootenay Tribe.
 LOUIS JACOB, ALEXANDER HAIYOOK, JOHN S. STARR, IGNATIUS JACK and
 JOSEPH DAVID, Representatives Kootenay Tribe.
 BAPTISTE SKALON, Chief Arrow Lake Band, Lake or Selkistee Tribe.
 PIERRE AYESSEK, Chief Hope Band, Stalo Tribe.
 LOUIS SARDIE, Chief Chilliwack Band, Stalo Tribe.
 HARRY STEWART, Chief Chilliwack Band, Stalo Tribe.
 JOE QUOQUAPEL, Chief Chilliwack Band, Stalo Tribe.
 CHARLEY JACOB, Chief Blataqui Band, Stalo Tribe.
 JAMES KWINTOMEL, Chief Yale Band, Stalo Tribe.
 MICHEL, Chief Maria Island, Stalo Tribe.
 HARRY YELENITSA, Chief Agassiz Band, Stalo Tribe.

Declaration of the Lillooet Tribe

MAY 10, 1911

We the undersigned chiefs of the Lillooet tribe (being all the chiefs of said tribe) declare as follows:

We speak the truth, and we speak for our whole tribe, numbering about 1400 people at the present time. We claim that we are the rightful owners of our tribal territory, and everything pertaining thereto. We have always lived in our country; at no time have we ever deserted it, or left it to others. We have retained it from the invasion of other tribes at the cost of our blood. Our ancestors were in possession of our country centuries before the whites ever came. It is the same as yesterday when the latter came, and like the day before when the first fur trader came.

**We are aware the
B.C. government
claims our country,
like all other Indian
territories in B.C.;
but we deny their
right to it.**

We never gave it nor sold it to them. They certainly never got the title to the country from us, neither by agreement nor conquest, and none other than us could have any right to give them title.

Musqueam Declaration

JUNE 10, 1976

We, the Musqueam people openly and publicly declare and affirm that

**we hold aboriginal
title over our land,
and aboriginal rights
to exercise use of
our land, the sea and
fresh waters, and all
their resources within
that territory
occupied and used by
our ancestors,**

namely: the lands, lakes and streams defined and included by a line commencing at Harvey Creek in Howe Sound and proceeding Eastward.....

Our ancestors aboriginal right

and our aboriginal right, is to live upon and travel over our aboriginal lands, seas and waters without foreign control or restriction, to utilize, trade and consume all the resources and products of those lands, waters and seas. It is our right to govern ourselves and our communities, to up-hold and determine our own customs, beliefs and laws.

Neither we nor our ancestors have ever given up, extinguished or diminished our aboriginal rights and title by treaty or agreement with any foreign government or power.

We have never considered the bits of land called "Indian Reserves" as compensation for our lost rights and cannot consider them as compensation.

We announce our intent to obtain compensation.... to establish control of our own communities and our own resources in order to control, determine, and guarantee our future.

Statement of the Nishga Nation JANUARY 22, 1913

From time immemorial the Nishga Nation or Tribe of Indians possessed, occupied and used the territory generally known as the Valley of the Naas River, the boundaries of which are well defined. The claims which we make in respect of this territory are clear and simple. We lay claim to the rights of men. We claim to be aboriginal inhabitants of this country and to have rights as such. We claim that our aboriginal rights have been guaranteed by Proclamation of King George Third and recognized by Acts of the Parliament of Great Britain. We claim that holding under the words of that Proclamation a tribal ownership of the territory, we should be dealt with in accordance with its provision, and that no part of our lands should be taken from us or in any way disposed of until the same has been purchased by the Crown. By reason of our aboriginal rights above stated, we claim tribal ownership of all fisheries and other natural resources pertaining to the territory above-mentioned.

For more than twenty-five years, being convinced that the recognition of our aboriginal rights would be of very great material advantage to us and would open the way for the intellectual, social and industrial advance of our people, we have, in common with other tribes of British Columbia, actively pressed our claims upon the Governments concerned. In recent

years, being more than ever convinced of the advantages to be derived from such recognition and

**fearing that without
such recognition,
the advance of
settlement
will endanger
our whole future,
we have pressed these
claims with greatly
increased earnestness.**

Some of the advantages to be derived from establishing our aboriginal rights are

1. That it will place us in a position to reserve for own use and benefit such portions of our territory as are required for the future well-being of our people.
2. That it will enable us to a much greater extent and in a free and independent manner to make use of the fisheries and other natural resources pertaining to our territory.
3. That it will open the way for bringing to an end as rapidly as possible the system of Reserves and substituting a system of individual ownership.
4. That it will open the way for putting an end to all uncertainty and unrest, bringing about a permanent and satisfactory settlement between the white people and ourselves, and thus removing the danger of serious trouble which now undoubtedly exists.
5. That it will open the way for our taking our place as not only

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loyal British subjects but also Canadian citizens, as for many years we have desired to do.

In thus seeking to realize what is highest and best for our people, we have encountered a very serious difficulty in the attitude which has been assumed by the Government of British Columbia. That Government has neglected and refused to recognize our claims, and for many years has been selling over our heads large tracts of our lands. We claim that every such transaction entered into in respect of any part of these lands under the assumed authority of the Provincial Land Act has been entered into in violation of the Proclamation above mentioned. These transactions have been entered into notwithstanding our protests, oral and written, presented to the Government of British Columbia, surveyors employed by that Government and intending purchasers.

The request of the Indian Tribes of British Columbia made through their Provincial Organization, that the matter of Indian title be submitted to the Judicial Committee of His Majesty's Privy Council, having been before the Imperial Government and the Canadian Government for three years, and grave constitutional difficulties arising from the refusal of British Columbia to consent to a reference, having been encountered in dealing with that request, we resolved independently and directly to place a petition before His Majesty's Privy Council. In following that course we desire to act to the fullest possible extent in harmony both with other tribes of British Columbia

and with the Government of Canada.

We are informed that Mr. J. A. J. McKenna sent out by the Government of Canada has made a report in which he does not mention the claims which the Indians of the Province have been making for so many years, and assigns as the cause of all the trouble, the reversionary claim of the Province. Whatever other things Mr. McKenna found out during his stay, we are sure that he did not find out our mind or the real cause of the trouble. We are also informed of the agreement relating only to the so-called reserves which was entered into by Mr. McKenna and Premier McBride. We are glad from its provisions to know that the Province has expressed willingness to abandon to a large extent the reversionary claim which has been made. We cannot, however, regard that agreement as forming a possible basis for settling the land question. We cannot concede that the two Governments have power by the agreement in question or any other agreement to dispose of the so-called Reserves or any other lands of British Columbia, until the territory of each nation or tribe has been purchased by the Crown as required by the Proclamation of King George Third.

We are also informed that in the course of recent negotiations, the Government of British Columbia has contended that under the terms of Union the Dominion of Canada is responsible for making treaties with the Indian Tribes in settlement of their claims. This attempt to shift responsibility to Canada and by doing so render it more difficult for

us to establish our rights, seems to us utterly unfair and unjustifiable.

We cannot prevent the Province from persisting in this attempt, but we can and do respectfully declare that we intend to persist in making our claim against the Province of British Columbia for the following among other reasons:

1. We are advised that at the time of Confederation all lands embraced within our territory became the property of the province subject to any interest other than that of the province therein.

2. We have for a long time known that in 1875 the Department of Justice of Canada reported that the Indian Tribes of British Columbia are entitled to an interest in the lands of the province.

3. Notwithstanding the report then made and the position in accordance with that report consistently taken by every representative of Canada from the time of Lord Dufferin's speeches until the spring of the present year, and in defiance of our frequent protests, the Province has sold a large proportion of the best lands of our territory and has by means of such wrongful sales received a large amount of money.

4. While we claim the right to be compensated for those portions of our territory which we may agree to surrender, we claim as even more important the right to reserve other portions permanently for our own use and benefit, and beyond doubt the portions which we would desire so to reserve would include much of the land which has been sold by the Province.

We are not opposed to the

coming of the white people into our territory provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation.

If, therefore, as we expect, the aboriginal rights which we claim should be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the Province and ourselves should be finally adjusted by some equitable method to be agreed upon which should include representation of the Indian Tribes upon any Commission which then might be appointed.

(Signed) W. J. LINCOLN, Chairman of Meeting.

As reproduced in the Report of the Joint Committee of the Senate and House of Commons to Inquire into the Claims of the Allied Indian Tribes in British Columbia, 1927.

This statement was unanimously adopted at a meeting of the Nishga Nation at Kincolith. It was copied to: Secretary of State for the Colonies, Prime Minister of Canada, Minister of Indian Affairs, Minister of Justice, Indian Rights Association of BC, and the "Friends of the Indians of BC."

Sto:lo Declaration

We, the people of the Sto:lo nation know the Creator put us here.

The Creator gave us laws that govern all our relationships to live in harmony with nature and mankind.

The laws of the Creator defined our rights and responsibilities. The Creator gave us our spiritual beliefs, our languages, our culture, and a place on Mother Earth which provided us with all our needs.

We have maintained our freedom, our languages, and our traditions from time immemorial.

We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the land upon which we were placed.

The Creator had given us the right to govern ourselves and the right to self-determination. The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other nation.

We, the people of the Sto:lo nation, openly and publicly declare and affirm to the people and governments of Canada and British Columbia:

That the people of the Sto:lo nation have held and still hold aboriginal title, and aboriginal rights to all lands and resources within our tribal territory.

That the people of the Sto:lo nation have never reached any agreement or treaty with the governments of Canada and British Columbia concerning the occupation, settlement, sovereignty or jurisdiction over our land.

We, the people of the Sto:lo nation, declare and affirm our

inalienable right of aboriginal title and aboriginal rights to the land, the mountains, the minerals, the trees, the lakes, the rivers, the streams, the sea, the air and the other resources of our land. We declare that our aboriginal title and aboriginal rights have existed from time immemorial, exists at the present time and shall exist for all future time.

**We, the people of
the Sto:lo nation,
declare that we shall
do all in our power
to see that the
governments of
Canada and
British Columbia
recognize in law,
and in practice,
our aboriginal title
and aboriginal rights.**

As reproduced in "Spiritual Sites, Ethnic Significance and Native Spirituality: The Heritage and Heritage Sites of the Sto:lo Indians of British Columbia," by Gordon Mohs, 1987.

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Nisga'a Declaration

JANUARY 1976

In 1969, Nishga Tribal Council agreed in principle with the "Statement of the Government of Canada on Indian Policy," in the face of strong opposition from other Native Peoples. That agreed principle was incorporated in the policy statement: "true equality presupposes that the Indian people have the right to full and equal participation in the cultural, social, economic and political life of Canada."

Undergirding the whole of the above, is the demand that, as the inhabitants since time immemorial of the Naas Valley, all plans for resource extraction and "development" must cease until aboriginal title is accepted by the Provincial Government. Also, both

**BC and Canada
must be prepared to
negotiate with the
Nishgas**

on the basis that we are inseparable from our land; that it cannot be bought or sold in exchange for "extinguishing of title."

What we seek is the right to survive as a People and a Culture. This, we believe, can only be accomplished through free, open-minded and just negotiations ... based on the understanding that self-determination is the 'answer' that government seeks to the 'difficulties' as they apply to the Nishga People.

Memorial to Sir Wilfred Laurier, Premier of the Dominion of Canada

From the Chiefs of the Shuswap,
Okanagan and Couteau Tribes of
British Columbia

Presented at Kamloops, B.C.

1910

Dear Sir and Father,

We take this opportunity of your visiting Kamloops to speak a few words to you. We welcome you here, and we are glad we have met you in our country. We want you to be interested in us, and to understand more fully the conditions under which we live. We expect much of you as the head of this great Canadian Nation, and feel confident that you will see that we receive fair and honorable treatment. Our confidence in you has increased since we have noted of late the attitude of your government towards the Indian rights movement of this country and we hope that with your help our wrongs may at last be righted. We speak to you the more freely because you are a member of the white race with whom we first became acquainted, and which we call in our tongue “real whites.”

One hundred years next year they came amongst us here at Kamloops and erected a trading post. After the other whites came to this country in 1858 we differentiated them from the first whites as their manners were so much different, and we applied the term “real whites” to

the latter (viz., the fur-traders of the Northwest and Hudson Bay companies. As the great majority of the companies’ employees were French speaking, the term latterly became applied by us as a designation for the whole French race.) The “real whites” we found were good people. We could depend on their word, and we trusted and respected them. They did not interfere with us nor attempt to break up our tribal organizations, laws, customs. They did not try to force their conceptions of things on us to our harm. Nor did they stop us from catching fish, hunting, etc. They never tried to steal or appropriate our country, nor take our food and life from us. They acknowledged our ownership of the country, and treated our chiefs as men. They were the first to find us in this country. We never asked them to come here, but nevertheless we treated them kindly and hospitably and helped them all we could. They had made themselves (as it were) our guests.

We treated them as such, and then waited to see what they would do.

As we found they did us no harm our friendship with them became lasting. Because of this we have a ‘warm heart to the French at the present day.’ We expect good from Canada.

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

**They said
a very large
reservation
would be staked off
for us,
and the tribal lands
outside of this,
the government
would buy from us
for white settlement.**

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, etc., stone which furnished pipes, utensils, and tools, etc., trees which furnished firewood, materials for houses and utensils, plants, roots, seeds, nuts and berries which grew abundantly and were gathered in their season just the same as the crops on a ranch, and used for food; minerals, shells, etc., which were used for ornament and for plants, etc., water which was free to all. Thus, fire, water, food, clothing and all the necessities 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, and without it the people could not have lived.

Just 52 years ago the other whites came to this country. They found us just the same as the first or “real whites” had found us, only we had

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larger bands of horses, had some cattle, and in many places we cultivated the land. They found us happy, healthy, strong and numerous. Each tribe was still living in its own “house” or in other words on its own “ranch.” No one interfered with our rights or disputed our possession of our own “houses” and “ranches,” viz., our homes and lives. We were friendly and helped these whites also, for had we not learned the first whites had done us no harm? Only when some of them killed us we revenged on them. Then we thought there are some bad ones among them, but surely on the whole they must be good. Besides they are the queen’s people. And we had already heard great things about the queen from the “real whites.” We expected her subjects would do us no harm, but rather improve us by giving us knowledge, and enabling us to do some of the wonderful things they could do. At first they looked only for gold. We know the latter was our property, but as we did not use it much nor need it to live by we did not object to their searching for it. They told us, “Your country is rich and you will be made wealthy by our coming. We wish just to pass over your lands in quest of gold.” Soon they saw the country was good, and some of them made up their minds, to settle it. They commenced to take up pieces of land here and there. They told us they wanted only the use of these pieces of land for a few years, and then would hand them back to us in an improved condition; meanwhile they would give us some of the products they raised for the loan of our land. Thus they commenced to

enter our “houses,” or live on our “ranches.” With us when a person enters our house he becomes our guest, and we must treat him hospitably as long as he shows no hostile intentions. At the same time we expect him to return to us equal treatment for what he receives.

Some of our Chiefs said, “These people wish to be partners with us in our country. We must, therefore, be the same as brothers to them, and live as one family. We will share equally in everything—half and half—in land, water and timber, etc. What is ours will be theirs, and what is theirs will be ours. We will help each other to be great and good.”

The whites made a government in Victoria—perhaps the queen made it. We have heard it stated both ways. Their chiefs dwelt there. At this time they did not deny the Indian tribes owned the whole country and everything in it. They told us we did. We Indians were hopeful. We trusted the whites and waited patiently for their chiefs to declare their intentions toward us and our lands. We knew what had been done in the neighboring states, and we remembered what we had heard about the queen being so good to the Indians and that her laws carried out by her chiefs were always just and better than the American laws. Presently chiefs (government officials, etc.) commenced to visit us, and had talks with some of our chiefs. They told us to have no fear, the queen’s laws would prevail in this country, and everything would be well for the Indians here. They said a very large

reservation would be staked off for us (southern interior tribes) and the tribal lands outside of this reservation the government would buy from us for white settlement. They let us think this would be done soon, and meanwhile until this reserve was set apart, and our lands settled for, they assured us we would have perfect freedom of traveling and camping and the same liberties as from time immemorial to hunt, fish, graze and gather our food supplies where we desired; also that all trails, land, water, timber, etc., would be as free of access to us as formerly. Our chiefs were agreeable to these propositions, so we waited for these treaties to be made, and everything settled. We had never known white chiefs to break their word so we trusted. In the meanwhile white settlement progressed. Our chiefs held us in check. They said, “Do nothing against the whites. Something we did not understand retards them from keeping their promise. They will do the square thing by us in the end.”

What have we received for our good faith, friendliness and patience? Gradually as the whites of this country became more and more powerful, and we less and less powerful, they little by little changed their policy towards us, and commenced to put restrictions on us. Their government or chiefs have taken every advantage of our friendliness, weakness and ignorance to impose on us in every way. They treat us as subjects without any agreement to that effect, and force their laws on us without our consent and irrespective of whether

they are good for us or not. They say they have authority over us. They have broken down our old laws and customs (no matter how good) by which we regulated ourselves. They laugh at our chiefs and brush them aside. Minor affairs amongst ourselves, which do not affect them in the least, and which we can easily settle better than they can, they drag into their courts. They enforce their own laws one way for the rich white man, one way for the poor white, and yet another for the Indian. They have knocked down (the same as) the posts of all the Indian tribes. They say there are no lines, except what they make. They have taken possession of all the Indian country and claim it as their own. Just the same as taking the “house” or “ranch” and, therefore, the life of every Indian tribe into their possession. They have never consulted us in any of these matters, nor made any agreement, “nor” signed “any” papers with us. They ‘have stolen our lands and everything on them’ and continue to use ‘same’ for their ‘own’ purposes. They treat us as less than children and allow us ‘no say’ in anything. They say the Indians know nothing, and own nothing, yet their power and wealth has come from our belongings. The queen’s law which we believe guaranteed us our rights, the B.C. government has trampled underfoot. This is how our guests have treated us—the brothers we received hospitably in our house.

After a time when they saw that our patience might get exhausted and that we might cause trouble if we thought all the land was to be occu-

pied by whites they set aside many small reservations for us here and there over the country. This was their proposal not ours, and we never accepted these reservations as settlement for anything, nor did we sign any papers or make any treaties about same. They thought we would be satisfied with this, but we never have been satisfied and never will be until we get our rights. We thought the setting apart of these reservations was the commencement of some scheme they had evolved for our benefit, and that they would now continue until they had more than fulfilled their promises but although we have waited long we have been disappointed. We have always felt the injustice done us, but we did not know how to obtain redress. We knew it was useless to go to war. What could we do? Even your government at Ottawa, into whose charge we have been handed by the B.C. government, gave us no enlightenment. We had no powerful friends. The Indian agents and Indian office at Victoria appeared to neglect us. Some offers of help in the way of agricultural implements, schools, medical attendance, aid to the aged, etc., from the Indian department were at first refused by many of our chiefs or were never petitioned for, because for a time we thought the Ottawa and Victoria governments were the same as one, and these things would be charged against us and rated as payment for our land, etc. Thus we got along the best way we could and asked for nothing. For a time we did not feel the stealing of our lands, etc., very heavily. As the country was sparsely settled we still had con-

siderable liberty in the way of hunting, fishing, grazing, etc., over by far the most of it. However, owing to increased settlement, etc., in late years this has become changed, and

**we are being more
and more restricted
to our reservations
which in most places
are unfit
or inadequate
to maintain us.**

Except we can get fair play we can see we will go to the wall, and most of us be reduced to beggary or to continuous wage slavery. We have also learned lately that the British Columbia government claims absolute ownership of our reservations, which means that we are practically landless. We only have loan of those reserves in life rent, or at the option of the B.C. government. Thus we find ourselves without any real home in this our own country.

In a petition signed by fourteen of our chiefs and sent to your Indian department, July, 1908, we pointed out the disabilities under which we labor owing to the inadequacy of most of our reservations, some having hardly any good land, others no irrigation water, etc., our limitations re pasture lands for stock owing to fencing of so-called government lands by whites; the severe restrictions put on us lately by the government re hunting and fishing; the depletion of salmon by over-fishing of the whites, and other matters affecting us. In many places

we are debarred from camping, traveling, gathering roots and obtaining wood and water as heretofore. Our people are fined and imprisoned for breaking the game and fish laws and using the same game and fish which we were told would always be ours for food. Gradually we are becoming regarded as trespassers over a large portion of this our country. Our old people say, "How are we to live? If the government takes our food from us they must give us other food in its place."

**Conditions of living
have been thrust on us
which we did not
expect, and which we
consider in great
measure unnecessary
and injurious.**

We have no grudge against the white race as a whole nor against the settlers, but we want to have an equal chance with them of making a living. We welcome them to this country. It is not in most cases their fault. They have taken up and improved and paid for their lands in good faith. It is their government which is to blame by heaping up injustice on us.

But it is also their duty to see their government does right by us, and gives us a square deal. We condemn the whole policy of the B.C. government towards the Indian tribes of this country as utterly unjust, shameful and blundering in every way. We denounce same as being the main cause of the unsat-

isfactory condition of Indian affairs in this country and of animosity and friction with the whites. So long as what we consider justice is withheld from us, so long will dissatisfaction and unrest exist among us, and we will continue to struggle to better ourselves.

For the accomplishment of this end we and other Indian tribes of this country are now uniting and we ask the help of yourself and government in this fight for our rights. We believe it is not the desire nor policy of your government that these conditions should exist.

We demand that our land question be settled, and ask that treaties be made between the government and each of our tribes, in the same manner as accomplished with the Indian tribes of the other provinces of Canada, and in the neighboring parts of the United States.

We desire that every matter of importance to each tribe be a subject of treaty, so we may have a definite understanding with the government on all questions of moment between us and them. In a declaration made last month, and signed by twenty-four of our chiefs (a copy of which has been sent to your Indian department) we have stated our position on these matters.

Now we sincerely hope you will carefully consider everything we have herewith brought before you and that you will recognize the disadvantages we labor under, and the darkness of the outlook for us if these questions are not speedily settled. Hoping you have had a pleasant sojourn in this country, and wishing you a good journey home, we remain

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Yours very sincerely,
The Chiefs of the Shuswap,
Okanagan and Couteau or
Thompson tribes
– *Per their secretary, J.A. Teit*

*In December 2009
the Cooks Ferry Indian Band,
a member community of the
Nlaka'pamux Nation, completed
construction of a memorial
gathering site to honor the
tremendous work of the Interior
Allied Tribes of BC during the
period 1908 – 1922.
The Memorial was constructed
at Nkemcin, on Kumsheen Indian
Reserve #1 at the confluence of the
Nicola and Thompson Rivers.
The year 2010 marked the 100th
anniversary of the meeting of
Chiefs at Spence's Bridge in May
1910, and writing of the Memorial
to Sir Wilfred Laurier there.
The original signatory Nations
and other First Nations attended
to open the memorial Arbour in
ceremony, June 2010.*

Northwest Tribal Treaty

FEBRUARY 11, 1991

We, the Northwest First Nations have occupied and governed our respective territories since time immemorial. The Creator put us on our territories and gave us laws in which to define and govern our relationships with each other and with the animals, plants, lands, waters and air.

We have maintained our spiritual beliefs, our languages, our way of life and traditions. We have done this through intermarriage and the exchange of material and food resources, and shall continue to do so through infinity.

We, the signatories to the Treaty, are of one heart in the advancement and protection of our common interests identified in the following principals:

1) We shall continue to practice our own tribal political system and laws, and we intend these separate jurisdictions to continue.

2) We shall continue to express our sovereignty as Nations.

3) We shall assist each other to reaffirm our continuing Hereditary Title and give expression to our rights; and to defend these rights against any erosion through external forces.

4) We shall collectively join the other First Nations to pursue explicit recognition of aboriginal title in Canada's constitution.

5) We shall continue to enter into bilateral and multilateral relationships with each other to strengthen and assist in settling matters and common concerns regarding our respective cultural identities, traditions, diversity, equality of our peoples, and our common boundaries according to our traditional laws.

6) We shall, in the spirit of sharing and co-existence, continue to enter in mutually beneficial relationships regarding access to traditional territories and natural resources. These include all resources that come from our territories.

We, as represented by the undersigned leaders of the respective First Nations, reaffirm these principles by this Treaty.

Signed by: Tsimshian Nation, Haisla Nation, Wet'suwet'en Nation, Gitksan Nation, Gitanyow Nation, Carrier Sekani Nation, Lake Babine Band.

Nuxalk Nation Position

SEPTEMBER 10, 1995

First of all we, the Nuxalk Nation acknowledge Tatau, The Creator, through Manakays, the Great Spirit, for all that he has provided since the beginning of time and still does today.

We, the Nuxalk Nation, stand in the position of sovereignty against International Forest Products (INTERFOR). We cannot and will never as the Nuxalk Nation compromise this position.

The Sovereignty of the Nuxalk Nation comes from Tatau, the Creator. It is not granted by nor subject to the approval of any other nation.

As the Nuxalk Nation we have the sovereign right to jurisdictional rule within our own territory. Our lands are a sacred gift. The land is provided for the continued use, benefit and enjoyment of our people, the Nuxalkmc, and it is our ultimate obligation to Tatau, the Creator, to care for and protect it.

INTERFOR has continually raped our lands and continues to do so today! Our old villages, hunting grounds, fishing grounds, grave sites and sacred areas are being destroyed. Our fish and animals that we need to feed our peoples are

disappearing. Our food plants, medicinal plants and trees are being trampled on and destroyed, all for the corporate value of the lumber.

We, the Nuxalk Nation, take this stand today and forever to state, "That we are appalled at what INTERFOR has done and is still doing today, to our Nuxalkmc Territory.

...Our territory is ours, the Nuxalkmc, and we have never ceded it to the Canadian or B.C. provincial government.

... So, with this we, the Nuxalk Nation will do whatever we have to within our own traditional Nuxalk jurisdiction to stop INTERFOR from any development on our territory. We do this as our obligation to Tatau, the Creator, and also to ensure that our lands provide for our children, grandchildren, and children yet unborn.

Way!
NUXALK STRONG
NUXALK FOREVER

Confederated Traditional Okanagan-Shuswap Nations Declaration. December 8, 1986

We, the Sovereign Traditional People of the Okanagan and the Shuswap Territories Declare at this time Our Position to be Known Before All People of the World. We Stand Together as one Under Four Hereditary Chiefs: N' kwala; A' turn; N' hum chin; Chil Heetza I. "In their declared relationships with the Royal Crown of England there are three witnesses that the relationship between our Nations and the Royal Majesty continues without diminishment:

The Rising and Setting of the Sun; The Great Waters which continue to Flow through our land on its way to the ocean; The Flying of the Royal Flag of the Imperial Crown. It is our understanding that these would always bear witness to the truth of our Relationship and is now Symbolized in the Royal Coat of Arms of British Columbia granted by King Edward VII in 1906. This is our stated position as it was then and is now.

We Declare that this stated position is Protected and Insured to us through our Four Hereditary Chiefs Agreement with the Crown of England which insured Peaceful Coexistence with our subjects.

The Okanagan Nation and the Shuswap Nation are Sovereign Nations. This originates from the Creator when he placed us on this Island in our Territory; We were

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given instructions under which our people have lived in Health from time untold. These instructions are contained in the Teaching of Coyote. It is through our Values that we live under the instruction of the Creator.

Our values form the foundation of our survival.

Therefore, our first responsibility is to protect our Spirituality. Our People are a Sacred Trust, countless Generations to come will carry the Sacred Trust of our Values from one generation to the next to keep it a living thing.

Therefore, our second responsibility is to protect our Future Generation. Our Culture is a Sacred Trust, the Values carried by Generation of our People are passed through the Language. Customs and Knowledge that we practice in our daily lives.

Therefore, our third Responsibility is to protect our Culture. The Land is a Sacred Trust. Our Knowledge and Customs are Understood and Practiced in our relationship with our land and in that way it Protects and Ensures our survival and, therefore it is the Living Body of our Spirituality. It is our mother nourishing us in all ways; Physical, Spiritual, Mental, and Emotional.

Therefore, our fourth responsibility is to Protect our Land. We hold these truths to be the truths upon which we stand as one.

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.

We have never lost a war with any Nations. No Nation can claim any of our lands by conquest. We have never given consent to join any other Nation of the World. We will never surrender our Right to carry the Instructions and Responsibilities the Creator gave to us. We will never betray our Children. We will never consent to Extinguish Our Sovereignty to any Nation.

We are Declaring Our position before All Nations of the World in Peace as our Four Hereditary Chiefs declared before the Crown of England.

We declare that the Relationship of the Crown of England to the Okanagan and Shuswap Nations was of mutual Respect and Peace with her Subjects, one that Upholds and Protects and Ensures the Sovereignty and any of the above mentioned Rights.

This is Witnessed by the Flag that Continues to Fly over Britain and is Vested in the Royal Promises made to these Four Chiefs that it would remain so as long as the Great Waters continues to Flow and as long as the Flag of Britain continues to fly.

We do not recognize a Relationship with any other Nation of the World, as long as these Witnesses stand.

We shall stand as one behind This Declaration. Only the Crown of England has the Rights to

Changes in its relationships with us only through Meetings and Agreeing with the Hereditary Descendants of those four Chiefs behind whom we stand and rejuvenate the original relationship.

We will never consent to Surrender or Sell our Land. No one has the right to sell what we collectively own. We will continue to Live on and Use Lands in ALL our Territories. We will Live our Spirituality and Share it and Pass it on to ALL who Desire to live it. We will practice our Rights to hunt, fish, pick berries, dig roots, and to use the resources of our lands.

We will Practice our Ways and Teach Our Children our Ways.

We will use Our Language and Protect it. We will care for and Respect each other and Protect each other.

We will Protect our land.

We will continue to live as Sovereign People and Never Surrender under ANY circumstances.

These are Our Rights.

‘Only the Creator could Take away these Rights’

We Speak As One.

Signed Tommy Gregoire (Okanagan-Shuswap), John Terbasket (Similkameen-Okanagan), W.A. Arnouse (Shuswap), William Chilheetza (Okanagan).

Ratified in Good Faith at Alkali Lake.

Okanagan Nation Elders' Position 1982

The Okanagan Nation is a sovereign nation. This originates from the Creator when he placed us on this island in our territory. We were given instructions under which our people have lived in health for nobody knows how many generations. Those instructions are explained in the teachings of Coyote. Our rights are contained in those teachings.

**Those are still
our rights.
Our sovereignty is
still the same.
The only one who can
change that is the one
who made it so.
That is our
understanding of
aboriginal title and
aboriginal rights.**

No other Nation in this world can give us what we already have. Our Nationhood and our sovereignty. When European Nations first encountered North America, there was an agreement signed by the King that obliged them to respect that. That agreement does not set out our sovereignty or our rights. All it does is establish the white peoples' rights in the territories of the various Indian nations. We already have our rights. The

white people need to define what they are doing in our country and how they will act toward our people. That is the basis of treaty-making. It defines white peoples' rights that we will allow them to have.

When the white people came to our territory there was an effort by the Queen's representatives to establish white people's rights that we would allow them to have in our territory. Our people agreed to define for them their rights so there would be no war. The Shuswap and Okanagan jointly agreed to stand together on what they would agree to, as far as what white people's rights were to be.

The agreement they reached was that white people could live in our territory as long as they in no way interfered with our people and the way our people lived. Four Chiefs representing the Okanagan and the Shuswap declared before the English Crown that we were a sovereign people and would always remain so within all of the practices handed down to us and that we would live in peace with the Crown's children in certain campgrounds set out and marked by four corner posts. The other land which white people did not directly live on belongs to our people in all respects of how we practice our sovereignty. If anything was to be removed from the resources then they would have to buy that from us.

That is the declaration that we make now. We cannot change what has been put in place by our Creator under the instructions of our Great Chief Coyote. We can in no way compromise that by being

included within the Constitution of Canada or any other Nation of the world. We have declared this position at the United Nations Non-governmental Organization Conference in Geneva on Aboriginal Rights in September of 1981 and have documented it fully.

We are committed to maintain that before all the other Nations of the world and will pursue to strategize with any other Indian Nation that is committed to the same position. What we need to do now is to make a re-definition of white people's rights because they have not respected the agreements our people defined for them to live in our territory in the first place.

**WE WILL NOT COMPROMISE
BY BEING INCLUDED IN THE
CANADIAN CONSTITUTION.**
We have to put them back in their place at whatever cost.

*Reprinted from
'Ka-Nata – a vision of social
revolution' magazine, Spring, 1982;
'Voice of KANATA Anti-Imperialist
Organizing Committee.'*

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Okanagan Nation Elders Declaration

MARCH 26, 1993

The Okanagan Nation is a sovereign Nation. Our Nationhood, Aboriginal Title and Rights originates from our Creator. The only one that can change that is the one who gave us those rights - our Creator. We, as Okanagan People, stand by the original agreement that was reached through the Royal Proclamation of 1763, whereby we allowed white people to live here so long as they did not interfere with our people, our lands and the way we lived.

**As Elders of the
Okanagan Nation,
we deeply resent
and reject
the governments'
legislative initiatives
to undermine and
extinguish our
Aboriginal Title
and Rights
within our
traditional territory.**

As Elders of the Okanagan Nation, we have an obligation and a responsibility to protect, enhance and preserve our Aboriginal title and rights to our land for our peoples.

The FIRST NATIONS GOVERNANCE RECOGNITION ACT, FIRST NATIONS SELF-GOVERNANCE LEGISLATION, the FIRST NATIONS CHARTERED LAND ACT, the FIRST NATIONS FOREST LANDS AND RESOURCE ACT, the FIRST NATIONS GOVERNMENT FINANCE ACT, FIRST NATIONS GOVERNMENT TAXATION LEGISLATION and the B.C. TREATY COMMISSION PROCESS, will only serve to extinguish our ownership and control of our traditional territories by transferring control to the Provincial Government of British Columbia.

We will not stand idly by and allow your government to undermine our democratic rights. We shall oppose the above-noted proposed legislation and any similar legislative initiatives by whatever means we feel is necessary.

Petition of the Douglas Tribes JULY, 1874

*To the Indian Commissioner for
the Province of British Columbia:*

The petition of the undersigned, Chiefs of Douglas Portage, of Lower Fraser, and of the other tribes on the seashore of the mainland to Bute Inlet, humbly sheweth:

1. That your petitioners view, with a great anxiety, the standing question of the quantity of land to be reserved for the use of each Indian family.

2. That we are fully aware that the Government of Canada has always taken good care of the Indians, and treated them liberally, allowing more than one hundred acres per family; and we have been at a loss to understand the views of the Local Government of British Columbia, in curtailing our land so much as to leave, in many instances, but few acres of land per family.

3. Our hearts have been wounded by the arbitrary way the Local Government of British Columbia have dealt with us in locating and dividing our Reserves. Chamiel, ten miles below Hope, is allowed 488 acres of good land for the use of twenty families: at the rate of 24 acres per family; Popkum, eighteen miles below Hope, is allowed 369 acres of good land for the use of their families: at the rate of 90 acres per family; Cheam, twenty miles below Hope, is allowed 375 acres of bad, dry and mountainous land for the use of

twenty-seven families: at the rate of 13 acres per family; Yuk-Yuk-y-yoose, on Chilliwack River, with a population of seven families, is allowed 42 acres: 5 acres per family; Sumass, at the junction of Sumass River and Fraser, with a population of seventeen families, is allowed 43 acres of meadow for their hay, and 32 acres of dry land; Keatsy, numbering more than one hundred inhabitants, is allowed 108 acres of land.

**Langley and Hope
have not yet got land
secured to them,
and white men
are encroaching
on them on all sides.**

4. For many years we have been complaining of the land left us being too small. We have laid our complaints before Government officials nearest to us; they sent us to some others; so we had no redress up to the present; and we have felt like men trampled on, and are commencing to believe that the aim of the white men is to exterminate us as soon as they can, although we have always been quiet, obedient, kind and friendly to the whites.

5. Discouragement and depression have come upon our people. Many of them have given up the cultivation of land, because our gardens have not been protected against the encroachment of the whites. Some of our best men have been deprived of the land they had broken and cultivated with long

and hard labour, a white man enclosing it in his claim, and no compensation given.

Some of our most enterprising men have lost part of their cattle, because white men had taken the place where those cattle were grazing, and no other place left but the thickly timbered land, where they die fast. Some of our people are now obliged to cut rushes along the bank of the river with their knives during winter to feed their cattle.

6. We are now obliged to clear heavy timbered land, all prairies having been taken from us by white men. We see our white neighbours cultivate wheat, peas, &c., and raise large stocks of cattle on our pasture lands, and we are giving them our money to buy the flour manufactured from the wheat they have grown on the same prairies.

...Therefore your petitioners humbly pray that you may take this our petition into consideration and see that justice be done us, and allow each family the quantity of land we ask for.

And your petitioners, as in duty bound, will ever pray.

(Signed) Peter Ayesik,
Chief of Hope,
And 109 others.

Save the Fraser Declaration

Gathering of Nations ~
Protecting Our Watershed
from Oil
2013

We the undersigned Indigenous Nations of the Fraser River watershed declare:

We have inhabited and governed our territories within the Fraser watershed, according to our laws and traditions, since time immemorial.

**Our relationship
with the watershed
is ancient and
profound,
and our inherent
Title and Rights
and legal authority
over these lands
and waters
have never been
relinquished
through treaty or war.**

Water is life, for our peoples and for all living things that depend on it. The Fraser River and its tributaries are our lifeline.

A threat to the Fraser and its headwaters is a threat to all who depend on its health. We will not allow our fish, animals, plants, people and ways of life to be placed at risk. We have come together to

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defend these lands and waters from a grave threat: the Enbridge Northern Gateway Pipelines project. This project which would link the Tar Sands to Asia through our territories and the headwaters of this great river, and the federal process to approve it, violate our laws, traditions, values and our inherent rights as Indigenous Peoples under international law. We are united to exercise our inherent Title, Rights, and responsibility to ourselves, our ancestors, our descendants and to the people of the world, to defend these lands and waters. Our laws require that we do this.

Therefore, in upholding our ancestral laws, Title, Rights and responsibilities, we declare:

We will not allow the proposed Enbridge Northern Gateway Pipelines, or similar Tar Sands projects, to cross our lands, territories and watersheds, or the ocean migration routes of Fraser River salmon.

We are adamant and resolved in this declaration, made according to our Indigenous laws and authority. We call on all who would place our lands and waters at risk – we have suffered enough, we will protect our watersheds, and we will not tolerate this great threat to us all and to all future generations.

Declared at T'exelc, Secwepemc Territory, and Vancouver, Coast Salish Territories
Signed, 48 First Nations or Indian Bands within the Fraser watershed; and signed as witness in support by 30 Bands and Nations from the coast.

Declaration of Secwepemc Sovereignty 1983

Secwepemc Chiefs and Representatives, collectively the only spokespersons for Secwepemc, declare that on this day, January 17, 1983, we reaffirm our sovereignty over our traditional territory.

We follow the path of our Elders and our Forefathers in standing firm for our sovereignty over our territory

**so that the future
generations of our
children will also
have what has been
handed down to us
by our Creator.**

Today through this Declaration we ensure that Secwepemc sovereignty over our territory comes from the past, to the present and forever on into the future.

We have governed, managed,

controlled, developed, protected and defended our territory since time immemorial. We have never abandoned our territory or sold it. We have never conceded our sovereignty by agreement or by conquest to any other nation.

We declare our sovereignty over all our lands, waters, air and all their resources in the Interior of what is now known as British Columbia, the land generally speaking that lays between latitude 50degrees, 30 minutes and 53degrees north, from the Fraser River area to the Rocky Mountains. We will work arm in arm with Secwepemc and other peoples who are willing to support our mandate which is to affirm our sovereignty over our traditional territory.

We, Secwepemc, will work towards self-reliance on the basis of co-operation.

We declare our support in the struggle for self-determination and independence of Indigenous and Third World Nations.

Sinixt Slhu7kiri

**Perry Ridge Wilderness
Preserve, Slocan Valley**

We the Sinixt Nation, also known as the Arrow Lake Indians, declare that

**Perry's Ridge
is within the
traditional territory
of the
Sinixt Peoples
and holds special
ecological
and cultural heritage
significance.**

From this time forward the Sinixt decree Perry's Ridge to be maintained and protected as:

Sinixt Slhu7kiri - Perry Ridge Wilderness Preserve

Sinixt interests have remained unchanged and the Sinixt have continued to demonstrate concern and responsibility for water quality, landscape and community safety as well as protection for ecological integrity and cultural values of traditionally used lands and water.

The Sinixt Slhu7kin - Perry Ridge Wilderness Preserve would be a wilderness co-managed area with no industrial development, where wildfire suppression is allowed for community safety purposes.

The Sinixt invite your support.

House of Nlaka'pamux c. 1880

One post up the Fraser at (Fountain) - one down the Fraser at Spuzzum - one up the Thompson River at Ashcroft - one up the Nicola River at Quilchena - one down the Similkameen River at Tcutcuwixa (near Hedley). All the country between these posts is my country and the lands of my people.

At Lytton is my centre-post. It is the middle of my house, and I sit there. All the country to the headwaters of all the streams running into the valleys between these posts is also my territory in which my children gather food. We extend to meet the boundaries of the hunting territories of other tribes.

**All around
over this country
I have spoken of,
I have jurisdiction.**

I know no white man's boundaries or posts. If the whites have put up posts and divided my country, I do not recognize them. They have not consulted me. They have broken my house without my consent. All Indian tribes have the same as posts and recognized boundaries, and the chiefs know them since long before the first whites came to the country.

*Head Chief David Spintlum
(1812 - 87) gave this description
of Nlaka'pamux territory
to an ethnographer.*

Declaration of the Tahltan Tribe 1910

We, the undersigned members of the Tahltan tribe, speaking for ourselves, and our entire tribe, hereby make known to all whom it may concern, that we have heard of the Indian Rights movement among the Indian tribes of the Coast, and of the southern interior of B.C.. Also we have read the Declaration made by the chiefs of the southern interior tribes at Spences Bridge on the 16th July last, and we hereby declare our complete agreement with the demands of same, and with the position taken by the said chiefs, and their people on all the questions stated in the said Declaration, and we furthermore make known that it is our desire and intention to join with them in the fight for our mutual rights, and that we will assist in the furtherance of this object in every way we can, until such time as all these matters of moment to us are finally settled. We further declare as follows:—

Firstly— We claim the sovereign right to all the country of our tribe—this country of ours which we have held intact from the encroachments of other tribes, from time immemorial, at the cost of our own blood. We have done this because our lives depended on our country. We have never treated with them, nor given them any such title. (We have only lately learned the B.C. government makes this claim, and that it has for long considered as its property all the territories of the Indian tribes in B.C.)

Declarations

Secondly- We desire that a part of our country, consisting of one or more large areas (to be erected by us), be retained by us for our own use, said lands and all thereon to be acknowledged by the government as our absolute property. The rest of our tribal land we are willing to relinquish to the B.C. government for adequate compensation.

Third-

**We wish it known
that a small portion
of our lands
at the mouth of the
Tahltan river,
was set apart a few
years ago as an
Indian reservation.
These few acres are
the only reservation
made for our tribe.
We may state we
never applied for the
reservation of this
piece of land,
and we had no
knowledge why the
government set it
apart for us,
nor do we know yet.**

Fourthly- We desire that all questions regarding our lands, hunting, fishing, etc., and every matter concerning our welfare, be settled by

treaty between us and the Dominion and B.C. governments.

Fifthly— We are of the opinion it will be better for ourselves, also better for the governments and all concerned, if these treaties are made with us at a very early date, so all friction, and misunderstanding between us and the whites may be avoided, for we hear lately much talk of white settlement in the region, and the building of railways, etc., in the near future.

Signed at Telegraph Creek, B.C., this eighteenth day of October, nineteen hundred and ten, by Nanok, Chief of the Tahltans Nastulta, alias Little Jackson George Assadza, Kenetl, alias Big Jackson and eighty other members of the tribe

Nemiah Wilderness Preserve

AUGUST 23, 1989

Let it be known that:
Within the Nemiah Aboriginal Wilderness Preserve:
There shall be no commercial logging. Only local cutting of trees for our own needs. i.e. firewood, housing, fencing, native uses, etc.

**There shall be
no mining or
mining explorations.
There shall be no
commercial road
building.**

All-terrain vehicles and skidoos shall only be permitted for trapping purposes.

There shall be no flooding or dam construction on Chilko, Taseko, and Tatlayoko Lakes.

This is the spiritual and economic homeland of our people. We will continue in perpetuity:

To have and exercise our traditional rights of hunting, fishing, trapping, gathering, and natural resources. To carry on our traditional ranching way of life. To practice our traditional native medicine, religion, sacred, and spiritual ways.

In 2015, this Declaration was affirmed and enacted by Xení Gwetin and Tsilhqot'in Nation as the law governing the Declared Title and Rights Area.

Xwe-nal-mewx Declaration

(Coast Salish)

c.1981

We know the Creator put us here. We know our Creator gave us laws that govern all our relationships to live in harmony with nature and mankind; defined our rights and responsibilities; we have the right to govern ourselves and the right to self-determination. Our rights and responsibilities cannot be altered or taken away by any other nation.

We have our spiritual beliefs, our languages, our culture, and a place on Mother Earth which provides us with all our needs.

We have maintained our freedom, our language and our traditions from time immemorial.

We continue to exercise our rights, fulfilling the responsibilities and obligations given to us by the Creator for the land upon which we were placed.

We openly and publicly declare and affirm to the people, the governments of Canada and British Columbia:

That the Xwe-nal-mewx have held and still hold Aboriginal title to all lands, waters and resources within our traditional territories.

That the Xwe-nal-mewx have never reached any agreement or treaty with the government of Canada, Britain and British Columbia concerning the occupation, settlement, sovereignty or jurisdiction over our land, except for those treaties entered into with the British government prior to confederation.

We declare and affirm our inalienable right of Aboriginal title

and Aboriginal rights to the land, the mountains, the minerals, the trees, the lakes, the rivers, the streams, the air and other resources to our land.

**We declare
that our Aboriginal
title and our rights
have existed from
time immemorial,
exists
at the present time,
and shall exist
for all future time.**

We declare unto ourselves the Sovereignty that is inherent in our Nations.

Haida Statement of Claim

**NOVEMBER 14, 2002;
SUSPENDED AND RE-FILED,
SEPTEMBER 2025**

*In the Supreme Court of British
Columbia,
Between: The Council of the
Haida Nation and
Her Majesty the Queen in right of
British Columbia and Canada*

The Haida Nation are Indigenous Peoples, whose territory relative to Canada's interests is Haida Gwaii, "Islands of the People", also known as the "Queen Charlotte Islands", which includes the land, inland waters, seabed, archipelagic waters, air space, and everything contained thereon and therein comprising Haida Gwaii.

Without the consent of the Haida Nation, and contrary to the principles and accepted practices of the British Crown reflected in the Royal Proclamation of 1763, the British Crown claimed Title and the right to colonize Haida Gwaii.

The Defendants are the successors to the British Crown.

Declarations

Qat'muk Declaration

NOVEMBER 15, 2010

Ktunaxa Nation
Executive Council

We, the Ktunaxa, have lived in our territory since time immemorial and have a deep spiritual connection to the animal world and, in particular, to the grizzly bear. Qat'muk is a very special place where Kławła Tukłutakʔis, the Grizzly Bear Spirit, was born, goes to heal itself, and returns to the spirit world.

The Grizzly Bear Spirit is an important source of guidance, strength, protection and spirituality for the Ktunaxa. Qat'muk's importance for the Grizzly Bear Spirit is inextricably interlinked with its importance for living grizzly bears now and in the future. The Ktunaxa have a duty to the Grizzly Bear Spirit and Qat'muk.

...Qat'muk includes the entirety of the Toby-Jumbo watershed and the uppermost parts of the South Fork Glacier Creek, Horsethief Creek and Farnham Creek watersheds;

...ʔaknumuɕtitit is our word for the law given to the Ktunaxa by the Creator.

**The law of the land,
ʔaknumuɕtitit,
is the law for survival**

The law protects the values inherent in the land. The land gives us the resources to survive, and in return, we uphold our covenant with the Creator to protect and not overuse the land.

T'akú Tlatsini

*Places that make us strong
Declaration.*

2023

We are the T'akú River Tlingit. Our relationship to our territory is sacred, and over millennia it has made us who we are. The T'akú River has always taken care of us as we take care of it - the T'akú is our promise to future generations.

Tlingit law affirms our responsibility to protect and care for the T'akú, and all that live and thrive there, and through reciprocity, the T'akú supports us as healthy Tlingit, today and forever into the future. We are strong partly because our lands and waters depend upon us; stewarding our lands and waters is an essential part of being Tlingit and of Lingít Kusteeyí.

"It is our responsibility to pass on healthy land so that the Tlingit remain healthy and survive forever. Therefore, we have a responsibility to pass Tlingit Laws which shall protect our Traditional Territory and way of life." – Taku River Tlingit Constitution

We declare the T'akú Tlatsini Indigenous Protected and Conserved Area, according to Tlingit law. T'akú IPCA includes all lands that bear waters flowing into the T'akú River.

This Declaration is an invitation to other governments and to interested parties to support and witness us in developing a sustainable and resilient future for the T'akú, a future that respects the global significance of the T'akú watershed and our inherited rights and responsibilities as Taku River

Tlingit, including to sustain ourselves and Lingít Kusteeyí today and forever.

With this Declaration:

**We call on
British Columbia
and Canada
to align Crown laws,
works and decisions
in the T'akú
with Tlingit law
and to recognize the
Taku River Tlingit
as decision-makers
in our territory.**

This is a duty that the Crown bears according to its own legal and constitutional obligations to recognize our inherited rights and title.

We invite other governments with interest in the T'akú to support and witness us in ensuring a thriving and abundant shared future that provides for all who cherish and rely upon this mighty watershed.

"It is the land from which we came that connects all life. Our land is our lifeblood. Our land looks after us, and we look after our land. Anything that happens to Tlingit land affects us and our culture.

"As Tlingit, we accept that we are part of and responsible for our land. Everything that is part of the land has life and spirit. Thus, we respect, protect and preserve all life and land."

– Taku River Tlingit Constitution

We have developed a fair, responsible and respectful mapped vision for the Area, that represents generations of knowledge and decades of work. The T'akú IPCA protects critical landscapes while providing for a diversified economic future. It includes protecting 60% of the T'akú watershed including our salmon rivers and spawning areas, and landscapes needed for wildlife, for clean water, and for Lingít Kusteeyí. These landscapes are appropriate for a diversity of non-extractive developments ...

The Taku IPCA provides opportunities for respectful mineral and other development in specially managed landscapes covering 40% of the T'akú watershed. These specially managed areas include vast landscapes of the highest mineral potential.

...We are using our laws and inherent jurisdiction to protect and conserve the T'akú waterways and landscapes essential for salmon, wildlife, and Lingít Kusteeyí to thrive today and forever.

We will not consent to disrespectful developments that cause lasting impacts... These threats build on generations of harm caused to our people and our lands through Crown government(s).. that tried to erase Tlingit law and culture and reap the riches of our territory without our consent. ...We have no where else to go; THIS IS OUR HOMELAND!!!"

– *We make this Declaration
as Taku River Tlingit Leadership
Council and Clan Leaders.*

“Douglas Treaties”

1850-54

In December 1849, the Hudson's Bay Company authorized James Douglas to make land purchases from the Indigenous.

In a memo August 16, 1850, HBC Secretary Barclay sent:

“...the form of Contract or Deed of Conveyance to be used when lands are to be surrendered to the Company by the Native Tribes. It is a copy with hardly any alteration of the Agreement drafted by the New Zealand Company in their transactions of a similar Kind with the natives there. The Lands retained you will enter in the Register Book...”

Each treaty around Victoria, Saanich, Nanaimo, and Fort Rupert included the same declaration:

Know all men, we, the chiefs and people of the family of [Tribal name], who have signed our names and made our marks to this deed on [this date] do consent to surrender, entirely and forever, to James Douglas, the agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same, the whole of the lands situate and lying between[description of lands]...

The condition of our understanding of this sale is this, that our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us; and the land shall be properly surveyed, hereafter. It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people forever; it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.

We have received, as payment, [amount in pounds sterling].

In token whereof, we have signed our names and made our marks, at [location],

(Signed) *X marks*

Declarations

Wuikinuxv

(Oweekeno, Rivers Inlet)

1913

We want to get the whole of Rivers Inlet, from Quay to the land—Oweekeno Lake. The white men want to take all our land and we are in the position of men who have been pushed half way to the water off our land, and it would not take much to push us off the land into the deep water altogether.

Sometimes I go round in the timber and see a post; sometimes we get inside the post [government survey markers]. And then they come and take our logs. I think that all this is our land and we should not be afraid to take logs anywhere.

In the old time the Lord put our fathers here among these mountains and trees. He also put the salmon there for their food.

Wherever these Government posts are now we cannot work, and that is not good according to our mind. We are very despairing. We have heard that the Government will take land and sell it, but we don't want to sell our land here, but we would like a yearly rental for it.

All these canneries round here should pay us a rental for the use of the land. Did the Government sell this land to the canneries? That is what we want know. All this land is ours and we want to reserve it for our children.

Chief Joseph Chamberlain to the Royal Commission on Indian Affairs, held at Rivers Inlet, Saturday, August 16th, 1913.

Wet'suwet'en and Gitksan Head Chiefs

Closing statement on the last day of trial in the *Delgamuukw* case, at BC Supreme Court.

MAY 14, 1990

“We, the Gitksan and Wet'suwet'en people, are in the court to state the truth of the ownership and jurisdiction we exercise over our territories.

“Three years have passed since we made our opening statements to this court, at that time you did not know who Delgamuukw and Gisdaywa were. Now, this court knows I am Gisdaywa, a Wet'suwet'en Chief who has responsibility for the House of Kaiyexwaniits of the Gitdumden.

I have explained how my House holds the Biiwenii Ben Territory and had the privilege of showing it to you. Long ago my ancestors encountered the spirit of that Land and accepted the responsibility to care for it. In return, the Land has fed the House Members and those whom the Chiefs permitted to harvest its resources. Those who have obeyed the laws of respect and balance have prospered there.”

“I am Delgamuukw, the third since this trial started. I also have obligations to my House and the Territories of my House.

“You have heard oral histories of the Gitksan and Wet'suwet'en that tell of the many groups that migrated into our Territories. Many stayed, contributing to our culture, acknowledging the authority of our chiefs and obeying our laws.

“Of all these groups, only the

Europeans failed to recognize our ownership and jurisdiction. This court now has an opportunity to redress this situation.”

We, the Hereditary Chiefs, decided against wearing blankets and regalia in this courtroom because we believe that our authority would not be respected by the government lawyers. Under our law, disrespect for people and for their territory requires compensation.

“We, the Gitksan and Wet'suwet'en, must be compensated for loss of the Land's present integrity and for the loss of economic rents.

We ask that the court, not only acknowledge our ownership and jurisdiction over the Land, but to restore it to a form adequate for Nature to heal in terms of restoration. We would like to see clearcuts and plantations returned to forests, contaminated rivers and lakes returned to their original pristine state, reservoirs of drowned forests returned to living lakes and life-sustaining flows to diverted rivers.

“We realize that the true financial value of this compensation for restoration would bankrupt both the federal and provincial governments. Compensation must remain an ongoing obligation of the federal and provincial governments “Until Our hearts are satisfied.”

However, this compensation should not be viewed by this court as an alternative to the acknowledgement of our ownership and jurisdiction of our Land. We do not want financial compensation without the recognition of our

authority over our Territories.

**We are asking you
to make declarations
on Gitksan and
Wet'suwet'en
Aboriginal Title.
We own our Lands.
I will identify
areas where the
powers of the
province and the
federal governments
need to be restrained
in order for us
to exercise our
responsibilities under
Aboriginal Title.**

First, we the Chiefs must have our authority recognized in order to exercise our responsibility to protect the Land for the future, and to conserve resources. We must have the power to manage all human activity that bring change to the Land, Air or Water on all of our territories.

Second, to enable each House to provide for its members and all those living in their Territory, the Chiefs must have control over the local economy by managing natural resource allocations within their Territories. This would include licensing, leasing, and permitting. As well, royalties and taxation payments from resource use on our Territories must be paid to us.

It is not our intention to exert any

powers over the non-Gitksan and Wet'suwet'en people living in our Territories. Fee-simple lands held by third parties as of October, 1984, would be exempt from this resource allocation.

We see the pulling back of these central government powers as being the minimum required to restore not only individual self-reliance but also community self-reliance. We have presented you with ample evidence of the effects on our Land resulting from government resource management. We have also given evidence of the effect that centralized economic management and government welfare has had on our people. The governments' system does not work. We, the Hereditary Chiefs, believe we can change the situation under our laws and practices through our authority.

Our system of government is as powerful today and will be as powerful tomorrow, as it was one hundred or ten thousand years ago. You have heard both ancient and modern histories tell of how our system has remained relevant through the evolving ecological, cultural and economic circumstances in which our people have found themselves. To say we disobey our laws and ignore our Chiefs' authority because we change a piece of technology, or use our Land in a different way, is a desperate argument.

This case then is about learning from the past so we can repair the present and pass on a healthier Land to our grandchildren. It is not about retrieving frozen rights from a nineteenth century ice-box.

Our Aboriginal Title is found in common law and takes precedence over the provincial crown. We do not have to, and will not, surrender our Aboriginal Title in order to be recognized by the federal government. We are self-governing.

However, we see a layering of responsibilities among the Gitksan and Wet'suwet'en, the federal government, and the provincial government being resolved in an ongoing series of negotiations. Given the strong imperative for the, Gitksan and Wet'suwet'en, British Columbia and Canada have social and economic activities continue within our Territories, consensus on the necessary political and administrative framework must be found.

We are asking this court to properly apply common law. We want a declaration of recognition and affirmation of our continued ownership and jurisdiction. We will not surrender or diminish our Title and rights. We do not request a "right" to use and occupy the Land, and we refuse extended Reserve Lands. We will decide what our future relationship will be with Canada and British Columbia on that basis.

We ask nothing more than what should have occurred prior to Confederation, and prior to this province entering Confederation. We are here to right the wrongs that have been occurring for over one hundred years. This court has the power to recognize and affirm Gitksan and Wetsuwet'en ownership and jurisdiction.

Declarations

Treaty 8 (Dene)

Remarks from, "As Long As This Land Shall Last"

"What was said at the first treaty was really good according to what was promised and the Chief Lefoin was quite a man in his own right and his demands were listened and adhered to." – Angelique Landry.

"Then Conroy took the pencil and said "Touch the pencil." Lefoin said: "I wouldn't touch the pencil unless you bring Bishop Breynet here, and what I say, and what you say will be all on the paper and Bishop Breynet will keep one and you take a copy." Conroy took the pencil again and he said "Touch the pencil and sign," and he said "no." So then Conroy took the pencil and he said, "While the sun rises on the east and sets in the west, and the Mackenzie River flows, nothing will be changed, it will be comfortable here, it will make you happy." - Victor Lafferty.

"No paper or manuscript was given to us, just straight talk . . . : The chief never got a copy. The treaty commissioner must have it. Even had the Chief got a copy he would not know what to do with it, we did not even know how to read. The chief only got a medal... [in 1922]." - Jean Marie Sabourin.

"So when the restrictions [game laws] came up, the papers were asked for by the Indians and there were no papers to speak of. So to this day there are no original treaty papers to go by." - Michel Landry.

Squamish 2004

Statement from: *Squamish Nation et al v. The Minister of Sustainable Resource Management et al*, 2004 BCSC 1320.

G.McDade and J. Tate, of counsel.

FACTS

[9] The Squamish Nation ... has four reserves in the urban areas of North and West Vancouver, and 18 reserves outside of the metropolitan area, in the Squamish Valley and Howe Sound.

[10] The asserted aboriginal title over Squamish traditional territory includes the lands within the watersheds draining into Burrard Inlet west of Indian Arm, and lands within the watersheds draining into Howe Sound, including the Squamish Valley to the height of land separating the Howe Sound drainage from the Lillooet drainage (the “Traditional Territory”).

[11] Within that traditional territory Mount Garibaldi is an area of cultural and sacred significance. In Squamish Nation history, Mount Garibaldi is known as the harbour of the Squamish Nation during the Great Flood, and therefore is the point of origin of the modern Squamish Nation. The Squamish Nation claims it has exclusively occupied and owned the Mount Garibaldi area under its laws since time immemorial. Mount Garibaldi is regarded with great reverence.

[12] The Squamish people, both traditionally and presently, use the lands along Brohm Ridge for a

variety of purposes including hunting, trapping, medicinal and spiritual practices.

[13] The Squamish Nation’s claims to title to the Mount Garibaldi area is well documented. Squamish people have used the Brohm Ridge area for at least 4,000 years.

[14] The Squamish Nation has repeatedly asserted aboriginal rights and title to its traditional territory, including Mount Garibaldi and the Brohm Ridge area. It is presently at Stage 3 of the 6-stage Treaty process with both the Provincial and Federal Crowns. The Treaty Commission accepted the Squamish Nation’s Statement of Intent on December 16, 1993.

[15] The Squamish Nation has also produced the Xay Temixw Land Use Plan which designates the Brohm Ridge/Mount Garibaldi area as a “Sensitive Area” where special care must be taken to protect the sacred cultural values which exist there. This area is in the heart of the Squamish territory and is not subject to any significant overlap with other First Nations.

Clayoquot Declaration APRIL 21, 1984

Let it be known as of April 21, 1984, we the Clayoquot Band, do declare Meares Island a Tribal Park.

(1) Total preservation of Meares Island based on TITLE and survival of our Native way of life.

(2) Preserve Meares Island – as the island is an ECONOMIC base of our people to harvest natural unspoiled Native foods, including all:

- a. sea foods and shellfish
- b. protect our traditional hunting rights of deer and water fowl, etc.
- c. protect the right of our elders to continue the gathering of their Indian medicines.
- d. protect the right of Native artists to continue the gathering of their needs. Cedar bark, cedar for canoes, and paddles, and masks. etc.

(3) Protection of all salmon streams on the Island.

(4) Protection of all Herring spawning areas around the Island.

(5) Protection of all traplines.

(6) Protection of all sacred burial sites on Meares.

The Native people are prepared to share Meares Island with non-Natives, providing that you adhere to the Laws of our Fore Fathers; which were always there. On these bases, we recognize your needs for:

(1) a. Watershed, as they already have in place their water system on

Means Island.

b. Hunting of water fowl in Lemmens Inlet.

c. Existing mariculture leases. We would reserve the right to process any further development, be it watershed or further mariculture leases.

(2) We would permit access to the Island for Recreational purposes — hiking, camping, fishing, whale watching, gathering restricted amounts of seafoods and shellfish.

(3) Recognize our Land Claims and that there be no resources removed from Meares Island excluding watershed.

Signed by:

George Frank (Hereditary Chief).
Alex Frank Sr. (Hereditary Chief)
and the

CLAYOQUOT BAND COUNCIL

*The 1984 Declaration
was reaffirmed in 2014 at the
establishment of a Tribal Park.*

Declaration of Indian Rights

National Indian Brotherhood

NOVEMBER 18, 1981

We, the Original Peoples of this Land, know that the Creator put us here. The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind. The Laws of the Creator defined our rights and responsibilities. The Creator gave us our spiritual beliefs, our Languages, our culture, and a place on Mother Earth which provided us with all our needs. The Creator has given the right to govern ourselves and the right to self-determination.

Any amendments to the constitution of Canada in relation to any constitutional matters which affect the Aboriginal peoples, including the identification or definition of the rights of any of those peoples, shall be made only with the consent of the governing Council, Grand Council or Assembly of the Aboriginal peoples affected by such amendment, identification or definition.

A Treaty and Aboriginal Rights Protection Office shall be established; A declaration that Indian Governmental powers and responsibilities exist as a permanent, integral fact in the Canadian polity.

Formal acceptance and confirmation of all aboriginal,

Declarations

treaty and other rights and freedoms recognised by the Royal Proclamation of 7th October 1763 and recognised and confirmed by

1. the various treaties made between the Crown and nations or tribes of Indians; and

2. the various settlements and agreements made or entered into by the Crown with Indian peoples, including declarations and judgments accepted by Indian peoples.

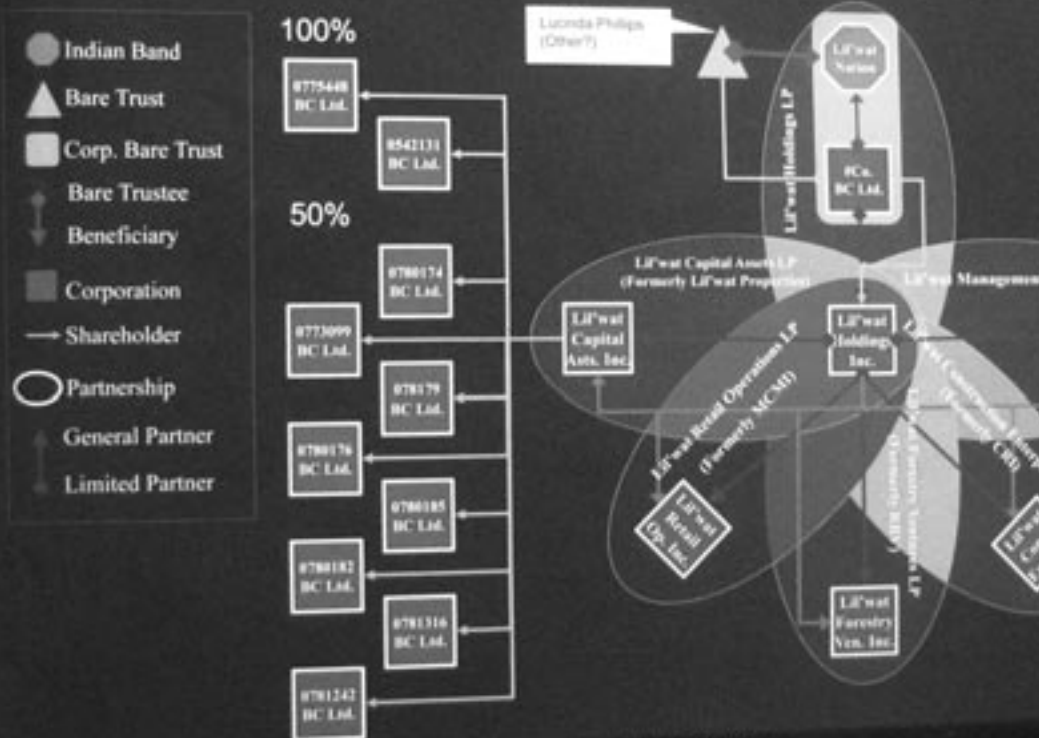
3. Formal recognition of the inherent right to Indian government within the Canadian confederation

This Declaration fused Indigenous opposition, coast-to-coast-to-coast, to the patriation of a Canadian Constitution that would give Canada the power to amend its own constitution, without guarantee by Britain and without consultation with Indigenous Peoples, under a federal government that had expressed its highest intentions towards Indigenous Peoples in the white paper policy of 1969.

It was provided to the British Parliament as a measure of desperation.

Neither the UK Parliament nor the House of Lords prevented the Canada Act - which they had been requested by Canada's Parliament to pass. Strenuous debate in both, in February and March of 1982, as well as several proposed amendments to the Canada Act, did not succeed in augmenting the Bill, proposed by Canada, and British lawmakers passed the Act and relinquished all constitutional powers over Canada.

Recommended Structure



RATCLIFF & COMPANY
LAWYERS



A Brief Summary

***of the results
of lawfare
in BC***

***“...the
First Nation’s
Aboriginal
rights are
released
in favour of
the rights
defined in the
Agreement...”***

A Brief Summary of the results of lawfare in British Columbia.

The reality of continuing Native Title

became impossible for Canada to ignore, not only because of the BC court ruling in *White and Bob 1964*, and not only because of the three judges in *Calder 1973*, but because of Native blockades and disruption of provincial development.

By the 1970s it was already one hundred years since the crown had broken all its promises.

The government response to the courts and the land occupations has been to delay, deny, distract, divide, and drown-out the processes of restoration, compensation and restitution which are demanded by the situation.

The government deals most effectively in duress: refusing to allow the expression of rights – the use of the resources or actions of jurisdiction and self-government – until a First Nation surrenders their own ancestral rights *and* assimilates in the system defined by Canada, in order to benefit by the agreement.

They call this “recognition and reconciliation.”

Although a few BC politicians tried to promote land claims settlements in the 1980s and 90s by saying it would be cheaper for the province to settle earlier than later, the overall mechanisms of denial have proved them wrong. The cost of fighting to prevent hearings of title and rights from taking place at all, fighting the few cases that survived pre-trial motions to dismiss them, makes up a small fraction of the profits gained by private companies since then. Decades later, most of every penny at work in the BC economy still comes directly from the land.

Working hand-in-glove with private law firms and public-relations experts, the BC government is sometimes hard to distinguish from the private interests, or “innocent third parties,” it protects. It is the private, corporate, and individual settler interests which depend on the denial of Aboriginal rights to make them profitable: free land; cheap stumpage; little or no accountability for environmental destruction; and a Supreme Court which shields the right of the Province to infringe Aboriginal rights for the purpose of its settlement,

industrial development, and resource-based economy.

With these tactics, the governments coerce Indigenous Peoples to extinguish – as a matter of policy – whatever piecemeal right is recognized in law. The court’s response has been to protect the Province’s interests by delay. So the executive branch and the judicial branch act as two wings on one rapacious bird.

The courts uphold decisions of The Minister. The courts put the interests of the “broader society” ahead of Indigenous Peoples. “Consultation” and “accommodation” are the only material expressions of government recognition. The only recourse from the result of consultation and accommodation is to go back to court, where the inevitable result is to go back into negotiations with the same government. And the government “interprets” court rulings to its own advantage.

This Summary provides examples of how it is done, since Indigenous Peoples did not disappear but survive to fight for their future.

~

In 1951, the *Indian Act* was amended and laws that prohibited lawyers from working for Indian Bands were repealed.

It was many years before this change was known to Indigenous People. The Canadian government did not exactly have lines of communication to Indian Bands in BC. Moreover, the Indian Agents, Game

Summary



White and Bob, with Maisie Hurley (center) on the front page of the Victoria Daily Colonist. March 6, 1964. 1964

Wardens, Priests, and officers of the courts liked their jobs and did not relay pertinent information.

By 1964, the fourteen Douglas Treaties had been denied for 110 years before the first one had its day in court – over hunting, which was explicitly preserved to the Saalequin (now Nanaimo).

Mrs. Maisie Hurley was key to the legal team that defended White and Bob in 1964.

Her daughter Kitty Sparrow recalled that time, in a 1996 interview about present-day cases.

This is my whole argument, that the onus is on the court to prove that that's not Indian land, and that they have no right to just assume it. But that's not going to happen, so therefore the Indians have to prove that it's their land, which is backwards.

It wasn't until I went back over an old case of my mother's, in 1964, the *White and Bob* case in Victoria – which they won,

then it was appealed and won. It was based on the Proclamation of 1763. Swencisky was the judge.

They were charged with hunting deer out of season. That was the first case Thomas Berger ever won. He was my mother's protegee.

What happened was that in my father's office, well, this game warden kept arresting Indians for hunting deer, and throwing them in Oakalla prison. My mother was fighting them on it. She got Berger, just out of law school then, to go and take this case up. She gave him all the historical background and everything.

My mother...was dying; she died that year. She wanted me to take her over in an ambulance to Victoria to hear the appeal on that. I took her over there (for the trial decision), and the Indians carried her up, she was in a wheelchair. The reasons for

judgement went on for a long time. Half-way through, you could see the judge was in favour of the Indians. The game warden was sitting next to me and when he saw the jig was up, he got up to go and my mother stuck her chin out and she said, "You bastard, get back there and learn something!"

They won that appeal. The arguments are still valid. That's a precedent. ...Before you go for sovereignty of the land, you've got to prove that the land is Indian. And that's my point: why do the Indians have to prove that when the colonialists don't?

In 1965, *White and Bob* forced the Supreme Court of Canada to recognize the Douglas Treaty – at least theirs, which was only one of fourteen.

It also forced the Supreme Court to reveal itself for what it was: a political force that could mute the legal process by simply saying, "we do not need to hear you," as regards the 1763 Proclamation and their own proof of title, and leave the question of Native Title in the breeze. This is described in the Case Summaries section.

This case was of crucial importance, among many hunting cases that involved treaty rights across Canada, and especially as it concerned Native land rights in competition with the claims of BC, where no comprehensive treaties were made. No treaties, that is, unless you include "Treaty 8", which had been so thoroughly abandoned and broken by Canada that the Peoples rejected it as such

by the 1920s, refusing treaty payments, refusing to abide by its terms, and taking action in protest.

However, their case was followed by five years of federal promises of a BC Claims Commission – which never materialized.

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In 1967, the Nisga'a title case was launched: *Calder v. The Queen*.

Months before the October 1969 ruling in *Calder*, in BC Supreme Court, the 1969 “White Paper Policy” or the Statement of the Government of Canada on Indian Policy, was made. It pre-empted whatever the ruling would be, by providing a blanket of government intention to assimilate and “wind up” Native affairs altogether.

That first ruling in *Calder* was brutal. It said that if Aboriginal titles or rights had ever existed, then they were extinguished by the presence of the crown and the fact that it legislated over the land in total denial of any other interests – therefore there can be no other interests.

The ruling did not deter the Union of BC Indian Chiefs – which had coalesced under the threat of the White Paper Policy. In 1971, they delivered their *Claim Based on Native Title to the Lands Now Forming British Columbia and the Waters Contained Therein or Adjacent Thereto*. It was a proposal to settle outstanding land disputes by compensation for stolen lands and recognition of those lands, per

nation, which they would choose to keep as their own.

Ottawa never responded.

The Nisga'a appealed the 1969 ruling. Four years later, the Supreme Court of Canada again provided a political solution to avoid a ruling on the matter of Native title, by giving a split ruling that was only decided on a procedural matter – not the matter of title.

But, for the first time, the SCC gave extensive written reasons in favour of continuing native title. These were provided by three of the judges, while the other three reasoned that all title and rights had been extinguished, as Justice Gould had done in BC. The seventh judge, under the influence of the Prime Minister, provided the procedural complaint that decided the case: BC had not agreed to be sued – a requirement that was waived by the trial judge – and therefore the case was improperly before the court.

After *Calder*, the fiat requirement of consent was overturned. It did not revitalize the case.

After the 1973 *Calder* ruling, demands for a full bench of the Supreme Court to conduct a reference case on its question of unextinguished Native title were refused. It was a political refusal, by Canada.

This time the federal government did produce a Claims commission – but the only result of any agreement made under it would produce the results described in the 1969 policy: extinguishment of rights in exchange for money, and occasionally small lands.

Prime Minister Pierre Trudeau said, “I guess you have more rights than we thought, when we did the white paper.” A few months after that, DIA Minister Jean Chretien made a Statement on Native Claims in Parliament, announcing that the government would accept Aboriginal claims for negotiation and settlement.

The Office of Native Claims was established, along with the Policy of the Government of Canada on Comprehensive Claims. The extinguishment policy – once it was revealed for what it was during negotiations – proved unacceptable to Indigenous Peoples. The Claims process provided money to Indian Bands for research, however, and created the appearance of progress for the public.

It did not create any appearances for Indigenous Peoples. The Province of British Columbia refused to engage in the Claims process, and openly admitted as much by the following year.

But in the summer of 1974, a young Secwepemc Chief took the meaning of Aboriginal title to the street. Denial of Aboriginal rights had created a displaced army of Native people with no land, no house, and no prospects. At Two Springs on the Bonaparte Reserve, the people shut down the highway and charged a toll. They armed themselves in defense of what they reasonably assumed might be a brutal invasion in response.

On several occasions over the next month, the highway was tolled and the statement of demands –

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starting with reparations in the form of promised housing on-reserves – were released at media conference. The blockade eventually resulted in a peaceful conclusion, with removal of barriers and a promise to meet the Minister. In order to ensure the meeting, the Native Peoples Caravan proceeded from Vancouver to Ottawa.

The fact that no charges were laid was a good out-of-court admission of the strength of the *Calder* decision.

In April 1975, all the Indian Band members of the Union of BC Indian Chiefs voted unanimously to reject all government funds. Barely any of it was reaching them, anyway, as the money went to a new white-collar industry of modern Indian Agents: Band administrators, consultants, other agencies and industries that delivered the ear-marked funding, and lawyers. The refusal of funds – all funds to Indian Bands, including social welfare, housing, and administration – visibly underlined a rejection of colonialism.

At that time, assumptions of jurisdiction over Indigenous Peoples and their natural wealth; the grinding, manufactured Native poverty – amid exponential non-native expansion, development, and resource extraction, were seen for what they were.

One of the many types of actions that followed was the occupation of Indian Affairs (DIA) offices, City Halls, and Band offices. In May and June 1975, there were at least thirteen blockades of public highways, logging roads, public works

yards, DIA offices, and a rail line.

The 1975 Rejection of Funds lasted until 1976. A pivotal moment among Indigenous leadership was at hand: an attempt at political unification between the Indian Bands, all but the Nisga'a represented by the Union of BC Indian Chiefs, and the now-majority of their people off-reserve, in the BC Association of Non-Status Indians.

For a year, the BCANSI and UBCIC were at their own table, hammering out a colony-proof reorganization of their politics, defining their own citizenship in defiance of the Indian Registrar and the *Indian Act*. In Comox, April 1976, at a summit meeting with a thousand people in attendance, the amalgamation failed.

In the intervening months between the August Rejection of Funds, there was the winter and the Department's annual deadline for renewal of funding. Some of the Indian Band Chiefs had been forced to retreat to DIA for financial aid. The unofficial federal criteria for re-application was to withdraw support from the new political union of on- and off-reserve Status and Non-Status Indians.

*

One of the results of the Supreme Court of Canada's refusal to decide on the Native title question in *Calder*, and the subsequent refusal of a reference decision on the case, was chaos in courtrooms. It was a chaos that compounded the SCC's change of heart in the *White and Bob* case, where they first gave the

province of British Columbia direct leave to appeal in Fall 1964 – then in March of 1965 they refused to hear the Native Respondents at all, partially confirming the trial judge's decision and leaving unaddressed the question of whether an Aboriginal right to hunt was protected by the 1763 *Royal Proclamation* – or if the right was protected by Native title. It was a question of urgency that defies overstatement, for the Indigenous Peoples.

Other cases followed *Calder* immediately to advance Aboriginal title on the ground. They were not allowed to proceed. Chief Paulette and sixteen other Chiefs, representing the Indigenous Peoples of the Northwest Territories, tried to register a caveat against the sale of crown lands, pending resolution of Aboriginal title interests. The clerk at the Lands Office refused. *Paulette v The Queen* ensued, and a NWT court decided to let their application stand. But the Attorney General of Canada sued and pursued Justice Morrow personally, refusing him the right to ever sit on that case again, and separately dealt with "Aboriginal land title" by concluding Paulette's case in 1977: Aboriginal rights cannot be registered as a caveat against crown land.

BC courts then spent decades producing contradictory rulings: some based on Justice Gould's 1969 ruling in *Calder*; some relying on Justice Norris in *White and Bob*; some quoting from SCC judges in the 1973 *Calder* ruling; and others doing their own research

and relying on whatever legal principles they found to suit their purposes.

In the BC courts, dozens of judges applied various combinations of rulings, yielding a veritable kaleidoscope of moving potential targets for Indigenous plaintiffs to aim for. What may have been a viable argument at the outset of litigation, or direct action, has sometimes been decided with great prejudice elsewhere by the time of trial and deliberation.

For example, between 1967 and 1979, the BC courts' decisions on Aboriginal rights were reversed three times. In 1968, in Squamish, Discon and Baker were told that without a treaty there were no Aboriginal rights. In the Okanagan in 1976, Derriksan was told that Aboriginal rights to hunt and fish are not subject to provincial regulation. In 1977, also in Okanagan, Kruger and Manuel were told that any Aboriginal rights not protected by treaty were subject to provincial regulation. In 1978, in Tsilhqot'in, Mr. Haines was acquitted for hunting without a license because the judge investigated the situation and decided the provincial wildlife officials "sought to deny and extinguish the hunting rights of the Chilcotin people" by always withholding licenses to Indians, so no one bothered to apply for a license anymore. In 1979, in Cowichan, the judge in *Jack* said that Aboriginal rights are constitutionally protected, but – as the fisherman's lawyer conceded – those rights are subject to government regulation. Mr. Jack was convicted for food fishing.



Chief Mackenzie (Ken) Basil (right) stands between the barricaded road through Two Springs, Highway 12, and RCMP. At left, Ed Burnstick (American Indian Movement) stands by with his rifle.

When the roadblock eventually achieved more progress than even the Calder case, and after meeting DIA Minister Buchanan in Ottawa, in October, Chief Basil stated to media reporters "It has been proven that the only way to create positive change is for there to be an armed confrontation, so I predict there will be a lot more armed confrontations in the future."

Image: Kamloops News, September 4, 1974, "Cool heads avoid clash between police, Indians."

For the same period, the 1974 Comprehensive Claims process went on for almost twenty years,

engaging *almost every* Tribal Council in BC. Only one of the submitted claims was not accepted: that of the Musqueam. The Musqueam People, known to the settlers of BC since Simon Fraser,

hold unextinguished title to what is today Vancouver.

It produced none of the predicted results of land claims settlements, with two minor exceptions: for self government in exchange for quit-claims at Sechelt in 1986, and for oil and gas business at Fort Nelson, in Bill C-26, the Fort Nelson Oil and Mineral Revenues Sharing Act. During that

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The Native Peoples Caravan arrives in Ottawa, Parliament Hill. Caravanistas were pushed into police by fully equipped riot squads – and then assaulted and arrested. Image: The Province newspaper, Vancouver, October 1, 1974, front page, “The action was outside the House,” accompanied by the caption “Indians and their sympathizers clash with RCMP riot squad on Parliament Hill Monday after a peaceful demonstration turned to violence.”

period, resource extraction continued at an increasing pace – nearly one hundred percent of the BC economy.

The Nisga’a began negotiations with the federal government in 1976.

BC’s response to the Nisga’a claim in *Calder*, however, had been uncategorical:

1. B.C. does not recognize aboriginal title.

2. BC relies on the decisions of the Supreme Court of B.C. and the B.C. Court of Appeal in *Calder*.

3. If Canada considers that Native title in B.C. was not extinguished prior to confederation with

Canada in 1871, and that there is a cloud on the provincial title to lands, it is entirely a federal responsibility to extinguish native title.

4. If Canada wishes to negotiate the provision of lands and resources in a claim settlement, it should first negotiate with B.C. to acquire lands and resources.

Although the Province never released such a succinct statement as this, these tenets repeatedly formed their arguments in court and their communications with the federal government.

The province was able to maintain their position for another twenty years without judicial

contradiction from the Supreme Court of Canada, and without interference by the federal government.

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On the ground, realities of the Indigenous situation did not permit such delays.

The federal government had devolved certain Ministerial duties to the Province of BC, among them the right to use social workers and police to enforce a provincial Act for child and family welfare. The “60s Scoop” ensued.

In 1980, people were dedicated to retrieving the children that continued to be apprehended for “neglect” – which could mean wearing a dirty band-aid, in a case successfully won by Harry Rankin – and the seized children who made up the vast majority of children in state “care.”

Ahead of the Indian Child

Caravan, this statement by Chief Wayne Christian of Spallumcheen (Splatsin), Secwepemc, was published in *Indian World*, July 1980:

The little people of the Indian world are the most vital resource to our survival as the first people. Our children will carry on the traditions and our fight for a just land claims settlement with the non-Indian governments. It is time that we as Indian people stopped talking about 'a future for our children,' and started to protect our children. The Provincial Government of B.C. literally stole 100 children from our community. The Department of Human Resources by the non-Indian values determined that our children were being neglected and abused. Since when is it a crime for grandparents, aunts, and uncles to care for their relations' children while their parents are off working to support the family? The number of Indian children taken by apprehension in this province is so high that I believe we have lost one generation to the white world. The provincial government has committed an act of genocide by forcing our children to live in the non-Indian society. We, the people of the Spallumcheen Indian Band, are challenging the provincial jurisdiction on our lands. We are taking the provincial government to court, to assert the fact that it is our right to care for our children, not the right of a non-Indian government. We have codified an Indian law that has



Indian Child Caravan, Thanksgiving weekend 1980. Photo: UBCIC archive.

existed since the creation of our Indian world. We are going to fight for our right to our children.

The Indian Child Caravan aimed to confront the BC Minister. Joined by thousands on its way to Vancouver, Thanksgiving weekend of 1980, the movement concluded on the front lawn of the Minister, where demonstrators demanded an interview.

This movement culminated in the first and only approval of an Indian Band bylaw pertaining to children. The Band had won, out of court, but only the one Band. The Minister was heard to say, "There will never be another Spallumcheen." And there wasn't.

~

In 1982, the Canadian Constitution was patriated.

It "affirms existing Aboriginal and treaty rights."

The courts, politicians, and bureaucrats have ever since refused to know what those are.

The expectation of section 35 and the First Ministers Conference was very real for Indigenous Peoples, if not for Canadians. Months after the event, people of Ohiaht (Huu-ay-aht) went to court to stop development of an important clam bed, pending the results of the con-

stitutional Conference. They thought the “Aboriginal rights” mentioned in the new constitution would be elaborated and defined; they based their application for an injunction on this:

Constitution Act, 1982.

PART II - RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed ...

PART IV - CONSTITUTIONAL CONFERENCE

37. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force. (2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item ...

PART VII - GENERAL

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of

no force or effect.

The judge did not share their optimism, which led them to take action:

The respondents Dunsmore have applied to the minister under the Land Act, R.S.B.C. 1979, c. 214, to grant a licence to use the foreshore of that beach for the purpose of using it as an experimental area for commercial clam production through artificial feeding. Such use, the petitioners say, would prevent the band members from using the beach as they always have and would interfere with their traditional form of conservation, i.e., never taking so many clams as to deplete the stocks. The right to use the beach in that way is asserted to be an aboriginal right within the meaning of s. 35(1) of the Constitution, which the petitioners expect will be identified and defined by the conference to be held pursuant to s. 37 and thus will, beyond question, then be protected by the Constitution.

That anticipated protection has not materialized, 40 years later. As the judge in the Peters case pointed out, “the wording of s. 37(2), which requires only that the conference to be convened within one year of April 1982 shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples including the identification and definition of the rights “to be included in the Constitution of Canada”. So, it is said, nothing need be done except convene a

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conference. The conference need not complete its work within any particular time or reach any conclusion. Even if there is a consensus or agreement by the requisite number of first ministers, that would merely be a basis for a possible future amendment of the constitution.”

Just prior to the 1982 Canada Act, Treaty nations sued the Secretary of State

and Britain for the attempt to pass off their treaty obligations to Canada. At that hearing, Lord Denning M.R. defended the crown’s division and the “crown in right of Canada” to take over treaties, but also spoke to the promise of S.35:

It seems to me that the Canada Bill itself does all that can be done to protect the rights and freedoms of the aboriginal peoples of Canada. It entrenches them as part of the constitution, so that they cannot be diminished or reduced except by the prescribed procedure and by the prescribed majorities. In addition, it provides for a conference at the highest level to be held so as to settle exactly what their rights are. That is most important, for they are very ill-defined at the moment.

Neither the Indigenous nations nor the United Kingdom’s Parliamentarians and Lords had confidence that the *Canada Bill 1981* would protect unsundered land rights and rights to self-determination.

The Union of BC Indian Chiefs launched the Constitution Express, joined by thousands along the way to Ottawa, then UN headquarters in

New York City, and then in London, England and the Russell Tribunal and even Belgium. They did not accept crown sovereignty and the UK's right to devolve its treaty promises, effectively to a new country made out of unsundered Indian land.

British politicians tried to amend the Bill. Their opinion did not carry the day, but their arguments were never answered by those who championed the Canadian constitution. Apparently, the only reason that Bill passed was because of a "political reality" – meaning cheap exports of fish, minerals, food, and lumber from half of North America.

~

In 1981, the Musqueam were the only People to be rejected

from the Comprehensive Claims Process in BC. Every other claim was accepted, but the Musqueam traditional territory included the whole of the City of Vancouver.

The 1984 Supreme Court of Canada ruling in *Guerin*, Musqueam, was the first instance of Canadian courts recognizing a duty to consult Indian interests. It was, at the same time, entirely prejudicial:

Indians have a legal right to occupy and possess certain lands, the ultimate title to which is in the Crown.

While their interest does not, strictly speaking, amount to beneficial ownership, neither is its nature completely exhausted

“The Canadian Parliament did not do justice to the native peoples of Canada. Nowhere is that more obvious than in the shameful section 35.

The section is an ambiguous and inadequate solution to the historical and widespread erosion of Canadian aboriginal rights, which include rights of land entitlement, rights to mineral resources on and under the surface and rights to have their aboriginal and treaty obligations fulfilled. These rights have been largely trampled upon and ignored in the long and tragic history of the North American Indians.”

- Mr Bruce George, Member of Parliament, United Kingdom, House of Commons, February 23, 1982, discussing the “Canada Bill” to pass the Canadian Constitution Act.

UK, HC, “*Aboriginal Rights Commission*,” vol 18 (1982)

by the concept of a personal right. It is true that the *sui generis* interest which the Indians have in the land is personal in the sense that it cannot be transferred to a grantee, but it is also true, as will presently appear, that the interest gives rise upon surrender to a distinctive fiduciary obligation on the part of the Crown to deal with the land for the benefit of the surrendering Indians.

These two aspects of Indian title go together, since the Crown's original purpose in declaring the Indians' interest to be inalienable otherwise than to the Crown was to facilitate the Crown's ability to represent the

Indians in dealings with third parties.

The nature of the Indians' interest is therefore best characterized by its general inalienability, coupled with the fact that the Crown is under an obligation to deal with the land on the Indians' behalf when the interest is surrendered.

Any description of Indian title which goes beyond these two features is both unnecessary and potentially misleading.

The circumstances of the case are worth remembering.

In 1958, the Musqueam people surrendered 162 acres of their valuable – and minimal – Indian reserve lands in order to have the Indian

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The Select Committee on Aborigines 1867 said, in effect,

“Do not transfer power to the provinces because that would be disaster.”

It said that the aboriginal problem ...is not a trust that could conveniently be confined to local legislatures.

The way that provinces have responded on the patriation debate over the past two years confirms our predecessors’ analysis of almost 150 years ago.

The Indians will get little from the provinces and slightly more, but not much, from the Federal Government.

Can one hope that the Indians will receive a little more from the courts?

They can expect very little; an analysis of court judgments shows a long history of powerlessness on aboriginal rights such as hunting and fishing and on treaties.

The Canadian Parliament has rendered the judiciary almost powerless to protect Indian rights.

- Mr J. Enoch Powell, Member of Parliament, United Kingdom, House of Commons, February 23, 1982, discussing the “Canada Bill” to pass the Canadian Constitution Act.

UK, HC, “*Aboriginal Rights Commission*,” vol 18 (1982)

Agent lease it on their behalf. The Agent, however, changed the terms of the lease in finalizing an agreement with the Shaughnessy Golf Club, including the rent, without their knowledge.

Musqueam’s Chief, Delbert Guerin, looked into it.

Kitty Sparrow remembered:

Well they [documents confirming government promises] were being hidden for years. I’ll give you an example. Delbert Guerin and the Musqueam. He would go around to Doug Saunders, Louise Mandell, everybody, to sue for the fraudulent deal with the Musqueam and the golf course, and they said there’s no chance. He asked for the papers from the D.I.A. and they said they were burnt; and then someone said they were in Ottawa. They hid them from him for years. Then he met some chap from the D.I.A. who was very sympathetic to the Indian cause, and they sneaked into the basement of the DIA and they smuggled the papers out.

The smuggled papers contained the terms of the original lease, and the terms reached by the Indian Agent in favour of the Shaughnessy Golf Club. These formed the basis of the legal action.

The case was originally filed in 1975, a few years after Musqueam’s elected Council finally got access, after repeated refusals, to the lease agreement that was made on their behalf. The changes to the terms included a lower lease fee; a cap on rent increase when the lease would come up for renewal; and

the right of the Golf Club to remove whatever structures or improvements they made to the lands.

As the SCC summarized it, “In this case the Band surrendered the land to the Crown for lease on certain specified terms. The trial judge found as a fact that such a lease was impossible to obtain. The Crown’s duty at that point was to go back to the Band, consult with it, and obtain further instructions. Instead of doing that it went ahead and leased the land on unauthorized terms.”

Musqueam won the first case in 1979 and was awarded \$10 million in damages, along with the following judicial recognition:

The Indians’ interest in their land is a pre-existing legal right not created by the Royal Proclamation of 1763...

The government appealed, taking the position that the Indian Act forms a political obligation to Indigenous peoples generally – not a legal obligation; and that the conditions of the reserve surrender did not form a trustee relationship. It is critical to note that the Musqueam were specifically denied legal counsel to assist with negotiating the surrender and the lease, and they were denied access to the final lease agreement for almost the full 15-year period before the lease would come up for renewal. That is, the government controlled the transaction from start to finish, acting as the Band’s advisor, agent, legal enabler, and trustee, refusing access to any other independent agent.

The Federal Court of Appeal

“...until this Bill is passed, any change in the constitution affecting the Native Peoples’ rights is our responsibility.

Let there be no doubt about that.

The rights to which the native peoples of Canada are entitled are set out in the International Covenant of Civil and Political Rights, which has been ratified by the United Kingdom and by Canada.

...the provisions of section 35 are inadequate for the protection of Canada’s native peoples and are inconsistent with the provisions of the covenant. Parliament has an obligation, which the United Kingdom accepted under the covenant, to ensure that the provisions of any law which we have the power to enact are consistent with the covenant.

Mr. J. Enoch Powell, MP UK HC (*as above*)

decided in favour of the government and overturned the 1979 decision, stating “the surrender did not create a true trust and does not afford a basis for liability based on a breach of trust.”

At this stage, the Musqueam people appealed to the Supreme Court of Canada, represented in the action by Chief Delbert Guerin and their elected Councillors. The SCC reinstated the Federal Court decision made by Judge Collier in 1979, including the \$10 million award for loss and damage.

At least as important as the financial compensation was the judicial recognition of the federal government’s fiduciary obligation

to Indigenous Peoples, and the duty to consult with them when making decisions that affect their interests.

Chief Delbert Guerin’s son, Victor Guerin, remarked on the 1984 case in 2024. He said,

The recognition by the court that the crown did us wrong is the most obvious thing, but, to me, the more important aspect of the decision was the comment from Justice Collier that he recognized we have Indigenous title to our lands. Not only to reserve lands, but to our territory – and that title is not something that is conferred by the crown, or by the Proclamation of 1763. It pre-

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exists and underlies crown title and it has been in existence since time immemorial.

That judge awarded \$10million in compensation for the lease. He lived in this area and dad would run into him sometimes. Just after the lease was renewed, sometime into the second 15-year lease, my dad saw him again. Collier said to dad that the \$10m figure was a “global” figure, that he awarded on his beliefs that the Golf Club would leave the lands. If he had known that the Golf Club wouldn’t leave the lands, he told my dad, he would have awarded some thing in the area of \$180million.

At the time the lease was initiated, Musqueam had no electricity, no running water, no trash collection. My dad, Delbert, used to have to pack water to where his grandparents lived, at about Marine Drive and Kullahun Drive. He took his buckets up to Dunbar and 41st area, about twenty city blocks away.

People used to get their water from the wells here. But when the city started developing up the hill from us, that contaminated our well-water. We couldn’t use well-water for anything but laundry after that.

With that court case, what they talked about was making decisions to better things for the next generation, and for generations to come.

There’s a great deal of reluctance on the part of the crown to recognize Indigenous title. The courts are not supposed to take a partisan viewpoint and accept

any pressure from other parties but they find ways to do so without creating the appearance of bias. They find ways to cover up their bias and make it look as if they are impartial, but they really are not.

On that subject, the Indian Agent, Anfield, was a member of the Anglican Church up the road from here; along with several members of the Board of the Shaughnessy Golf Club.

It would be twenty years before the courts recognized that Indigenous Peoples’ interests went far beyond reserve lands, and “consultation” was required for all of it, in *Haida 2004*.

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In 1984, *Moses Martin v. The Queen*

was the next time Aboriginal title was the cause in a suit.

The Nuuchahnulth at Meares Island successfully blocked logging, winning a temporary court injunction against logging, based on the balance of convenience to their rights – among other environmental concerns and significant public support for the Meares Island preservation campaign.

One of the five judges in the BC Court of Appeal remarked, in the reasons for granting the injunction against logging Meares Island, “There is a problem about tenure that has not been attended to in the past. We are being asked to ignore the problem as [the province of British Columbia has] ignored it. I am not willing to do that.”

“The fact that there is an issue between the Indians and the province based on Aboriginal claims should not come as a surprise to anyone. Those claims have been advanced by the Indians for many years. They were advanced in *Calder* and half the court thought they had some substance... I think it is fair to say that, in the end, the public anticipates that the claims will be resolved by negotiations and by settlement. This judicial proceeding is but a small part of the whole process which will ultimately find its solutions in a reasonable exchange between governments and the Indian nations.” – Macfarlane, J.

The *Martin* case was eventually adjourned, with consent of the Nuuchahnulth, and MacMillan Bloedel’s appeal against people physically blocking the landing of logging equipment on the island, “MacMillan Bloedel v. Mullin,” was dismissed with a temporary logging injunction. The court again avoided addressing the title component of the original suit, while two of the five judges sided with the logging company on the basis that if Native rights were later proved, a question of compensation for the logging could proceed.

The province’s right to license that logging, in the Meares case, came under question. BC and MacMillan Bloedel both fought the requested injunction together. BC had a lot to prove: that it had the right to “dispose of crown land” in such ways.

How did it argue this right? In the Statement of Defense of Her Majesty The Queen, July 8, 1985, the crown in right of BC’s explana-

tions for the validity of their activities were as follows:

“26. That the totality of effective legislative power in Canada is conferred by the “Constitution Act, 1867” (and particularly sections 91 and 92 thereof) upon or in the Parliament of Canada and the Legislature of the Provinces and that, if the Plaintiffs or their ancestors ever had jurisdiction to make laws for or having effect in any part or parts of what is now the Province of British Columbia, which is not admitted, that jurisdiction did not exist in British Columbia prior to and ceased to exist in British Columbia when the British Columbia Terms of Union came into force in 1871.

“27. That if the Plaintiffs or their ancestors, or the Indian Tribes or Indian Nations which they allegedly represent, ever had aboriginal title or rights over any part or parts of Meares Island, which is not admitted, the same was voluntarily given up to the Crown in right of British Columbia by requesting that, out of the lands in the territory outside those already set aside as Indian reserves, additional lands be set aside as Indian reserves and accepting the lands that were set aside accordingly.

“28. That it is a basic principle of the laws of England that the ultimate title (which is sometimes called the allodial title or *plenum dominium*) rests in the Sovereign, and that, if the ancestors of the Plaintiffs formerly owned Meares Island or any part or parts thereof, such right or title (if any) as they



Chief Moses Martin of Tla-o-quiaht (Clayoquot) tells MacMillan-Bloedel loggers the island is his people's garden and not to cut the trees, 1984. Photo by Friends of Clayoquot Sound, in a Western Canada Wilderness Committee flyer.

individually or in any combination may have held in or to Meares Island or part or parts thereof was extinguished by the bringing of the laws of England into force in and over Meares Island by the following:

The Imperial Letters Patent dated 13th January 1849, granting Vancouver Island to Hudson's Bay Company.

The Imperial Letters Patent dated 16th July 1849, appointing Richard Blanshard Governor of Vancouver's Island and the Instructions that accompanied them.

The Imperial Statute 12 and 13 Victoria c. 48, being an Act to provide for the Administration of

Justice in Vancouver's Island.

The Imperial Letters Patent dated 16th May 1850 appointing James Douglas Governor of Vancouver's Island and the Instructions that accompanied them.

The Ordinance of the Colony of Vancouver's Island made on 19th December 1860 being an act for confirming Titles from the Hudson's Bay Company.

The proclamation, issued on 19th February 1861, by James Douglas, Governor of Vancouver Island and its Dependencies, providing for the pre-emption by settlers of unsold Crown Lands in certain districts of the said Colony.

The proclamation, issued on 21st

March 1861, by the said Governor extending the provisions of the proclamation to the whole of the Colony.

The proclamation issued on 6th September 1862, by the said Governor providing for changes in the method of pre-emption of Crown Lands in the Colony.

The Imperial Statute 28 and 29 Victoria c. 63 being an Act to remove Doubts as to the validity of Colonial laws.

The Imperial Statute 29 and 30 Vict., c. 67, enacted on 6th August, 1866 and being an Act for the union of the Colony of Vancouver Island with the Colony of British Columbia.

The Union Proclamation, 1866 made by Frederick Seymour, Governor of the Colony of British Columbia, on 17th November, 1866.

The English law Ordinance, 1867, being an ordinance of the United Colony of British Columbia and being numbered 70, that was enacted on 6th March, 1867.

Chapter 103 of the Consolidated Statutes of British Columbia published pursuant to the Consolidated Statutes Act, 1867.

The British North America Act, 1867 (now the Constitution Act, 1867).

Reconveyance of Vancouver Island from the Governor and the Company of Adventurer's of England trading into Hudson's Bay to the Queen, April 3, 1867.

The Terms of Union, 1871 admitting the Colony of British Columbia into the Dominion of Canada.

Section 2 of Chapter 69 of the Consolidated Acts of British Columbia, 1888 and the corresponding

provisions in subsequent Revised Statutes of the Province, the latest of which is section 2 of the Law and Equity Act, RSBC 1979, c. 224 and by the ordinance and proclamations listed in paragraph 29 hereof.

29. That if an aboriginal title or right could be established by the Plaintiffs through use and occupation from time immemorial or otherwise, that title and any rights alleged to appertain thereto, including the right to use, possess, harvest, manage and conserve the forests within Meares Island, were reduced, diminished or extinguished by the Colony and Province of British Columbia through the making or enactment of laws of general application and the following ordinances and proclamations..."

of which there were seven, dating between 1858 and 1861.

In this way, the Province defended provincial forest licensing from the claims to title of Chief Moses Martin of the Tla-o-quiath (Clayoquot) and Chief Corbett George of the Ahousaht people, at the heart of their Nuuchahnulth territory on Meares Island.

The Clayoquot memory and connection to the area – evidence of inter-development and mutuality between the people and the land – was bottomless. The Crown's claim to the area was nothing more than a list of proclamations and ordinances made by foreigners who had never even heard of the place. 37 proclamations and ordinances, to be precise.

Summary

Of those pieces of paper, eleven were self-defeating as evidence of land rights, because they pre-dated the colonial government's pleas for British money to buy Indigenous land titles in 1861.

Five of the papers had become the subject of wholesale mobilizations of the Allied Tribes, whose leadership traveled from the west coast to Ottawa to petition the federal government against adopting the provincial requests.

The seven proclamations, 1858 to 1861, were not referenced by the UK's Secretary when it refused the request of the Legislative Assembly of Vancouver Island in 1861 for additional funds to buy land to settle. Apparently the Members of the Legislative Assembly didn't think they were adequate, either, or they might have realized that all the land already belonged to the crown and they would have had no need to purchase any. But that was not true.

All of the province's papers as evidence fail the *Royal Proclamation 1763* constitutional test of showing land purchased for the Crown: there is no other way for the Crown to acquire the Indigenous land titles and accompanying jurisdiction.

In an irony that further attempted to bend logic, the provincial crown included in its defense that it relied on Section 52 of the brand new Canadian Constitution.

S.52 provides: "the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

At that moment, and today, most

of BC legislation is made uncertain by that exact section because the 1982 *Constitution Act* confirms the 1763 *Proclamation* of King George and its protection of Indian lands from trespass by colonial Subjects, until such time as the land is purchased from willing Indigenous sellers for the crown.

The Crown argued, in 1985, that *any* title or rights Chief Martin or any of his people ever may have had to *any* part of Meares Island had been released when the Bands lived on the Indian Reserves demarcated for them and accepted additional lands to those reserved areas later. That is the opposite of what the Indian Reserve Commissioners told the Peoples in 1871 and 73, and in 1913-14 when they were laying out those reserves.

40 years later, the crown continues to try to legitimize the Indian reserve process in exactly the same way: by adding lands to existing reserves. In the last five years, nearly a dozen First Nations have accepted additions to reserve lands, as Interim Treaty Benefits, Reconciliation Agreements, and Settlement Agreements. In court, the crown relies on the procedure as evidence of Indigenous consent to the Indian reserve solution to the Indian land question.

In the case of Martin, the Nuuchah-nulth won an injunction against logging at Meares Island, and their title question was set aside in an adjournment.

A few days later in July 1985, in the Statement of Defense of Her Majesty The Queen, July 12, 1985, the

crown in right of BC's Response to the action in *Delgam Uukw* (as it was titled then) was virtually identical, minus references to Vancouver Island.

The Province of British Columbia opened a Ministry of Native Affairs in 1988.

Twenty years later, BC would amend its statement of defense in a new title case brought by the Nuuchah-nulth to say that the Province did not know their Nation existed as such.

The Nootka crisis of 1790 between the British and the Spanish had been resolved at the Nuuchah-nulth retreat of Friendly Cove, where British explorers made copious notes of the Indigenous national borders.

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The trial of Musqueam fisherman Ronald Sparrow.

Martin was overlapped by the *Sparrow* case.

In June of 1984, Ronald Sparrow of Musqueam was detained by Fisheries officers at the mouth of the Fraser River.

The DFO spent several days observing the Native fishing going on there, and rehearsed several scenarios ahead of laying charges. In the end, they arrested several fishermen.

Mr. Sparrow was selected for further prosecution and charged with fishing with a net larger than the *Fisheries Act* allows. Sparrow, with the support of his entire community and elected Council, was

assisted with a legal defense as the case was important to everyone. The intention of that defense was understood to be the distinction of his right to fish with any net, and that his fishing rights were outside the powers of government legislation to regulate; that he had an Aboriginal right protected in the Constitution Act 1982.

In pretrial motions, now his legal counsel agreed with the crown prosecution that conservation was a higher legal objective than Aboriginal rights. The government's right to regulate fisheries was conceded by Sparrow's legal team.

The significance of this concession was taken up by Chief Joe Matthias of Squamish during the 1986 General Assembly of the BC Aboriginal Peoples' Fisheries Commission.

With at least eighty Chiefs in attendance from every part of the river and a lot of the coast, and another hundred and twenty people in essential Elders and mentors, fisheries Watchmen and essential Staff, Sparrow's case was the subject of scrutiny, worry, financial support, and moral solidarity.

Matthias spoke to the legal problem of conceding the right to regulate the fishery, and the power to define conservation:

I would like to raise a number of points leading up to the main concerns I have with the Federal Government of Canada, the Department of Justice and the BC Indian Food Fish situation. If we went around this table we would be well aware of the various charges being laid by Fisheries under their regulations

Summary



In 1985, dozens of Haida people were arrested for defying a court injunction and blockading loggers from Lyell Island. The old growth timber was being cut for two coastal pulp mills. Over the next two years, roadblocks extended to South Moresby as well, in the midst of Haida assertions of title over their entire territory and archipelago.

Photo: detail from a Globe and Mail picture (Canadian Press) in John Cruickshank's article: "3 Haidas charged w defying order on island logging at Lyell." November 18, 1985. Image: on the BC Legislature lawn, Victoria.

regarding our food fishery. I think everyone around the table has someone in their Band or Tribal Council who is affected by enforcement provisions of the Fisheries officers.

In discussion with our lawyers we have become aware that the Department of Justice has set aside a team of lawyers whose sole objective in life is to handle food fishery cases in British

Columbia and other parts of Canada, mainly the Maritimes. This raises some concern to me as I view that as a particular tactic to define food fishery rights through court decisions, picking and choosing the best legal cases in favour of the Federal Crown that support Fishery Regulations and keeps moving those cases upwards until we get a final determination, say the Supreme Court of Canada level.

I am becoming more aware of this kind of attitude that I'm talking about on a national level because the cases in the Maritimes are as numerous as those cropping up here in B.C.

Coming to B.C., Squamish Band with our bylaw #10, although we have through a number of decisions successfully defended that bylaw establishing our jurisdiction and ousted Fisheries' jurisdiction, they still insist on coming on the Reserve and finding ways of laying charges and developing legal arguments that give the whole situation a different slant and in some cases they pursue it and in others they drop or stay the charges.

...we look at the bylaws as a shield to oust the Federal regulations from our territory. ... This past five or six months we have juggled four or five different cases ourselves. One case was finally dropped by the Justice Department with no reason given.

Basically, what they were saying was that the rivers going through a Reserve, the bed of the river belongs to the Province of British Columbia therefore, Provincial jurisdiction applies. What they were trying to argue legally was that a public route would be deemed a public highway. Trying to argue that rivers were public and that they qualified as public highways under the Highways Act and therefore

became Provincial Crown Land under Provincial jurisdiction, and these are rivers going through our Reserves. And in that way overturn our bylaw, the Federal Application of Squamish Bylaw. This was an argument with the Province as well as the Department of Justice. Very similar to foreshore problems, whether under federal or provincial jurisdiction.

We were prepared to go to court and prove that they were wrong. The reason I am explaining this, is that this is the type of technique I see Justice Department developing, trying to come down with various unique legal arguments to overturn or to strike down or erode our fishing rights. They eventually dropped that case.

This past two months there are 54 charges being laid in the Sto:lo area...

The concern I am having here is the strategy that, although I can't put a finger on it and say, there definitely is a legal strategy to erode our rights through the Courts system, that is what I feel about the whole process.

There are a couple of cases we should discuss today... the Sparrow case. This is a case where Sparrow was convicted a few years ago and now being appealed. The case is that the food fishing rights have been extinguished, in fact Aboriginal Rights have been extinguished and that the word "existing" in Section 35 does not protect Aboriginal Rights.

There are further problems, the appeal is going ahead and the concern that some of us have in regards to the Sparrow case was their lawyers appear to have made a concession or admission in their factum regarding their argument. They appear to say that Federal fisheries regulations and legislation when concerning conservation will overturn and override Indian Food Fishery Rights, in other words, Aboriginal Rights.

So this is not only a Federal Fishery Regulation regarding Food Fishery but regulations pertaining to land, Reserve land for example.

What all this means is that our position has been that within our Reserves, eventually through land claims our traditional lands, we maintain absolute authority within our sphere of jurisdiction. Provincial and federal regulations cannot make any inroads, they may conflict, they may overlap, but we maintain that traditional position.

... The danger of court action is always that we run the risk of losing.

Given that background, what we have is the fine cutting-edge of fishery in the Sparrow case in front, and we have a number of other cases in B.C. moving forward: we have the Sto:lo situation and we also now have the Gitksan situation, where its bylaw addresses both Reserve land control as well as traditional land control over the fishery, so that is going to be tested.

That's how I perceive the Department of Justice Federal Government's legal strategy on one front; on the other front we sit, we talk, we consult, and we meet on developing policy with Siddon and McKnight as a diversion.

We are constantly trying to get policy changed in our favour; gain more control, we control policy, we control management. As we are doing that with policy, they are proceeding with money and their lawyers which is unlimited to determine our rights through the Court system.

The concern is that it is a global issue, so we have met with the Musqueam Council and their legal advisors along with Sto:lo and their lawyers. We were assured that there was no concession that Federal regulation would override our fishing rights, that there was not an admission to that, and that it was a fallback position and in fact they were arguing in the appeal that fishing rights is an absolute right not subject to anything except pure form standing alone. In case they didn't win that argument and only in the narrow area of conservation will Federal legislation override fishing rights.

The problem with conservation is, that is what our argument has been on a policy level with government all along and they are always maintaining that Fisheries Department is the only authority in the world that decides what is good for conser-

vation. If they win on that point the implications are far reaching that Indian food fishery can always be undercut for conservation purposes on their arbitrary say. That is my gist of the legal implications of that case.

The other concern is the provincial involvement that regulation can undermine our rights on land.

When we met, we were hoping that they would amend their argument but, even if they wanted to, they couldn't, because it was submitted in their factum. Because it was submitted in their factum the Department of Justice has responded and agreed with it, the provincial government has come aboard and agreed with it also.

We were assured by the Musqueam Council that their intention was not to undermine or hurt or destroy Fishing rights for B.C. Indians. I take that as their sincere belief, however, I bring it to your attention because I have discussed with Chairman of the Nuuchah-Nulth Tribal Council and have discussed with Squamish, we haven't discussed it further with the Sto:lo people but there is room here for intervention.

The B.C. Aboriginal Peoples' Fisheries Commission intervened in the Sparrow Case.

Sparrow won his case in BC in 1986; the Province and the DFO appealed to the Supreme Court of Canada. But for a brief time, the Musqueam had won the identification of a *general* Aboriginal right to "food, social, and ceremonial" fisheries and that effected a formal allocation of 500,000 Fraser River sockeye to Native fisheries. That was the political response to the ruling, while the governments appealed to the Supreme Court of Canada.

The 1986 ruling confirmed Chief Matthias' suspicions:

The constitutional recognition of the right to fish cannot entail restoring the relationship between Indians and salmon as it existed 150 years ago. The world has changed. The right must now exist in the context of a parliamentary system of government and a federal division of powers. It cannot be defined as if the Musqueam Band had continued to be a self-governing entity, or as if its members were not citizens of Canada and residents of British Columbia. Any definition of the existing right must take into account that it exists in the context of an industrial society with all of its complexities and competing interests. The "existing right" in 1982 was one which had long been subject to regulation by the federal government. It must continue to be so because only government can regulate with due regard to the interests of all.

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Summary

By 1987, in the midst of years of unproductive and less regular meetings, the Nishga

(Nisga'a) Tribal Council made a formal resolution to approach the Minister of Justice of Canada and request the Supreme Court give a reference ruling on Aboriginal title, relying on the facts of their 1973 case. The Minister refused. The *Delgamuukw* trial of the Gitksan and Wet'suwet'en title case was underway: the Minister told the Nisga'a there would soon be developments on the matter of Aboriginal title.

In the early decision mentioned above regarding the province's defense, one of the motions brought before the court, *Delgam Uukw* 1987, a precedent was set that has never been revisited: Aboriginal title cannot be registered as an interest in land because it is "inalienable" – it can only be sold to the crown – and because it therefore has no market value.

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In the governments' appeal of Sparrow, in the 1990 SCC ruling,

Chief Justice Dickson wrote for the majority of the court that "federal power must be reconciled with federal duty." The ruling clarified that aboriginal rights must be interpreted as generously as possible and that they must be allowed to develop over time along those lines, rather than being boxed-in to a pre-contact method and limited to that expression.

Dickson also gave the unsolicited judicial opinion that "there was



from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands [British Columbia] vested in the Crown.”

One of the pivotal results of the *Sparrow* decision at SCC was the invention of a new right for Canada: it has the right to “infringe” Aboriginal rights, if it can meet a new “justification test” in doing so.

Having been confirmed in possession of a higher objective than Aboriginal rights – the regulation of the salmon fishery to ensure conservation goals – now the government’s new legal tool of justifiable infringement cut a wide swath through constitutional protection of “Aboriginal and treaty rights.” This occurred in the same moment that continuing Aboriginal rights were confirmed, for the first time since the 1982 Canadian constitution.

Only seven years later, the Supreme Court in *Delgamuukw* expanded the uses of justifiable

The scene at Cheam fishing sites in Sto:lo territory has been militarized for decades. Canadian Armed Forces tanks roll through the reserve and park near fishing grounds, or at least they did for many years, during the height of fishing season. Favourable court rulings did not mean safe access to the river. This photo of Edna Douglas surrounded by Native Youth Movement warriors is from the very end of the twentieth century.

RCMP and DFO violence and intimidation towards the Sto:lo on their fishing grounds is well-documented and has been central to court cases, where the true attitude is revealed in subpoenaed documents.

For instance, when one DFO official complained - in writing - to his senior about holding meetings with the Cheam he compared the idea of meeting with Sam Douglas to inviting the infamous serial killer Clifford Olson into a daycare. Perhaps he meant the DFO officers were like helpless children, but the judge reprimanded him for that and for swearing up and down at Sto:lo women at their fishing places.

infringement to protect any legislative objective that the government might pursue. SCC Chief Justice Lamer gave examples of such valid pursuits: forestry, hydroelectric dams and infrastructure, highways, the settlement of foreign populations.

The significance of the fishing right identified in *Sparrow*, and its logical evolution to a title case – Musqueam title being the origin of the Musqueam right to take fish at that place – was anticipated by the

deployment of the new BC Claims Task Force: a commission beyond the Rocky Mountains treaty frontier, where there were no treaty rights to apply to the Office of Native Claims for compensation of denial; only Indigenous Peoples who had never surrendered anything.

The BC Claims Task Force was the end of all the claims that had been worked on under the 1974 federal Comprehensive Claims policy. Although Canada’s policy position did not move, the name

changed: the “modern day treaty process” was painted over “Native Claims.”

The Nisga’a Comprehensive Land Claims Framework Agreement was initialled in March 20, 1991. The Report of the BC Claims Task Force was released June 28, 1991. The Nisga’a negotiation would remain outside the new process.

In the renamed “treaty” process, the highest outcomes were the same as under the Comprehensive Claims Policy, but BC First Nations were invited to negotiate without providing proof of claim. Now called the “made in BC treaty process,” with the stated aim of a “new relationship,” the federal Minister for Indian Affairs later clarified that it is “not a rights-based process.”

Entrance to the BC treaty process provided access to negotiating loans that would pay for research, travel, community incentive, a few jobs – all funds that were not available anywhere else: not since the negotiations under the Office of Native Claims was up-ended for the BC treaty process.

What the BC treaty process had, that the CCP did not, was several influential Indigenous leaders promoting it.

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Another one of the results of Sparrow 1990 was the Aboriginal Fisheries Strategy, and with it the political solution to the first ever Aboriginal right declared in a Canadian court.

Significantly, the court deter-

mined that Musqueam people have a constitutional Aboriginal right to fish for salmon for food, social and ceremonial purposes. These three purposes were not defined.

Ron Sparrow won for the Musqueam recognition of their Aboriginal right to fish for salmon, and for that right not to be infringed unless there was a “compelling legislative objective.”

Musqueam remained the only Indigenous People west of the Rocky Mountains to have a judicial declaration of an Aboriginal right to fish until 2008.

Thousands more fishing charges ensued across British Columbia, and Canada, when people expected to be able to practice their fishing rights for exactly the same reasons that Musqueam had won theirs.

The political recognition in the Aboriginal Fisheries Strategy (AFS), was a new policy design: government funding for programs to assist individual First Nations with training in DFO methods of catch monitoring, escapement monitoring, the purchase of equipment and hiring of staff, and an Agreement to accept a communal fishing license for its Members, with a catch limit, gear limit, restricted openings, and regulatory measures.

It was the first program since the Comprehensive and Land Claims Policy of 1974 (which had failed) to offer cash and participation in exchange for consent to be governed. It did so aggressively and coercively.

Funding programs newly available under the Aboriginal Fisheries Strategy were showcased in the

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lobby of the building where the new Inter-Tribal Fishing Treaty, 1989, was being discussed in General Assembly. Money, the first ever available for habitat management, was available. The price of it was to withdraw from the 1989 Fishing Treaty.

This ultimatum resulted in the abeyance and effective dissolution of the “Treaty of Mutual Purpose and Support,” which had been adhered to by every Indian Band on the Fraser and Columbia Rivers. It was the same weaponization of program funding that blocked the union of UBCIC and BCANSI in 1976.

This strategy will be used again and again to interfere with Indigenous self-determination, from splitting broad Tribal Councils into individual First Nations – to be eligible for accommodation agreements; to the abandonment of a unified movement for the Aboriginal Peoples Family Accord in favour of smaller, separate delegated rights to administrate in Children and Families – but at inadequate capacity; to the continued isolation of off-reserve Indigenous reunification with the political movement of Indian Bands or First Nations; and even the withholding of education funds, until the promise not to assert self-determination is ensured for the duration of the program... among other examples to follow.

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When the Lil’wat Peoples Movement occupied their Lillooet Lake Road

to prevent further desecrations by logging, they were arrested,

charged, jailed, and denied the right to have their title and jurisdiction defense delivered to the court.

One of the defendants in that case, Harold Pascal, followed up by filing a Notice of Motion that named the BC Attorney General, several government lawyers, the RCMP as an entity, other government officials, and International Forest Products Limited and Howe Sound Timber Company in an application:

“for an order that the parties to whom notice is directed are in criminal contempt of court of participating in a racist conspiracy to suborn the courts into forsaking the rule of law by abusing the court process in order unconstitutionally and fraudulently to extort unceded territory: the non-native legal system is usurping jurisdiction so non-native society can convert the uncaded territory, and in furtherance of this fraud the pretence is that the preliminary jurisdictional issue can not be resolved on the pure law basis of the courts’ constitutive instruments, the constitutional precedents, the constitutional legislation and the natural law of the constitution of Canada.”

The judge decided,

“Counsel for the Attorney General has relied upon submissions that the impugned passages are vexatious within the meaning of rule 19(24)(b) of the Supreme Court Rules, and are embarrassing within the meaning of rule 19(24)(c) of the Supreme Court Rules.”

And the judge directed the phrases to be struck out from the Motion.

The BC Supreme Court’s decision in *Delgamuukw*, 1991, was imminent.

Now, the Province’s lawyers would appear in the Líl’wat trial to delay a judicial approach: this matter was just about to receive a ruling in a long-running case – meaning the Gitksan-Wet’suwet’en title case, *Delgamuukw and Gisdayway v. the Queen*. The federal Minister of Justice had said the same thing to the Nisga’a in 1987, to justify the refusal of a reference case for *Calder*, at an earlier point in the same case.

The only point that was then applied to the Líl’wat jurisdiction case ignored the fact that in *Delgamuukw*, the Plaintiffs conceded court jurisdiction; in Líl’wat, they did not.

The 1991 ruling by BC’s Chief Justice MacEachern in *Delgamuukw* was a travesty

on the scale of Justice Gould’s 1969 ruling against the Nisga’a in *Calder*. Twenty-two years later, that BC ruling against the Nisga’a remained a precedent unaffected by any other ruling on Native land rights. MacEachern said,

“The plaintiffs in the present case did not contest Canadian sovereignty over any part of the territory over which they claim aboriginal rights. To do so successfully would have been difficult since the certainty of Canadian sovereignty in British Columbia, which has as its root the sovereignty of the British Crown, was confirmed by the Supreme Court of Canada in *R. v. Sparrow*, 1990.”

The judge discussed Gitksan and Wet’suwet’en modes of governance which were presented by the most extensive line of witnesses ever seen, and then dismissed them out of hand, ruling that the people only “grouped together for survival,” and that Canadian law must uphold decisions of the majority.

He wrote, “the absence of treaties does not change the fact that Canadian and British Columbian sovereignty is a legal reality recognized both by the law of nations and by this court.”

In 1993, the BC Court of Appeal ruling to allow the *Delgamuukw* Plaintiffs’ appeal included a highly significant and yet almost unreported judicial declaration:

[262] 1. I would grant a declaration that the plaintiffs’ aboriginal rights were not all extinguished by the Colonial Instruments enacted prior to British Columbia’s entry into Confederation in 1871.

[263] 2. I would grant a declaration that the plaintiffs, being Gitksan and Wet’suwet’en persons, have unextinguished non-exclusive aboriginal rights which received the protection of the common law, and which now receive protection as existing aboriginal rights under s.35(1) of Constitution Act, 1982.

These rights are other than a right of ownership or property rights, and are located within the area indicated on Map 5

The rights may be described *sui generis* rights in respect of land.

They are integral to a distinc-

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Reoccupation at Vallican, Sinixt, 1989. Throughout the 1970s, 80s, and 90s roadblocking was one of the most substantial generators of change in Canada, while participation in government-funded negotiating processes produced almost no results except safety for resource extraction to continue. Court rulings always resulted in progress for the government's assimilation agenda.

tive culture of an aboriginal society in existence at the date of the assertion of sovereignty. Their characteristics may vary depending upon the particular context in which the rights are said to exist, and having regard to specific fact situations.

[264] 3. I would not grant a declaration with respect to jurisdiction over land and resources or people within the territory. The question of the extent, if any, of self-regulation which does not conflict with valid federal or provincial legislation is a question which is ripe for negotiation, and is better

sued to the reconciliation process which the parties seem disposed to pursue.

[265] 4. I would not interfere with the decision of the trial judge that the claim for damages must be dismissed. But I should emphasize that the plaintiffs' claim, as pleaded, was for damages for the wrongful appropriation and use of the territory which they alleged that they owned and controlled. It was an "all or nothing" claim which failed when the plaintiffs failed to establish ownership of all of the land and resources in the territory.

[266] Once that claim was gone, then what remained was a claim to exercise undefined aboriginal rights within the area shown on Map 5. Any claim for compensation for interference with those rights needs fact and site specific consideration, not possible on the evidence in this case. [267] 5. The parties wish to negotiate the precise location, scope, content and consequences of the aboriginal rights which the trial judge has held may be exercised in that part of the territory, the approximate area of which is illustrated on map 5. That arises naturally

from the reasons, in which the trial judge invites counsel to reconsider his arbitrary assessment of the area. No order of this court is required to permit the parties to enter into such negotiations.

[268] 6. ... I would not adjourn the appeal.

[269] 7. I would not give effect to the alternative declarations sought by the Province relating to the alleged extinguishment of aboriginal rights by grants of fee simple and of lesser interests in the period from 1871-1982. The Province did not have the power after 1871 to extinguish aboriginal rights. But some provincial land and resource laws affecting aboriginal rights may be given force as federal laws through the operation of s.88 of the Indian Act. The question of what effect, if any, fee simple and lesser grants have on the particular aboriginal rights exercised by the plaintiffs requires a detailed and complete analysis, which neither the record nor the submissions permit in this case.

This recognition of unextinguished land rights was only slightly late for the purpose of launching the BC Treaty Commission, 1992. If the Province and the courts had held to their position that all Aboriginal rights had been extinguished by colonial proclamations and letters, what would there be left to negotiate?

The Plaintiffs and Province did agree to a two-year delay of the appeal, to make time to negotiate. During that time, BC kept logging



*Art Loring, Gitksan, on the BC Rail line logging blockade, 1994.
Photo capture from the film, "BLOCKADE – It's about the land and who controls it," Nettie Wild, Director, Canada Wild Productions, 2015.*

over protest. Gitksan Chief Don Ryan challenged BC's right to license more logging in the same lands, in court, and the court basically ordered the Chiefs to meet and consult – forbidding them to be "unreasonable."

That case, *Ryan v. Schultz*, created a precedent for an abundance of "consultation and accommoda-

tion" cases to follow: Indigenous Peoples don't seem to have the right to refuse to be consulted. Like a tractor conveyer belt, Peoples are consulted, accommodated, and left to sue for inadequacies, and then ordered to return to the negotiating table.

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In 1993 the *First Nations Chartered Lands Act* was unilateral legislation

following the BC Claims Task Force recommendation that land title was not resolved. The *Chartered Lands* law was another attempt to gain consent to be governed by Canadian and BC land laws, by agreement. Under those laws, Aboriginal rights to the land are locked up in provincial regulation and registration, governed by the crown. Substantial protest followed its enactment.

In 1994, the Sovereignty Peoples Information Network denounced the recurring colonial objectives in government offers:

Our suggestion to the Special Rapporteur to define the future role of indigenous treaties and other instruments is to terminate any or all colonial government conventions, laws, practices, policies which are repugnant and which continues the oppression, aggressions, cooptation, neo-colonization and genocide of Indigenous peoples under the flags of convenience of world economic institutions such as IMF, World Bank, NAFTA, GATT, NATO, and to instate and to protect in perpetuity the absolute Indigenous sovereignty, and to institute reparations for the damages incurred throughout the violations named above and invoke those applicable articles of the Principles of Nuremburg.

The Network was an early alliance of seven Nations against the new

BC Treaty Commission. By 2007, every First Nation negotiating table in the BC treaty process (except one) completed a new alliance, freezing negotiations and blocking BC Ferries sailings with canoes.

Every generation since the Hudson's Bay Company arrived has had to deal with government reversal of promises and policy.

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One of the legal challenges that followed from the 1993 Court of

Appeal decision in *Delgamuukw*, and the abandonment of the negotiations ordered by that court shortly after, was a new challenge to strike out from the case by one of the Houses: Xsgogimlahxa.

The motion to strike out was made in order to re-examine the pre-trial motions in which the *Delgamuukw* and *Gisdayway* legal counsel had admitted the court's jurisdiction over their clients.

The 1995 Xsgogimlahxa motion asked that the question of crown jurisdiction, and therefore the court's jurisdiction, over unsundered Indigenous nations be revisited and put to the test – just as was invited by paragraph 268 above. The request to clarify jurisdiction was combined with the height of RCMP and Canadian Armed Forces violence at Gustafsen Lake, and the motion asked that this clarification was necessary to pause and possibly prevent further violence there.

It was not. The motion was denied without elaboration by the Supreme Court of Canada in a two-day Vancouver session.

Summary

This kept the BC treaty process intact.

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In 1996, the SCC upended two key principles from *Sparrow*

when they adjusted the goal posts for establishing Aboriginal rights.

The court shifted the burden of proof to the Aboriginal people, to show they had a specific right; and attached explicit limitations to the identification and practice of the right, in the *van derPeet*, *Gladstone*, *Smokehouse* trilogy – all fishing cases, all decided on the same day.

Writing for the majority, but with two judges dissenting and holding to Dickson's progress, the SCC now decided that Aboriginal rights are only those which are distinctive and historically integral to the people claiming the right, and the expression of the right is limited to its scope pre-contact. "Pre-contact" means pre-1846, as this date has become agreed by the crown's judges and the crown's counsel to be the date of "effective British sovereignty." The significance of 1846 is the treaty between Britain and the USA to settle their border through Oregon.

This legacy of the "frozen right" instituted by the SCC in 1996 has remained. Although many judges have given opinions about the "logical evolution" of an Aboriginal right, an "evolved" Aboriginal right has never been identified by the court in Canada.

For instance, in 2005, in the treaty-rights cases of *Marshall* and

Bernard on the east coast, it was decided that cutting three dozen spruce trees for sale was not the kind of logical evolution of Aboriginal rights that they were talking about.

When First Nations undertake logging operations in British Columbia, it is with a provincial license under a federally sanctioned scheme – not with Aboriginal rights. When judicial recognition of Aboriginal rights draws near, an extinguishment opportunity appears in the form of a regulatory scheme which “accommodates” the right. Accepting that regulation and accommodation, the Indigenous party consents to be governed.

Fishing rights – the right to subsistence, provided by salmon, in areas along the coast and in-river and along lakes – is one of the most intrinsically material rights of Indigenous Peoples. It has been recognized since the Douglas Treaties of 1850-54; since the Indian Reserve Commissions of the 1870s and 1910s. Since the Dominion Fishery Commission of 1906. Since the *Indian Act* mobilization of Band fishing bylaws in 1951.

But in order to practise those rights, a First Nation would now have to recognize the federal right to limit them. The Aboriginal Fisheries Strategy peddled a poison pill: funding to hire fisheries technicians and band enforcement officers – in exchange for Indigenous recognition of the federal right to manage fisheries altogether.

One of the results of the *van derPeet* trilogy was development of pilot Aboriginal

fish-sales programs by agreements with DFO. In *Gladstone*, named for the Heiltsuk fisherman William Gladstone who was arrested, relieved of his herring roe on kelp, and charged, the court found he had an Aboriginal right to make some trade in this seafood. The finding was based on extensive evidence of the historical practice. The limit of the right, however, was defined this way:

...the right to derive from a resource what was traditionally derived from that resource is not necessarily a right to harvest the same quantity of fish from that resource as was traditionally harvested. The right is rather to take from the fishery enough to secure “the modern equivalent of what the aboriginal people in question formerly took from the land or the fishery”.

Despite the large quantities of herring spawn on kelp traditionally traded, the evidence does not indicate that the trade of herring spawn on kelp provided for the Heiltsuk anything more than basic sustenance. There is no evidence in this case that the Heiltsuk accumulated wealth which would exceed a sustenance lifestyle from the herring spawn on kelp fishery. It follows that the aboriginal right to trade in herring spawn on kelp from the Bella Bella region is limited to such trade as secures the modern equivalent of sustenance: the basics of food, clothing and housing, supplemented by a few amenities. The right to “sustenance” was found to belong to the Heiltsuk fishermen, and that they could trade

herring roe on kelp to that extent. The trade was not recognized as a commercial scale of activity.

The court simultaneously found the federal government has a right to suspend that trade, and to compensate the people for associated losses. In this case, where the Heiltsuk right to sustenance by herring roe fisheries was recognized, the federal government continued to suspend the right. The federal government promised some form of compensation, and it did not deliver.

In 2009, William Gladstone carried a heavy petition forward to several public meetings of Indigenous organizations. It has been dubbed The Suicide Petition. Not only did no compensation issue after the 1996 ruling, but the demoralization of the Heiltsuk – separated from their fishing grounds, and their resulting poverty, and a stunning list of barriers to their well-being was presented alongside news of a rate of addiction, domestic violence, suicide, incarceration and bad health among their people which, set across from Canadian statistics, revealed what can only be properly understood as the government’s terror tactic against Indigenous Peoples who stand up for their rights on the land and water, and in court.

“The stakes are very high for our people,” said Heiltsuk Spokesperson and Chief Negotiator William Gladstone. “Our economy is deeply rooted in harvesting and trading land and sea products. Our right to harvest and sell herring spawn on kelp commercially, was recognized by the Supreme Court

in 1996, however our commercial right has not been fully acknowledged and no reparation has been made for the severe losses our people have sustained flowing from of the Canadian government's denial of our commercial right — a right which has been affirmed by the highest court in the land."

Mr. Gladstone said the Canadian government's failure to recognize the Supreme Court ruling has cost the Heiltsuk community millions of dollars in lost revenue and has severely contributed to the suppression of its people. Unemployment rates among the Heiltsuk people fluctuated between 80 to 90 per cent eight to 10 months out of the year, at the time of writing.

Punishment for acts of self-determination, like this one by the Heiltsuk, has always been exacted against Indigenous communities and organizations who fight in court and on the land. Punishments like politically withholding the right articulated in the court's decision is not unusual. Even court refusal to *hear the argument* is typical.

Punishments for Bands that demonstrate publicly, go to court, reoccupy land, can all include a sudden freeze on housing funds; aggressive development of contested lands; situating a waste dump next to a populated Indian Reserve — or even right next to the daycare on the Reserve. Retaliatory oppression has not slowed, but rewards for assimilation have visibly, dramatically increased. The DFO's Pilot Fish Sales programs for Aboriginal communities on the Skeena, Fraser, and Van-

couver Island became available in 1999. An agreement under the Aboriginal Fisheries Strategy was prerequisite.

The crown pays cash money for "implementation agreements"

(implementing submission to be governed by Canada under Sectoral Agreements, promising not to assert independent jurisdiction), and for "settlement agreements" (releasing and indemnifying the governments and public for past harms). Whether they pay their lawyers and consultants more to land the agreements than they pay the First Nations under the agreements is a matter deserving inquiry.

The array of available program schemes to offset the exercise of Aboriginal rights has also increased proportionately to the blood sweat and tears shed by Indigenous Peoples.

The Aboriginal Aquatic Resource and Oceans Management program, for instance, "accommodates" otherwise unproven, or denied, Indigenous rights in jurisdiction, management, regulation, conservation, and commercial and social activity on the water and in the fisheries. In order to benefit from the program, a First Nation makes many concessions. First among those is consent to the DFO's regulatory role and crown interests in the unceded territory.

Once agreement is made, it becomes impossible (at least it hasn't been done yet) to later argue that an Aboriginal right is being infringed. The Crown, having mobilized program resources and

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regulations to facilitate a limited alternative to the "undefined Aboriginal right," denies any further infringement of the Aboriginal right on the ground that the regulatory scheme sufficiently accommodates the right. A First Nation participant in the program will have to warrant that their right is in fact accommodated by the agreement. They will typically also waive any other related right in favour of the agreement.

As well as limiting Aboriginal rights to a precisely defined relic, to be proved on a case-by-case basis,

Chief Justice Lamer went to great lengths to give the Constitution's confirmed *Aboriginal and treaty rights* a better working definition by his ruling in *van derPeet*. He said that the purpose of Section 35 of the Canadian constitution is to provide "a platform for negotiation" on which "the prior existence of Aboriginal societies can be *reconciled* with the sovereignty of the crown."

The concept of reconciliation was there shifted from its prior usage:

a focus on the need to balance, or reconcile / make even, the crown's *duties* to Aboriginal peoples with the *powers* the crown assumed in violation of Aboriginal powers. Now reconciliation would mean tempering the powers of *Aboriginal societies* against the crown.

To date, "reconciliation agreements" feature many forms of assimilation: consent to be governed in English; consent to the

jurisdiction of the BC Supreme Court for dispute resolution; and consent to 'co-manage' with one or more public institutions that bring existing values and definitions.

When the Heiltsuk fishermen argued, in *Gladstone 1996*,

that government curtailment was infringing their unsundered rights to fish and to trade and sell their catch of all kinds of seafood, the government answered that the Heiltsuk community had a commercial fishing license, a "J" license, and that this program was adequate to accommodate the alleged Aboriginal right. The program was not adequate, and the court decided as much, but the commercial fishing license became a model for government approaches to "accommodation" of Aboriginal rights before they ever got to court.

For small First Nations, with no commercial access to their resources, going to court is expensive.

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In the same way that the Aboriginal Fisheries Strategy offered funding by agreement with the Department,

dozens more rights-specific programs have come into effect.

The precise objective of these programs is to reward surrender with short-term, comparatively small financial resources. The majority vote system of decision making, imposed by the *Indian Act* on previously independent clans and family head subsets of national

government, now all lumped together on one or two Indian Reserves – away from their traditional title lands – facilitated the gradual decline of once fiercely autonomous, consensus-based methods of collective decision making.

In 1935 the *Indian Act* was amended to require, under federal law, that every Indian Reserve be represented by one elected Chief and a board of Councillors proportionate to the population of the Reserve. Most of these reserve communities fully maintained their normal representative governance, holding meetings to reach consensus and advise the single elected chief. However, meeting in groups of three or more persons had already been made illegal under the *Indian Act*, in 1927. The "potlatch" as it was called in the *Indian Act*, actually referred to any gathering where dancing, singing, and feasting – three essential mechanisms of ceremonial legitimation of governance decisions.

In 1996, the First Nations Land Management Framework

Agreement was signed between 13 First Nations (Indian Act Bands) and the federal government, with royal assent specific to them.

Three years later, it became the federally legislated *First Nations Land Management Act*, and other First Nations can opt to participate in creating Land Codes under it. Reserve lands can be registered in the new First Nations Land Register, a unique record of reserve lands and lands set aside for First Nations; lands not registrable under provincial land registries – Aborig-

inal lands cannot be registered as owned by Aboriginal peoples, but, as per the FNLMA, "it includes all the interests or land rights in, and resources of, the land that are within the legislative authority of Parliament."

The First Nation "Land Codes," enabled under Framework Agreements, import the Canadian legislation over an Indigenous group by powers assigned to Indian Bands under the *Indian Act* and replace the relevant sections of the *Indian Act* with Canadian legislation voted into effect by majority vote of the Band or First Nation members.

This legislation mobilizes "Self Government Agreements" on the ground, with the reassignment of "lands reserved for the Indians" under new Canadian legislation pertaining to "First Nation lands," as well as creating the appearance of converting traditional authentic Indigenous governance over title lands – the title holders' governance – into governing structures created by Canadian legislation, supposedly legitimized by majority vote under *Indian Act* rules of procedure.

Without this capitulation, Aboriginal communities have no mechanism to lease, sell, develop, or meaningfully use land – except to surrender it to the crown, in *Indian Act* procedure, and have the federal government manage the land for their benefit, as in the case of the Musqueam golf club lease. Under the new *Land Management Act*, Indigenous communities appear to surrender the right to hold and govern their individually held land titles to the governing struc-

**“...the
First Nation’s
Aboriginal rights
are released
in favour of the rights
defined in the Agreement...”**



Lawyer and BC Minister for Treaty Negotiations, Geoff Plant, being questioned by Elder Keely George at an InSHUCKch Treaty Group annual general meeting, 2008. At the same time as recommending Final Agreements to First Nations, Mr. Plant actively explained to big business lobby groups in BC that these agreements would not change their business models.

Plant solidified his career as Crown counsel in the 1990s by prosecuting Indigenous people who defied court injunctions at roadblocks, beginning his argument - even after the BCCA Delgamuukw declarations in 1993 - with the words: Aboriginal people never had any title and rights, and if they did, they were extinguished at crown sovereignty. After government, Plant went into private practise as a consultant, most recently appearing for the Tsawwassen First Nation to intervene in the Cowichan Tribes litigation. Photo by Kerry Coast.

ture of the Indian Band / First Nation Land Code.

The legislation introduces a new phase of empowering elected leadership on Indian reserves to pass resolutions releasing tradi-

tional lands beyond the reserve boundaries, because the membership has voted their consent to the Band Council structure of representation on those lands.

Put another way, once the Band

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or First Nation membership has fulfilled the due process requirements of the *Indian Act* and voted powers of administration to the Chief and Council, where previously those powers of administration had never been consented to but were imposed by the unilateral *Indian Act* legislation, the Canadian-made governing system gains the recognition of the people it was imposed on, under a different name.

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It took generations before displacement from land holdings, the disuse of the traditional language of governance, the replacement of traditional roles of government by Indian Agent and then Band Council roles of government,

and the impoverishment of traditional modes of ceremonial decision resulted in majority acceptance of the *Indian Act* structure of self-administration.

The majority-rule aspect of the elected Chief and Council system became a self-fulfilling inevitability, where circumstances favoured certain families and their close relations, eventually creating conditions across First Nations, with few exceptions, where one family became substantially more successful and more numerous than the others. The smaller families often had little choice but to move away, as limited resources on-reserve were prioritized to the ruling family.

Not only was the single elected Chief imposed, but the type of man who could take that role was also designated. That character was discussed by Chief Sam Mitchell of the Lillooet Tribe, who recounted in interviews that the chief was expected to be a Christian, and to lead the people into church. It was not uncommon for the chief to be appointed by an Indian Agent.

Given that the *Indian Act* was the mechanism of the displacement of traditional government in favour of importing Canadian legislation, the results of the process can't be considered legitimate – only a further complication and injury of colonialism which the victims will eventually find ways to resolve once their proper titles and powers are recognized, protected from foreign influence, and restored.

Possibly the greatest strength and the greatest guarantor of sustainability of the land-based clans and their autonomy within their title lands was the consensus model of making decisions which affected the entire nation, or an entire People. No family, no name, no area – no matter how small – could be ignored and overruled in a decision that would affect them. The power and the right of decision belongs to those peoples, and it has not been surrendered by any process which is authentic to them; it has only been coerced in manufactured circumstances of extreme duress.

That is to say, the progress and empowerment of the imposed *Indian Act* structure is the result of imposing “conditions calculated to bring about the destruction of the people, in whole or in part.”

In 1997, the *Delgamuukw* ruling came from the Supreme Court of Canada

The traditional modes of governance described as evidence in that case explained a consensus process, whereby no one but the title holder of a particular area could make decisions about it.

Canada has imposed the condition that an Aboriginal title or rights holder is the sum total of the people, and that the majority vote of that group should carry a decision. But this 50% + 1 method does not reflect authentic governance: it is the antithesis.

Within “the group” identified by Canadian courts, are many sub-groups, and each is, traditionally, autonomous. This was explained at trial in *Delgamuukw*, but the court rejected it and carved its own criteria for decision making into the heart of “Aboriginal rights” as they would be recognized in s. 35.

The form of corporate governance imposed by Canada is designed to produce results favourable to large groups of relocated people with no connection to or understanding of lands and waters, and only having interests in reducing the lands to exportable commodities. It ignores the fact that some ecosystems are smaller than others; that in spite of difference, each part is essential; that consensus is the only appropriate and reliable form of governance when sheer demographic size fails to represent differently apportioned parts.

The decision making process that serves the colonial warehouse is

therefore diametrically opposed to the value of autonomy assigned to place-based Houses and regional memory, which function as the essential posts and markers to guide “management.” Place-based representation is visibly foundational to Indigenous governance structures, where a chieftainship refers to a specific place that shares its name. The place survives, the name survives, and generations of leaders succeed to that name, carry it at the height of their own powers, and relinquish it to the next – but never move it.

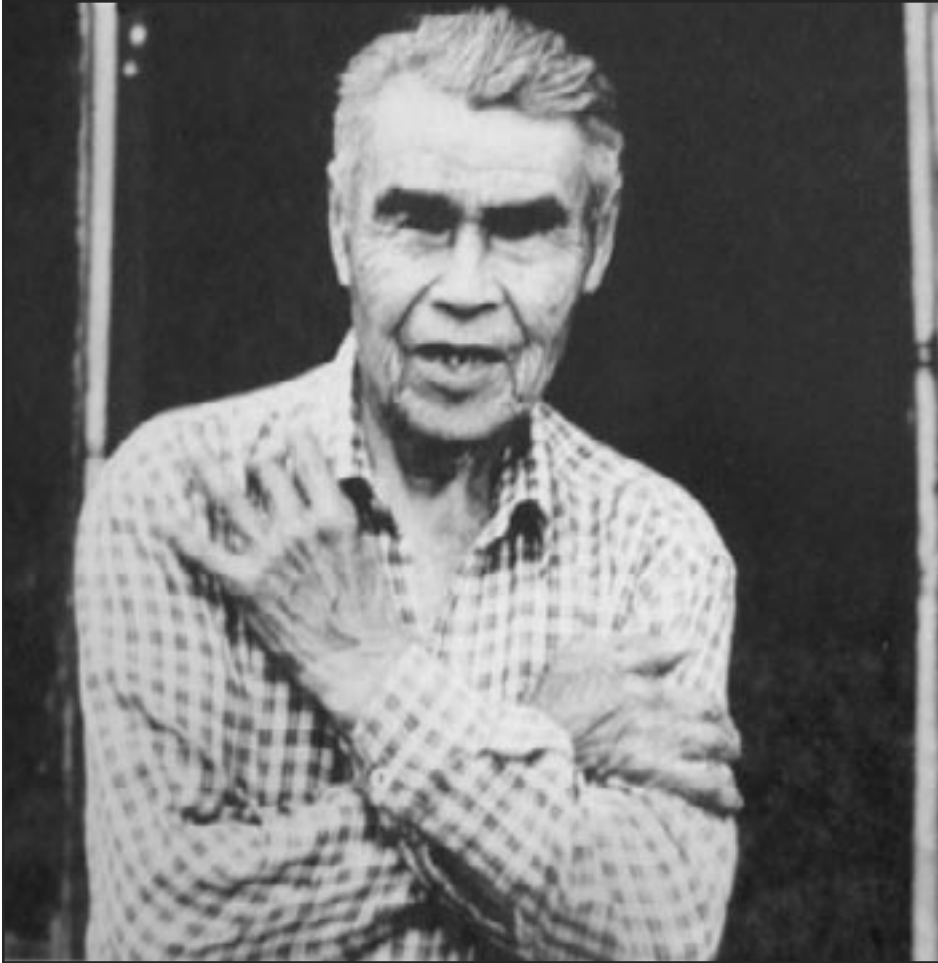
The judge denied that the Gitksan and Wet'suwet'en had proved any continuing rights of jurisdiction, or any title, but added a great deal of opinion on what Aboriginal title could provide, if proved: the right to use the land, the right to be consulted and accommodated as to how the land would be used, and the right to benefit economically by the use of the land.

The court addressed how the political denial of Aboriginal land rights could not be maintained as proof that there was no continuing right:

[136] I hasten to add that the constitutionalization of common law aboriginal rights by s. 35(1) does not mean that those rights exhaust the content of s. 35(1). As I said in *Côté, supra*, at para. 52:

Section 35(1) would fail to achieve its noble purpose of preserving the integral and defining features of distinctive aboriginal societies if it only protected those defining features which were fortunate

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Delgamuukw, Albert Tait, at the beginning of the court action in 1985. By 1997, two more people had succeeded to the title of Delgamuukw. This is, Mr. Tait and his immediate successor died before the case was completed. In 1997, Alfred Joseph was Delgamuukw.

enough to have received the legal recognition and approval of European colonizers.

I relied on this proposition in *Côté* to defeat the argument that the possible absence of aboriginal rights under French colonial law was a bar to the existence of aboriginal rights under s. 35(1) within the historic boundaries of

New France. But it also follows that the existence of a particular aboriginal right at common law is not a *sine qua non* for the proof of an aboriginal right that is recognized and affirmed by s. 35(1). Indeed, none of the decisions of this Court handed down under s. 35(1) in which the existence of an aboriginal right has been demonstrated has

relied on the existence of that right at common law. The existence of an aboriginal right at common law is therefore sufficient, but not necessary, for the recognition and affirmation of that right by s. 35(1).

[159] I should also reiterate that if aboriginals can show that they occupied a particular piece of land, but did not do so exclusively, it will always be possible to establish aboriginal rights short of title. These rights will likely be intimately tied to the land and may permit a number of possible uses.

However, unlike title, they are not a right to the land itself. Rather, as I have suggested, they are a right to do certain things in connection with that land. If, for example, it were established that the lands near those subject to a title claim were used for hunting by a number of bands, those shared lands would not be subject to a claim for aboriginal title, as they lack the crucial element of exclusivity. However, they may be subject to site-specific aboriginal rights by all of the bands who used it. This does not entitle anyone to the land itself, but it may entitle all of the bands who hunted on the land to hunting rights. Hence, in addition to shared title, it will be possible to have shared, non-exclusive, site-specific rights. In my opinion, this accords with the general principle that the common law should develop to recognize aboriginal rights (and title, when necessary) as they were

recognized by either *de facto* practice or by the aboriginal system of governance. It also allows sufficient flexibility to deal with this highly complex and rapidly evolving area of the law.

The Supreme Court sent the matter back to trial for proof of Gitksan and Wet'suwet'en title to be decided against the new definitions, but the Chief Justice said he did not recommend it. Instead he recommended negotiation.

At the same time as elaborating on what activities a finding of Aboriginal title would afford, he also gave a list of activities which would meet the justification test for infringement of Aboriginal rights, including title: logging, mining, hydroelectric power as well as the development of infrastructure, settlement of foreign populations, and agriculture.

Based on the finding that Aboriginal title could still exist, if proven against the new criteria and tests, the BC public and its media cried out that this would change everything for the terms of the BC Treaty Commission. It logically should have done.

In 1998, the federal and provincial governments and the First Nations Summit staged a review of the BC treaty process. They concluded that Lamer said it best at the end of his ruling in *Delgamuukw*, "Let's face it, we are all here to stay." They did not change any aspect of the negotiating mandates or terms of outcome.

One of the actions that commenced in response to the Supreme Court's decision that Aboriginal title could be proven to continue to exist, was that several Chiefs in the Okanagan authorized a community logging venture on what were easily proved to be Aboriginal title lands.

They predicted that they would be criminalized for it, but planned to use the opportunity to defend themselves in court as a chance to prove their Aboriginal title - since they could not afford to launch the litigation.

In 1999 the two cases arising from the Province's prosecution of the Bands - logging without a provincial license - in *Jules* and *Wilson*, resulted in convictions. They later consolidated their case on appeal and applied for funding in advance of the trials, on the basis that the matter of Aboriginal title was of urgent and compelling public importance. In 2004, they won this judicial recommendation that their case be funded.

Subsequently, the BC court stripped the title defense from their argument, and tried the case on whether they had an Aboriginal right to do the logging. The provision of fees in advance to deal with the title issue did not seem to involve any repercussions.

In the meantime, in the year 2000 fishing case of the *Cheslatta Carrier Nation v. BC*, legal counsel showed that Aboriginal peoples find themselves in a 'Catch-22': they may have valid rights requiring consultation by the Crown, but the Crown is not bound to recognize those rights until the aboriginal

claimants have been put through the time and expense of a full trial of the four elements enunciated in *Sparrow*.

By the time the trial process is completed and the aboriginal rights determined, the threatened governmental infringement may have proceeded and the issue may well be moot, since the Crown is under no duty even to consult before taking many administrative actions affecting the land or resource in issue - until an asserted aboriginal right has been found to exist by a court of law.

The judge ultimately confirmed this complaint by refusing to adjudicate the Carrier fishing rights in the absence of a conflict.

During this time, the Haida were suing for a lack of consultation on the re-assignment of a contentious logging license on their islands, in critical old-growth forest. They won, and the license transfer - along with the logging - was suspended.

In a related decision made at the same time in *Taku River Tlingit*, the Supreme Court of Canada furthered the test for consultations to be "reasonable."

So, the results of the double ruling in *Haida* and *Taku* was elaboration of the procedural right to be consulted, further to *Guerin* and *Delgamuukw*, and to offer suggested preferences for accommodation of the rights that are about to be infringed following the observance of the procedural right.

Every Indigenous People west of the Rocky Mountains has *prima facie* land rights in their territories,

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In an early reaction to the denial of access to resources being exposed in Haida, Prime Minister Paul Martin met with Chiefs' organizations across Canada, developing the Transformative Change Agreement.

Allocating \$5billion in new funds, over five years, in a ten-year plan to "close the gap in the areas of education, health, housing and economic opportunities" the Agreement is signed with representative BC First Nations organizations (the Kelowna Accord, above) late in 2005.

Days later the federal government is toppled in a vote of no-confidence, and a Conservative government replaces the Liberals within weeks.

Within weeks, the new Conservative government scrapped the entire program, which had money in the bank to fund it, and instead announced negotiations with the Assembly of First Nations which would produce the Indian Residential Schools Survivors Settlement Agreement, worth about \$5billion.

Photo, by Government of BC: BC Premier Gordon Campbell is seen standing with the executive of the Union of BC Indian Chiefs, with the UBCIC President, Stewart Phillip, and Vice-President signing the Accord in Kelowna.

on the strength of their own cultural traditions alone. This recognition has seeped through the Aboriginal rights cases, and it has pooled up at the feet of government, and it has grown wider and wider so that Indigenous communities *must be consulted* before government decision makers take any step that adversely affect those interests.

Now with that explicit recogni-

tion, the government took several steps to get around this requirement to consult.

First, they introduced program funding which they say accommodates the unproven Aboriginal rights: that is, they obtain an Indigenous statement to that effect, and then provide a small fraction of the dollars to be made in the development scheme.

Forest and Range Agreements (FRA) were one of the political results of the *Haida 2004* decision. To pave the way for business in BC to continue as usual, BC adapted a sort of tax on logging companies: a per-capita payment to First Nations which would fulfill the consultation and accommodation – ahead of proof of rights or title – required by *Haida*.

In order to receive any money from logging in their traditional lands, in the FRA program, which is the only program, First Nations have to accept that their "economic interests have been accommodated." This concession is signed off *before* logging plans are finalized; *before* the logging is carried out.

The financial compensation is a fraction of the stumpage fee the crown charges to the license holder, but it is not proportionate to the value of the timber: it is a fixed-rate *per capita* payment, the same for every First Nation, equalized over the course of a year.

Likewise, benefits sharing agreements, that arose after *Haida*, enable some share of revenues from industrial or extractive industries - but they require receipt of accommodation in advance, leaving, if anything, the right to be consulted at later stages of the project.

The other adaptation by the Province was a formal definition of the rights holders who would be accommodated and consulted.

BC adopted a reversal of opinion on the powers of First Nations described in the *Indian Act*, and attributed to the elected Chief and

Council the power to make decisions on *all corners of the traditional territory* – not just the Indian reserve, as they had tried and failed to unilaterally legislate in 1993, and tried but mostly failed to attract First Nations to join under the Land Codes of 1998 and 2000.

They then crafted a series of waivers which expressly recognize the Chief and Council as the *legitimate authority* of “X First Nation” (which is questionable – they are on Canada’s payroll as officials elected under the terms of the *Indian Act*), and the Band or First Nation Chief and Council signs an Agreement with the government, warranting said accommodation.

Still relying on *Indian Act* powers, the elected Council can make this decision without notice to or the consent of the members.

The federal government has discretion over the funding which is channeled to First Nations administrations, and they can decrease or withhold that funding as a consequence of refusal to accept the license fee monies; as a consequence of withholding their natural wealth and refusing to be “accommodated” by the fee in exchange for the unproven right. When the Band administration (and its dedicated consultants) inevitably shepherds the elected Council through the process and across the bottom line to pass the Agreement by Band Council Resolution, not only have their Aboriginal interests been “accommodated” – they have been at least partly extinguished.

At the same time, the signing authorities have given tacit and often explicit recognition of crown

interests and rights in their heretofore unsundered territory. That is written into the language of the funding agreement, after the Aboriginal Fisheries Strategy model.

Since *Haida* and *Taku*, 2004, the province and Canada have started to interpret the *Indian Act* differently. Since 1876, the arbitrary, imposed system of on-reserve administration, with its one elected Chief and its per-capita proportionate elected Council, was always limited *totally* to matters that take place on an Indian Reserve.

The reserves-without-treaties in British Columbia had been minimized, set in stone, and then occasionally displaced downriver as the priority of settler immigration and convenience increased; and case after case prosecuted Native people for hunting, fishing, camping, etc. off the reserve.

Local Indian Agents and Priests collected fines from people visiting Indian Reserves, which were marked against trespass and violation as an offense under the *Indian Act*; usually these fines were collected from Non-Status Indians visiting their families.

However, the fact of Indigenous land titles and interests way beyond the reserve boundaries now became finally irrepressible.

In answer to the *Haida* ruling that agents of the crown must consult Aboriginal peoples when there is the appearance that licensed third-party activities might affect their Aboriginal rights, the governments responded by making the Chiefs and Councils responsible to consult

their own people on matters of land use in the traditional territories.

Now the governments simply send thousands of land use proposals to First Nations, and await their reply.

The imposed Indian Act system of decision making is totally unequipped to handle such decisions. The government does not recognize authentic forms of government.

This has pitted traditionalist Indigenous people against their own Band Councils to such an extent that even the divisive decisions to stage roadblock reoccupations in the 1980s pale in comparison.

In these land use proposals, or “referrals” – as they are called by the time they get to the Band Office, bring enormous pressure. It is time-sensitive pressure applied by corporate interests vital to the provincial economy.

In order for “Aboriginal interests” to be accommodated in these forthcoming land developments, the People in question must provide detailed technical reports for sensitive, dynamic ecosystems with many values to account for. In so many cases, Traditional Aboriginal Knowledge accepted by the process does not exist in the format required by the process, which was completely designed by the government and corporate actors. In most cases, if not all cases, corporations refuse to educate themselves in the language, law, custom and culture which houses the land-based information in question.

If the result of consultation is not “scientific,” the developers and

District Managers – and the judges in the ensuing litigation – proceed by dismissing it.

The Band Council Administrators, lawyers, and often hastily hired consultants are fully capable of delivering results without the actual title holders' involvement.

Courts have made a pattern of seeing any delay in the consultation procedure or failure to produce timely technical data as, “unreasonable,” and “frustrating the process.” After that, there is no recourse.

Land Use Planning agreements, Revenue and Benefits Sharing agreements, Interim Treaty agreements, Strategic Engagement Agreements, etc., have produced First Nation, or Indian Band, decisions in favour of the logging, mining, industrial development, municipal expansion, and so on, which makes the BC economy viable. Unfortunately, such decisions have often not been a real long-term benefit to the community, while licensing further irreparable harms on the land, and have had the effect of introducing the “tyranny of the majority” where a majority vote or a Band Council Resolution results in the logging of a small family's entire hereditary land title.

In 2007, the *Douglas* case, about salmon fishing on the Fraser River, established that a single unreturned phonecall, recorded to the Band office answering machine, constitutes the fulfillment of consultation.

A few months later, the ruling from BC Supreme Court in *Tsilhqot'in Nation v. British*

Columbia was released. In finding “small spot” aboriginal title throughout the claim area - small spots being closed village sites, hunting blinds, fishing rocks, Justice Vickers wrote in his extensive *obiter dicta*: “It appears that the Province has been violating Aboriginal title in an unconstitutional and therefore illegal fashion since it joined Canada.”

Vickers found Tsilhqot'in aboriginal rights throughout the claim area. However, as the Supreme Court of Canada would comment on the later appeal of this case, their claim had not been made out adequately to suit the evolving court tests of Aboriginal title: “the legal principles may be unclear at the outset, making it difficult to frame the claim with exactitude.”

The Tsilhqot'in agreed to a one-year negotiation period with BC before deciding whether to appeal the court's ruling. After the twelve months of unproductive discussions, the Tsilhqot'in appealed for a wider Declaration of title.

In the meantime, this was the closest anyone had got to a declaration of Aboriginal title. The judge had added to the meaning of Aboriginal title lands, saying the provincial *Forestry Act*, and other provincial legislation, does not apply to them.

Discussing the case at a January 2008 conference, Grand Chief Stewart Phillip, President of the UBCIC, said,

When he heard of the judge's ruling that BC forestry laws don't apply on aboriginal title lands, one BC lawyer automatically said, ‘BC could pass

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legislation to control aboriginal title lands.’ Why didn't he say, ‘BC could pass legislation to recognize aboriginal title’? We are so deeply entrenched in this adversarial position.

The effect it has in our communities is unspeakable. In Terrace last year, there were 111 suicide attempts. 8 of those were completions. All one has to do is walk a few blocks from here to the Downtown East Side to see the human costs of our unresolved land rights.

For the first time in 30 years, our leaders and legal advisors are going to work together to create a province-wide legal strategy to force BC and Canada to move on their archaic positions that deny the aboriginal title and rights of our people and seek the extinguishment of our land rights and human rights. And we know in our hearts we will prevail.

What followed from this determination that the First Nations Leadership Council would work with the provincial government was the draft *Recognition and Reconciliation Act 2009*.

Unfortunately, the exact same politicians which had sued BC for ratifying the Nisga'a Final Agreement – and then held a provincial poll to ensure that the BC treaty mandate would stay well behind *Delgamuukw's* progress – were writing the legislation. Premier Gordon Campbell, Minister for Treaty Geoff Plant, and Minister of Finance Michael deJong appeared all over the province, telling non-Native people that the legislation

wouldn't change a thing for them, and at the same time telling the media that it would mean a "seismic shift" for Aboriginal people. When the legislation was finally leaked, the typical clauses about recognizing crown sovereignty and consent to be governed by the crown were all underlining the "new" offer.

The Province would control "recognition and reconciliation."

The First Nations Leadership Council appeared to be offering consent to the province, on behalf of all Indigenous Peoples, for the new legislation their lawyers were helping to write. This ended in a ceremonial performance of the Death Song, rendered in an Annual General Assembly of the Union later that year. The legislative solution was rejected.

~

The collapse of the BC treaty process

came about after abandonment on every side – at least, First Nations formally walked away when, in 2009, the Province and Canada quietly announced that negotiating loans would no longer be repayable. The Xaxl'ip had gone to an urgent action committee of the UN Committee for the Elimination of Racial Discrimination to explain how, if negotiations failed, and they walked away, they would be in third-party remedial management because the balance of the loan was more than they were worth.

By that time, some tables were negotiating for a settlement capital that was no more than what they had borrowed to negotiate it:



When the grassroots membership of First Nations whose Chiefs made up the First Nations Leadership Council - through the UBCIC, BC Assembly of First Nations, and First Nations Summit - were made aware of the legislative proposal, they demanded to be consulted.

Eight regional meetings were held. This photo is from the meeting in Prince George, June 2009, where people demonstrated their opposition to the provincial legislation as well as the assumption that they could be represented by an absentee Leadership Council.

averaging \$7 - 21million per First Nation. But if they left the negotiations, that bill would come due.

The entire "modern day treaty process" – refusing to adapt to the gains made in *Delgamuukw*, *Haida*, and now *Tsilhqot'in* – subsided with disaffected communities rising together in the First Nations Unity Protocol Agreement – even blockading ferry sailings in 2007. There was a successful challenge resulting in finding "no domestic remedy" to the land question, based on participation in the BC treaty process, provided by the Inter-American Court of Human Rights; blockades of treaty polling stations at Band offices; court challenges of each of the three Final Agreements

from 2007 to 2009; the publication of the *BC Treaty Negotiating Times* newspaper – which exposed the isolation of First Nations, none of them realizing that dozens of other communities were reeling from the same bad faith negotiations; and the point-blank exposure by UN treaty bodies and urgent action committees of BC's name-change gimmick, now substituting "certainty" for "extinguishment" but meaning the same thing.

Three Final Agreements were made under the BC Treaty Commission. To date, some communities remain involved after thirty years and have garnered provincial licenses for forestry as "interim treaty benefits."

The number of programs to substitute for various chapters of Final Agreements has multiplied almost inconceivably.

They are all based on the same exchange of Indigenous title, rights and jurisdiction for “the rights defined in the Agreement.”

At present, the suite of “certainty” and “modified rights” and “reconciliation” (more alternatives for the word “extinguishment”) agreements have evolved from the Comprehensive Claims categories of 1974 to the “Aboriginal Horizontal Framework” laid out in 2006 to what can be called the Sectoral Agreement Strategy in present day.

Instead of completing a Final Agreement as in the discredited BC treaty process, First Nations can complete each chapter of a Final Agreement as a stand-alone deal.

They are known as Education Jurisdiction Agreements; First Nations Land Codes; delegated Health Agreements; Child and Family Service Agreements, and so on. They all start with the Land code, which requires a constitution: the bedrock of the corporate unit.

The transition of Indian Bands to municipal corporations was one of the goals of the 1969 White Paper Policy, bringing Indigenous peoples within “the body Politic of Canada,” as the Superintendent of Indian Affairs, D.C. Scott, said in 1920.

All the Agreements are enabled by federal legislation. While the legislation does not spell out the extinguishment requirements, the Implementation Agreements with the Province and Canada explicitly require the abandonment of the

right to self determination – except as defined in the Agreement; and consent to be governed by Canada’s Parliament, BC’s courts, and even minor provincial bureaucracies.

The Sectoral Strategy implementation agreements for financing dwarfs total Final Agreement compensation by ten-to-twenty times in *each* Lands, Health, Education, and Children and Families chapter.

But this remains the only practical way for Indigenous Peoples to make Aboriginal rights work for their people – that is, the only way to receive *any* compensation or recognition of rights from Canada or BC: to surrender them.

The government’s only offer in response to the right is compensation for extinguishment, by Agreement, and accommodation of a set of rights – defined and authored under the Canadian constitution – in that same Agreement where the right is acknowledged for the first and only time. The right is not acknowledged outside of the Agreement, which doesn’t exist until ratified, and there it is: surrendered, modified, assimilated to expression within BC law.

Several types of broad Agreements have, much more recently, achieved Indigenous consent to be governed and recognition of crown sovereignty. In the *Haida Rising Tides* agreement, the nation for the first time recognized crown jurisdiction on their islands. The media headlines announced shared jurisdiction, or recognition of Haida – but that had already happened. What was novel was the Council of the Haida

Summary

Nation’s recognition of crown rights and jurisdiction.

The same acquisition of Indigenous consent and recognition of the crown comes through jurisdiction-sharing arrangements such as with Musqueam in 2026. This Indigenous consent and recognition is unprecedented, and comes with no recognition of title; no promise of land ownership; no respect for self-determination.

It comes with money and participation agreements – some 40 years after the *Guerin* decision identified the duty of government to consult Aboriginal people when making decisions that affect their interests. Of course, it is only much more recently that courts have identified the well-being of the environment as an Aboriginal interest.

In the same year as the 2007 *Tsilhqot’in* decision, the Inter-Tribal Fishing Treaty relating to the Fraser and Columbia Rivers was revived and greatly attended. The goal: a sustainable restoration plan and responsible management of the riversheds.

The tragic result of the 1990 *Sparrow* decision, when the court established that the federal government had the unfettered right to control regulation of saltwater fisheries – meaning salmon – “for the purpose of conservation,” was as Chief Matthias predicted in 1986: the collapse of the salmon stocks.

In 2009, Fraser sockeye salmon returned at 1% of historical run sizes. This triggered a Commission of Inquiry, as there was no obvious

explanation for the decline.

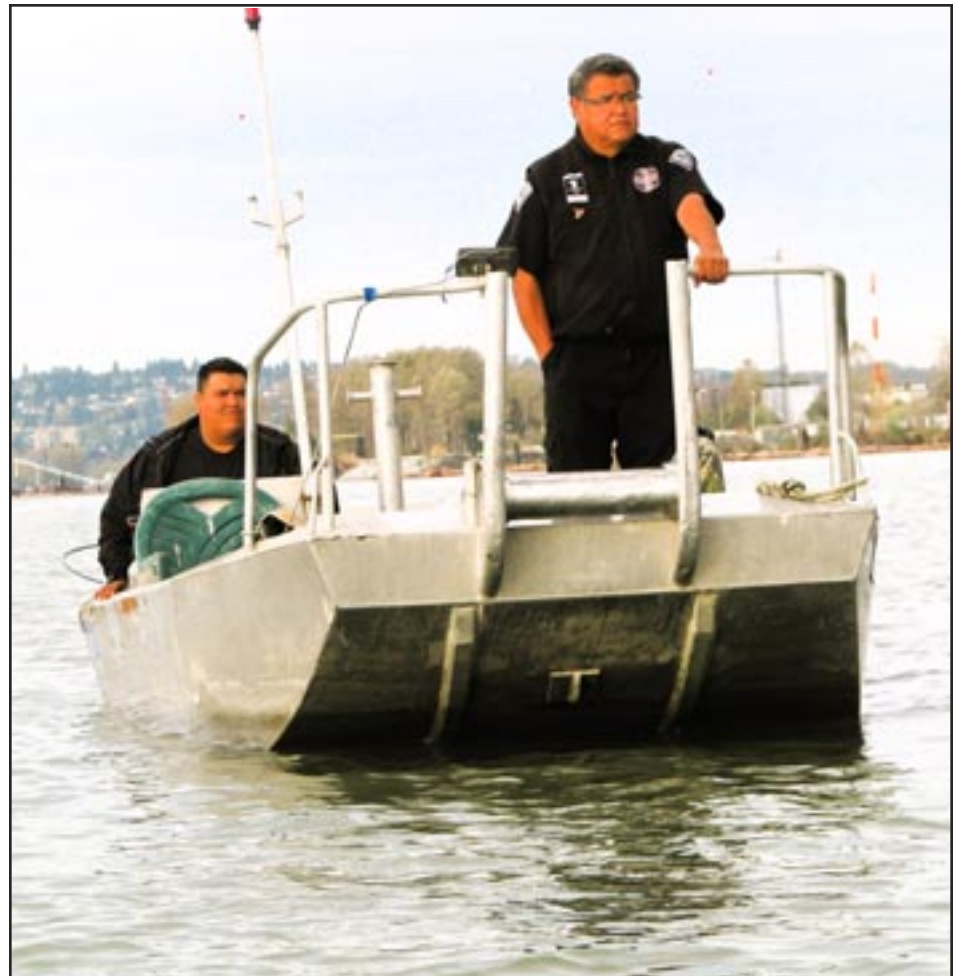
Chinook, Coho and Steelhead had collapsed as well – many were red-listed endangered species by 2009.

In the *Cohen Commission Aboriginal Worldview Panel*, December 2010, every witness spoke to their total dissatisfaction with their relationship with DFO. The Aboriginal Aquatic Resources and Oceans Management and Aboriginal Fisheries Strategy agreements were characterized as arbitrary, unilateral, and ineffective in incorporating Indigenous values into fisheries management.

The Communal Fishing Licenses that DFO unilaterally offers communities does not include the needs of people living away from home; people who come home at fishing time. The way openings (and closures) for Aboriginal food, social and ceremonial fisheries are organized in such a way that most communities can never catch their allocation, particularly on the coast.

The “consultation and accommodation” objective of legislation was not being achieved.

The Cohen Commission report heard evidence of the impacts of commercial over-fishing; open net-cage Atlantic salmon farms in the migration path of the Fraser salmon; development in riparian areas and estuaries; Vancouver sewage effluent pooling in the tidal reaches of the Fraser River; the quarter-million licenses to the sport fishery for salmon which allows “eight in possession” for sockeye, and is largely unregulated; logging and mining in watersheds; agricultural water diversion from salmon-bearing streams; roadbuild-



Dick Louis, Musqueam Fisheries, escorting the Paddle for Wild Salmon in 2010.

ing and train-tracks in riparian areas; and much more. The report emphasized that it could find no single causative factor for the staggering decline, and made no strong recommendations regarding any of the causes.

Meanwhile, each of the causes of decline presented were the subjects of literally hundreds of Indigenous court actions. The Commission was designed to avoid coming to conclusions that implicated any of British Columbia’s major industries - all land-based.

Again trying to regain some control over restoration of the salmon – lifeblood of the people – both the Ahousaht and Lax Kw’alaams fishing cases, 2008 and 2011, were initiated as title cases.

The court stripped the title issue from the question of whether they had an Aboriginal right to fish for salmon and seafood commercially. The court said the title question would be tried separately, later. It has not been.

Well into its stated campaigns for a “New Relationship” and

“Recognition and Reconciliation,” the Province of BC had these remarks in its statement of defense to the Ahousaht fishing claim:

British Columbia consequently does not admit the present-day existence of an aboriginal nation known as the Nuu-chah-nulth Nation or otherwise made up of the individual Plaintiff Nations.

British Columbia does not admit that the Plaintiffs have aboriginal title over bodies of water or over lands below the surface of the water, including the foreshore, whether as defined in the Fifth Amended Statement of Claim as the Territories or the Fishing Territories or otherwise, for either of the following two reasons:

(a) as a matter of law, aboriginal title does not subsist over water or land covered by water; and
(b) as a matter of fact, the Plaintiffs did not occupy such Territories or Fishing Territories to the extent necessary to establish aboriginal title.

As Britain’s oldest friend at first contact, and in resolving a dispute with Spain; as people who brought them food there at Friendly Cove, Nootka, where subsequent Captains bought timber to replace their main masts, this seems a little forgetful. It does not sound like “reconciliation.”

The reduction of “Aboriginal rights” to nothing more than procedural rights to be “consulted and accommodated,” and the ongoing procedural firewall against title cases making their way through courts, has not repaid Indigenous

perseverance very kindly.

In 2011, the judge in *West Moberly* said “the Province’s approach to consultation amounts to nothing more than a chance for First Nations to blow off steam.” Furthermore, it wrote that since 2004, the government approach to consultation has been “characterized by bad faith, bias, incompetence, unprofessionalism, and errors of ...fact, law and jurisdiction so numerous that several pages would be required.”

This revelation did not have any result.

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The Supreme Court of Canada’s decision in *Tsilhqot’in* was made in 2014

– the first declaration of Aboriginal title in Canada, confirmed by the highest court. It broadened the tests and definitions for Aboriginal title: “Aboriginal title flows from occupation in the sense of regular and exclusive use of land.” “Evidence of occupation sufficient to ground Aboriginal title is not confined to specific sites of settlement, but extends to tracts of land that were regularly used for hunting, fishing or other resources over which the group exercised effective control at the time of assertion of European sovereignty.” “Aboriginal title is not confined to specific sites of settlement, but extends to tracts of land that were regularly used.”

This case began to discuss compensation that may be due to Indigenous Peoples where Aboriginal title lands have been impacted by development or settlement,

Summary

where those infringements are proven to be unjustifiable. “Once Aboriginal title is confirmed, the lands are “vested” in the Aboriginal group and the lands are no longer Crown lands.”

However, for all that was expanded over the ground, the legal meaning of Aboriginal title in Canada was diminished further than ever before:

“Aboriginal title is subject to certain carve-outs.” “Provincial laws of general application apply on Aboriginal title lands.” and “Aboriginal title lands may be infringed with justification,” and “therefore the question of federal / provincial jurisdiction is of no consequence.”

Since the ruling, the people have continued to be wrapped up in consultation processes. The declaration of title did not extend to their full territory, and so, as with the Nisga’a, the Tsilhqot’in are negotiating with only half a ruling. BC and Canada are apparently in no rush to expedite a hearing to complete or concede their claim.

In the meantime, they are in the same situation as other First Nations, accepting Sectoral Agreements and fighting fishing charges.

One of the results of the *Tsilhqot’in* decision, for others, is a proliferation of “recognition and reconciliation agreements.” One deal at a time, First Nations are wheeling and dealing in extremely valuable properties, maybe adjacent to their reserve or of obvious and ongoing cultural importance. They are trading them in – either to make a few more hectares of Indian Reserve, or in exchange for such

things as schools and health centres. These carry the requisite promise not to assert any Aboriginal rights in that regard again, and to sign off that they have been compensated and accommodated.

The *Tsilhqot'in* case, originally started as *William v. the Queen* in 1989, shows every sign of returning to court with the “frame” of the complaint adjusted to the courts’ evolutionary – or perhaps “devolutionary” – legal concepts.

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In 2019, the province enacted the *BC UN Declaration on the Rights of Indigenous Peoples Act*. At the outset, this piece of legislation said that “Indigenous Peoples” in the UN Declaration would mean “Aboriginal peoples” in the BC Declaration. By changing the definition, a great deal of international rights were lost, and the status quo definition of Aboriginal peoples in Canada was substituted. Moreover, when challenged in court, in *Gitxaala*, BC revealed in its statements that it had never intended the Act to be enforceable.

For good measure, in the style of BC’s wildlife and environmental protections, there is section 2(1), which states that every provision of the Act applies to every enactment “unless a contrary intention appears in this Act or in the enactment.”

*

The effect of cumulative impacts is well understood by Indigenous communities.

The refusal of the courts to provide clear, reliable decisions on the protection of Aboriginal rights



Prime Minister Justin Trudeau receiving a copy of the Inter-American Court of Human Rights “Reasons for Admissibility” report in the Edmonds v. Canada case, from James Louie of Lil’wat in 2015. In accepting the Petition to be heard, the Court waived the requirement to prove exhaustion of the domestic remedy - that there is no hope for resolution within Canada - apparently on the strength of extensive documentation of century-old problems, and perhaps partly on the basis that Canada mostly refused to participate, except sending the Court a copy of the BC legislation on Children and Families. The Edmonds case describes ongoing violations of Lil’wat people by the imposition of Canadian legislation and agents to enforce it.

resulted in this part of the 2021 written ruling in the case brought by Marvin Yahey on behalf of his Blueberry River First Nation, for relief from the ongoing infringement of their rights under Treaty 8.

Justice Burke of the BC Supreme Court described the swamp of precedent available to them this way:

At the upper end of the infringement spectrum lies the idea expressed in *Mikisew* and repeated in *Grassy Narrows* that treaty rights are infringed when “no meaningful right” – be it to

hunt, fish or trap – remains within a First Nation’s traditional territories.

In the middle ground between these two poles lie various articulations of the degree and significance that may be required to find an infringement, including: a “meaningful diminution” of the right (*Gladstone*, *Morris*, and Justice Huddart in *Halfway*), “more than an insignificant interference” with the right (*Morris*), an “unnecessary infringement” of the interests protected by the

right (*Sparrow*, and Justice Huddart in *Halfway*), a “detrimental effect” on the exercise of a right (*Ahousaht*), a “limitation on the method, timing and extent” of a right under a treaty except to the extent the treaty has limited that right (*Badger* modified in *Marshall*), an “erosion [of] an important aspect of” the right (*Badger*), a “substantial” impairment of the right (Justice Southin in *Halfway River*), or even (potentially) making the rights “illusory” (Justice Southin in *Halfway River*). ...

... I find it appropriate to consider whether there has been an infringement of Blueberry’s treaty rights by considering if there has been a significant or meaningful diminishment of the rights.

These are what is left after consultation and accommodation: a legal complaint as to how bad the infringement was.

In the most recent title cases in BC Supreme Court, the judge reverted to findings of small-spot title in *Nuchatlaht*, 2024. The “small spot” approach was specifically rejected by the Supreme Court in *Tsilhqot’in*. The Nuchatlaht case referred to a small island, and the judge only found title on the landing sites and villages. In *Cowichan*, 2025, there is a case that only asked for title to a village site – a site that had been sketched and mapped and referred to in nautical directions by the entire first century of BC colonists.

The judge found that BC had unjustifiably infringed the Cowichan right to that village, when the

Chief Commissioner for Lands and Works sold it to himself and his friends – against all the rules about reserving village sites. The Province appealed the decision within hours.

In this back-eddy of catch-22s and endless negotiations leading to further infringement, we are left with what the Chief Justice of the Supreme Court of Canada said:

“Ultimately, it is through negotiated settlements that the reconciliation of Aboriginal societies with the sovereignty of the crown is to be achieved.” When Antonio Lamer said that to the Gitksan and Wet’suwet’en, and all Aboriginal Peoples, in 1997, he condemned them all to a conclusion determined by government policy. He knew that at the time, and so one more of the landmark rulings on Aboriginal title ended with a lie. It would be repeated many times over.

The Gitksan and Wet’suwet’en went to court *to get relief from negotiations*. All those hereditary leaders, representing some 40 houses, launched their title case in 1985 because they had just found out, in the Comprehensive Claims negotiations, that the only outcome in negotiations with Canada is surrender, extinguishment, and assimilation.

The next Chief Justice, Beverly McLachlin, said the same thing to the Tsilhqot’in: “while claims are resolved, consultation and accommodation are the best tools for reconciliation.”

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Summary

Native jurisdiction, land ownership, and right of governance have been split apart in legal and legislative silos; been minimized or dismissed altogether; constructed in the mainstream narrative and in the language of negotiation as if to be hypothetical *sui generis* concepts; and made “legally” impracticable by the colonial courts which assume the right to displace the native jurisdiction.

It is the assumption of jurisdiction by the colonial court that must be reconsidered.

A court that has an interest in the outcome of its own decision has no ability to deliver a fair trial, and that is the criteria for jurisdiction.



Timeline

**“So I said,
anyone who sets
logging equipment
down in the Stein,
I’ll shoot them.”**

**Chief Ruby Dunstan
Nlaka’pamux**



A Timeline of Events

in
the
Expression
of
Land Title
and
Jurisdiction
west of
the
Rocky
Mountains

1670 Prince Rupert's Charter.

King Charles II made a grant for exclusive trading to the Governor and "Company of Explorers trading into Hudson's Bay," thus incorporating the Hudson's Bay Company. The grant included exclusive trading rights in "the lands draining into Hudson's Bay" (now almost 40% of Canada), mineral rights, and a mandate to discover the non-existent Northwest Passage – a theoretical ocean route north of North America. The area was adjacent to French trade and activity.

1754 French and Indian War.

Soon to become the Seven Years War, British colonial forces in the Thirteen Colonies on the eastern seaboard of North America declared war against France and her extensive Indigenous partners. During the Siege of Montreal, a young James Cook served in the Navy, later to be rewarded with a commission that would see him sail to the Pacific northwest.

1760 Articles of Montreal.

In the Seven Years War between Britain and France, Chief Pontiac and his extensive regional military alliance fought alongside their French trading partners. When France conceded defeat in "New France" at Montreal, it protected its Indian Allies' interests in the following part:

Article 40: The Savage or Indian Allies of his Most Christian Majesty shall be maintained in the lands they occupy if they wish to remain there; they shall not be disturbed on any pretext whatever for having taken arms and served his Most Holy Majesty.

In the next few years, while the British took over French forts in the

area, Article 40 was not upheld. The British also refused regular sale of guns and ammunition, limiting this exchange to a minimum which was inadequate to the Peoples' needs, and drastically reduced the payment for furs. Indigenous Alliances under the Shawnee leader Pontiac undertook a campaign to overthrow the British, destroying their forts and settlements, with the full expectation that the French would regain their former position as respected and mutual guests of "New France."

British Admiral Amherst organized a biological offensive, sending blankets infected with smallpox to be distributed among Pontiac's allies. The attack weakened the confederacy considerably.

1763, February 10 Treaty of Paris.

The colonial powers of Europe ceased conflict among themselves, ending the Seven Years War. Much of the conflict was based in and concerning colonies distant from Europe. Spain, Portugal, France, Britain, Belgium, and others settled their competitions over access to those lands and heretofore independent nations. They pledged to each other not to make war, and to stand together against "Any who would oppose us." This included the revelation to Pontiac that France had abandoned him and his campaign.

October 17, Royal Proclamation.

In an attempt to end or mitigate Pontiac's continuing war and sacking of British forts, among other things, King George III of Britain acted to protect its future in North America. That future would depend on the good will of the Indigenous sovereigns there, and their military might. Desperate to correct His



Chief Pontiac led the dominant military alliance from the Great Lakes to the Atlantic coast, maintaining order and recognition of Indigenous sovereignties.

This recognition was a term of France's surrender to Britain, in the Articles of Montreal, 1760. This recognition was also the crucial aspect of King George III's Royal Proclamation of 1763, which Pontiac forced as an end to raids on non-compliant British forts.

colonial subjects' violations of the 1760 treaty at Montreal, and the violations of mutual trading agreements made along the Eastern Seaboard with such Chiefs as Powhattan, the King issued an Executive Order to the Governors of the Colonies there.

However, the King relied on the promise of allegiance to them which was agreed in 1760 at Montreal, and since violated, now referring to the Native nations as

"His Majesty's Allies." The Indigenous Peoples would not be "molested or disturbed" in their "Hunting Grounds" which are "Reserved to Them or any of them;" and the only judicial jurisdiction any British court would have would be on "Lands surrendered to Us," by the Native Peoples in public meeting, and "on any Lands not purchased by or ceded to Us," the Governors would have no rights except to pursue and apprehend colonists for violations of British law.

1766 Pontiac's Peace Treaty.

A cessation of military campaign was agreed at Ottawa between Pontiac and the British general William Johnson, with no other conditions nor surrender.

1769 Assassination of Pontiac.

For the promise of a barrel of rum from the fort, it is said, an acquaintance murdered the powerful leader Pontiac. The hired assassination followed years of colonial efforts to sabotage Indigenous resistance that was centered around Pontiac's diplomacy and relationships.

1774-83 American War of

Independence. With military leadership that had been trained in the French and Indian wars, such as George Washington, American colonists won their independence from Britain. Taxation of the colonies to pay for (and fight) the Northwest wars, without representation in British parliament, and the simultaneous assertion of Imperial control of American settlement activity, like the Proclamation of 1763, prompted rebellion throughout the colonies. The emergent USA would continue in various states of armed conflict with Britain for many

decades to come.

1790-92 Nootka Convention.

Under the protection of Chief Maquinna, Spanish and British envoys maintain peace while resolving the "Crisis at Nootka Sound" by treaty. The Spanish relinquish their international rights of trade, and their rights of "discovery" (under the 1492 Papal Bull) on the northwest coast of America.

1793 Alexander Mackenzie

reaches the Pacific Ocean by land from Montreal, establishing a connection of North West Company trading partners across the continent.



James Cook, in a portrait by William Hodges.

1794 The Jay Treaty. A "Treaty of Amity, Commerce, and Navigation" between Britain and the newly determined USA, reducing British interference in American maritime trade. The terms recognize freedom of passage between the Canadas and the USA by Indigenous people.

The decisive battle at Fallen Timbers, between Americans and Britain's Indigenous "Allies," ends when the Native contingent is locked out of the British Fort during their strategic retreat from American forces, and scattered. The resulting American advance into the Indian Territory was considered by some to be the end of the Northwest Indian War waged by Americans. It was one of the first in a series of battles which would be waged ever westward, following a pattern of the British supplying and encouraging Indigenous forces against the USA in dozens of skirmishes, battles and massacres. Britain promised protection and alliance in exchange, but always retreated until the Americans were exhausted and the Indigenous forces sacrificed.

The Jay Treaty includes relinquishment of British-held forts in the Northwest, and secures American loyalty with Britain against France.

1799 The Russian-American Company is created, with much the same structure and purpose as Britain's Hudson's Bay Company. The RAC's interest in the fur trade brings ships and forts into the North Pacific coast of America, especially Alaska, and sometimes as far south as California.

1801-02 Rocky Mountain House. David Thompson arrives from Montreal, travelling with Native guides along the ancient trading trail. The NWCo. traders build their fort at this confluence of Native trade routes.

1806 North West Company fur traders arrive in Carrier and Dakelh country by land from Montreal,

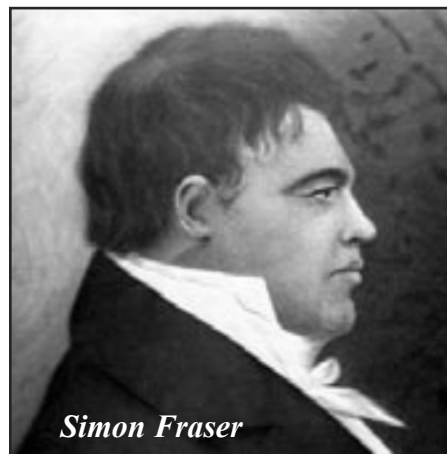


North West Company flag.

with the diplomatic and navigational employment of Cree guides, via the well-worn Grease Trails connecting The Great Plains to the Coast. They establish a trading fort at Stuart Lake, Fort St. James, joining it into the cross-country fur trade.

1807 Kootenay House. Built by the NWCo. cartographer David Thompson, his young family, and other NWCo. men, the post became a hub for trade between the European company and Kootenay nationals.

1808 Simon Fraser travels from Ft. St. James to the sea via the Fraser River. From one border to another, he must employ local nationals as pilots and diplomats to cross through Secwepemc, St'át'imc, Nlaká'pamux, and Sto:lo. Reaching the tidal reaches of the N'sát'atqu – the Fraser River – the pilots turn him back to avoid encountering Musqueam patrols.



Simon Fraser

c. 1809 Rocky Mountain House is burnt down by Native wardens of the Grease Trail. David Thompson builds Salish House in Montana.

1811 David Thompson reaches the Pacific Ocean by the Columbia River from Rocky Mountain House, via Salish House. He finds Fort Astoria newly constructed by Americans when he arrives in what was called the Oregon Territory – now Washington State.

1812 War of 1812. War begins between Britain and USA. The great military leader Tecumseh sides with Britain's General Brock, against the Americans who are making hostile inroads, and in pursuit of British recognition of an independent Indigenous nation throughout the Ohio River Valley and westward, encompassing many nations joined in confederacy. Brock dies in battle, replaced by General Procter, who steadily retreats and leaves Tecumseh's forces in the rear, unwilling to retreat from their own country, until the General finally abandons his sworn Ally to the American General Harrison and the Kentucky Rifles. Tecumseh is killed, holding his position, and his confederacy disperses.

1814, December 24, Treaty of Ghent. The USA and Britain end the War of 1812. The terms of peace require several Commissions to establish boundaries between them, from the coast and then inland along the 49th parallel. This border only runs west to the end of the Great Lakes. The success of the British defense is due solely to their alliance with Tecumseh, but the Treaty does not even mention any conditions concerning protection of

Timeline

the Indian Territory. The establishment of that independent “Indian Country” was the basis of Tecumseh’s alliance with Brock.

1819 **James Douglas** is apprenticed to the North West Company, at the age of 16.

1821 **Hudson’s Bay Company monopoly**. Having warred with inland fur-trading rivals, the North West Company, in skirmish warfare and settlement of the Red River Colony, Britain adjudicated the dispute and ordered amalgamation under HBC.



Tecumseh and General Brock, 1812, in the painting by Charles William Jefferys. The promised establishment of an independent “Indian Country” in the Ohio River Valley was the basis of Tecumseh’s alliance with Britain against the USA. Brock was killed in battle, and his successor, General Procter, did not honour the promise in the Treaty of Ghent and the conclusion of the war. Procter retreated, abandoning Tecumseh to his death in battle - and the dispersal of his tribal alliances.

1824 **HBC** makes first trip west to the Oregon Territory, to inspect forts and license to passage by trade routes acquired from the North West Co. One of his stated aims is to promote Christianity and introduction of Missionaries to Indigenous Peoples, within his overall mandate to make the forts profitable.

1825 **Treaty of St. Petersburg** determines northwest boundary between Russian and British “interests,” the present-day Alaska-BC border, in securing exclusive access to Indigenous trading partners in the North Pacific maritime fur trade.

1834 **HBC attempts to build forts up the Stikine River, in Tlingit**. This was denied by the Russian Company, and the competition eventually resolved by Russia leasing Tlingit land to the HBC in exchange for protection and supplies.

1839 **James Douglas**, highly regarded by Governor Simpson, is appointed Chief Factor of the Hudson’s Bay Company in the “Columbia District” – the Pacific Northwest.

1843 **Chief Cheealthuc and Fort Camosun**. After reaching Clover Point the previous summer, HBC Governor Douglas returns to Lekwungen where, under the Chief’s leadership, a site for a trading fort is selected and the people render a substantial forested area into logs and build it, in a partnership with HBC, receiving trade goods for labour and envisioning a joint enterprise. This Fort’s name soon changes to Victoria.

HBC moves its assets from Fort Vancouver, now in Washington State, to the new Fort Victoria in anticipation of American control south of the 49th parallel.

1846 **Oregon Treaty**. Extending a boundary between the United States and “British North America” along the lines established after the War of 1812, the new border along the 49th parallel bisects Sinixt, Sto:lo, and Coast Salish of Vancouver Island.

In recent years many Supreme Court of Canada rulings have selected this year as the “effective date of” **British sovereignty** across what is now called British Columbia. However, no such Declaration was ever made at the time by the crown. The Court’s retroactive finding of “British sovereignty,” which it maintains to date, has been historically rejected by the original sovereign nations, who never conceded any such control nor consented to be governed by Britain.

It was not until 1864 that any crown-funded public gathering was held and Indigenous peoples were addressed as “Subjects” of the Queen.

1849 The Colony of Vancouver's Island. The HBC is given a Charter to develop Vancouver Island for British settlement. HBC's Charter for the huge island includes selling land to settlers to raise funds for its own governance. The first Governor is Richard Blanshard.

However, *quam ipse habet* - No one can transfer to another a larger right than he himself has. Neither the Company nor the British had land rights, which could only be gotten from people who actually possessed them. As HBC's Chief Factor, Douglas had lived and worked throughout the HBC trading posts in Sto:lo, Secwepemc, Okanagan and Carrier Dakelh nations and was very aware that attempting to sell any of their lands to someone else was not possible.

1850 Kwakiutl stop HBC miners from taking coal. In response, colonial authorities negotiate treaties, signed February 8, 1851. The HBC fort includes the coal diggings inside massive walls.

Governor Blanshard steps down, and is replaced by James Douglas.

The British "Indian Department," which defined the rights and liabilities of Indian persons distinct from any of "Her Majesty's other Canadian Subjects" since 1757, was transferred to Canadian administration. The colonial governments began to keep records of Indians and Bands entitled to benefits under treaty, forming the "Indian Department." At that time, the only Indian-British treaties in British North America were east of the Great Lakes.

1850-54 Fort Victoria Treaties. Songhees, Klallam, Nanaimo,

Saanich, and Kwakwaka'wakw leaders met with HBC Governor Douglas and other colonial officials to secure compacts for land use and other constructive arrangements. Since the Indigenous language versions of the meetings were not written, and the signing Chiefs did not read English, the nature and scope of these treaties is somewhat disputed. Especially because most Indigenous signatures were given as Xs on a blank paper, to which Douglas attached treaty text later. According to the British Company, they gained – in perpetuity – ownership of all lands not fenced or in village sites, saving only the right of the original owners to hunt and fish "as formerly." At that time, fencing was not a feature of traditional land use.

The areas covered by these treaties include the southern tip of present day Vancouver Island, the area around Nanaimo and a coal mine, and a site for a fort and another coal mine towards the northern tip of the Island, Fort Rupert.

1853 The Colony of the Queen Charlotte Islands names all of Haida Gwaii as a British colony. Haida allow a small copper mining camp at Skincuttle a few years later, but the mine is a ruse to gain knowledge of the People's villages. It will be 1863 before the mining façade has run its true course of delivering smallpox directly to the islands.

1855-56 Puget Sound War. Following the 1855 Elliott Point Treaty, at Seattle, Washington, immigrants began to settle in many areas in violation of the treaty. Several violent attacks and open conflicts took place, effectively out-gunning and expelling Chief

Seattle's people from traditional lands. Sto:lo people north of the US border, relations of the people at Puget Sound, inform colonials they don't want a treaty like that.

1857 Gold found in the Fraser River is brought to San Francisco for sale.

1858 Spring and Summer Fraser River gold rush: an estimated 30,000 men, mainly from California, buy mining licenses to get gold up the Fraser River from offices in Victoria.

Some of them act as American militias, entering Sto:lo and Nlaka'pamux, going towards Lillooet. Riverside villages are attacked and burned to the ground; Lytton's Chief Spintlum and Yale's Chief Liquitim negotiate with leaders of the American militias to bring an end to the Grouse Creek War.

HBC gunboats are sent to sit in the mouth of the Fraser River. It is the only act the Colony of Vancouver Island is capable of, after selling all those mining licenses to thousands headed for the Fraser, where there's no Colony.

August 2 The Colony of British Columbia is announced in Britain. Joining with the Colony of the Queen Charlotte Islands, the HBC is seconded to form the infrastructure of British government in the new Colony. HBC employees take on most government roles.

The HBC had, at that time, approximately 26 trading forts active, by agreement with about half of the Native Nations whose lands were included in the geographical description of the new Colony.

Timeline

November 19 James Douglas was made the first Governor of the colony of British Columbia. He was sworn into office by British lawyer Matthew Begbie, as directed by Queen Victoria of England. At the same time, newly appointed Governor Douglas appointed Begbie the Chief Justice. In addition to being Governor of Vancouver Island, Douglas expects a salary of £5,000, but receives a £1,500 salary with instructions to do better for Britain.

1859 Winter **Starvation** – Interior Salish peoples face unprecedented starvation as a result of gold miners' raiding of their food caches, and the previous summer's gold rush disruption of the salmon fishing.

February 14, **BC Lands Proclamation**: "All the lands in British Columbia, and all the Mines and Minerals therein, belong to the Crown in fee." There is no mention of "Indians."

1861 **The Colony's Petition to Buy Land**. The House of Assembly, which is the Colony of Vancouver Island's Legislature, sends a Petition to the Imperial Government, via the Secretary of State for the Colonies, advising that they cannot continue settlement without more money to buy land. They explain the danger settlers are in, if they continue moving into non-treaty areas, particularly Saanich and Quw'utsun, and that many would-be settlers have left the Colony because of the lack of certainty and lack of political will to achieve it.

Governor Douglas includes a cover letter with the Petition, explaining, among other things:

"As the Native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain Districts, they would not fail to regard the occupations of such portions of the Colony by white settlers, unless with the full consent of the proprietary Tribes, as national wrongs..."

Lord Newcastle, Colonial Secretary, replied: "I am fully sensible of the great importance of purchasing without loss of time the native title to the soil of Vancouver Island; but the acquisition of the title is a purely colonial interest, and the Legislature must not entertain any expectation that the British taxpayer will be burdened to supply the funds or British credit pledged for the purpose."

Britain refuses to send more money, but does not reduce the settlement mandate and colonial expectation proportionately.

Sto:lo Lands are surveyed and reserved against non-native settlement, covering most of what is today called the Fraser Valley from Hope to Abbotsford.

Secwepemc Lands from Fort Kamloops are surveyed and reserved against non-native settlement, covering a substantial part of the interior of Secwepemc country.

1862 **Smallpox** is introduced to the International villages around Victoria, by a carrier recruited from San Francisco. Coinciding with the arrival of the disease, Governor Douglas sends soldiers to burn down hundreds of tents and houses there, particularly at the Haida camp. At two-week intervals, more and more of the Haida, Tsimshian,

Tlingit, and other resident visiting nationals are expelled from the international village that has grown up around Fort Victoria – coinciding with the two-week incubation and contagious stages of the disease. No effective steps are taken by the Colonial Government to quarantine infected individuals, nor to vaccinate others, but sick people are sent away by canoe.

As the disease spreads northwards, consuming the Native populations, surveyors follow two-to-four weeks behind and stake claims at hollowed-out and indefensible village sites. Suddenly, settled and cultivated Native areas along the coast are open for speculation and sale, where just a month before the dense Native populations defied encroachment.

Smallpox-infected blankets are distributed throughout the Interior of the mainland Colony of BC by known and trusted HBC traders. Most, if not all, nations have recorded their victims as the majority of their citizens, and have smallpox burial grounds written indelibly on their national maps.

Catholic Oblates are invited by Governor Douglas to begin construction of a school for the Christian education of Indigenous boys, at St. Mary's Mission. Presumably many of their first students were smallpox orphans.

Cariboo Wagon Road comes under construction by Royal Engineers from Britain, to facilitate easier mining access to the interior goldfields. As the route is dynamited and tunneled along the narrow Fraser Canyon, with Chinese workers employed to set the dynamite and dying at a rate of at

least one person per mile, the river flats are re-named for the groups most populating them: Boston Bar (Americans); Kanaka Bar (Hawaiians); China Bar; French Bar; etcetera.

1863

British Columbia Boundaries Act. Parliament at Westminster established the boundaries of then Colony of British Columbia thus: all such Territories within the Dominions of Her Majesty as are bounded to the South by the Territories of the United States of America, to the West by the Pacific Ocean and the Frontier of the Russian Territories in North America, to the North by the Sixtieth Parallel of North Latitude, and to the East, from the Boundary of the United States Northwards, by the Rocky Mountains and the One hundred and twentieth Meridian of West Longitude, and shall include Queen Charlotte's Island and all other Islands adjacent to the said Territories, except Vancouver's Island and the Islands adjacent thereto.

Sir James Douglas is knighted, for service to Great Britain.

1864

April Tsilhqot'in War. To stop the invasion of their country by unauthorized road builders, and countering the smallpox war, Tsilhqot'in Chiefs sent out warriors to attack an incoming roadbuilding crew. Eighteen are killed in this declaration of war.

May The Governors' Picnic at New Westminster. To officiate the instatement of Frederick Seymour as Governor of British Columbia – and the retirement of James Douglas – invitations were sent

throughout British Columbia to Chiefs to attend a feast and formal speeches. Four thousand people are said to have attended, and sixty among them were Chiefs of their people. It was the first such public gathering where the idea was formally presented, west of the Rockies, that the British monarch was the head of one unified state – that Queen Victoria was “mother” of them all – promising advancement, prosperity, “British justice,” and peace. Several Chiefs replied with speeches of their own.

Written copies of Governor Seymour's speech do not contain a key statement he made there concerning arrangements for land use, a statement recorded in the oral tradition – as it was given – by those who heard it: that Sto:lo reserves surveyed by McColl would be enshrined and protected (they were huge reserves); and that one third of all revenues from developments of lands outside reserves would be shared with the Chiefs for their communities.

June Royal Engineers are tasked with building an alternative route to the Fraser gold mines: via steam ship on Harrison Lake, up the Lillooet River to Mount Currie, and overland to Anderson Lake, by boat, portage, and boat across Seton Lake to Lillooet. In the process, they are confronted by Lil'wat, who reserve to themselves the entire “Pemberton Valley,” and allow for a small roadhouse site, and passage to Anderson Lake.

Cariboo Gold Rush extends gold mining developments to Barkerville, without agreement with Dakelh or Secwepemc. One of the world's most prolific area for gold, about \$1billion in today's dollars

were extracted from the area without any return to the Native communities forced to abandon the place by influx of miners and threat of retribution. The Stikine and Yukon gold rushes lead further colonial assertions into the north.

September Devastation to

Nuu-chah-nulth. Following the 1862 death of “Government Agent” William Banfield, near his home which he rented from Huu-ay-aht, Nootka villages are threatened by gunboat visit and seven Nootka villages are shelled down by colonial gunships on suspicion of the murder of Banfield and as an example of the unpredictable and catastrophic expression of British naval power. Further investigations confirmed that Banfield's drowning was accidental, as had been initially reported.

Colonial revenues

reached £110,000 by the end of 1864. The redistribution to Indigenous Nations of a percentage of that revenue, as explained by Governor Seymour, did not take effect.

Victoria is now a city of 6,000, and Barkerville nearly as large.

1865 Lands and Works becomes a Provincial Department.

December, Royal Navy gunboat attack at Tsaxis. *HMS Clio* shelled the village and a landing party burned all the houses and canoes. The *Daily Colonist*, January 6, 1866: “they told piteous tales of losses of food, oil, blankets and some seventy canoes.”

This act of British brutality did not deter the Kwakiutl from rebuilding 26 houses on either side of the fort.

Timeline

1866 Union of Colonies of Vancouver's Island and British Columbia.

1867, March 29, British North America Act. Also called the *Constitution Act*, 1867, this Act forms the basis of Confederation of colonies in British North America, including a division of powers between the new federal government and the Colonies, now four Provinces. Under Section 91/24, only the federal government has power to address "Indians and lands reserved for Indians."

Reserves Reduced. Exclusive Sto:lo lands surveyed by McColl are reduced by 92% to form 17 separate, small Indian reserves. A Secwepemc land reserve from Kamloops, down the Thompson River, back to the mountains above Chase and present-day Sun Peaks ski resort, recorded by Commissioner Cox, is reduced to a 7.7 square kilometer Indian reserve at Kamloops, and small fishing stations.

Once the Colony joins Canada in 1871, becoming the Province of British Columbia, the process of marking out impossibly small areas as Indian Reserves, relocating villages from desirable and well-settled areas to be re-settled by non-natives, continues.

c. 1869 Nisga'a to the Governor in Victoria to petition the Governor of the Colony, to recognize their formal demand to the Nass Valley. They were refused a meeting with the Governor.

HBC Land to Canada. The Hudson's Bay Company signs a Deed of Surrender, relinquishing "Rupert's Land" to Canada.

1870, June 1, Crown Lands Ordinance. An Ordinance to amend and consolidate the Laws affecting Crown Lands in British Columbia. III. Pre-Emption: "From and after the date of the proclamation in this Colony of Her Majesty's assent to this Ordinance, any Male person being a British Subject, ...may acquire the right to pre-empt any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian Settlement) not exceeding 320 acres.... Provided that such right of pre-emption shall not be held to extend to any of the Aborigines of this Continent, except to such as shall have obtained the Governor's special permission in writing to that effect."

1871 BC joins Canada. A

rticle 13 of the Terms of Union incorporates the sense of S.109 of Canada's Constitution (the British North America Act, 1867), by saying that "a policy as liberal" as that employed by the Colony of BC in relation to

Indigenous Peoples would be continued by the Dominion government, and "tracts of land as may be required by them" would be set aside, bought from the province and held by the Queen for "the Indians."

1872 Miners burn twelve Gitksan houses and six poles. Gitsegukla Chiefs blockade the Skeena River to all trading and supply boats.

August 10, Tsilhqot'in treaty. An

agreement between Canada and Tsilhqot'in provides terms for a Canadian Pacific railway and for other non-Tsilhqot'in endeavours in their lands, barring rapid non-native settlement, promising western education and agricultural technology. Only five months pass before the terms were violated by Canada.

1873 First Indian Reserve Commissioner mandated by Canada for BC, to carry out the Province's transfer of lands to the Dominion Government for Indian reserves, as per Article 13, 1871.

Commercial Salmon Fisheries. Technology to preserve salmon in tins was brought north from California. Immediately canneries are developed adjacent to Indian fishing areas. Non-native, and substantially Japanese, salmon



Canneries decimate Fraser salmon runs within a decade of opening, and to 1% by 2009.

1874 March, BC Lands Act is ratified by the BC Legislature in Victoria, claiming ownership outright of the lands and waters "Of British Columbia."

July Petition of the Douglas Tribes Naming themselves for the "lost or missing" agreements made under Governor Douglas' leadership, 110 Chiefs from the Lower Fraser to Bute Inlet met at Hope to

jointly state their dispute with the Indian Commissioner for BC.

November **Minister of the Interior** with the Governor-General, by Memorandum: "The undersigned would respectfully recommend that the Government of the Dominion should make an earnest appeal to the Government of British Columbia if they value the peace and prosperity of their Province ...to reconsider in a spirit of wisdom and patriotism the land grievances of which the Indians of that Province complain apparently with good reason and take such measures as may be necessary promptly and effectually to redress them."

1875

January 23, BC Public Lands Act Disallowed Just four years after BC's Confederation with Canada, the Attorney General of Canada reviews the Province's BC Lands Act legislation and *disallowed it as unconstitutional* because of the Province's failure to acknowledge or resolve its liabilities with respect to Native title lands and lands to be reserved "for Indians." The legislation was nullified.

By the end of the year, however, Canada got a new AG and he approved the BC Lands Act, "lest great inconvenience ensue."

May, Sto:lo chiefs boycott the Governor's picnic in New Westminster, saying they don't want that food and the money for the picnic should be rejected and returned to the Queen.

February, Report of the British Columbia Indian Office.

"The Indian Reserves of British Columbia have for some time been, and are at present time in a most

unsatisfactory condition both to White settlers and Indians. ...owing to the scarcity of arable land in some localities, the request of the Dominion Government to grant eighty acres of average land to each Indian family was declined..."

The Reserves established by this time did not include a third of the land claimed by the crown for its colony in 1858. The inadequate Reserves described in the BC Indian Office report were never enlarged, only some were exchanged for lesser lands during the Indian Reserve Commission of 1912-14.

1876

April 12, The Indian Act is legislated in Ottawa: *An Act to amend and consolidate the laws respecting Indians*. The only constitutional instruments available to the Dominion specifically denied a colonial right to govern Indigenous Peoples, as did the treaties of the east. It would not be until 1982 that those constitutional limitations were again confirmed, in the *Canada Act*.

July 1, Federal Fisheries Act proclaimed in BC. There is no reference to Native fishing.

September 20, The Governor-General, Lord Dufferin, addresses the Legislative Assembly of British Columbia:

"From my first arrival in Canada I have been very much pre-occupied with the condition of the Indian population in the Province. You must remember that the Indian population are not represented in Parliament and consequently that the Governor-General is bound to watch over their welfare with

special solicitude.

"Now we must all admit that the condition of the Indian question in British Columbia is not satisfactory. Most unfortunately as I think there has been an initial error, ever since Sir James Douglas quitted office in the Government of British Columbia neglecting to recognize what is known as the Indian title. In Canada this has always been done: no Government whether Provincial or central has failed to acknowledge that the original title to the land existed in the Indian tribes and communities that hunted or wandered over them.

"Before we touch an acre we make a treaty with the Chiefs representing the bands we are dealing with, and having agreed upon and paid our stipulated price often times arrived at after a great deal of haggling and difficulty we enter into possession but not until then do we consider that we are entitled to deal with an acre."

1877 Dec. 31, Indian Affairs report. The Deputy Superintendent of Indian Affairs reports on BC: "The non-recognition by the Provincial Government of the title of the Indians to land occupied by them ... being sold without reference to the Indian title thereto. Unless the equitable claims of the Indians in respect to the lands in question are recognized and met in a liberal spirit serious trouble may be the result."

1878 North West Reserve Commission. Nisga'a representatives to the Commission say, "We don't want you measuring our land," echoing the sentiment of Quw'utsun people in the Cowichan Valley, who pulled out all the first surveyors' stakes.

Timeline

1880 Indian Act Amendment

(assented to April 19, 1884) “Every Indian or other person who engages in or assist in celebrating the Indian festival known as the “Potlach” (*sic*) or in the Indian dance known as the “Tamanawas” (*Sundance*) is guilty of a misdemeanor, and shall be liable to imprisonment for a term of not ore than six nor less than two months in any gaol (*jail*) or other place of confinement; ...”

These “festivals” described in the memo were actually critical venues of Indigenous governance.

1884 The Best Of All Titles,

Gitwangat Chiefs to Victoria: “... would it be right for our Chiefs to give licenses to members of the tribe to go to the district of Victoria to measure out, occupy, and build upon lands in that district now held by whitemen as grazing or pasture land? Would the whitemen now in possession permit it, even if we told them that, as we were going to make a more profitable use of the land, they had no right to interfere?”

1885 Three Tsimshian chiefs

travel to Ottawa and meet with Prime Minister Macdonald to discuss “our troubles about our land.”

1888 Prohibition on Native fish

sales. The first *Salmon Fishery Regulations for British Columbia*, 1878, did not mention Native fishing. Now they were amended: “... Provided always that Indians shall, at all times, have liberty to fish for the purpose of providing food for themselves but not for sale, barter or traffic, by any means other than with drift nets, or spearing.”

1889 Kwakiutl Chief charged

under Potlatch ban. Since the laws of the lands were criminalized under the 1884 *Indian Act*, with all manner of traditional governance gatherings outlawed, the first criminal charges under the *Act* were brought against Chief Hemasack of Kwakiutl. He was acquitted by Judge Begbie because the law on the books was vague.

May, The Methodist Missionary

Society followed up with the Superintendent-General of Indian Affairs respecting British Columbia. They provided a 50-page letter documenting the content of a meeting they had with the Premier of BC and the Superintendent addressee, and supporting documents, including over twenty affidavits from North West Coast Chiefs, and another twenty letters, documents, protests, and affidavits from Missionary personnel. Coercion and lies by colonial Agents feature centrally, with the overall message that the Province’s Indian Reserve scheme is a gross injustice and justice is demanded forthwith.

1892 BC Fishery Commission

Report. There were no Indigenous witnesses to the Commission, only Indian Agents and Indian Reserve Commissioners. The Commission heard from the “Promoter of colonization companies,” among 112 witnesses who were “all British Subjects.” Among the data reported: 1.13 million pounds of halibut caught in 1891; total value of BC fisheries in 1890, \$3.5million. The same Commission reported in 1905 that 1.13million cases of salmon had been packed out of BC.

Before the turn of the century,

Fraser River-bound salmon would appear to have nearly collapsed in the two lean runs of the four-year salmon cycle. The Province’s commercial fisheries would be represented by agents travelling throughout the province to destroy terminal weir fisheries used by Indigenous communities, including at Indian Reserves which had been located specifically to include weir fisheries, and also to build hatcheries inland – further impacting Indigenous harvesting at the terminus of headwater streams.

1899 Treaty 8.

The Yukon Gold Rush began in 1896, and the Peoples of the Mackenzie River Valley and Athabasca areas understood that they could lose their lands with a treaty – or lose their lands without one. Treaty Commissioners hastened to Fort Resolution and relied on the Catholic Father Gabriel Breynat (later Bishop Breynat), Order of Mary Immaculate, to draw Indigenous leaders in to adhere to Treaty 8. Small payments are made along with the much more substantial promise that, “as long as this land shall last,” and “as long as the rivers flow,” the Peoples would be free to move throughout and use their lands. BC takes no part in the treaty making.

At this juncture, Treaty Commissioners drew a hard line between individuals who had European blood and those who did not, calling the former Metis and often “halfbreeds,” even while many of these people were Chiefs and substantial members of their communities. For instance, Pierre Beaulieu was wanted for Chief at treaty negotiations in 1900, but the Commissioners refused his election, calling him Metis. With treaty, “Indians” got treaty rights and

annuities, and the others got scrip – for land and cash. The fate of the “halfbreed settlements” produced by this dichotomy is notoriously dismal.

1900s Anthropologists. Through the Department of Mines and the Geological Survey, Canada hires anthropologists to go out among the Nations and learn 500 words of each language, then report on customs and culture, national boundaries, and natural resources including signs of mineral deposits. Franz Boas is among them, and he hires James Teit as an assistant.

1901 BC Fisheries Act passed by the Province’s legislature, creating double regulations alongside federal fishing laws.

1906 Cowichan and others visit Buckingham Palace to seek redress.

1907-08 Ownership of reserves. In correspondence, and then in court, the BC Government tells the Dominion Government it holds no proprietary rights in the Indian reserves and denies the Dominion has power even to deal with Indian reserves. The Committee of the Privy Council contradict them. The Province proceeds to hear its own argument in its own court, by Order in Council, without interference of the Dominion government.

1908, September 28, BC can “repeal the Magna Carta.” The Province had encouraged settler fishermen to fish during times that were prohibited by federal laws but open under the BC Act. 52 charges were laid in August, under one or the other regulations. In the hoped-for test case of provincial versus federal power over fishing in tidal

waters, the Province mistakenly attributed a public right of such fisheries to the *Magna Carta*, 1215; and then declared that the Province could “repeal the Magna Carta, either directly or by implication.”

1905 Babine Barricade Treaty. After Provincial Fisheries destroyed their fishing weirs, two Chiefs went all the way to Ottawa to find either restoration or compensation. The Treaty would compensate for the loss of the fishery, which made the people independent, by providing a school, health care, and implements to transition the economy away from fishing. It was never implemented, but the Babine fishery was outlawed ongoing.

1909 March Cowichan Petition. “From time immemorial the Cowichan Tribe of Indians have been the possessors and occupants of the territory including the Cowichan Valley containing a large area and situate within the Territorial limits of the said Province of British Columbia.

“The Indian title to said territory was always recognized by Your Majesty’s predecessors. This Indian Title was expressly recognized and affirmed [7 pages of references]... The title of your Petitioners has been wrongfully repudiated and ignored by the Government of the Province of British Columbia. ...

“Your petitioners have waited patiently for long years in the hope and expectation that their rights would be recognized and justice done to them by the Government of British Columbia but have at length exhausted all other constitutional means known to them.”

1910 Sir Wilfrid Laurier, having been advised by the Department of Justice that the Indian land controversy should be judicially decided, met the Indian Tribes of Northern British Columbia at Prince Rupert and speaking on behalf of Canada said, “I think the only way to settle this question that you have agitated for years is by a decision of the Judicial Committee, and I will take steps to help you.” He promised to form a judicial hearing of the tribes’ complaints against BC.

July 16, Declaration of the Shuswap, Thompson and Okanagan tribes. Announcing their decision to affiliate with the coastal Indian Rights Association, and stand with them to demand certain rights for Indian people and a settlement of the land issue: “First, we stand for treaty rights with the dominion government, ... for compensation to us by the British Columbia government for all lands of ours appropriated, or held by them, including all lands pre-empted or bought by settlers, miners, lumbermen, etc., ... for the obtaining of a permanent and secure title ... for the carrying of our claims before the Privy Council of England for settlement...”

August 25, The July 16 Declaration is delivered to Prime Minister Laurier during his visit at Kamloops. It’s also known as the Memorial to Wilfred Laurier.

1911 May 10, Memorial to Frank Oliver, Minister of the Interior, Ottawa, by Chiefs of the Shuswap, Couteau or Thompson, Okanagan, Lillooet, Stalo or Lower Fraser, Chilcotin, Carrier and Tahltan Tribes: “We never asked that any of

these things be built so we could share in them, and we well know they were not built for our benefit. Government utilities such as the police, for instance; we see no benefit in, for they are used to force laws on us we never agreed to, and some of which we consider injurious and unjust. This appears to be all the BC Government can claim to have done for us...”

Declaration of the Lillooet Tribe: “We are the rightful owners of our territory and everything pertaining thereto.”

October 10, Sir Robert Borden replaces Laurier as Prime Minister. The promise of a hearing is replaced by plans to establish the next Indian Reserve Commission.

Fort St James Barricade Treaty is agreed between the Province and Nak’azdli and Tlazten to remove their weirs on the Stuart Lakes river systems, which they did, in exchange for a school, agricultural capabilities, gill nets and relief in times of hardship, which the Crown did not provide. For a school, they built Lac Lejeune Residential School. Abuses were committed there, and the expected education was not provided. Most years the government did not provide gill nets. In some years, they provided twine to sew the nets in place of the nets; in most years, nothing. The one bull and several cows did not meet the needs of the sixty families. The one plow was also inadequate. The seeds they gave, only on one occasion, were not suitable for the climate. The Bands, after many attempts to rectify the situation, sued for damages in 2008.

1911 Amended Indian Act permits the annexation by a town or city of reserve lands. “The Governor-in-Council may, upon the recommendation of the Superintendent-General, refer to the judge of the Exchequer Court of Canada for inquiry and report the question as to whether it is expedient, having regard to the interest of the public and of the interests of the band for whose use the reserve is held, that the Indians should be removed from the reserve or any part of it.”

1912 McKenna McBride Commission - BC and Canada’s Indian Reserve Commission mandated. Canada’s Commissioner was Richard McKenna and BC’s was its Premier, Richard McBride. There was no Indian party to the Commission, and no mandate beyond locating Reserves. The Commission went ahead, being surprisingly preoccupied with fishing rights and the introduction of hatcheries.

In most of the proceedings of the McKenna-McBride Commission the Indians attempted to raise the question of Indian title, but the Commissioners were instructed not to discuss it. Instead they often gave assurances that participation in the reserve process would not prejudice claims which could, they said, be resolved in Court.

1913 Commission testimony. Among hundreds of testimonies now forming the only record of colonial agreements, Chief Joe Hall of Sq’ewlets, Sto:lo, testifies to the Reserve Commission that Governor Frederick Seymour promised his people one third of revenue and resources from all developments off-reserve, on traditional Sto:lo lands, and that Governor Douglas

Timeline

had characterized the lands which were neither Reserve nor pre-emptions as “like a fruit tree benefitting Natives and non-natives alike.”

May, Petition of the Nishga Tribe was lodged in the Privy Council. It united the Indian Rights Association in a “test case” of their land title question.

48 Chiefs protested the Indian Reserve Commission at a meeting in Spences Bridge on May 23.

1914 Nisga’a Petition denied. The Privy Council replied they could not address it, because the McKenna-McBride Commission was underway. However, that Reserve Commission had no mandate or jurisdiction to hear the Nisga’a matter – or any matter concerning title – as it was only intended to carry out the unilateral, much protested, process of demarcating the smallest possible Indian Reserves.

In 1914, there are 14,000 landed non-native residents in Vancouver.

June 20 Order in Council – PC 751. Instead of admitting the Nishga Petition, the Committee of the Privy Council followed the recommendation of Duncan Campbell Scott – Superintendent General of Indian Affairs, and produced a referral of the “Indian land question” to the Exchequer Court of Canada with the right of appeal to the Privy Council. These were their conditions for allowing the matter to proceed:

“The Indians of British Columbia shall, by their Chiefs or representatives, in a binding way, agree, if the Court, or on appeal, the

Privy Council, decides that they have a title to lands of the Province to surrender such title receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usage of the Crown in satisfying the Indian claim to unsundered territories, and to accept the finding of the Royal Commission on Indian Affairs in British Columbia as approved by the Governments of the Dominion and the Province as a full allotment of Reserve lands to be administered for their benefit as part of the compensation.

"That the Province of British Columbia by granting the said reserves as approved shall be held to have satisfied all claims of the Indians against the Province. That the remaining considerations shall be provided and the cost thereof borne by the Government of the Dominion of Canada.

"That the Government of British Columbia shall be represented by counsel, that the Indians shall be represented by counsel nominated and paid by the Dominion.

"That, in the event of the Court or the Privy Council deciding that the Indians have no title in the lands of the Province of British Columbia, the policy of the Dominion towards the Indians shall be governed by consideration of their interests and future development."

The Chiefs of the Indian Rights Alliance declined the "generous" offer. They made a counter offer: "That when the findings of the Royal Commission are known, each tribe that may consider such findings insufficient shall have opportunity of making application for additional lands to be reserved for the use and benefit of the Tribe for reasons to be stated in such

application, and every such application which cannot be dealt with by conference between the Tribe and the two Governments shall be decided by His Majesty's Imperial Minister, the Secretary of State for the Colonies, in pursuance of the principle embodied in Article 13 of the 'Terms of Union.'

"That in fixing compensation regard shall be had to all the terms and provisions of any treaty made between the Crown and any Tribe of Indians in Canada.

"That in fixing compensation regard shall also be had to all restrictions and disabilities imposed upon Indians by Provincial Laws and those imposed by Canadian regulations relating to the fisheries.

"That all remaining matters, including an equitable method of fixing compensation, shall be adjusted by enactment of the Parliament of Canada.

"The government rejected such an adjustment, and the Native leaders were advised that P.C. 751 "remained open" to them.

1915 *R. v. Jim* Chief Edward Jim of the North Saanich tribe was caught in possession of deer meat which he had hunted on his Reserve. On appeal, the conviction of hunting in violation of the *BC Game Protection Act* was overturned, since section 91(24) of the *British North America Act* means matters pertaining to "Indians and lands reserved for Indians," is under federal jurisdiction. The judge decided hunting and fishing on Indian reserves should be regulated by the federal government – not provincial wildlife laws.

This case was a breakthrough in BC, where Native hunters and fishermen were persecuted by Indian Agents and Game Wardens

stationed especially to intercept their subsistence activities.

The **Allied Tribes** is formed at Spences Bridge.

1916 *June 20-23, BC Indian Conference, Vancouver*. Almost all Indigenous nations "in BC" were represented at the meeting. They documented their refusal of the Order in Council, made a statement to reject the Reserve Commission, and declared plans to pursue their land rights together with the Nisga'a.

The statement was put into the hands of the Government of Canada and the Secretary of State for the Colonies, was published in the press of Vancouver and was sent to each Indian Tribe:

"The Indian Tribes of British Columbia have always claimed tribal ownership of the lands of the Province as the lands of their forefathers,... All the Indians of the Province have for many years desired that this land question should be decided, and to that end in the year 1909 sent a petition to the late King Edward VII., and his Imperial Minister, the Secretary of State for the Colonies, asking that the Imperial Government refer the land question to the Judicial Committee of His Majesty's Privy Council." It took ten years for the government to convene its own Judicial Committee, as a substitute for the King's Privy Council.

July, A confidential report by the Reserve Commissioners described Indigenous "satisfaction" with conditions on-reserve.

1917 *December 6, Rejection of Reserve Commission*. The Allied Tribes passed a resolution rejecting

the McKenna-McBride Commission entirely. They wrote,

"We do not want anything extravagant. ...We want that our actual rights be determined and recognized; a settlement based upon justice. We want a full opportunity of making a future for ourselves."

1919 Claims of the Allied Tribes sets out their ownership and jurisdiction on their lands, and their conditions proposed for equitable settlement. They work to get it to a judicial hearing, because their land complaint had never been allowed in any court.

June, League of Nations formed with the end of World War I, the capitulation of Germany signing the Treaty of Paris. With 63 states (including the British Empire and its colonies) eventually joining the League, it is the first world organization for diplomacy among what are, essentially, colonizing states.

1920 Indian Act Amended to make Indian Residential School compulsory. 75 years later, Duncan Campbell-Scott's reflection on the "schools" was quoted in the 1996 report of the Royal Commission on Aboriginal Affairs: "It is quite within the mark to say that fifty percent of the children who passed through these schools did not live to benefit from the education which they had received therein."

June 2, Senator Claims. In the course of debate regarding Bill 13 in the Senate, Sir James Lougheed, leader of the Government in the Senate, said:

"I might say further, honourable gentlemen, that we do not propose to exclude the claims of Indians. It will be manifest to every honour-

able gentleman that if the Indians have claim - anterior to Confederation or anterior to the creation of the two Crown Colonies in the Province of British Columbia - they could be adjusted or settled by the Imperial Authorities. Those claims are still valid. If the claim be a valid one which is being advanced by this gentleman and those associated with him as to the Indian Tribes of British Columbia being entitled to the whole of the lands of British Columbia this Government cannot disturb that claim. That claim can still be asserted in the future."

1921 'Namgis Christmas Potlatch. At least 300 people attended at Village Island. Lands, titles, and privileges were returned during the "divorce" ceremony, and gifts were given to witnesses among other business proceedings. Pool tables, sewing machines, phonographs, blankets, money, sacks of flour, - to a value (estimated by the police) of \$10,000. 45 people were arrested and charged with crimes under the *Indian Act*: giving speeches, dancing, carrying and receiving gifts, for the purposes of the potlatch. As a condition of their sentences, the people were forced to relinquish some 700 ceremonial items used in potlatching.

This event is considered the last great potlatch, so crushing was the effect on the hosting Chiefs and communities that their guests were arrested, robbed, fined, and jailed in circumstances beyond their control. The potlatch tradition of government continued in smaller and more insulated ways, eventually surviving 67 years of aggressive state criminalization.

Northwest Territory and Yukon Branch. Canada transfers

administration of the Mackenzie-Athabasca, or Treaty 8 and Treaty 11, to this new department. Treaty obligations were flouted in Game Laws that devastated treaty partners who depended on trapping, fishing, and hunting as their economy.

1922 Unification of Allied Tribes, Coast and North.

"Whereas it is apparent that there are two factions of organization at the meeting, namely the Allied Tribes and independent party. To try and bring these two parties together, therefore, be it resolved that the Indians of B.C. join an organization of Indians to fight Bills 13 and 14 and adopt for its policy the statement of the Allied Indian Tribes of B.C. ... said organization to have standing executive committee which will consist of Indians and others deemed acceptable by Interiors." All Indians on the coast of the mainland and on the east and west coast of Vancouver Island joined that organization.

The resolution was supported by Chiefs representing "Haida, Musqueam, Nanaimo, Cowichan, Saanich, Cape Mudge, Alert Bay, Fort Rupert, Kingcome, Bella Coola, Lower Fraser Tribes, Lillooet Tribe, Kamloops Tribes, Campbell River Tribes, Similkameen Tribes, N'kmip, Penticton Tribes, Okanagan Tribes, Fairview Tribes, Nicola Valley Tribes, Tsimpshian Tribes, Squamish Tribes."

1924 February 29, Allied Tribes Intervention. By Memorandum presented to the Government of Canada, the Allied Tribes opposed the Government of Canada adopting the McKenna-McBride report.

July 19, Parliament legislates the Indian Reserve boundaries identified in the McKenna-McBride Indian Reserve Commission, over the protests and direct Petition of the Allied Tribes to cease and desist from doing so. Canada acknowledges that, with this concluded, British Columbia has satisfied its obligations with respect to furnishing lands for Indian reserves *as per* Article 13 of the Terms of Union with Canada, 1871.

40,000 acres of good land was cut-off from Indian Reserves, and 80,000 steep, rocky acres – valued altogether at half what was cut-off – were added to Reserves instead.

1925 *June 26, Privy Council*

Decision. In the course of debate, House of Commons, the Minister of Interior recognized that the Allied Tribes are entitled to obtain from the King's Privy Council a decision of the Indian land controversy, and agreed that the Government would give authoritative sanction for so doing.

1926 **Imperial Conference.**

Reviewing its extended obligations around the world, in the Commonwealth, British lawmakers decided that, as a result of constitutional practice, the Crown was no longer indivisible. The view of the Crown's Privy Council was adjusted to separate and divide each self-governing dominion, province or territory. For Canada, this process was not achieved, but was advanced by the Statute of Westminster 1931.

June 10, Petition of the Allied Tribes "To the Superintendent General Of Indian Affairs:

"The Allied Tribes submit that the Dominion is under obligation

for providing all funds already expended and all funds requiring hereafter to be expended by the Allied Tribes in dealing with the Indian land controversy in establishing the rights of the Allied Tribes, and in bringing about final adjustment of all matters relating to Indian affairs in British Columbia. The Allied Tribes so submit upon grounds briefly stated as follows:

1. Well established precedent relating to judicial proceedings intended for establishing the rights of Indian tribes and in particular that of the Oka case, which was carried independently to the Judicial Committee of His Majesty's Privy Council by the Indians interested and of which the total cost was provided by the Parliament of Canada.

2. The fact that the Dominion of Canada being by virtue of the British North American Act and the "Terms of Union" trustee for the Indian Tribes of British Columbia and under all obligations arising from such trusteeship has by entering into the compact with British Columbia above mentioned rendered itself incompetent for taking effective action establishing the rights of the Indian Tribes of British Columbia, as is clearly shown by the Opinion of the Minister of Justice issued in the month of December 1913, and moreover has put itself in the position of a party in the case upholding the contentions of the Province of British Columbia, ..."

December, Joint Special Committee of the House of Commons and Senate, "To Inquire into the Claims of the Allied Indian Tribes of British Columbia, as set forth in their Petition submitted to Parliament in June, 1926."

The Committee, not a court, was convened to hear a delegation from the Allied Tribes. Representing the Allied Tribes were Andrew Paul, Peter Kelly, John Chillihitza, and Basil David. They testified to the written *Claims*, on the reality that Native title in what was by then called "British Columbia" was never extinguished, ceded or surrendered; that numbers of politicians had promised, over the years, that their claims were clearly valid; and that each and every nation demanded their land title be recognized.

1927 April 14, Report of the Joint Committee. The Inquiry was a "final" strategy by the colonial governments: to draw Indigenous leaders in to a vaguely-defined formal setting and dismiss their claims out of hand, as a matter of procedure. The Minutes of Proceedings reveal this agenda completely, and show that the Committee Members pursued it by a combination of interrupting and deliberately misinterpreting the Indigenous witnesses, and adopting an attitude of unconditional supremacy over them.

The Special Committee's 290-page report on the *Claims* was a complete dismissal. The Committee recommended that, in lieu of a treaty under which subsidies are paid to many tribes in Canada, the British Columbia tribes should receive an annual payment of \$100,000, (increased in 1979 to \$300,000) annually, distributed per capita.

Indian Act Amended. "141. Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from

any Indian payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of said tribe or band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months.”

This paragraph prohibits lawyers from acting on behalf on Indian clients. The Amendment also outlaws Indian gatherings to discuss the land question, among other articles of martial law. The 1927 consolidation of the Indian Act included 190 sections.

1930 Scott-Cathcart Agreement approves the trans-section of Indian Reserves by railways, without compensation or admission.

1931 Native Brotherhood of BC forms among Haida and Tsimshian, soon extending among more Coastal Nations and eventually including mainland interior tribes. Operating initially to protect Indigenous commercial fishermen’s livelihoods, NBBC evades the *Indian Act* ban on Indigenous gatherings by prominently displaying British and Christian symbols, and singing *Onward Christian Soldiers* at the start of every meeting.

Statute of Westminster. The Crown in right of Canada is recognized as the judicial authority on cases arising in Canada, where pre-

viously the British monarch’s Privy Council provided a court of jurisdiction. This authority was also taken to extend to administration and fulfilment of treaties – although no communication or consultation on Britain’s disposal of its treaties involved the Indigenous treaty partners. The British North America Act 1867 remained Canada’s constitution.

The Statute provided for the position of Governor General to be appointed from within Canada. The GG would retain the power to interfere in unconstitutional actions by Parliament, and it did so as late as 1979, after which time the Canadian Constitution returned all powers to Canada’s Parliament, including constitutional amendment, in 1982.

1934 January, A further petition from Kitwankool asserting “aboriginal title.” The Assistant Indian Commissioner for B.C. wrote back to the Hazelton Indian Agent, under date of February 19, 1934: “...any question relating to Indian lands in British Columbia was dealt with by Parliament as a result of an investigation made by a Special Joint Committee of the Senate and House of Commons appointed to enquire into the claims of the Allied Indian Tribes of British Columbia as set forth in their petition submitted to Parliament in June, 1926.”

1935 Band governance prescribed. The Indian Act is amended to require that a single chief be elected to represent each Indian Band. Without that single Chief, elected according to Indian Act specifications, the Band cannot receive any relief funding through the Department of Indian Affairs.

Timeline

1937 Boycott of Treaty Payments at Fort Resolution. Protesting government abeyance of every treaty measure – except a few dollars annuity, family signatories to Treaty 8 offered a serious confrontation to government officials visiting to make treaty payments. The land had been overrun by trappers and hunters; game laws were introduced to violate treaty rights, no doctors, medicine, teachers, or “white men to work for them” had been brought as promised.

Oil at Norman Wells, uranium at Port Radium, and gold at Yellowknife had attracted enough prospectors and miners through to the Arctic Coast. In 1939, mining revenue surpassed fur trapping – and Native persons were not employed in mineral production.

1938, July 29, Province takes 5% of Indian Reserves. Order-in-Council 1036 allows the Provincial government to take up to one-twentieth of a Federal Indian reserve for a public purposes, including the need for lands to assure access for hydro, railways, telephone, or public highways. Highways and railways bisect many villages. More than 5% is taken, over time.

1944 North American Indian Brotherhood co-founded with Andrew Paull, Squamish.

1946 New Deal Prime Minister Mackenzie-King announces a Special Joint Committee of the Senate and House of Commons, “to examine and consider the Indian Act and the amendments thereto, and to suggest and amendments that they deem may be advisable.” They began in May. Hearings were attended by Native groups from

each province, the Native Brotherhood and North American Indian Brotherhood speaking mainly for British Columbia.

The mandate is described by one of the Committee members as: “..a serious undertaking... the amendment of the Indian Act will establish for years to come, the type of control which will determine the standards of life, training, and perhaps the very existence of these subordinated human beings to whom democracy is denied in Canada.”

Native Voice publication launched by Native Brotherhood of BC, with Maisie Hurley editing.

1950 **Indian Homemakers**

Association of BC is founded at a meeting in Grand Chief Dr. Rose Charlie's house in Chehalis. The women quickly proceed from domestic issues to position papers on fisheries, housing, jurisdiction over children, and political organization.

1951 *June 20, Indian Act*

amendment. Prohibitions on legal suit addressing the land question were rescinded; Indigenous members of treaty and non-treaty nations alike were retroactively made Canadian citizens as of 1947; and the new Section 87 (now Section 88) purported to make all laws of general application apply to Indians within the province:

s. 87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this

Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provisions for any matter for which provisions is made by or under this Act.

The ambiguity over application of this section resulted in continuous hunting and fishing charges and decades in court, which continue today: each Aboriginal group must establish its rights on a case-by-case basis, or by treaty, in order to defeat provincial legislation, such as the *Wildlife Act* or *Fisheries Act*, BC. The province claims to “accommodate the aboriginal right,” in some legislation, by including limited additional provisions for people with Indian Status.

1952 **Canadian Governor**

General. Vincent Massey is the first Canadian-born person to hold the post.

1956 **Sinixt declared “extinct.”**

Otherwise known as the Arrow Lakes Indian Band, Canada officially declared the Sinixt extinct. Bisected by the Canada/USA border, fifteen hydroelectric dams were built in their territory – on the BC side – flooding best village sites and making life very difficult. Most of the people had therefore moved away: many to the Colville Reservation in the USA. Sinixt warriors returned in the 1980s to protect ancestral burial sites in Vallican from road development. The road project desecrated burial sites, removing bones and artifacts which were later repatriated from museums. The Sinixt “illegal” reoccupation at Vallican is the longest in Canadian history.

1957 Musqueam lease. The Government of Canada leased 162

acres of Musqueam Reserve lands to Vancouver's Shaughnessy Golf and Country Club for 75 years. This land, approximately one-third of the reserve lands, was leased for a fraction of its value. Musqueam citizens were denied access to legal representation in the negotiation and details of the lease were concealed from them for twenty years.

1963 *August 15, an Indian Claims Commission* is described as “evolving,” with extensive terms of reference. Minister of Citizenship, Guy Favreau, told the National Indian Council the purpose of the Commission would be to determine with finality claims of “Indian bands or identifiable groups” – in treaties or otherwise – that “merit honourable dealings.” Favreau described the land title situation in BC as unresolved, noted outstanding claims and referenced the Royal Proclamation of 1763, and acknowledged the unilateral actions taken by governments in denial of the Indian interest.

During this time, the Minister of Citizenship was responsible for Indian Affairs.

1964 *January, Only cash for claims*

The *Indian Record* reports: “Indians will not be entitled to reclaim any land to which they may have rights, under recently introduced legislation by the House of Commons to establish an Indian claims commission. One clause says that any claims allowed by the five-man commission will be paid in money only. The legislation also makes clear that Indians will have to find many old documents if they hope to win their cases before the commission. Claims must be supported by evidence in writing

“reasonably contemporaneous to the time the subject matter of the claim arose.” Some of the claims date back hundreds of years. The bill also says any oral evidence must be corroborated in a material particular “by evidence other than oral evidence.” All claims must be submitted within two years of proclamation of the act setting up the commission.”

September, R. v. White and Bob

is won by the defendants – Native deer hunters in Snuneymuxw (Nanaimo), based on the provisions of an 1854 treaty and, in the opinion of one judge, based on protections provided in the *Royal Proclamation 1763*. The “Douglas Treaty” was a colonial land purchase, mainly for coal mines and a non-Native settlement, promising to respect the people’s rights “to hunt and fish as formerly” throughout unsettled areas of their territory. The *Royal Proclamation* had never been invoked as a defense before, and another judge’s minority opinion dissented, saying it did not apply because the People in question were unknown to the British crown in 1763.

The BC Court of Appeal found in favour of Douglas Treaty rights, which had been ignored by Indian Agents, Game Wardens, and the Province ever since.

The Province of BC appealed the decision to the Supreme Court of Canada – denying the validity of one of the only valid claims the colony had to Native title land, the Douglas purchases 1850-54 – and the SCC, faced with a comprehensive Defendants’ Factum, summarily upheld the BCCA ruling in favour of White and Bob’s treaty right to hunt “as formerly” in a one-paragraph oral statement

confirming the Treaty exception to the *Indian Act*, 1951 s. 87(88), on November 10, 1965.

The issue of whether the Royal Proclamation of 1763 applied to British Columbia was one of the questions avoided by the Supreme Court when it delivered its decision. The entire decision reads:

[1] Mr. Berger, Mr. Sanders and Mr. Christie, we do not find it necessary to hear you. We are all of the opinion that the majority in the Court of Appeal were right in their conclusion that the document, Exhibit 8, was a “treaty” within the meaning of that term as used in s. 87 of the Indian Act [R.S.C. 1952, c.149]. We therefore think that in the circumstances of the case, the operation of s. 25 of the Game Act [R.S.B.C.1960, c.160] was excluded by reason of the existence of that treaty.

[2] The appeal is accordingly dismissed with costs throughout.”

October, Federal-Provincial Conference on Indian Affairs. With a new Minister of Citizenship, Tremblay, and without Indigenous participation, the stated goal of the conference is to integrate Indian people into “the mainstream of Canadian Life.”

The Conference identified a need to focus on, “if Indians are to be associated more closely with the life of other Canadians in the Provinces, correlations of federal and provincial policies and responsibilities for health, welfare, education, community development and other services is essential.” It reports one example of progress as using provincial Child and Family Services on-reserve. One of the results of this “progress” was the 60s Scoop:

Timeline

widespread apprehension of thousands of Indigenous children from playgrounds, schools, and homes, under the Provincial legislation, and redistribution of federal resources to a suddenly thriving industry in the removal (without accountability) of those children to the non-Native households the children were removed to.

The Hawthorne Commission

is mandated to examine Indian migration from rural and reserve areas to cities, and “the modern Indian” and his needs in Canadian society. The latter is being scrutinized for fulfilment by provinces, as much as possible, in place of the federal government.

1965 Native Claims Commission is announced, following from the *White and Bob* break through.

1966 December 10, International Covenant on Civil and Political Rights adopted by UN General Assembly resolution. Article 1:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the real-

ization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Entered into force March 23, 1976

1967 Nisga'a Tribal Council

launches court action against BC, suing "for a declaration that the aboriginal or Indian title to certain lands comprising more than 1,000 sq. miles has never been lawfully extinguished." It was an attempt to further realize the judicial recognition gained in the *White and Bob* decision in favour of Nanaimo (Cowichan) treaty rights. Prior to that, the only rights an Indigenous person had recourse to were the rights in the *Indian Act*.

1968 *R. v. Discon and Baker*.

The Court held that, lacking a treaty (which White and Bob had), the two Squamish hunters had no Aboriginal rights. Charges against them under the *BC Wildlife Act* were upheld.

1969 *May, Vienna Convention on the Law of Treaties* is brought into force at the UN, to govern interpretation of treaties between states, after three years of conferences to develop it.

Moccasin Walk of 100 Miles

organized by the Indian Homemakers Association of BC, to raise funds for an Indigenous leadership conference, relating to the federal White Paper in development.

June, White Paper Policy.

The Statement of the Government of Canada on Indian Policy was delivered by the Minister of Indian Affairs, Jean Chretien, in Parlia-

ment, after a first draft was brought to at least seventeen meetings with Native leaders coast-to-coast since October 1968. The federal government was pursuing a policy of aggressive assimilation of Native rights; the end of treaties, Indian Status, and the *Indian Act*; Native ownership of Native land (Indian reserves); and "Finally, once Indian lands are securely within Indian control, the anomaly of treaties between groups within society and the government of that society will require that these treaties be reviewed to: how they can be equitably ended."

At an Ottawa meeting of the regional consultations, earlier, a National Committee on Indian Rights and Treaties was elected to assist the Peoples and Nations identify the scope of their land rights.

August, **Union of BC Indian Chiefs** (UBCIC), is formed in a meeting of every elected Chief in British Columbia, at Kamloops. **BC Association of Non-Status Indians** (BCANSI) is formed at the same meeting.

Financed meaningfully by the Indian Homemakers Association of BC, the meeting is an organized retaliation to the Chretien Statement.

October, *Calder v. The Attorney General of British Columbia*

BC Supreme Court ruling finds that Aboriginal title – "if it ever existed" – has been extinguished by the presence of Englishmen and their intention to rule the land by Imperial British license. The Nisga'a request for a Declaration of their continuing title, on the basis of the Royal Proclamation of 1763 and for the reason of their own

ancient rights - as introduced in the *White and Bob* case - was denied.

Barber Commission. Proceeding from the white paper policy mandate to "inquire into and report upon how claims arising in respect of the performance of the terms of treaties ... may be adjudicated", an Indian Claims Commission is established under the *Inquiries Act*." Lloyd Barber continues as Commissioner through the 1970s, mostly as a one-man office. The role of the Commission culminated in a 1977 Report.

November, Catholic Bishops

pledge support for Indian people in their efforts to obtain "fair treatment" and "an equitable settlement of treaty, land claims and other rights," in response to the white paper.

National Indian Brotherhood

formed as a union of all elected Chiefs of Indian Bands in Canada.

1970 Alaska Native Claims

process sets an example of recognition of Native title and compensation for land and resources, right beside BC's border.

1971 April 30 "White Paper

objectives remain valid." In his letter to the Prime Minister, Indian Affairs Minister Chretien confirms that the 1969 objectives will be achieved through "an evolutionary process of provincial and Indian inter-involvement by promoting contacts at every level of government, at the same time recognizing the truth of the matter - that progress will take place in different areas in different ways at a different pace."

December Claim Based on Native Title to the Lands Now Forming British Columbia and the Waters Contained Therein or Adjacent Thereto, the UBCIC statement to Canada, is a proposal to settle outstanding land disputes by compensation for stolen lands and recognition of those lands, per nation, which they would choose to keep as their own.

1972 July 6, The Claim Based on Native Title is formally received by Prime Minister Trudeau in Ottawa, presented by a delegation of over one hundred Indigenous leaders. Trudeau told the people they would have to wait for the result of the Nishga land claim, currently in court, just as the Privy Council did in 1913.



*Prime Minister Pierre Trudeau receives Claim Based on Native Title, Ottawa, July 6, 1972.
Photo: Nesika, vol 2, no. 2*

1973 January 31, *Calder v. BC* Supreme Court of Canada. The fact that “Aboriginal title” exists in the common law is generally agreed by the court. Three judges reason that the Nisga’a title continues, because no “clear and plain” act to extinguish their title has ever been undertaken by the crown. The court decision in this case was made on a technical issue, not the title issue, and it was dismissed by a majority of the court for not having been

properly brought before them. The judge’s reasons on title are therefore only opinions. The reasons written by Hall, Spence and Laskin, JJ, form the basis of many subsequent court rulings in favour of Aboriginal rights:

“This aboriginal title does not depend on treaty, executive order or legislative enactment but flows from the fact that the owners of the interest have from time immemorial occupied the areas in question and have established a pre-existing right of possession. In the absence of an indication that the sovereign intends to extinguish that right the aboriginal title continues.”

Due to the uncertainty raised by this judgement the Federal government introduces a policy to exchange extinguishment of aboriginal title for land parcels in fee simple title and certain rights.

March 24, Chief Paulette and the Registrar of Land Titles.

Chief Francois Paulette and fifteen other Chiefs approached the Northwest Territories Land Titles Office to place a caveat on ‘crown lands’ encompassing 400,000 square miles of their national territories. Much of this land was in Treaty 11 and Treaty 8. A thorough history of those dishonoured agreements was given in testimony at the trial. The placement of the caveat with the NWT Registrar of Titles would trigger a duty to evaluate the claims of Aboriginal title if an attempt was made to transfer the crown lands.

This action followed the *Calder* case within weeks. The Nisga’a had not lost their argument that their land title was not extinguished, rather the judicial recognition of their position provided the chance to act on Aboriginal title in practical applications.

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The Registrar of Titles referred the question to the NWT Supreme Court, where Judge Morrow accepted the Chiefs’ standing to make the request, and lodged the caveat according to their wishes, saying, “There is no doubt in my mind that their testimony was the truth and represented their best memory of what to them at the time must have been an important event. It is fortunate indeed that their stories are now preserved.”

Morrow’s ruling reads, in part:

“1. I am satisfied that those who signed the Caveat are present-day descendants of those distinct Indian groups who, organized in societies and using the land as their forefathers had done for centuries, have since time immemorial used the land embraced by the caveat as theirs.

2. I am satisfied that those same indigenous people as mentioned in (1) above are *prima facie* owners of the lands covered by the caveat — that they have what is known as aboriginal rights.

3. That there exists a clear constitutional obligation on the part of the Canadian Government to protect the legal rights of the indigenous peoples in the area covered by the caveat.

4. That notwithstanding the language of the two Treaties [8 and 11] there is sufficient doubt on the facts that aboriginal title was extinguished that such claim for title should be permitted to be put forward by the caveators.

5. That the above purported claim for aboriginal rights constitutes an interest in land which can be protected by caveat under the Land Titles Act.”

The Chiefs’ lawyer, Gerald Sutton, of the Indian Brotherhood, explained that the claim was not

made in relation to private properties now held in fee, but only to unsold “crown”—or—“treaty” land. Sutton told the *Indian Voice* newspaper, April 1973, “They didn’t want to inflict any hardship on people who already hold titles, they just want to effect a land freeze to stop things as they are.”

Canada’s Attorney General immediately launched suit against Judge Morrow, and he was in Federal Court by July. There, the trial judge upheld Morrow’s decision to allow the caveat since it didn’t require discussion of the merits of Aboriginal title, only to register that there was a question pending. By 1977, Canada’s Supreme Court thoroughly digested this matter by using technical reasons that relied on a deficiency in the NWT Lands legislation: no caveat can be registered against crown lands. In effect, the SCC made a ruling to deny a practical test of the application of Aboriginal title, as a registrable interest in land.

July 5, Royal Visit. Elizabeth II of England visits Canada, making a speech in Calgary: “You may be assured that my Government of Canada recognizes the importance of full compliance with the spirit and terms of your Treaties.”

August 8, Government will negotiate land claims. Jean Chretien addresses the House of Commons with a policy statement: for the first time Canada will negotiate over Native land claims. Chretien referred to, “the Government’s recognition and acceptance of its continuing responsibility under the British North America Act for Indians and lands reserved for Indians.”

In 1973, the population of British Columbia is 2,367,271.

1974 June 25, Biggest Protest in History at Victoria legislature features Native politicians from across the continent. Speakers raise many issues: control of children; inadequate housing; the land question; the federal government’s new Claims Policy and the provincial government’s refusal to engage with it. Philip Paul of Tsartlip, holding the UBCIC portfolio on Comprehensive Claims, speaks out and encapsulates his analysis of the policy: “We are pawns of both governments, and back and forth we go. That’s why we’re at the stage of demonstrating.”

July, The Office of Native Claims is established as a specialized branch of the Department of Indian and Northern Affairs to deal with comprehensive and specific claims. The Office was given the responsibility to determine the validity of an increasing number of claims being researched and submitted to the

federal Government; conduct basic research; formulate policies related to the development of claims and conduct of negotiations; and represent the government on claims negotiations with Indigenous Peoples.

August - September, Two Springs, Bonaparte, highway toll. At least 30 people maintain a continuous armed presence on the reserve, staging several road closures and collecting a toll from non-native travellers, supported by dozens of helpers bringing food and carrying out communications. Their stated aim is to raise money to rebuild an Elder’s house, destroyed by fire (which is common among cheaply and unsuitably made houses on reserves), when the DIA offers no assistance and use of forest resources by Aboriginal people for their own use is prohibited. They have the moral support of many communities and organizations, some of which plan to launch their own reoccupations to follow up Two Springs.

Sept., Native Peoples Caravan is joined by people from coast to coast, culminating in a group of over 200 taking a Manifesto with many demands to Parliament to intercept the Speaker of the House and the Prime Minister directly, on September 30.

Phillip Paul, Research Director of Indian Land Claims, UBCIC, speaking to the demonstrators. BC refuses to join land claims negotiations with the federal government. Victoria, June 25, 1974. Photo: At the Songhees Reserve Longhouse, Indian Voice, August 1974.



Timeline

1975 April, **Rejection of Funds.**

All Indian Bands refuse federal transfer payments and program funding. The refusal underscores a rejection of government control. Reoccupations and DIA office take-overs mark that spring and summer, resulting in the permanent closure of the Kamloops and Vernon DIA offices, and moving administration to new Tribal Councils of Bands associated by nationality.

June, **Tseycum Indian Band shut**

down access to clam beds in Patricia Bay. Along with the “No Trespassing” signs, they reiterated their authority over the foreshore as a treaty right. Citing destruction of the oyster fishery by non-natives, spokesperson Gabriel Jack explained the Band intended to stop that from happening to the clam beds.

July, **Lillooet Lake Roadblock.**

DFO officers remove and destroy gill nets at the head of Lillooet Lake, an easy-access camping spot that is saved for the Lil’wat Elders to do their fishing. The community is incensed and reoccupies the whole area, blocking the road up over the Duffy Lake corridor and through to Lillooet.

A roadblock in Gold River, Uckleshaht, addresses similar issues, in solidarity.

August, **BC Fish and Wildlife**

hires analysis of leading court cases. The “Survey of Native Rights as they relate to Fish and Wildlife Protection in British Columbia,” Protection Services – Enforcement Section, by K. Krag, provides a minimizing view of Native rights

Across British Columbia in the 1970s, there are so many reactionary reoccupations, protest fisheries, criminal charges levied against basic food fishing, even on reserves – and so many of them won by the defendants – that by 1980 a judge in Lillooet described the DFO’s actions as harassment and ordered the federal Department and its Ministry to negotiate a practical solution with Indigenous communities, in *R. v. Adolph*.

Guerin v. The Queen.

The Musqueam Band, led by Chief Delbert Guerin and Councillors, files for a review of the Shaughnessy Golf Club lease of 1957. In 1979 they are awarded \$10 million in damages owing to the prejudicial terms of the lease and the failure of Indian Affairs to consult with them on the terms. They reject the cash settlement in order to appeal, eventually to win their legal point in 1984: agents of the crown have a fiduciary obligation, when handling matters that affect Indigenous Peoples; and the crown must consult the People concerned before deciding such matters.

October **World Council of**

Indigenous Peoples is founded in Sechelt at a first international conference organized by Chief George Manuel, the Nuu-chah-nulth Tribal Council, and counterparts in nineteen other countries, with delegates from Maori, Africa, South America, Saami, the National Congress of American Indians, among others. Preparatory conferences in Guyana and Copenhagen allowed consensus to quickly be achieved in formalizing the Council, and a “Solemn Declaration” issued from the conference: “...We vow to control again our own destiny and recover our complete humanity and pride in being Indigenous Peoples.”

1976

January **Nisga’a Negotiations**

begin in ceremony, in New Aiyansh with representatives of the federal and BC governments.

The **Nishga Declaration** is issued:

“In 1969, Nishga Tribal Council agreed in principle with the “statement of the Government of Canada on Indian Policy,” in the face of strong opposition from other Native Peoples across the nation. That agreed principle was incorporated in the policy statement: ‘true equality presupposes that the Indian people have the right to full and equal participation in the cultural, social, economic and political life of Canada.’ Such an agreement in principle, however, does not necessarily mean the acceptance of the steps to implement as suggested by the 1969 Policy Statement.

Co-existent with the NTC agreement of the stated principle is also the NTC agreement with the Hawthorne Report, that “Indians should be regarded as Citizens Plus; in addition to the normal rights and duties of citizenship,



Lillooet Lake Road at Grandmother Slough, July 1975.

Indians possess certain rights as charter members of the Canadian Community.”

“Under the whole of the above, is the demand that, as the inhabitants since time immemorial of the Naas Valley, all plans for resource extraction and “development” must cease until aboriginal title is accepted by the Provincial Government. ...both the Government of BC and the Government of Canada must be prepared to negotiate with the Nishgas on the basis that we, the Nishgas, are inseparable from our land; that it cannot be bought or sold in exchange for “extinguishing of title”.”

April UBCIC and BCANSI

fail to merge into one organization of both Status and Non-Status Indians living on- and off-reserve.

United Native Nations is founded, with membership from Aboriginal and Metis organizations and Non-Status Indians, to pursue the land question and represent the Aboriginal people with no Band affiliation or government recognition.

June 10 Musqueam Declaration.

“We, the Musqueam people openly and publicly declare and affirm that we hold aboriginal title over our land, and aboriginal rights to exercise use of our land, the sea and fresh waters, and all their resources within that territory occupied and used by our ancestors, ...”

1977 Gitksan-Carrier (Wet’suwet’en) Declaration

“Since time immemorial, we [the Peoples] have exercised Sovereignty over our land. We have used and conserved the resources of our land with care and respect. We have governed ourselves. We have gov-

erned the land, the waters, the fish and the animals. This is written on our totem poles. It is recounted in our songs and dances. It is present in our language and in our spiritual beliefs. Our Sovereignty is our Culture.”

September, World Council of Indigenous Peoples releases its Statement on the rights of Indigenous Peoples worldwide, in Samiland, Sweden

1978 June, Protest fishery

at Xwisten. Surrounded by the entire northern St’át’imc leadership, Bradley Bob catches one salmon in front of the waiting and watching DFO. He is immediately charged, his salmon seized, and his case attracts people from up and down the Fraser River to an overflowing courthouse in Lillooet. The magistrate ruled that DFO’s action was lawful to regulate the fishery, and the accused was found guilty.

Constitutional Talks

The National Indian Brotherhood leaders insisted on having a role in First Ministers’ discussions aimed at creating a constitution based in Canada. A federal promise for them to “participate” did not materialize, but a section regarding Aboriginal rights was drafted and introduced. It was negotiated out of the draft Constitution in a First Ministers meeting in November, 1981.

Namgis Fishery Closed.

Kwakwaka’wak closed down their own ancient fishery on the Namgis River, based on the unprecedented decline in returning salmon. The fishery remained effectively closed for over thirty years, and salmon have only recently begun to increase in number.

October, R. v Haines.

In the case of BC conservation officers charging Mr. Haines, a Tsilhqot’in moose hunter, with hunting without a permit, Provincial Court Judge Barnett looked into the situation after having handed down many fines in similar cases. This time he dismissed the charges and shared his findings: “when the fish and wildlife conservation officers refuse to issue permits to the Indian people, it is they who are wrong, not the Indians who continue to hunt and kill only what they need for food.” “I now realize that for the past few years the conservation officers at Alexis Creek have deliberately ignored Indian hunting rights and the cumbersome procedure they make you go through when you do apply for a permit is really just a smokescreen to disguise the fact that no permits are granted at all. All the Indian people knew this, and, therefore, Indian hunting did not stop.”

1979 Aboriginal Rights

Position Paper is published by UBCIC. It provides an extensive, thorough and nuanced overview of the cultural, economic, social, political and legal values to be restored. The basis for these restorations is Native Title, and the absence of consent to be governed by Canada – essentially a rejection of crown sovereignty, and a proposal for the baseline start of negotiations towards cooperation.

July, 350 Chiefs visit UK

Parliament. Concerned about Canada’s private plans to secure a Constitution independent of Britain and independent of treaties and founding British arrangements with Native Nations, the delegation sought assurance from the

Members of Parliament that their constitutional status be protected in any new Canadian Federation. According to MP David Ennals, debating the *Canada Bill* in early 1982, they “asked us for the constitutional tools to enable them to develop their own nationhood, their own forms of self-government and to preserve their traditions.” And, “forcefully expound the concept of Indian sovereignty and Indian government.”

The Chiefs wore medallions given to them by Indian Agents on behalf of British kings and queens.

July 20, Native Claims Policy.

A strategic outcome document is submitted to Cabinet concerning the scope of negotiations under the 1973 Office of Native Claims.

The submission is approved July 25, 1979. It explains:

a) Indian title is to be extinguished for money and certain limited concessions, many of which would be of a temporary nature.

b) Any CONFIRMATION of Indian title is explicitly rejected as a basis for agreements.

c) Any powers or authority transferred to Indians are to be consistent with non-Indian political institutions, i.e., municipal-type administrations which can be tied later into provincial laws and institutions.

d) The concept of Indian Government, as a way of confirming Indian special status, is explicitly rejected.

e) Economic self-sufficiency for Indians is to be sought through wage employment or through prudent management of cash resulting from claims settlements. Indian ownership and development of resources is not regarded as an economic alternative because con-

firmation of Indian title is unacceptable.

f) Claims settlements are to be adaptable from one area to another. In other words, the essential provisions of the James Bay and Northern Quebec Agreement are to be applied in B.C., the Yukon, the Northwest Territories and elsewhere.

g) Provincial participation in negotiating claims settlements is regarded as essential (aside from any legal requirements for this) because one important aim is to shift jurisdiction over Indians to provinces.

September 18, Review of Specific Claims Policy: “Minister’s briefing regarding Federal policy and strategy regarding the settlement of specific claims.” This codification of the aims of the Claims Policy included the following text:

a) Negotiation with Indians is to be on a ‘pragmatic’ basis, i.e., with those Indian groups who are prepared to accept extinguishment of their rights.

b) Priority is to be given to extinguishing Indian Rights in those areas where major resource development is likely to occur.

c) Issues of Indian title are to be resolved through negotiation rather than legal action, because they could rule in some instances in favour of Indians under the present Constitution.

d) Rigid time limits are to be set on negotiations and enforced with threats of legislated settlements.

e) Existing national and provincial Indian political organizations are to be avoided in negotiating settlements. Regional and local Indian organizations and Bands are to be alienated or isolated from

membership in such political organizations to facilitate negotiations on Federal terms.

f) Indian organizations which are interested in accepting provincial programs and are willing to serve as program delivery agencies for government will be encouraged and supported (as opposed to political organizations which are committed to Indian Rights).

g) Federal negotiators are instructed not to waste time discussing matters which the government is not prepared to accept, i.e.:

- confirmation of Indian title
- Indian ownership of resources
- Indian Government (as opposed to municipal-type administration), etc.

- support for indigenous Indian institutions.

h) Federal ‘public relations’ are to be designed to convey to Indians and the general public that government actions are ‘positive’.

i) Projected cash outlays in return for Indian title are to be emphasized, because on the surface, they appear substantial. In reality, however, payments are to be extended over many years and would be offset by royalties and other revenues accruing to the government from resource development on former Indian lands. Indians would also be required to assume increasing responsibility for financing various programs and would reduce Federal program expenditures accordingly.

1980 Nuu-chah-nulth, Haida, Heiltsuk Nations file claims under Canada’s Comprehensive Land Claims Policy. By this time, only three tribal councils are not engaged in land claims, and only

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the Musqueam claim - pertaining to the Vancouver area - has been rejected outright.

October 2, Patriating the Canadian Constitution.

Prime Minister Trudeau's resolution on patriating the Constitution is released to the public. The intent is to seek a joint address from Parliament to complete the patriation process by the end of the year. The Resolution re-defines the Constitution of Canada in terms which exclude all references to the Proclamations, Enactments, Agreements, Treaties and arrangements entered into between Native Nations and the Imperial Crown.

The basis for British and Canadian recognition of "Indian Rights" would lose legal force in Canada, releasing Canada from responsibilities to Native Nations on behalf of the British crown. The constitutional amendment formula does not involve any Indigenous representation.

Thanksgiving, October 9-13,

Indian Child Caravan. Led by the Spallumcheen community, a caravan of people travelled from Secwepemc, and places north, and from communities on Vancouver Island, to a march in Vancouver. Chief Wayne Christian later explained, "You have to understand that the population of our community was about 350. Every family

had been impacted by that child apprehension policy, except two. About a hundred children had been apprehended from our community alone." Spallumcheen had passed a Band by-law concerning care of their children, codifying their own laws, and the Minister of Indian Affairs had 40 days to approve or reject it. From the Vancouver march, "at the last minute we changed our route to go to the Minister's house, Grace McCarthy. We went there and demanded that she recognize our jurisdiction and return the children to us - we had 30 people prepared to take the children home with us, and we demanded the federal government make the resources available to us to carry out our own plan."

Indian Agents at the ratification were heard to say, "there will never be another *Spallumcheen*" and there never has been another Band by-law for child welfare allowed to stand.

Instead, Native children continued to be apprehended in numbers that maintained the earlier rate of forcible removal of children to Indian Residential Schools – until at least 2019, the *Moushoom* and *Trout* class actions, the legislative settlement, and the *Act Respecting First Nations, Inuit, and Metis Children, Youth and Families*. The *Act* establishes a Canadian legal framework which

First Nations can opt-into and receive funds to implement the Canadian legislation over their own Indian Band governments, accepting governance by Canada under the terms, by agreement.

October 17, Constitution Express.

The Union of BC Indian Chiefs decide in council to mobilize a convoy of education and intervention by rail to Ottawa. As Rosalie Tizya later explained, "...there was close to 800 people on two trains going to Ottawa. A number of people went to the United Nations headquarters in New York City at that time, and they had a meeting with 21 other nations. Some of the Chiefs went on to England to meet with Members of the English Parliament. In Ottawa we had meetings with the Standing Committee, and it actually delayed Trudeau's patriation process."

November, Leaders on the European leg of the Constitution Express presented to the Fourth Russell Tribunal in Rotterdam. Explaining Canada's plan to patriate a new constitution without regard for the international rights of Indigenous Peoples *vis a vis* British Columbia prompts a formal statement from the Tribunal which is heard around the world.

1981 Constitution Express.

Returning from England, Europe, and the UN headquarters in New York City, Indigenous Leaders had gained an audience at the British House of Lords, where they made their case concerning the historical relations with the Crown of Britain, and their concerns about Canada's attempt to slip those obligations in a new Constitution which has been



Chief Wayne Christian, (left) Splatsin, Secwepemc, led the Indian Child Caravan. Right, PM Trudeau.

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drafted without reference to Indigenous Peoples.

In response, in the process of granting Canada the right to make a new constitution under its own legislative powers, Lord Denning, in the English High Courts of Appeal in 1982, described the Royal Proclamation of 1763 as “equivalent of an entrenched provision in the constitution of the colonies of North America.” Lord Denning said, “Its force as a statute, is the same as to the statutes of the Magna Carta, which has always been considered to be the law throughout the Empire.” He further said that the obligations of the Crown under the Royal Proclamation of 1763 and under the pre-confederation treaties signed with Aboriginal people, were undertaken with the passing of the *British North America Act* 1867 and were affirmed in their meaning and must now be affirmed in the *Canada Act*.

Indigenous leaders credited the

Constitution Express with the extension of the Constitution hearing date from December 7, 1980 to February 8, 1981; a provision to have the constitution committee meet with Indigenous leaders; increased recognition of Indigenous Nations among developing countries; and promoting a nationalist spirit at home.

Throughout 1981-82, Native organizations strike Constitutional Committees and working groups to influence the end result.

January, Harassment of Fisheries. Disruption of community food fisheries, Elders’ fisheries, and every fishery is so completely widespread, with cases going on for years and hundreds of peoples’ salmon being sold by DFO for a dollar, before any conviction, and never replaced or compensated, that a BC court judge simply refused to show up to DFO’s appeal of Herman Thomas’ acquittal, in Matsqui, simply sending the court clerk a note: he “didn’t want to hear Indian food fishing cases anymore,” and told Thomas to go home. That date was the defendant’s eighth appearance in court over three years concerning the same charge of being in possession of salmon. The case was aired in Indigenous media publications, along with pages of testimony canvassing the energetic extent and depth and damages of the government officials’ interference, across all nations.

“In All Fairness: A Native Claims Policy” The Minister of Indian Affairs releases a booklet to briefly state the scope of negotiations available for both treaty and non-treaty Nations to make their claims.

September, Valid Claims. The Committee of Deputy Ministers from the Office of Native Claims, receives preliminary analysis,

“The anthropological and historical evidence clearly documents a basis for the Nuu-Chah-Nulth, Haida and Heiltsuk claims under the terms of Canada’s policy on comprehensive claims. The Department of Justice has expressed the opinion that native interest has not clearly been extinguished throughout the claim areas. Therefore, it would appear that these are valid claims and that it would be in the best interests of all concerned to attempt to reach a negotiated settlement.” The presentation then cited a lack of federal funds to facilitate the claims process.

Forty years later, these valid claims have not begun to be settled. After major on-the-ground confrontations between these Peoples and police, hostile loggers, and fishermen; after millions in court defenses and litigation; after astonishing public pleas for relief; all the Province of BC can show in progress recognizing land title is a co-managed forest area and small-scale fishing operations with Heiltsuk, after being embarrassed by the 2009 “Suicide Petition” to implement court-ordered compensation from 1996; a major court victory for the Nuu-chah-nulth in their commercial fishing practices, achieving only part of what they offered to negotiate 40 years earlier; and an Agreement to begin negotiations with Haida.



UBCIC poster.

July 27, Occupation of DIA

Vancouver. The 15th Floor of 700 W. Georgia Street was occupied by Indigenous defenders, where they gathered information and intelligence relating to DIA conspiracies to divide and sabotage the solidarity building among Indigenous Peoples in their land title movement.

November, The Indian Association of Alberta, and others, appealed a November 1980 decision regarding the development of Canada's constitution. They had sought a declaration that treaty or other obligations entered into by the Crown to the Indian peoples of Canada are still owed by Her Majesty in right of Her Government in the United Kingdom. Their application was dismissed, and they appealed. Then, in the England and Wales Court of Appeal, London, Lord Denning held that any obligations held by the crown in right of the United Kingdom had been passed to the crown in right of Canada – as per the 1926 Imperial Conference. This transfer included treaty rights and other constitutional arrangements. The transfer was made without Indigenous Peoples. Finally, Denning held, “It is, therefore, not permissible for the Indian peoples to bring an action in the United Kingdom to enforce these obligations. Their only recourse is in the courts of Canada.”

The open question as to Britain's failure to enforce the terms of the *Royal Proclamation 1763* against its own citizens, among other broken promises – especially enforcement of the *Indian Act*, as well as the interpretation of constitutional and treaty obligations, were all left with the Canadian courts.

1982 Canada Constitution Act.

The Parliament of the United Kingdom enacted the Canada Act which proclaimed, among other things, that the Constitution of Canada is the supreme law of Canada. That legislation listed specific statutes which make up the Canadian constitution, one of which is the *Constitution Act*, 1982.

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

(1) “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. . . . (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.”

Section 25 of the *Constitution Act*, 1982, reads: “The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aborig-

inal peoples of Canada including ... b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.”

37. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.

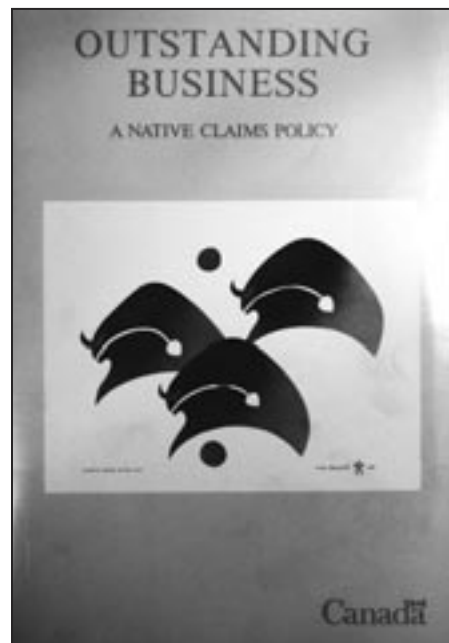
(2) The conference shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item ...

“Outstanding Business: A Native Claims Policy.”

The Minister updates his 1981 *In All Fairness* policy book. The primary update concerns increased funding to native “participants” – as they are called in the Claims process. It was the first transparent, public release of the actual details of the Policy.

It tracked the Policy from the 1969 Statement of the Government of Canada on Indian Policy, the “White Paper.” It reinforced the impression that the government would deal sharply with Peoples who pressed their claims through legal avenues, with a clear statement to that effect:

“Bands with longstanding grievances will not have their claims rejected before they are even heard because of the technicalities provided under the statutes of limitation or under the doctrine of laches. In other words, the govern-



A 1982 DIA publication on Land Claims. Three years later a review of the policy said it would take 100 years to settle claims at that rate.

ment is not going to refrain from negotiating specific claims with Native people on the basis of these statutes or this doctrine. However, the government does reserve the right to use these statutes or this doctrine in a court case.”

1983 First Ministers Conference, one of three, mandated by Section 47 of the 1982 *Canada Act*, continuing until 1987. Only the 1985 conference included significant Indigenous participation.

January 14, Lil'wat Nation

Declaration, “We, the People of the Lil'wat Nation declare that our land and rights as a Nation have never been relinquished by ourselves. The Creator placed us here on our land with the right to self-determination. The right to self-determination and the right to exist as a people is sacred in our way, and we believe we have that right. Canada's unilateral action in patriating its constitution without the consent of the Indian people and its blatant disregard of rights to self-determination of Indian People is regarded by the Lil'wat Nation as a bold and callous act against sovereign people. ...We will not be invitees to a conference where our rights as a sovereign people is to be discussed. Our attending such a conference will be as equal participants.”

Report of the Special Committee on Indian Self-Government in Canada, “Penner Report.” Following the first constitutional conference, this Committee held meetings with Indigenous representatives across Canada. The Committee encountered almost unanimous rejection of the government's 1982 proposals for

legislative change which were touted as facilitating greater local control and exercise of authority by band governments. Opposition to these proposals was on the basis that they involved a delegation of power to “inferior” Indian “municipal” governments, rather than a recognition of sovereignty of Indian First Nations, and would radically alter the special trust relationship, relieving the federal government of its fiduciary and special responsibilities.

The Committee recognized the need for a new relationship based on a constitutional recognition of Indian First Nations governments as a distinct order of government in Canada. The Committee supported full jurisdictional authority for First Nations determining their own membership, recommended full First Nations authority over lands and resources and establishment of a First Nations land registry, an adequate land and resource base, the settlement of claims, the correction of deficiencies in community infrastructure, and phasing out the programs of the department of Indian Affairs within five years. None of these were acted on in the spirit in which they were recommended.



Meares defenders obstruct Macmillan Bloedel boats at Heelboom Bay. Photo: Friends of Clayoquot.

Timeline

1984 February, The Significance of Indian Consent, published by UBCIC, clarifies the autonomous position of Indigenous Peoples, following Canada's constitution.

“By the time North America was discovered and settlers moved to the new world, an International law was established to protect inhabitants of the territories being colonized. England recognized International law and had come to agreement with other nations in who would colonize what territories. In recognizing International law, England had to prove ownership of the land by conquest or consent.

“Faced with the impractical solution of gaining the land by conquest, the only other choice open to the English for gaining ownership was by negotiation with the Indian Nations and gaining their consent for occupation.”

April, Defense of Meares Island

Tla-o-qui-aht and Nuuchah-nulth Chiefs went to stand on Meares Island, home of the oldest trees in the world, and delivered a Declaration to preserve the area against impending logging. They and others blocked logging access, refused to leave the area when the BC court issued an injunction for their removal, and eventually Chief Moses Martin sued the government over the logging licenses it sold to MacMillan Bloedel. The blockade lasted five months. The Chiefs defended the island staunchly, in court, where the crown's position was that the Chiefs had no standing in relation to the island.

A year later, March 27, 1985, the BC Court of Appeal ruled that there would be no logging before land claims had been settled. Meares Island was preserved and

the 1984 Declaration was renewed in 2014 with the establishment of a Tribal Park.

June, Ron Sparrow of Musqueam is detained by Fisheries officers at the mouth of the Fraser River. He is charged for fishing with a net larger than the BC Fisheries Act allows. Sparrow is assisted with legal counsel, as the case is important to everyone, and he intends to defend his right to fish with any net as being outside the powers of government legislation: an Aboriginal right protected in the Constitution.

In opening motions, however, his legal counsel agreed with the crown prosecution that conservation was a higher legal objective than Aboriginal rights.

1985 April 2-3, Prime Minister Mulroney chairs the First Ministers Conference to amend the constitution, to entrench the Aboriginal right of self-government, and makes speeches of loyalty and praise to First Nations:

“We need to, I think, I believe, reconsider and rethink our understanding of Canada, so that the Aboriginal Peoples too will have their own space in their own time.”

“As a Canadian and as Prime Minister, I fully recognize and agree with the emphasis that the aboriginal peoples place on having their special rights inserted into the highest law of the land, protected—as we all want ours—from arbitrary legislative action.”

April 12, The Buffalo Jump.

Deputy Prime Minister Erik Nielsen, tasked with reducing the federal deficit, produces a Cabinet document titled “The Buffalo Jump of the 80s.” It is leaked to the press. Of 19 federal spending areas,

Nielsen identifies the department of Indian Affairs as a target for budget cuts to balance the books, proposing to reassign 3,500 of 5,000 DIA staff and cut almost \$200 million in annual spending. Although great criticism of this plan arose, and the Mulroney government publicly retreated from the budget proposed by Nielsen, the plan – and budget cuts to Aboriginal groups and organizations – was carried out anyway. A cap on budget increase of 2% was applied and stayed in place for almost 30 years.

Sechelt Self-Government

Agreement is in final stages. Unlike any other nation, they have agreed to extinguish their title and rights to their territory, accepting instead a municipal role, with small lands, powers of taxation, and the ability to engage in business.

June 12, Indian Act Amends

Indian Status. After major mobilizations of community and Canada-wide organizations to intervene in Standing Committee hearings since the 1950s, Canada amends the *Indian Act* to reinstate people who were stripped of Indian Status, mostly women who married non-Native men. The change follows a recommendation from the UN Human Rights Committee, in *Lovelace*, three years earlier; and the 1982 *Canadian Charter of Rights*, which prohibits sexual discrimination. Most of the Indigenous recommendations to the *Amendments* are ignored, only to later be included in amendments in 2010, 2013, 2017, and 2021, following further litigation.

At the same time, the Bill C-31 amendment removes Band membership as an automatic entitlement to Indian Status. It also includes a

clause to protect the crown, the Registrar, government staff, and any Band, and any person involved in the removal of a Status Indian’s name from the Registry, from liability for damages caused by refusing to register individuals in the past. In 1985, there were 48 claims of wrongful appropriation being launched against the government by enfranchised Status Indians, with the stated aim of restoration and compensation. These were nullified by the legislative settlement.

July 8, July 12 BC claims Indian Reserves extinguished title.

In reply to both Moses Martin and his claim to Nuuchah-nulth title at Meares Island, and to *Uukw v. The Queen* and claims to title throughout Gitksan and Wet’suwet’en, the defendant crown in right of the Province of BC responded:

“That if the Plaintiffs or their ancestors, or the Indian Tribes or Indian Nations which they allegedly represent, ever had aboriginal title or rights over any part or parts of Meares Island / the Province of British Columbia, which is not admitted, the same was voluntarily given up to the Crown in right of one or both of the Colony of British Columbia and the Province of British Columbia by requesting that, out of lands in the territory outside those already set aside as Indian reserves, additional lands be set aside as Indian reserves and accepting the lands that were set aside.”

The crown had many other defenses, all of them references to colonial letters and legislative enactments, but this argument seems to confirm the bad faith with which their Privy Council ran the McKenna-McBride Commission of 1912-16. *See 1914.*

Summer, Fall, Defense of Gwaii Hanaas. At Lyell Island in south Moresby, a mass arrest of 71 Haida people blocking logging operations is carried out. The Haida Nation declared the area a Haida Heritage Site. Eventually, after more logging, the land is recognized a park by agreement between Haida and the federal government of Canada, with Haida forced to concede “Canadian interests” in the area in order to ensure preservation of the remaining undisturbed area.

Stein Valley defended. The first Voices for the Wilderness gathering is held in the Stein alpine, led by Nlaka’pamux Elders and their Chiefs, the Lillooet Tribal Council, and Lil’wat. The government was opening auctions for forestry licenses in spite of well-known and total opposition. Nlaka’pamux people persisted, raising support over a decade of actions and the annual Stein Valley Festival, and eventually created a protected area, where the Stein Valley Nlaka’pamux Heritage Park was declared, in agreement between the Nlaka’pamux and BC, in 1994.

November, Nuuchah-nulth Tribal Council child service authority is delegated to several NTC staff from the provincial Superintendent. This is the inception of the first Indigenous-run, government-funded child and family welfare agency, USMA, which began in 1987. It remained the only one of its kind for 20 years.

“Living Treaties, Lasting Arrangements – Report of the Task Force on Comprehensive Claims.” This federal Report reviews the Land Claims Policy and progress in unselfconscious language. Over 150 pages of the

most comprehensive disclosure to date includes: “There are now six groups in negotiations, with fifteen waiting to begin. Seven others have submitted claims that have not been accepted for negotiation. At the current rate of settlement it could be another 100 years before all the claims have been addressed.”

1986 October 16 Off-Shore Aboriginal Alliance of Nations (OSAAN) includes Tsimshian, Haida, Nisga’a, Heiltsuk, Nuuchah-nulth. The Alliance forms a working committee from a meeting that identified Aquaculture and Foreshore leasing; Offshore oil and gas; Logging; Pollution; Overharvesting of shellfish; the Sport fishery; native food fishing; commercial fishing licensing; and co-management and jurisdictional issues as serious concerns “lacking follow-up by any other organization.” The OSAAN group limited its focus to the first four.

On-reserve fishing bylaws. Several Bands have enacted fishing by-laws on their reserves, in accordance with the *Indian Act* provision for “the preservation, protection and management of fish on the reserve.” Fisheries officers continue to bring charges against on-reserve fishing carried out under the bylaws, notably in Squamish, Gitksan, and Cowichan, and on the Atlantic coast.

At a meeting of the BC Aboriginal Peoples’ Fisheries Commission, it is noted that every Band represented in the room has a few people being prosecuted on charges for fishing for food purposes.

November, DFO, DIA, and the Ministries of Justice, Transport, and Environment undertake a

Reserve Boundary Review in order to delimit reserve boundaries from riverbeds of navigable waters (anything a canoe can traverse) and from the foreshore, making the Band fishing by-laws inoperable.

Sechelt Self-government

Agreement ratified. It is the first and only consensual agreement concerning governance in Canada. It is based on the newly ratified Sechelt Constitution, 1986, and replaces electoral and other procedures described in the *Indian Act*, by bringing similar Canadian and BC legislation over the people by their ratification.

December 8, Confederated Traditional Okanagan-Shuswap Nations Declaration.

“We, the Sovereign Traditional People of the Okanagan and the Shuswap Territories Declare at this time Our Position to be Known Before All People of the World. We Stand Together as one Under Four Hereditary Chiefs: N’ kwala; A’ turn; N’ hum chin; Chil Heetza I.

1987 April, Aboriginal Title

Reference Case. Fourteen years after their title case, with no progress from the courts, the Nisga’a Tribal Council is stuck in stagnated negotiations with Canada while logging, mining, commercial fishing and settlement continue around them. The Council contacts the Attorney General of Canada to request a reference to the Supreme Court “regarding the continued existence of our Aboriginal title.” The AG declines.

Uukw v. The Queen

takes the question of registering land subject to Aboriginal title further. In 1988, the BC Court of

Appeal held that in order to file a *lis pendens*, a caveat affecting the status lands with the Land Title Office – as Chief Paulette did, the claimant must be claiming an interest or estate in land that is capable of registration. The court found that even if aboriginal title was an estate or interest in land, it was not registrable under the Land Title Act because it is inalienable. Aboriginal title land, they said, lacks the element of marketability necessary to establish a “good safe holding and marketable title.”

Gitxsan and Wet’suwet’en launch their title case, *Delgamuukw and Gisdaway v. The Queen*. 48 House Chiefs claim title and jurisdiction over 57,000 square km, as well as rights of self-government; compensation for lands appropriated and developed; land titles; and resources therein. The Province’s position is that the Gitxsan and Wet’suwet’en have “no right or interest in and to the territory.”

In 1991, they received a damaging ruling from the BC Supreme Court. They successfully appealed it, where the BC Court of Appeal asked the Province and the Plaintiffs to enter a period of negotiations before considering appealing the case further. That was in 1993, and so the Gitxsan and Wet’suwet’en entered the BC treaty process.

During “negotiations,” logging and development continued as usual – over their protest – throughout highly contentious areas that had been part of the reason for the title case in the first place. Both nations withdrew from the treaty process in events of blockading a railway line and logging access roads.

In 1995, several of the Plaintiff

House Chiefs joined a legal motion to strike out: to separate from the original pleadings and case, in disagreement with the original concessions made by their legal counsel regarding BC and its court’s jurisdiction over them, to which Judge McEachern turned and thanked the Plaintiffs’ lawyers for their submission, their admission on behalf of their clients, that they recognized the colonial court’s jurisdiction to hear the case on their lands. McEachern said, “Thank you for that, without it this case could not proceed.”

In 1995, Chief Justice Lamer of the Supreme Court of Canada refused to hear their motion to strike out. The court case was resumed in the appeal to the Supreme Court of Canada, and concluded in 1997 with judicial denial of jurisdictional powers, and no declaration of title.

August, Okanagan Nation

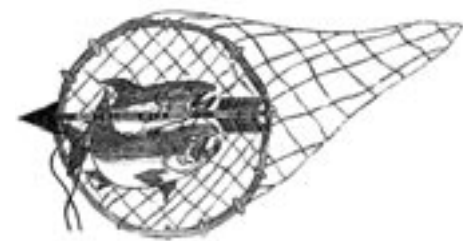
Declaration. “We are the unconquered aboriginal people of this land, our mother; The creator has given us our mother, to enjoy, to manage and to protect; we, the first inhabitants, have lived with our mother from time immemorial; our Okanagan governments have allowed us to share equally in the resources of our mother; we have never given up our rights to our mother, our mother’s resources, our governments and our religion; we will survive and continue to govern our mother and her resources for the good of all for all time.”

Report of the National Task Force on Suicide in Canada. An investigation limited to *Status Indians* found that Aboriginal people are two- to three-times more likely to commit suicide than other

Canadians, and identified eight contributing factors. Number 1: Loss of control over collective identity: Some researchers believed that the Canadian government’s attempts to assimilate Aboriginal peoples into the dominant culture had significantly lowered their self-esteem.

1988 BC Ministry of Native Affairs is opened within the BC provincial government.

1989 Inter-Tribal Fishing Treaty. Using the Indian Bands and the new Tribal Council modes of organization, the Nations of the Fraser and Columbia rivers signed a Treaty of Mutual Purpose and Support. Including every community on the rivers, they set out to enforce traditional laws and negotiate targets for fisheries which would ensure good salmon escapement, and fair catch for headwater Peoples. Their unified legal position is based on mutual recognition of titles and rights.



ITFT logo 1989

1990 March 10-11, NDP Title Stunt. The New Democratic Party of BC resolves, in its convention, to “acknowledge Aboriginal title and negotiate modern day treaties...” on the basis of that recognition. At the same meeting, they overwhelmingly rejected the 1974 Judge Boldt decision on 50-50 Native / non-Native sharing of salmon fisheries in Washington State, and

made up a management plan for the Carmanah Valley – all by themselves. The NDP won the BC election in October 1991, because the Conservative vote was split by the new BC Liberal Party, and a Native title acknowledgment was never heard from an elected BC government until 2005.

March, Aboriginal Media Budget canceled. Weeks ahead of the most significant Supreme Court of Canada decision on Aboriginal rights, in *Sparrow*; and the Constitutional amendment in the Meech Lake Accord; and the developing conflict at Oka, Kahnésatahke, the federal government cancelled its \$3.45 million Native Communications Program, which had subsidized most Aboriginal newspapers since 1974.

Kahtou, which was published in Sechelt, had a circulation of 7,500, and reached every reserve in British Columbia, was a major casualty – losing its entire annual \$240,000 budget at the moment it should have been renewed.

This federal budget slashed money to Indigenous organizations across Canada, but mostly in British Columbia: UBCIC lost 40% of its budget; 28 organizations lost their only source of revenue – Secretary of State funding – and fifteen of those were in BC;

May 31, Sparrow. The decision in the Musqueam fishing case is complicated, multi-faceted, and like a double-edge sword to Aboriginal rights. For the first time confirming that Aboriginal rights exist outside historic treaties, distinct from title cases, and that proven Aboriginal rights aren't subject to provincial or federal legislation, the Supreme Court of Canada simultaneously

introduces a formula to justify infringement and regulation of those Aboriginal rights. It also reduced and subjected the 1982 constitutional promise of Aboriginal rights to first be proved in court on a case-by-case basis.

In *Sparrow*, “conservation” of salmon was found to be a “compelling objective” adequate to meet the test of justification for infringing Aboriginal rights. The irony was blinding. The Department of Fisheries and Oceans had licensed the Pacific salmon fishery into decline by 1897, with commercial fleets and canneries, while outlawing Native food fisheries *and* the most reliable, traditional, fishing methods that ensured future abundance: the in-river weir fisheries where individual salmon runs could be seen and counted, and harvested selectively.

A few years after *Sparrow*, a Commission into the decline of Fraser salmon was formed: evidence of the DFO's total indifference to conservation. By 2009, DFO had “conserved” only *one percent* of Fraser sockeye salmon, and Chinook, Coho, and Steelhead were all listed endangered species.

June, Meech Lake Accord. As part of the implementation of the 1982 Canadian Constitution, the Accord was designed to entrench the rights of Quebec as a distinct society – but it did not recognize or safeguard Indigenous titles and rights against the Province. Elijah Harper, a Cree Member of Parliament from Manitoba, filibustered the last days of the vote so the Accord would expire before it could be ratified in a vote. He explained, “I was opposed to the Meech Lake Accord because we weren't included in the Constitution. We were to recognize

Timeline

Quebec as a distinct society, whereas we as Aboriginal people were completely left out. We were the First Peoples here – First Nations of Canada – we were the ones that made treaties with the settlers that came from Europe. These settler people and their governments didn't recognize us as a Nation, as a government and that is why we opposed the Meech Lake Accord.” The United Native Nations declare “Elijah Harper Day” in their General Assembly.

July-September, Mohawk defense of The Pines from golf course development. Solidarity demonstrations and information roadblocks on highways occur across Canada.

October, Defense of Lil'wat.

Lil'wat block the Lillooet Lake Road against logging, reoccupying their road and blocking logging access to sacred areas, for 116 days. Roadbuilding for the logging blasts several iconic petroglyphs to dust.

Dec. 3, BC Claims Task Force

is created by agreement between select First Nations representatives, the Government of BC, and the Government of Canada. The terms of reference ask the Task Force to recommend how the three parties can begin negotiating “Aboriginal land claims” and what the negotiations should include.

This process comes in the dissolution of the Land Claims process which started after *Calder*.

1991 February 11, Northwest Tribal Treaty. Tsimshian Nation, Haisla Nation, Wet'suwet'en Nation, Gitksan Nation, Gitanyow Nation, Carrier Sekani Nation, Lake Babine Band: “We shall continue to enter into bilateral and

multilateral relationships with each other to strengthen and assist in settling matters and common concerns regarding our respective cultural identities, traditions, diversity, equality of our peoples, and our common boundaries according to our traditional laws.”

March 8, Chief Justice McEachern of the BC Supreme Court writes a one-thousand-page decision in *Delgamuukw and Gisdaway v. the Queen*, the Gitksan-Wet’suwet’en case for a declaration of title and jurisdiction. The ruling denied not only land ownership, but that the nations were “organized societies.” In the result, the decision favoured aboriginal “subsistence use” of vacant crown land, and a fiduciary obligation of the governments to consider its licensing on that land in relation to aboriginal uses. In this context, consultation and “sometimes accommodation” would be required.

McEachern said, “there is no doubt, to quote Hobbs, that aboriginal life in the territory was, at best, “nasty, brutish and short.” McEachern concluded his dismissal of the action with the following lines: “...the remaining problems will not be legal ones. Rather they will remain, as they have always been, social and economic ones.”

March 20, Nisga’a Framework Agreement is ratified by the Nisga’a Tribal Council, Canada, and BC, commencing negotiations anew. It is the *only* land claim under negotiation in the province.

June 28, Report of the BC Claims Task Force recommends that the Province and Indigenous Peoples engage in negotiations to address

the conflicts erupting in court and on the ground.

They make 19 recommendations, including: “the process must be open, fair and voluntary. The result of the negotiations must be set down in modern treaties, the blueprints for a new relationship. Implementation of these treaties will require the commitment of all to bring about positive and lasting change in the political, social and economic structures of British Columbia. The negotiations to build a new relationship between First Nations, British Columbia and Canada should begin as soon as possible.”

The Task Force noted, “To date, both federal and provincial governments have exercised powers affecting First Nations’ interests, often without consultation or consent. When British Columbia joined Confederation in 1871, the federal government assumed legal responsibility over “Indians and lands reserved for Indians.” Recent initiatives have marginally increased First Nations’ responsibility for programs on reserves. In 1985, the federal government began negotiating agreements which would delegate more administrative responsibility. However, legal authority continues to rest with the federal government.”

Four months later the Social Credit government of BC, which commissioned the Task Force, lost the provincial election.

June 16, Declaration of the Lheit-Lit’en Nations. “We, as a Nation, have been lost for a long period of time, where we were subjected to other people’s laws, values, and beliefs. As a result our Nation broke up under the subjection, and our people drifted through time

living in another world. ...We come together in the spirit of mutual assistance and cooperation, and in the exercise of our inherent sovereign powers passed on to us by our Creator, to combine our efforts for the attainment of our goals. Accordingly, our peoples do hereby establish through this declaration, the foundation of “The Lheit-lit’en Act.”

July 2, Judicial Conspiracy. In a Motion filed to appeal a decision of the BC Supreme Court, Líl’wat people convicted of nuisance (blocking a road to prevent logging of sacred sites) raise allegations against Justices of Appeal, Supreme Court Justices, Provincial Court Judges, legal counsel, a Minister of the Crown, and R.C.M.P. officers. The Motion describes how the government’s judicial, executive and enforcement branches have conspired to evade the constitutional law protecting Indigenous land rights, or, specifically, “abusing the court process in order unconstitutionally and fraudulently to extort unceded territory.”

BC’s Attorney General intervenes *ex officio* and has the judge strike the Motion from the proceedings without hearing.

August 26, Royal Commission on Aboriginal Peoples is “mandated to investigate and propose solutions to the challenges affecting the relationship between Aboriginal peoples, the Canadian government and Canadian society as a whole,” by Order in Council.

1992 Charlottetown Accord on the constitutional rights of Aboriginal self-government is unanimously agreed by all Parties – the Native Council of Canada, the

Inuit Tapirisat, the Assembly of First Nations, Metis National Council, Canada and Provincial Ministers. Then, the rules for voting-in the constitutional amendment are changed: a national referendum is held, the Accord fails the new threshold and is abandoned when the Canadian public votes it down in the referendum. Significant opposition to the Accord comes from Indigenous nations as well, notably Mohawk.

February 26, British Columbia Treaty Commission Agreement, with British Columbia and the First Nations Summit, is ratified. The BCTC will operate on the same basis as the Comprehensive Claims Policy, with the exception that no proof of claim is required to enter negotiations. First Nations will receive loans to cover the cost of negotiations.

Fraser Sockeye Decline in the upper reaches is so alarming that a Commission is appointed to investigate. The *Pearse Report* follows.

December, BC Treaty Commission opens, accepting its first Statements of Claim.

Canadian forestry industry is worth \$448 billion and employs 900,000 Canadians. In something called the Canada Forest Accord, all stakeholders approved “Strategic Direction #7, Aboriginal People: A Unique Perspective” within the National Forest Strategy for Canada. It enables new legislation, a joint initiative between the Intertribal Forestry Association of BC and the National Aboriginal Forestry Association.

NAFA is short-lived.

1993 First Nations Chartered Lands Act attempted by the federal government. It was a process to legislatively effect the conversion, with consent, of “Indian land” to fee-simple properties that could be mortgaged and sold. BC Chiefs opposed it as a “massive assault” on Aboriginal and Treaty Rights, forming the temporary Coalition Against First Nations Genocide to fight it.

Delgamuukw appeal. At the BC Court of Appeal, the trial ruling was reversed, in part. The Province conceded that “aboriginal rights were not *all* extinguished” by colonial actions prior to 1871. BC requested a declaration that any Aboriginal interests in land were *sui generis*, and this was so declared.

1994 Roadblocks at Douglas Lake, Nanoose, and Lil’wat.

1995 January 3 Petition. The Native Sovereignty Association petitions the Queen of England to restore the jurisdiction of the native people over their hunting grounds. The Petition relies on Queen Anne’s Order dated July 9, 1704, establishing an independent and impartial Standing Committee with jurisdiction over boundary disputes between the native people’s hunting grounds and the Crown’s public lands in North America. In the Constitution Act of 1982, the Canadian Parliament confirmed “existing aboriginal and treaty rights,” and therefore the 1704 and 1763 Orders. The petition sought to have a Standing Committee, previously constituted by the 1704 Order, address and report on the boundaries of existing native people’s hunting grounds and the legal sanc-

tions applicable against various respondents “for jurisdiction in relation to the Hunting Grounds,” which had been illegally usurped by the Canadian courts and by “band” governments elected under the *Indian Act* operating on illegal “reserves” on unsurrendered hunting grounds.

One of the Petitioners is Percy Rosette, who is centrally involved in the Sundance at Ts’peten – soon to be the scene of the largest Canadian military ground assault since the Korean War.

The Petition is stonewalled by BC’s Attorney General and Canada’s Governor General, who refuse to forward it to the Head of State in Britain.

August 24, Defense of Ts’Peten. RCMP and Canadian Forces prepare for siege at the site of the Ts’peten Sundance (Gustafsen Lake), in the midst of a media “smear and disinformation campaign.” After three weeks under heavy fire, the reoccupation at Ts’peten is abandoned. The occupants are all charged with serious crimes. In an interview from prison about the land question behind the incident, the Elder Wolverine said “The only thing I want to see come out of this is that if the Canadian government, on both levels of government, does not want to pay the compensation for what they done to us, then they open the door to a third party tribunal with the Queen.”

Inherent Right Policy. Canada Policy Guide 1995 re. Aboriginal Self Government – “Approaches to Implementation of the Inherent Right and the Negotiation of Aboriginal Self- Government”

“The Government of Canada

recognizes the inherent right of self-government as an existing right within section 35 of the *Constitution Act, 1982*. It has developed an approach to implementation that focuses on reaching practical and workable agreements on how self-government will be exercised, rather than trying to define it in abstract terms. The Government believes that this approach is flexible and will allow all interested parties to make meaningful progress in the realization of Aboriginal self-government.”

Canada’s new policy on Aboriginal self-government follows the scuttled Charlottetown Accord. It is dubbed the “self-termination” strategy by Native sovereigntists, because traditional authorities are replaced by Canadian-made governance structures, with a ratification process to formally consent to be governed by Canadian law, and import the relevant statutes over themselves, as an “extinguishment by agreement” model. The BC Treaty Commission’s newsletter explains the new policy this way: “The inherent right of self-government does not include a right of sovereignty as it is understood in international law. All First Nations exercising self-government will remain part of Canada, contributing to the Canadian federation.... In BC, the government.. is negotiating self-government agreements as part of the BC Treaty Commission process. These agreements will result in practical arrangements which will meet the interests of all parties at the negotiating table. ...while ensuring that First Nations governments are firmly within the Canadian legal and constitutional fabric.”

September; Defense of Ista. Nuxalk traditional government and non-native supporters block logging access to the island where their first ancestor was placed on the earth. They defy a court injunction, citing their own jurisdiction. RCMP arrest hereditary leaders for contempt of court, flying them to Vancouver to pre-trial hearing. Three chiefs are charged, then detained for 23 days: they would not sign court documents allowing their release, in protest that the court has no jurisdiction over them nor right to make orders on their lands.

1996 *February* **First Nations Land Management Framework**

Agreement signed between 13 First Nations (Indian Act Bands) and the federal government.

Three years later, it becomes the legislated federal *First Nations Land Management Act, 1999*, where First Nations can opt-in to create Land Codes under it. Reserve lands can now be registered in the new First Nations Land Register, a unique record of reserve lands and lands set aside for First Nations; lands not registrable under provincial land laws. The legislation mobilizes “Self Government Agreements” on the ground, with Indigenous communities voting in favour of the governing structure of the Indian Band / First Nation Land Code to gain decision making powers over reserve lands. The legislation introduces a new phase of empowering elected leadership on Indian reserves to pass resolutions releasing traditional lands beyond the reserve boundaries, because the membership has voted their consent to the Band Council structure of representation.

van der Peet Fishing ruling.

The Chief Justice of the Supreme Court of Canada says: “A core purpose of section 35 of the Constitution Act, 1982 is to effect reconciliation of pre-existing Aboriginal sovereignty with assumed Crown sovereignty.” The fishing cases of *van der Peet*, *Gladstone*, and *Smokehouse* are ruled on together, as a trilogy, which freezes Aboriginal rights in 1846.

October; Report of the Royal Commission on Aboriginal Peoples.

In several volumes and subsets, the Report gives over one thousand recommendations.

1997 *Blackwater et. al. v.*

Her Majesty the Queen in Right of Canada, the United Church of Canada and named employees, results in the first case of an Indian Residential School employee charged with violent crimes against students, where the Government of Canada is named as a defendant and the Supreme Court of Canada found the government not only “... vicariously but also directly liable for the sexual and physical abuse atrocities inflicted on the named plaintiffs.”

It is a watershed moment, and hundreds of similar cases are launched within the next few years. It is the first time the extent of violent and sexual abuse in the institutions is revealed in national media.

William Blackwater, Gitxsan, later explained of Indian Residential School, “Those... atrocities inflicted on them for attempting to speak and practice their own respective Aboriginal identity; are the foundational factors of why Aboriginal peoples across Canada fear their own respective Ancestral

Laws, Practices, Values and Principles.”

Yukon Final Agreement

comprehensive land claims agreement between Indigenous Peoples and the Governments of Yukon and Canada. Negotiations began in 1975.

June 30, *R. v. Pena*.

Lahalus, a Lil’wat Elder and veteran of many police invasions of land reoccupations, is called as a witness for the defendants of the Ts’peten occupation. She swears to the courts’ persistent refusal to allow the question of jurisdiction to be raised. She testifies to having been in front of 50 judges but has never been allowed to argue, or been answered on, the point “that we have the inherent right to sovereignty and jurisdiction.”

The jury in *R. v. Pena*, the trial of the Ts’Peten Defenders, the Gustafsen Lake Sundancers, delivers their verdict. Several jurors are openly weeping. They want to read a prepared statement, but decline after Justice Bruce Josephson cautions them that they could be actionable for libel and slander.

The Foreman delivers a guilty verdict on the charges of Weapons and Mischief and Attempted Murder. The jury had been instructed not to consider much of the Defendants’ key evidence describing the history of their land rights and jurisdiction.

December 17, *Delgamuukw v.*

The Queen ruling narrowly defines Aboriginal title, in a way that excludes several features of historical Indigenous land title such as shared areas, and titles held by individuals as heads of Houses and Clans. It also expands the legal

concept of justifiable infringement of Aboriginal rights introduced in *Sparrow*: that Aboriginal title can be infringed for “valid provincial objectives” of “compelling public importance,” which are itemized for the purposes of future litigation as: agriculture, mining, forestry, hydroelectric power, development of infrastructure, and settlement of foreign populations.

Finally, the court shifted the onus of proving title onto the Indigenous party instead of requiring the crown to prove it had secured some kind of title, right of way, or extinguishment of competing claims, as suggested in *Calder*.

After some 350 days of trial and Gitxsan and Wetsuwet’en testimony in court, the Supreme Court of Canada unanimously decided that *if* Aboriginal title could be proved, it would mean a *sui generis* interest in land. This interest would include the usufructuary right of exclusive occupation of the land; using the land; and making decisions about its use. Further, it would mean the right to benefit economically by others’ use of it. To celebrate that, dozens of roadside fires were lit throughout BC.

Chief Justice Antonio Lamer concludes by saying, “Let’s face it, we are all here to stay.”

In 1997, the population of British Columbia is 3,949,000.

1998 “Regret” for Indian Residential Schools.

Janice Stewart, Minister of Aboriginal Affairs Canada, announces the government’s policy reply to RCAP, “Gathering Strength.” She states that Canada “regrets” incidents of harm in Indian Residential Schools and promises a “New Relationship.”

Timeline

1999 Aboriginal Title on the Ground. Okanagan and Secwepemc Chiefs go logging on their own territory to test the ruling in *Delgamuukw*, using their Aboriginal title land for forestry without a provincial license. Expecting they would be served with an injunction against the activity, they planned to argue the position in their defense – because they could not afford to launch litigation. They are served with an injunction to stop logging, and pursue their case as a defense.

Nisga’a Nation ratifies a Final Agreement with BC, for 8% of their traditional territory to become Treaty lands held in fee-simple title. The Nisga’a relinquish their Aboriginal rights in favour of the rights identified in the Agreement.

Suit against Self-government.

BC’s opposition Liberal leaders Gordon Campbell, Geoff Plant, and Michael DeJong sue the government of British Columbia for recognizing Nisga’a powers of government in the Final Agreement.

2000 Nisga’a Final Agreement ratified by Canada’s Parliament. It had been in negotiations since 1976, under the first pilot claims processes established in the Comprehensive Claims Policy 1974.



*Nisga’a
Nation
Government
crest.*

Kitsilano Reserve returned.

The Federal Government paid the Squamish Nation \$92.5 million in a Specific Claims settlement for the misappropriation of Kitsilano Reserve No.6 at the entrance to False Creek, and returned 4.7ha to Squamish as an Indian reserve.

Skeetchestn v. The Registrar.

The Kamloops Land Titles Registrar refused to register a certificate of pending litigation and a caveat in connection to the lands of 6 Mile Ranch, overlooking Kamloops Lake. The BC Court of Appeal upheld the Registrar's decision on the basis that Aboriginal title is not a registrable interest.

2001 New Liberal government

of BC drops its court case against BC, as the plaintiffs Campbell, Plant and DeJong form the BC government. Instead, the new government conducts a referendum to narrow the province's negotiating mandate, asking British Columbians for direction on the following points: should private property be on the negotiating table? The overwhelming answer is "no." UBCIC stages ballot-burnings in protest.

2002, June, Tsawwassen Accord.

Six Aboriginal organizations, including the BC AFN, First Nations Summit, UBCIC, BC Native Women's Association, and Association of BC Indian Friendship Centers came together in a statement of unity on the inherent Indigenous jurisdiction to manage care of children and families. The Accord was to the point: "Whereas the Aboriginal Nations have an inherent right of self-determination including jurisdiction relating to the children and families of those Nations; Whereas the rights of self

determination and jurisdiction are not respected by the federal and provincial governments...".

Haida Title Case. "The Plaintiffs, together, represent the Haida Nation, including the Council of Hereditary Chiefs, and bring this Action on behalf of all citizens of the Haida Nation. ...whose territory Haida Gwaii includes the land, inland waters, seabed, archipelagic waters, air space, and everything contained thereon and therein comprising Haida Gwaii..."

The Haida title case was put on hold while a series of negotiations were offered by the province.

Tsilhqot'in Title Case. The Xeni Gwet'in amalgamate two court actions arising from anti-logging occupations in Nemiah and the Brittany Triangle, making one case seeking a declaration of Aboriginal title and rights to hunt, trap and trade in those areas. The "Claim Area" is just a portion of the Tsilhqot'in traditional territory and encompasses 438,100 hectares.

2003 Westbank Self-Government Agreement ratified. In the Agreement, Westbank gains control of such activities as Public Works, regulation of traditional Okanagan medicine practitioners in its community, participation in Environmental Reviews, and water and waste services. Without prejudicing future positions either party may take, the Agreement specifically does not recognize Westbank power to regulate or administrate in the areas of banking, taxation, trade, incorporation, and mineral rights. The main effect is to allow Westbank to sell its land.

2004 – Unofficial country visit of Rodolfo Stavenhagen, UN Special Rapporteur on the Rights of Indigenous Peoples. He visits in response to extensive communications from Indigenous leaders, but without invitation from Canada.

April, Canada-Aboriginal Peoples Roundtable. Native leaders and Canada's First Ministers are "... focussing efforts to close the gap in the areas of education, health, housing and economic opportunities," with a proposed injection of \$5billion to mobilize implementation. It leads to the Transformative Change Agreement, or "Kelowna Accord."

May-July, BC invokes *Terra*

Nullius. In continuing court action by BC to derail Okanagan Nation commercial forestry, started in 1999 in Brown's Creek, the Province filed a Statement of Claim asserting exclusive ownership of and jurisdiction over the Watersheds, and pleading denial of Okanagan title in the form of *terra nullius*: that the Watersheds were vacant Crown land and the Okanagan were not sufficiently organized to hold title at common law.

The Okanagan Defence and Counterclaim put the Province to proof of ownership of the area with any deed or evidence of purchase, and challenged the unconstitutional *Forest Act* in unceded Okanagan territory, asserting title to the Browns Creek Watersheds.

Skwelkwet'welt Protection

Centre Police remove a Secwepemc reoccupation at the site of the 1861 Neskonlith Reserve, now under the Sun Peaks Resort Municipality.

Timeline

2005 January 12, Mineral Titles Online. The government of British Columbia enables internet-based access to stake mining claims. The process has no option to consult First Nations, but sells a license and leaves the infringement up to the Indigenous party to challenge in court. As of October 2023, this infringement was judicially acknowledged in BC Supreme Court, in *Gtxaala*.

January 17, Tahltan Elders

Occupy Band. For five months an average 35 people stayed in the Band office, shutting down operations and demanding the resignation of their elected chief who was maintained in power by the government, in consideration of major mining operations he was approving over the opposition of affected Tahltan people.

They were eventually tricked into leaving the office when RCMP officers promised them an election for a new Chief. Lilian Moyer, a Tahltan leaders later explained, “Then they said if we leave the building, the Chief will have no more power, and lose his authority, and they said what was going on with the developments had nothing to do with him. But we didn’t get it in writing. We decided to leave the Band Office, and then nothing changed.... in business with the

mining and oil drilling contracts.” The Chief in question was Jerry Asp, later to become the first President of the Canadian Aboriginal Minerals Association.

September BC Premier acknowledges Aboriginal rights — the first time any British Columbia premier had done so — in a speech to the First Nations Summit. He said, “For too long ... we did follow a path of denial. There was a denial of rights, of culture, of opportunity and equality ... The First Nations and Aboriginal people of Canada have been failed, and we must move forward to rectify that.”

November 25, Transformative Change Agreement signed in Kelowna by Prime Minister Paul Martin, BC Premier Campbell, AFN Regional Chief Shawn Atleo, First Nations Summit Chair Edward John, and UBCIC President Stewart Philip. Three days later, the federal Liberal government was defeated in a vote of no confidence. Parliament was dissolved on November 29.

Six weeks later, the Conservative party was elected and formed Canada’s new government. The existing \$5billion allocated to “closing the gap” between Native and non-Native people in Canada evaporated. Martin followed up,

once in opposition, to continue the project with the existing budget, through a private member’s bill in Parliament. It did not succeed.

2006 April, Indian Residential Schools Survivors Settlement

Agreement is announced as a \$2billion settlement, plus lump-sum payments to Survivors. The full name of this class-action settlement is now rarely used. The keyword removed is “Survivors.” The Settlement pertains to individuals who attended a School and were alive in 2005.

About 800 Survivors opted-out of the class-action final settlement. The class-action succeeded, and included an average \$25,000-per-student “Common Experience Payment,” an “Alternative Dispute Resolution” process to settle claims of serious physical and sexual abuse using a points system; the creation of the Truth and Reconciliation Commission, a formal apology by Canada, and substantial settlements to the lawfirms representing hundreds of individuals with Residential School-related litigation against the state and church in the courts – now settled out of court by the class-action.

New Relationship Trust Act

creates a BC corporation that will be credited with \$100 million, to be used at the discretion of an independent Board, to meet the needs and priorities of First Nations by application of grants for funds to start businesses, among other things. 80% of the fund was quickly steered away from unanimous results of community polls advising for immediate disbursement in language and culture and Elder health programs. \$80million was invested directly with four



Skwelkwek'welt Protection Center, 2004.

corporate portfolios barely an arm's length from the politicians who approved the fund. Since then, the Fund does not earn enough to pay for its board and numerous consultants, and receives annual funds from government and non-profit organizations to fulfill a handful of grant applications each year.

Tthrowwelth v. British Columbia was launched by Haida matriarch Lavina White in BC court, then New York and Malta courts. It was an allegation of genocide against Canada, making the case that Canadian judges are complicit in genocide and "the crime of genocide never occurs unless the court system of the country in which it is occurring is complicit."

Any national constitutional court may gain jurisdiction to hear a case of law alone, based upon the "universal extraterritorial jurisdiction" to prevent genocide-in-progress attributable to "judicial inactivity" within the state in question. *Tthrowwelth* sought a recommendation that the courts of North America address their own constitutional law. The case has still not been heard.

2007 January, First Nations Unity Protocol Agreement. Attempting to hold the governments to account, every First Nation in treaty negotiations with BC walked away from their tables (except one, hoping to gain speed by avoiding the protest). FNUPA communications stated that government mandates reflect a political position that, "the negotiations are purely political with no legal basis. They are using it as an excuse to refuse to negotiate any recognition or reconciliation of aboriginal rights and title.

"We are requesting the Com-

mission to clarify this issue as part of the proposed review. From our perspective the governments' treaty positions have not responded to developments in the law of aboriginal title and good faith negotiations nor to positive developments in the New Relationship.

"In fact, what we see at our Tables is less than was available in the Nisga'a agreement, less than is available in Treaties elsewhere in Canada, less than is available in court, and far less than is promised in the New Relationship."

The FNUPA took action to back up their demands, including blockades of BC Ferries sailings. Specifically, they wanted changes to: certainty provisions, constitutional status of treaty lands, governance, co-management throughout traditional territories, fiscal relations and taxation, and fisheries.

In 2006, the Auditor General had confirmed the refusal of the governments to recognize rights and title in negotiations: "...the two governments base their participation in the treaty process on their own policies, and do not recognize the aboriginal rights and title claimed by First Nations."

By 2007, BC and Canada claim to have spent \$439.8 million on their side of negotiations. Loan funding to all First Nations treaty groups, representing 103 communities, comes to \$289 million.

March 23, Lheidli T'enneh vote "No" to a Final Agreement negotiated in the BC treaty process. The cash component of the offer includes \$13million over ten years as "Settlement Capital."

May 10, Petition of the Hul'qumi'num Treaty Group to

the Inter-American Commission on Human Rights. The petition was soon admitted by the Inter-American Court on the basis that the HTG had exhausted the domestic remedy to the state's violations of the right to property, the right to culture, and equality before the law, since it had participated as far as possible in the BC Treaty Commission, and because of Canadian courts' ongoing failures to find in favour of Aboriginal title – but only to recommend these same negotiations.

June, Petition for Injunction against the Tsawwassen Final Agreement is lodged with BC's Supreme Court by neighbouring Indigenous nations. Although they have been locked out of discussions for several years, on matters concerning their territories, the judge dismisses *Cook v. BC, Minister of Aboriginal Affairs*, saying they have waited too long to act.

July, Tsawwassen Final Agreement is the first "modern day treaty" ratified by a First Nation under the BC Treaty Commission. With last-minute BC contributions of millions of dollars for the TFN negotiating team to acquire services of a self-described "disaster management" PR firm, and an offer of \$15,000 to each Elder upon ratification, and for a fishing allocation, 1% of their claimed territory, \$21 million, municipal government, and a shopping mall, "Tsawwassen First Nation releases Canada, British Columbia and all other persons from all claims, demands, actions, or proceedings, of whatever kind, and whether known or unknown, that the Tsawwassen First Nation ever had, now has or may have in the future, relating to or arising from any act, or omission, before

the effective date that may have affected or infringed any aboriginal rights, including aboriginal title, in Canada of the Tsawwassen First Nation.”

The total cash value of the deal was \$33.6 million plus self-government funding of \$2.9 million annually over the first five years of the treaty. Then-Minister of Indian and Northern Affairs, Canada, Chuck Strahl said, “Who am I to say if it’s a good deal?”

September 13, UN Declaration on the Rights of Indigenous Peoples recognizes Indigenous peoples around the globe being equal to all other Peoples. Canada votes against adoption of the DRIP in UN General Assembly, but it passes almost unanimously.

October, Maa-nulth First Nations Final Agreement ratified. The five First Nations in the treaty group release their title over 378,000 ha, for: the rights in the Agreement; 20,900 hectares of Treaty Settlement Lands; and \$58million in Settlement Capital.

November 17, Tsilhqot’in Nation v. British Columbia, ruling from BC Supreme Court. In finding “small spot” aboriginal title throughout the claim area, Justice Vickers wrote in his reasons: “It appears that the Province has been violating Aboriginal title in an unconstitutional and therefore illegal fashion since it joined Canada.” Vickers died not long after this decision.

The Tsilhqot’in agree to a one-year negotiation period with BC before deciding whether to appeal the court’s ruling. After the year of unproductive discussions, the Tsilhqot’in appeal for a wider Declaration of title.

November 29, All Our Relations A Declaration of the Sovereign Indigenous Nations of BC:

“We, the Indigenous leaders of British Columbia, come together united and celebrate the victory of the Tsilhqot’in and Xeni Gwet’in peoples in securing recognition of their Aboriginal title and rights – and all those Indigenous Nations and individuals that have brought important court cases over the years resulting in significant contributions in the protection and advancement of Aboriginal title and rights, including the Nisga’a, Gitksan, Wet’suwet’en, Haida, Taku River Tlingit, Musqueam, Heiltsuk and Sto:lo - shining light on the darkness of years of Crown denial of our title and rights.

“After pursuing different pathways, we now come together to make this solemn Declaration out of our common desire to be unified in affirming our Aboriginal title.”

2008 June 11, Apology to Indian Residential School Survivors by Prime Minister Stephen Harper.

June 12, the Specific Claims Tribunal Act receives Royal Assent, and comes into force in October. Providing an alternative to court, where the Tsilhqot’in Nation just won a strong judicial opinion that they were owed compensation for damages, the Tribunal can award a maximum of \$150million.

2009 February 12, Frank Paul Inquiry. The Davies Commission looks into the death of Frank Paul in police custody, in 1998. The Inquiry was finally commissioned in response to major protests of the number of Aboriginal people dying in, or immediately after being in, police custody.

Timeline

2009 November 10, Heiltsuk demand recognition of commercial fishing rights. In 1996, the Supreme Court of Canada found that the governments owe compensation for restricting Heiltsuk fishing rights, in *Gladstone*. 13 years of “negotiating” implementation of that decision had led nowhere.

In a statement, the 1996 name plaintiff William Gladstone (also Chief Negotiator), said: “Our economy is deeply rooted in harvesting and trading land and sea products. Our right to harvest and sell herring spawn on kelp commercially, was recognized by the Supreme Court in 1996, however our commercial right has not been fully acknowledged and no reparation has been made for the severe losses our people have sustained flowing from of the Canadian government’s denial of our commercial right.”

Government failure to honour the ruling cost the Heiltsuk community millions in lost opportunities, they said, with unemployment rates of 80-90% for most of the year. Desperate levels of alcohol and drug abuse, suicide and family violence were connected to the denial of fishing and resource rights.

2010 May 10, Memorial to Wilfred Laurier 100th anniversary gathering. Delegations representing all the original signators meet at Spences Bridge at a commemorative arbour to re-sign the Declaration.

August-September, Walk, Paddle for Wild Salmon Walking from the northern tip of Vancouver Island to Victoria, then to Vancouver; and boating from Lytton to Vancouver on the Fraser River, hundreds of Indigenous nations are represented

by thousands of people. They converge at the Cohen Commission.

Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River

in response to massive outcry concerning the collapse of *the largest salmon-producing watershed in the world* to 1% of historical run sizes.

The Commission refuses to find cause, in spite of evidence of cumulative impacts indicating mining, forestry, industrial developments in headwaters, hydroelectric production and dams, commercial overfishing, and open-net cage aquaculture at critical areas of the juvenile salmon migration along the coast.

Indigenous participation was

against; and concerning reconciliation. The AHF funding was canceled, after twelve years, and the organization closed.

2011, *March 12, Yale First Nation* Final Agreement ratified. It has still not yet come into effect, as of 2026.

2012 *May, UN CERD* Report. The Committee for the Elimination of Racial Discrimination asked for Canada to respond within one year on three issues concerning human rights crises being experienced by Indigenous Peoples.

July 10, Tla'amin Final Agreement (Sliammon) ratify a Final Agreement negotiated in the BC treaty process.



James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, with Mary Point and other Musqueam hosts, October 2013

severely restricted to a generalized “Aboriginal World View” dialogue, and disastrously under-funded, leading to a near-eclipse of specific, scientific testimony from Indigenous perspectives.

Aboriginal Healing Foundation

issues two reports: on the disasters and tragedies that arose from the lump-sum settlement payments under the Indian Residential Schools Settlement Agreement, which it had warned and advocated

December, Attawapiskat

Chief Theresa Spence undertakes a hunger strike to get a meeting with Prime Minister Harper about, among other things, Bill C-45. The Bill is an omnibus application to unilaterally legislate changes to First Nations governments and mobilize assimilation of First Nations to municipal corporations.

2013 **Idle No More** movement in solidarity with Chief Spence and opposition to Bill C-45 sweeps

Canada. Demonstrations and reoccupations appear throughout BC.

February 10, Copper Broken

at BC Legislature. Chief Beau Dick of Nam’gis and many others perform a ritual shaming ceremony by cutting a copper and leaving piece of it on the BC Legislature lawn. They had marched from Kwakwaka’wakw down the length of Vancouver Island with the copper, provided by Haida and symbolizing their historic alliances and wealth. The Chief and a small group of diplomats continued in 2014 to Ottawa and the Parliament building where they broke another copper in July. The action was a solemn challenge to the governments, calling out their abuse and criminal violations of the Peoples and the Lands and Waters. The challenge was not answered.

Canada’s Universal Periodic

Review. Two thirds of the statements made to Canada by the other member states of the United Nations were specific to Indigenous rights, and violence against Indigenous women and girls.

2014 January, The Situation of Indigenous Peoples in Canada.

Following the first *official* country visit by a UN Special Rapporteur on the Rights of Indigenous Peoples, 2013, S. James Anaya’s report makes 99 recommendations to the Government of Canada. Anaya characterizes Canada’s approach to Indigenous legal issues as “adversarial.”

Further, “Resource development projects, where they occur, ... should in no case be prejudicial to unsettled claims.”

Timeline



Tsilhqot'in Elders travelled to Ottawa to witness the Supreme Court of Canada proceedings on their title case, 2014, which started in 1989.

January, Missing and Murdered Indigenous Women and Girls in British Columbia. Report of the Inter-American Commission on Human Rights' visit. The Commissioners note that violence and murder is carried on against Native women with "impunity."

June 26, Declaration of Aboriginal title by the Supreme Court of Canada, in *Tsilhqot'in Nation v. British Columbia*. It is the first in Canada.

2015 UN CCPR Report, Canada: "The state should find ways and means to establish Indigenous Peoples' titles to their lands, as well as ensuring Indigenous consent to developments which might impact their titles and treaty rights."

Canada announces a national



inquiry into Missing and Murdered Indigenous Women and Girls.

CESCR UN Committee for Economic, Social and Cultural Rights put Indigenous Peoples' rights to "freely dispose of their natural wealth" as the first matter on its List of Issues to the state. It was followed by requests for information on housing, health, physical safety, languages, standards of living and children and family protection among Indigenous Peoples.

Matsqui of Sto:lo sues for a Declaration that they have an Aboriginal right to go fishing for food. They are unsuccessful.

Truth and Reconciliation

Commission Report describes the forcible removal of children as "cultural genocide." In 94 Calls to Action, the TRC does not mention land rights. The word "reconciliation" is not defined.

Edmonds v. Canada is admitted to the Inter-American Court of Human Rights in 2014. The case, arising from ongoing child apprehension and removal, challenges Canada's assumption of jurisdiction over Lil'wat.

Fall BC Summit Meetings commence, involving provincial Ministers, municipal leaders, and Indigenous leaders. It is the first practical expression of the 1969 vision expressed in the Statement of the Government of Canada on Indian Affairs, the "White Paper Policy," to attempt amalgamation of services and funding through a regionalized provincial process.

2015-2022 Waiver Agreements

Following the Tsilhqot'in Nation winning judicial recognition of their land title in a Declaration that covered 40% of one community's territory, the Province engaged almost 20 other First Nations in Framework Agreements, Reconciliation Agreements, Forestry Agreements, and Strategic Engagement Agreements.

Comparable to interim agreements in the BC treaty process, two dozen First Nations engage in "accommodations" to receive benefits, industrial opportunities, and small parcels of land in fee simple title in exchange for releasing certain claims against the government.

2016 May, Canada endorses UNDRIP while visiting the UN Permanent Forum on Indigenous Issues.

The federal government announces the division of the Department of Indian Affairs into two: Indigenous Services Canada, for program delivery to Aboriginal individuals, and Crown-Indigenous Relations and Northern Affairs Canada, for programs concerning Indigenous organizations.

2019 November, BC UNDRIPA.

The Province's *Act* selects various articles from ICCPR / ICESCR, as well as the UN DRIP 2007, and the

UN Charter. It does not include the articles which protect the right of Peoples to dispose of their natural wealth; to choose their political affiliations freely; and not to be coerced. This provincial *Declaration Act* provides that BC laws “be interpreted in a manner consistent with the UNDRIP, 2007” unless that is not practicable

The BC *Act* defines Indigenous Peoples to mean “Aboriginal peoples” in Section 35 of the Constitution. The rights of “Aboriginal peoples” in Canada are already interpreted by the Supreme Court to fall far shorter than the rights described in the UNDRIP 2007.

BC legislative debates and its submissions in the Mineral Rights case, *Gitxaala* 2023, clarify that the BC government did not intend the UNDRIP to be enforceable in BC.

It also clarifies that the rights in the *Act* shall be subject to the rights of others in the broader society, as per the leading cases on infringement of Aboriginal rights.

William v. BC is launched by the Xení Gwétin of Tsilhqot’in to reject the crown’s “consultation and accommodation” process with gold and copper mining at Teztan Biny. The court rejects the Xení Gwétin claim of bad faith, referring to the *Haida* and *Taku* cases of 2004.

An Act respecting First Nations children and families. Canada legislates its response to the Canadian Human Rights Tribunal’s findings of racial discrimination in child welfare agencies. The new legislation provides for First Nations to surrender their jurisdiction regarding their own children and families, by the non-assertion model of extinguishment, in exchange for funding to implement



The second declaration of Aboriginal title, 2023, in BC Supreme Court, with the Nuchatlaht suit for Nootka Island. The judge recognized title to “small spots” - an approach that was rejected by the SCC in Tsilhqot’in in 2014.

Agreements to be governed by Canada’s Parliament, Canada’s Charter, and, in BC, to submit to BC courts in case of disagreement.

The financial packages attached to implementation of this and other new Sectoral Agreements are over ten times the settlement monies in Final Agreements made in the BC treaty process.

2021 CANDRIPA. Canada passes the “United Nations Declaration on the Rights of Indigenous Peoples Act.” As with BC’s UNDRIP legislation, it defines “Indigenous peoples” as “aboriginal peoples of Canada in subsection 35(2) of the Constitution Act 1982.”

The contents of the *Act* is a commitment to produce a plan.

2024 BC Lands Act. The province renews its 1874 attempt to gain control of unsurrendered Indigenous lands by unilateral legislation. The process is abandoned in weeks.

2025 August, Cowichan Title
A declaration of Aboriginal title is made by Madame Justice Young of

the BC Supreme Court, finding that provincial land titles at a Cowichan fishing village on the Fraser River are “defective” and “invalid” owing to their incompatibility with the *Terms of Union*, 1871. The judge offers BC, the City, and Cowichan 18 months to *negotiate the implementation of her declaration* to the 700ha. urban and industrialized lands – because aboriginal title is still without legal definition on the ground.

The Province files appeal before its lawyers could have finished reading the 800-page ruling.

December, *Gitxaala v. BC* appeal leads to the judge’s clarification on the proper process for consultation: “the judge’s declaration that the Crown has a s. 35 duty to consult is, in the context of this particular litigation, sufficient on its own to ensure that the government lives up to its statutory responsibilities under the *Declaration Act*.”

The population of BC is 5.68 million at the end of 2025.

From the August 7, 2025 BC Supreme Court ruling in

Cowichan Tribes v. The Queen

[1] The plaintiffs, on their own behalf and on behalf of the descendants of the historic Cowichan Nation, brought this action seeking a declaration of Aboriginal title to their traditional village of Tl'uqtnus on the south arm of the Fraser River, and to its surrounding lands and submerged lands. They also seek a declaration of an Aboriginal right to fish the south arm of the Fraser River for food.

[7] Accordingly, the Court makes six declarations, which are summarized below:

- The Cowichan have Aboriginal title to the Cowichan Title Lands within the meaning of s. 35(1) of the *Constitution Act, 1982*;
- The Crown grants of fee simple interest in the Cowichan Title Lands, and the Crown vesting of the soil and freehold interest in certain highway lands in the Cowichan Title Lands, unjustifiably infringe the Cowichan's Aboriginal title;
- Except for Canada's fee simple titles and interests in certain lands (the "Vancouver Airport Fuel Delivery Project Lands"), Canada and Richmond's fee simple titles and interests in the Cowichan Title Lands are defective and invalid;
- With respect to the Cowichan Title Lands, Canada owes a duty to the Cowichan to negotiate in good faith reconciliation of Canada's fee simple interests in the Vancouver Airport Fuel Delivery Project Lands with Cowichan Aboriginal title, in a manner consistent with the honour of the Crown;
- With respect to the Cowichan Title Lands, BC owes a duty to the Cowichan to negotiate in good faith reconciliation of the Crown granted fee simple interests held by third parties and the Crown vesting of the soil and freehold interest to Richmond with Cowichan Aboriginal title, in a manner consistent with the honour of the Crown; and
- The Cowichan have an Aboriginal right to fish the south arm of the Fraser River for food within the meaning of s. 35(1) of the *Constitution Act, 1982*.

No means no.

Lilian Moyer, Tahltan, 2004.
Photo by Klabona Keepers



Glossary



glossary

A brief and general description of terms, provided for ease of reference.

These definitions are provided with special regard to their unique usage in Canada.

A fortiori Describes a newly presented legal argument or insight which is taken as more compelling than previous and generally accepted conclusions on the subject.

Aboriginal *Colonial term.* The first Peoples of an area encountered by Imperial Europeans. “Aboriginal people” are defined in the Constitution of Canada as being Indian, Inuit and Metis. (*see also* Indian)

Aboriginal rights In Canada, these are first defined as “group rights” as against the rights of Canadians. The definition of *Aboriginal rights* is an ongoing process in the courts, leading to a long list of individual First Nation-specific rights which have been proved on a case-by-case basis. The rights of Aboriginal peoples pursuant to Section 35 of the 1982 Constitution Act. The Supreme Court of Canada has

referred to the poorly defined S.35 as “a platform to negotiate with Canada” and the Provinces.

Aboriginal title Land rights of Aboriginal Peoples. An Aboriginal right. This term is a colonial construct, defined by Canadian courts in defiance and exclusion of Indigenous laws. “Aboriginal title” is extensively defined and diminished by Canadian courts, which interpret this phrase to mean a constitutional “Aboriginal right” to land, which can be justifiably infringed, expropriated, or extinguished at the pleasure of the crown.

Abrogate To depart from established law, to the effect of nullifying or impairing existing rights.

Accommodation The provision of programs, services, finance, legislation, or other considerations which either allow for the continued exercise of rights or compensate the impairment of rights and/or loss of property. A Canadian legal construct creating a procedural right of Aboriginal people as a convenient alternative to the protection of constitutional Aboriginal rights. Accommodation usually involves infringement of Aboriginal rights, and can only be undertaken after consultation.

Allodial title Outright ownership of property which is not subject to any other owner and therefore not taxable.

Ally One of two parties who commit to each other’s interests against the world.

Ancestral lands “This unique relationship to traditional territory may be expressed in different

ways, depending on the particular indigenous people involved and its specific circumstances; it may include traditional use or presence, maintenance of sacred or ceremonial sites, settlements or sporadic cultivation, seasonal or nomadic gathering, hunting and fishing, the customary use of natural resources or other elements characterizing indigenous or tribal culture. As the Inter-American Court of Human Rights has pointed out, “for indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”” - *Indigenous And Tribal Peoples’ Rights Over Their Ancestral Lands And Natural Resources ~ Norms And Jurisprudence Of The Inter-American Human Rights System, 2010.*

Appeal To challenge a decision of a court by applying to a higher court for further hearing.

Appellant The party who appeals a decision

Assembly of First Nations A union of each First Nation occupied by Canada, represented in the Assembly by its elected Chief. *See* National Indian Brotherhood.

Assimilation The indoctrination or inculcation of one people by another to adopt the dominating society’s social, economic, cultural, civil, and political expressions of right and humanity. For instance, “I want to get rid of the Indian problem. Our object is

Glossary

to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department.” – Duncan Campbell Scott, Deputy Superintendent General of the Interior, Canada, 1920, to the House of Commons.

Assumption Proceeding without consent.

Autonomous Independent, self-determining.

Bad faith Deceit. Engaging in discussion or negotiation with stated objectives that the negotiator has, secretly, every intention to subvert, avoid, and displace.

BC Association of Non-Status Indians (BCANSI) Founded in 1969 at the same Kamloops conference where the UBCIC was founded, BCANSI was a union of Indigenous individuals who had been displaced from their Bands on-reserve by the Canadian Registrar’s refusal of Indian Status. It was re-founded as the United Native Nations in 1976.

British Subject Any person who can claim rights under the British flag or as a member of a Commonwealth country or a citizen of any lands claimed by the British crown, minus the Original Inhabitants.

Canadianization From Chief William Scow’s appendix to the 1971 UBCIC “Claim Based on Native Title,” p. 102: “The publication of the *Native Voice* is a product of the new Indian, and it is in the Canadianization of the Indian that finds the significance of the paper for the national life of Canada and the changing Indian.

It was from among the latter group that the founders of the Native Brotherhood of B.C. and the staff of the *Native Voice* came.”

Caveat Per *Native Law*, Volume 9, re. the *Paulette* case, 1973-77, “A caveat is not an “instrument” as defined in the Land Titles Act,...”. Canada’s courts relied on this narrow interpretation of the word to deny registration of Aboriginal title lands as a lien on crown lands.

Cede To yield or surrender; to give up; to relinquish to another nation, as by treaty, purchase, or constructive arrangement.

Certainty (also see *extinguishment* and *predictability*) The guarantee by Indigenous Peoples that they will make no claim against development or the crown’s assumptions.

Chicanery The use of a right to injure another. Also, deception or trickery.

Claims, Comprehensive Claims Indigenous claims against the government arising from areas where Native people have Aboriginal interests without treaty or specific legislation, encompassing all such ill-defined concerns as hunting, fishing, trapping, land title, as well as entitlement to other rights and benefits arising from land use or compensation.

Claims, Specific Claims Claims arising from grievances about fulfilment of existing treaties or the actual administration of lands and other assets under the Indian Act.

Colonization Violent, unilateral, and extra-legal interference in the economies, laws, and land rights

of an inferior military power to gain exploitive use of land and labour.

Colonial Of or pertaining to the assumed entitlements of foreign populations and their interests in lands where they have rights guaranteed by a stronger, invasive foreign country, at the expense of the original inhabitants. Advancing the foreign invader’s interests over unsundered or contested lands and jurisdictions, especially through settlement and enforcement of foreign laws, by force.

Colonialist A person who promotes, rationalizes, or defends colonial actions.

Colonizer The person or group of people who arrive in another country and subjugate the lands, laws, and original inhabitants to a foreign interest. The parent country of such persons or groups.

Common law The application of *stare decisis*, or judge-made legal precedent, as the governing norms. A body of decisions made in courts of jurisdiction within a state. Common law is constantly open to adaptation, revision and interpretation by successive judges. *Contrast to* Constitutional law.

Compensation The provision of money or other considerations to an injured party, when the material effect of a violation cannot be reversed.

Compensatory relief A legal remedy to a judicial finding of unlawful damages to a plaintiff; the order of payment or other measures as compensation.

Confederation 1867 The union of British colonies: Upper and Lower Canada (now Ontario and Quebec), New Brunswick, and Nova Scotia under the *British North America Act 1867*, creating the Dominion of Canada. The Colony of British Columbia joined confederation in 1871 and became a Province of the Dominion.

Constitution A declaration of principles, rights, and responsibilities for the members of a state, governing the membership and the leadership. The constitution is enacted, and can be amended, by its own statement of policy and procedure.

Constitutional democracy A state which practices democratic governance under a constitution.

Constitutional law Governing principles of legal right and responsibility which are enshrined in the constitution. These laws, articles, statutes or amendments, establish guarantees to citizens of the state or entity; a balance of power between citizens and the government; and cannot be changed by judges.

Constitutional monarchy A state which is governed by hereditary leaders, such as kings or queens (lords, chiefs, etc.), and a public constitution which balances and limits the discretionary power of the monarchy by establishing the rights, responsibilities, and powers of citizens and government in competition with it.

Constitutional rights Individual or group rights identified clearly in a constitution. These rights are supposed to be immune from judicial or other

derogation or violation. Constitutional rights can be suspended by the executive of a state in extraordinary circumstances.

Constructive arrangement Formal or informal, an ongoing mutual agreement between two parties to resolve a legal issue. Sometimes this agreement involves one or both parties voluntarily putting aside their rights or responsibilities in favour of the terms in the agreement. Parties may re-negotiate terms, opt to end the arrangement, and are often beholden to each other by their agreed terms on pain of retaliatory measures or a return to adverse positions.

Consultation An exploratory meeting between two interested parties to find out each others' interests. In Canada, "consultation" is a procedural right of Aboriginal people, identified by the courts, which comes into effect when agents of the crown anticipate action that could impact their Aboriginal rights

Consultation and accommodation. *See* Duty to consult.

Declaration (in a court) A judge's statement describing legal status. A declaration can be used as a tool to clarify a party's legal rights, resolving a legal dispute where those rights have been denied and infringed.

Declaratory relief - Use of a declaration to describe a legal right. To prevent infringement from continuing, or the resolution of a legal dispute, by judicial recognition. A declaratory

judgment goes no further in providing relief than stating an applicant's rights.

Decolonization The substitution of Indigenous worldview for colonial worldview.

Defense The legal argument of the Respondent to explain their actions.

Development, the right to Taking legal account of modern changes in law, and international law, respecting the right of Peoples to adapt to changing circumstances and make choices and innovations based on those.

Dispose The action of liquidating title to a property or possessions by sale or lease.

Disposition The manner in which rights are effected. A decision of a court.

Domesticate To bring internationally enshrined rights under state law. Usually by enacting legislation which is said to fulfill the internationally-defined norm. In the *domestication* process, however, in Canada's case, internationally recognized rights of Indigenous Peoples have been reduced to legal constructs authored by the state itself, constructs which limit the rights and serve the state, rather than imported in their fulness with reference to the right to international appeal.

Duty to consult A procedural requirement of the crown towards Aboriginal people to discover their interests. The duty arises when crown actors plan to take action which could reasonably be anticipated to impact proven or unproven

Aboriginal rights. The duty is a consequence of the crown's unilateral assertion of sovereignty in Indigenous territories.

Dynamic right “The “dynamic right” approach to interpreting the nature and extent of aboriginal rights starts from the proposition that “the phrase ‘existing aboriginal rights’ must be interpreted flexibly so as to permit their evolution over time” (*Sparrow*). According to this view, aboriginal rights must be permitted to maintain contemporary relevance in relation to the needs of natives as their practices, traditions and customs change and evolve with the overall society in which they live. This generous, large and liberal interpretation of aboriginal rights under s. 35(1) would ensure their continued vitality.” Per *van derPeet*, 1996, [172] Justice L’Heureux-Dubé, dissenting. Note that the courts have not adopted the “dynamic right” approach. *See also*, “frozen right.”

Economy The practise and procedure of sustaining normal, sustainable distribution of wealth to ensure a resilient human community.

Encroachment Non-consensual use of space or resources.

Encumbrance A burden or duty to another which limits a person or party's exclusive right.

Enfranchisement 1. The right to vote, and otherwise participate in the civil and political activities of government. The right to empowerment, by the process of citizenship, of the rights of citizens. 2. In regard to Indian

Status, enfranchisement meant being struck from Canada's Registrar of Status Indians, and having no more Aboriginal rights. While enfranchisement was characterized by the government as a voluntary individual process, it was rarely so. This form of enfranchisement was introduced in the 1857 *Act for the Gradual Civilization of the Indian Tribes*, and later *Indian Acts*, and was required by Canada and the Provinces before Indigenous individuals could vote, attend university, practice any profession, be insured, or buy land (among other things). Enfranchisement was often imposed arbitrarily as a means of removing influential people from their Band and/or stripping them of legal relationship with that Band or nation.

Equality of arms The balance of power and resources that must exist between the prosecution and the defense in a legal question brought before a court, or in the exercise of competing rights. This is the foundation of “legal aid,” or the state's duty to provide legal counsel to individuals facing criminal charges. However, in a legal competition between a persecuted group and a state judicial branch which legislates and upholds that persecution, including denying the group's right to its own natural wealth, no amount of subsidized lawyers can remedy the inequality.

Existing, as it is used in S35(1) Canadian Constitution Act: Those rights which were in effect at the time of the enactment of the *Canada Constitution Act*, 1982.

Glossary

Expression The manner of exercising a right, tradition, custom or practise.

Extinguishment 1. The cessation of right, whether by tyrannical suppression or by agreement with consent to release and indemnify. 2. Land purchase. The term “extinguish” was historically used interchangeably with “purchase” of Native land, usually by treaty, for the crown. (*see also* certainty and predictability and modified rights and reconciliation of rights)

Extra-legal Illegal. Ad hoc laws engendered to rationalize and mobilize a dominating power.

Fair trial A number of conditions are required: a) equality of arms, b) respect for the principle of adversarial process, c) impartiality of the presiding judge. The defendant must be allowed to defend herself according to her chosen argument; defense must be allowed.

Fee-simple land rights – *see Private land*.

Fiduciary A party or person whose interests are protected by another.

Fiduciary duty The responsibility of trust. If one party is assigned guardianship of another party's interests, against all others, that guardian must act on behalf of its fiduciary to protect its best interests and make decisions accountably, typically with consultation.

First Nation An Indian Band.

First Nation Lands Lands owned by a First Nation, once the First Nation has incorporated or made an agreement under the federal legislation, the *First*

Nations Lands Management Act, 1999. FNLMA created First Nations Land Codes, which could be completed by ratification by Band membership – 50% + 1. The new incorporation of these lands as fee simple title holdings brings them under provincial legislation.

First Nations Summit A political body formed to represent First Nations parties. The BC Treaty Commission was founded by British Columbia, Canada, and the First Nations Summit.

Frozen right The practice of recognizing a mode of activity as an “aboriginal right” only up to a certain point in history – usually 1846, in BC, which is considered the moment of British sovereignty here; refusing the right to develop in application to the activity. Per *van derPeet*, 1996, [165-169] Justice L’Heureux-Dubé, dissenting: “The “frozen right” approach would recognize practices, traditions and customs – forming an integral part of a distinctive aboriginal culture – which have long been in existence at the time of British sovereignty..., the proclamation of sovereignty by the British imperial power as the “cut-off” for the development of aboriginal practices, traditions and customs....; This is no doubt contrary to the perspective of aboriginal people as to the significance of European arrival on their rights. ...the “frozen right” approach imposes a heavy and unfair burden on the natives: the claimant of an aboriginal right must prove that the aboriginal practice, tradition or custom is not only sufficiently significant and

fundamental to the culture and social organization of the aboriginal group, but also has been continuously in existence... . This test embodies inappropriate and unprovable assumptions about aboriginal culture and society. It forces the claimant to embark upon a search for a pristine aboriginal society and to prove the continuous existence of the activity for “time immemorial” before the arrival of Europeans. ... constitutes a harsh burden of proof, which the relaxation of evidentiary standards suggested by the Chief Justice is insufficient to attenuate. In fact, it is contrary to the interpretive approach propounded by this Court in *Sparrow*, which commands a purposive, liberal and favourable construction of aboriginal rights.” The Canadian courts have adopted the “frozen right” approach to finding Aboriginal rights. *See also* “dynamic right.”

Genocide Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.” - *Convention on the Prevention and Punishment of the Crime of Genocide, 1948.*

Good faith Honesty. Engaging with others in full disclosure of protected interests and expected outcomes; transparency. The intention to be accountable.

Governor General The Queen’s representative in Canada and the Head of State.

Hostage A person or people who are deprived of their rights by a captor or occupier, and maintained in a state of dependency under the threat of further violence.

Impairment Abrogation of an existing right to the point that the right is no longer practicable.

Indefeasible That which cannot be defeated, revoked, or made void. This term is usually applied to an estate or right which cannot be defeated.

Indemnify To save or release as harmless; to protect from legal suit in future.

Indian In the North American colonial context, a person (or, *not a person*, see Indian Act) native to North America. Also the name given to national British Allies during the Seven Years War between Britain and France, for instance, in the Articles of Montreal, “and” in the Royal Proclamation 1763, “the Indian Nations with whom We are Aligned.”

Negative definition: In the Indian Act, an Indian is distinguished from a person.

Indian Act Legislation enacted in 1876 by the new Dominion of Canada, amalgamating laws concerning Indians. Notably, immediately after the unconstitutional 1875 *BC Lands Act* was endorsed by Canada’s

Attorney General Edmund Blake, who reasoned that it would be inconvenient to settlers to continue to deny BC jurisdiction over Indian land. People governed by the Indian Act were not considered “persons,” they were considered “Indians” with extremely limited rights.

Indian Land Indigenous territory which has not been lawfully surrendered in consensual, informed, authentic procedures. Native land.

Indian Problem Any activity by Original Inhabitants of countries claimed by explorers for Great Britain (by Divine Right, or by Terra Nullius, or by the similar Doctrine of Discovery) which interfered with the colonial extraction of materials and resources from those lands and the settlement of foreign populations on those lands, or which posed a crisis of law wherein the “British Sovereign” had made more promises than its colonizers intended to keep. The presentation of law by Original Inhabitants to British colonists.

Indianness A term possibly first invented to denote the features of life protected by “Aboriginal title,” as it is known today, in the case of *R. v. Dick*, 1985, when it became relevant to distinguish between what aspects of Indigenous life the federal government had a (colonially assumed) constitutional right to define, versus what aspects of Canadian life a Province had the constitutional right to define. (see “Dick, 1985,” this Issue)

Indigenous Of or pertaining to a land base. Original Inhabitants.

“Native.”

Infringe Violate. Cause damages to a person or group by frustrating or impeding their ability to carry out normal, lawful, important activities.

Infringement Violation. Non-proprietary use of others’ space and resources, to their detriment. Imposition. Libelous invasion without necessary permission or consent.

Inherent Birthright. A quality or capacity which resists encroachment by virtue of its ancestral continuity.

Inherent Right Policy, Canada, 1995 “The government of Canada recognizes self-government as an existing Aboriginal right under the *Constitution Act, 1982.*” -the policy. The Policy defines what self-government is, and states key principles for the negotiation of permitted expressions of self-government.

“The inherent right of self-government does not include a right of sovereignty as it is understood in international law. All First Nations exercising self-government will remain part of Canada, contributing to the Canadian federation.... In BC, the government.. is negotiating self-government agreements as part of the BC Treaty Commission process. These agreements will result in practical arrangements which will meet the interests of all parties at the negotiating table. ... while ensuring that First Nations governments are firmly within the Canadian legal and constitutional fabric.” – *Treaty News*, October 1999, a BC Treaty Commission

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publication.

Injunction A court-issued prohibition on specific activity. An injunction must be applied for, and argued in court, to win judicial recognition that the balance of convenience rests with the plaintiff party. An injunction can be used as an interim measure of justice, to stop harm by actions proceeding, while more extensive or declared rights are argued in court, or in negotiations.

Injunctive relief The effect of remedying an unjust encroachment on lawful activities by a court injunction, delivered to the offending party, specifically prohibiting the actions it describes. Failure to comply with an injunction can lead to criminal charges.

Intent That which a person or party wants and expects to have happen.

Intent (criminal) A demonstrable plan or action by one person or party against another to deliberately cause harm.

Internationally protected people Those people whose lands are occupied by an intervening foreign power. Subjects of an effective occupation.

International rights The establishment of human rights standards by an international body, such as the United Nations, or the League of Nations before that, or by treaties between nations such as in the Iroquois Confederacy. Today the most substantial international rights are the Universal Declaration of Human Rights; the International Conventions on Social, Economic,

Cultural, Civil and Political Rights; the Convention on the Prevention and Punishment of the Crime of Genocide, etc.

International rights are only protected so far as the member nations to the treaty are willing to hold each other to account.

Irreparable harm Damage which can never be remedied. Especially, when the harm is inflicted by one group upon another, directly or indirectly. For example, killing members of the group; destruction of sacred sites; destruction of natural wealth; forcible removal of children; extinction of species.

Jurisdiction The legitimate power of decision.

Justice delayed It is an established legal truism that “justice delayed is justice denied,” partly because during the delay further damage results, and partly because an arbitrary delay is a denial.

Justification test (*see also* infringement) Canada has established and confirmed in its courts that the rights of the “broader public” are superior to Aboriginal rights in most cases. The court reasoned that as long as damage is kept to the minimum, and the Aboriginal people have been consulted and accommodated within the convenience of the broader public, then a “compelling legislative goal” justifies the infringement of Aboriginal rights. In *Delgamuukw*, 1997, the court listed economic development; settlement of foreign populations; hydroelectric development; and several other settler incursions as examples of justifiable goals.

“knowing receipt” When two parties are involved in a trust situation involving assets of value, where one party controls the assets for the benefit of the other party and has a fiduciary duty to them, then it is possible for a third party outside of that relationship to knowingly receive of those assets or values by the fiduciary’s breach of duty. Because of this knowledge the third party is liable for the misappropriated assets and values which may then be restored to the victim.

Land Back The unequivocal release of Canadian titles to land stolen from Indigenous Peoples, and return of those lands to Indigenous governance and ownership, in certain areas.

Land claims A process under Canadian federal policy to negotiate settlements, in land and/or cash, in exchange for Indigenous surrender of their own title. (*see also* cut-off claims; comprehensive claims policy)

Law A natural or artificial limit to human activity, after which consequences arise in the damaged lands, or, are imposed by the society’s judicial branch.

Liability Legal responsibility for any contravention of the law, and damages to injured parties.

Magna Carta 1215. The confederacy between British Nobles and the King to establish the land rights of Nobles (land owners descended from Imperial Roman, Saxon, and French conventions) against the rights of the new Norman Crown. The origin of democratic, Parliamentary power in

competition with the Crown.

Mental Harm Psychological violence practiced by a state against one group of people; a form of genocide. There are many forms of mental harm, such as racist slurs made publicly by elected politicians; lack of prosecution of crimes against the group; misrepresentation of the group’s history in public institutions; institutional denial of past harms against the group; double standards in human rights and constitutional rights and proportionately higher criminalization, such as in “The entrenched injustice of living under a system of administration that ignores the constitutional law – in a country that poses as a constitutional democracy under the rule of law – causes angst and despair unto death, as mirrored by the statistics of suicides” among the group facing genocide. (Quote from “Ongoing Genocide,” by Bruce Clark, 2019.) (*see also*, Genocide Convention)

Modified rights A term generated in 2007 as a public relations response to international recommendations that Canada abandon its policy that Indigenous Peoples must extinguish their unsundered land rights in order to complete any type of settlement or compensation agreement with the government. The term “rights modified by agreement” was exchanged for the term “rights are extinguished” in final agreements, however, the only possible interpretation of these “modern day” comprehensive and land claims agreements is that the Indigenous party retained no rights

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except those in the agreement, effectively surrendering and therefore extinguishing their ancestral and inherent rights.

Monarchy The direct rule of a nation by a hereditary lineage of royal kings and queens, and their appointees. A system of leadership created by the Roman Empire throughout Europe, by vesting power in key individuals – recognized by the leader of the Christian church in Rome – who would accept this delegated authority and displace traditional authorities; to be continued by hereditary line, and altered or influenced by the Vatican as convenient.

National titles Lands and resources owned by a nation,

Native An original inhabitant.

Natural law The rules of nature. Also, a term to refer to human interpretation and understanding of how nature's rules inform and influence humanity's governance of itself, especially in relation to the rest of Creation.

Natural wealth The benefit of title lands: water, fish, trees, minerals. Natural resources.

Nemo potest esse simul actor et judex - No one can be at once suitor and judge. For legal proceedings to be considered lawful, such hearings must be presided over by a competent, independent, and impartial tribunal.

Nemo debet esse judex in propria causa - No one can be judge in his own case.

Non-derogation A stated exception to a rule: that one law may not take away from rights

provided by another law.

Non-Status Indian A Native person who is a member of an Indigenous nation, other than Métis or Inuit, by birth, blood, or adoption – yet who is denied enrolment in the government of Canada Registrar of Status Indians, and denied the legal rights associated with that status.

Normalization The strategic use of words, terms, images, and co-optation of selected historical fragments, combined with hypothetical future satisfaction, to create the appearance of acceptability and inevitability in the situation of Indigenous Peoples in Canada, even while the naked facts of the matter clearly indicate that many aspects of the colonization process are ongoing crimes in progress.

Numbered treaties / historical treaties After Confederation in 1867, the Dominion government proceeded west from “the Canadas” to buy Indigenous land and make constructive arrangements for the expansion of British North America. These treaties were so general and so geographically vast, including many distinct Indigenous Peoples and groups of Peoples, that the Dominion government seems to have simply numbered them in sets as they were concluded. Treaty One to Treaty Eleven are the result.

Plaintiff The person or party which launches litigation, seeking legal remedy, against another.

Potlatch A ceremonial event of great cultural, legal, social and economic significance for the

family that hosts it – and usually for the entire community, as well as neighbouring relations and nations. Marked by a feast and the distribution of fabulous gifts, money, and food to a great number of people, a potlatch confirms individuals in their titles by this demonstration of beneficent leadership. The important political business of a nation is typically confirmed by potlatch, whether marriage, treaty, inheritance, transfer of title, adoption, diplomatic conclusion, etc.

Precedent A leading example of common law legal application, such as a case which establishes a clear priority right in the outcome and then is referred to in successive litigation. To *set a precedent* is to exceed previous leading examples and create a new standard.

Prejudice Literally, pre-judgment. (see *Without prejudice*)

Prima facie right A right or interest which is visibly obvious, or reasonably anticipated, without further legal proof or evidence. A self-evident fact.

Procedural rights The right to be involved in decision making or legal procedures, based on existing legislation, statute or precedent.

Private land Land held by fee-simple title licensed by the crown.

Puppet government (within meaning of Alaska 2006 UPR shadow report USA)

Quieting title Buying land or making treaty with Indigenous People. See *extinguishment*.

R. v. “Regina versus.... (the named defendant)” “R” stands for

“Regina” – the Queen of England, or “Rex” – the King of England.

Radical title Literally, the “root” or underlying title, no matter what usufructuary or other rights of occupancy may burden it. Both the crown and Indigenous Peoples claim radical title to the land, while some Indigenous Peoples and organizations recognize crown sovereignty in the courts and do not contest crown jurisdiction and assertion of radical title.

Recidivism Repeating criminal acts in spite of – and in contempt of – previous legal reprimand.

Recognize To give judicial and executive effect and definition to a legal right, thus mobilizing its legal expression and usage. E.g., international Treaty Bodies continually recommend that Canada recognize Indigenous land titles.

Reconciliation 1. Per Lamer, CJ, in *van derPeet* 1996, Supreme Court of Canada: “that the purpose of Section 35 [of the 1982 Canadian constitution] is to provide a platform for negotiation on which the prior existence of Aboriginal societies can be *reconciled* with the sovereignty of the crown.” 2. This term is used by federal and provincial governments of Canada when describing the process of eliminating, by Agreement, any aspect of Indigenous Peoples’ land rights and other rights which is not authored by Canada; i.e. ancestral, inherent and unsundered Indigenous Peoples’ rights. 3. “Reconciliation” was not defined by either the mandate or report of the Truth and Reconciliation

Commission Canada, nor by any court or executive order.

Reconciliation of rights The most recent term generated in 2019 in an evolving BC public relations response to international recommendations that Canada abandon its policy that Indigenous Peoples must extinguish their unsundered land rights in order to complete any type of settlement or compensation agreement. The term “reconciliation of rights” was exchanged for the term “rights are modified” which had been swapped out for the term “rights are extinguished” in final agreements, however, the only possible interpretation of these “modern day” comprehensive and land claims agreements is that the Indigenous party retained no rights except those in the agreement, effectively surrendering and therefore extinguishing their ancestral and inherent rights. This new phrase was announced by Canada, British Columbia, and the First Nations Summit in a joint policy paper. *See also* Reconciliation; *see also* Rights, of Peoples. In usage, from the April 2, 1985, First Ministers Conference, Mr Harold Cardinal: First of all, Mr. Prime Minister, our Treaty Nations want to congratulate you and your new government for the effort that you are making to bring about a true spirit of reconciliation amongst all people in this country, and particularly amongst the Aboriginal Peoples and other peoples who live on this land with us.

Relief Measures ordered by a court to remedy injustice. *See*

statutory, declaratory, and compensatory relief.

Remedy Actions taken to restore a lawful balance.

Reparation Return or transfer of ill-gotten gains, benefits, or wealth to an injured party. Usually reparation follows a judicial decision, an international arbitration, or a mutual agreement such as a treaty.

Reserve; Indian reserve 1. A swath of land which has been reserved against settler trespass, and which is set outside of British control, usually with large and general boundaries. 2. A measured parcel of land claimed by the crown and held for the use of an Indigenous community to the exclusion of a Province.

Respondent The person or party who is brought to court on a legal matter, in either criminal or civil proceedings.

Restitution Restoration of legitimate powers of governance, as in the renewed empowerment of traditional authorities which have been driven underground or outlawed by a corrupt regime.

Right The expression of lawful activity.

Right, in land *See title.* Land rights of people, owners, or lessees are determined by the governing authority which holds legitimate jurisdiction over the land(s) in question.

Right of way A type of land use which does not denote ownership, but has been negotiated between the owner and another user. Presently, the crown has assumed jurisdiction over lands it does not hold title to, and has authored many rights of way

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from highways, pipeline access roads, train tracks and hydro facilities, etc.

Royal Proclamation An act of the Imperial Crown of England (Great Britain) during the time of the British Empire (now the “Commonwealth”). An Executive Order, nullifying and making void any inconsistent colonial action.

Sectoral Agreements Modern-day agreements between First Nations, Canada, and the Provinces to repeal certain sections of the Indian Act in exchange for the voluntary adoption to be governed by equivalent federal and provincial laws, displacing traditional jurisdictions with the Peoples’ consent, and creating rights-by-agreement. For example, the First Nations Lands Management Codes, etc.

Self-determination Encompassing many activities, self-determination belongs to Peoples, according to the International Conventions on Economic, Social and Cultural; and Civil and Political Rights, 1966: “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own

means of subsistence.”

Self-government, First Nations 1. A group of civil and political activities defined and limited by Canada in legislation. First Nations negotiate for a self-government agreement, always surrendering aspects of land title, self-determination, and traditional governance, in exchange for colonial recognition of their right to incorporate as a municipality; to tax activities on First Nation Lands (also defined by Canada); create bylaws; register their lands in fee simple; conduct business as corporate entities, etc. *See also* Inherent Right Policy. 2. The actions of licensing, managing, enforcing, financing, and providing arbitration over all areas of human activity within a specific jurisdiction defined by Aboriginal title.

Sovereign (noun) The individual in whom the right to authority and government is vested.

(adjective) An exclusively authoritative or supreme power.

Sovereignty Authority, sometimes attached to a divine power or legacy; the right to rule.

Spectrum of rights Crown courts began to qualify “Aboriginal rights” along a spectrum of importance, in 1996 *Van derPeet*. This spectrum has been devised and defined by the courts – not by Indigenous Peoples – according to the crown colonizer’s values, and application of those values to aspects of Indigenous social, cultural, economic, civil and political society.

Standing Having a sufficient legal right or interest in a matter to be heard in court, to bring legal action.

Status Indian A person who is entitled to enrolment by the Registrar of the government of Canada.

Stare decisis The rule of precedent.

Statute A written law.

Statutory rights Activities which are specifically protected by law.

Statutory relief A legal remedy provided by a court finding that relies on existing legislation, to protect the right identified in the statute.

Sui generis “Aboriginal title has been described as *sui generis* in order to distinguish it from “normal” proprietary interests, such as fee simple. However, as I will now develop, it is also *sui generis* in the sense that its characteristics cannot be completely explained by reference either to the common law rules of real property or to the rules of property found in aboriginal legal systems. As with other aboriginal rights, it must be understood by reference to both common law and aboriginal perspectives.”

“The idea that aboriginal title is *sui generis* is the unifying principle underlying the various dimensions of that title. One dimension is its inalienability.

Lands held pursuant to aboriginal title cannot be transferred, sold or surrendered to anyone other than the Crown and, as a result, is inalienable to third parties. This Court has taken pains to clarify that aboriginal title is only

“personal” in this sense, and does not mean that aboriginal title is a non-proprietary interest which amounts to no more than a licence to use and occupy the land and cannot compete on an equal footing with other proprietary interests.” *Delgamuukw*, 1997, at 112, 113.

.. I am satisfied that a jurisprudential analysis of the concepts underlying “rights” in common law or western legal thought is of little or no help in understanding the rights now held by aboriginal peoples and now recognized and affirmed by the common law and by the Constitution.... In short, it is not only aboriginal title to land that is *sui generis*, all aboriginal rights are *sui generis*. Lambert J.A. in *Delgamuukw v. British Columbia* (1993).

Suit Bringing legal action against another; usually a “lawsuit.”

Terra nullius A Latin expression, of Roman law, meaning “vacant land,” or land that is not owned by anyone, particularly not owned by a state.

Title An acquired or inherited status corresponding to ownership of land. A position in society or government. Individual title includes rights and responsibilities to the land or position; collective title refers to what is owned in common by several or more people.

Trespass Unlawful access to another’s place.

Trust In terms of legal rights, a “trust” is a delegated or assumed power by one for another.

Truth and reconciliation

Currently undefined.

Ultra vires Exceeding legal power.

Union of BC Indian Chiefs (UBCIC) Founded in 1969, in a defensive reaction to the Canadian government’s white paper policy Statement of the Government of Canada on Indian Policy, the UBCIC’s membership is each Indian Band which joins the Union, pays its dues, and is represented by its elected Chief. The Union’s mandate is to address the land question.

United Native Nations (UNN) A Union of Indigenous individuals and Indian Bands which replaced BCANSI in 1976. Their mandate was to resolve the “Indian land question,” restore Indian Status to those who had been deprived of it, and to support urban Indigenous people and families in a multitude of ways. The UNN was dissolved in 2013.

Uphold As in a decision of a court: when a higher court confirms the lower court’s decision.

Usufruct; usufructuary Under Roman law, usufruct was a type of personal servitude (*servitutes personarum*); a beneficial right in another’s property. Also, “the temporary right to the use and enjoyment of the property of another, without changing the character of the property.” In inheritance practice, a *usufructuary right* is commonly recognized in a widowed spouse, with respect to the property of the deceased.

As a descriptor of Aboriginal rights, aboriginal title, “aboriginal rights are not proprietary in nature,

but rather “personal and usufructuary,” and dependent upon the good will of the Sovereign.” *Delgamuukw* 1997, at para. 17.

The Privy Council’s decision in *St. Catherine’s Milling and Lumber Co. v. The Queen* (1888), described aboriginal title as a “personal and usufructuary right.”

Victim “‘Victims’ means persons who, individually or collectively, have suffered

harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.” - *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 1985, #18.

Violate Abuse. Engage in illegal conduct, to the detriment of the subject.

Void Illegal because of conflicting, overarching customary or international law.

Waiver Transmission of right by a failure of the appropriate actor to take steps. In usage: “one cannot gain jurisdiction by waiver;” Bruce Clark, in constitutional application to SCC, September 15, 1995.

Without prejudice These words are sometimes used to qualify a legal statement or communication, indicating that the content of the writing is not intended to be interpreted as a legal admission concerning the rights of either party.

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*Arthur Manuel (left),
Secwepemc, founder of
Indigenous Network on
Economies and Trade,
and Edward Moody,
Nuxalk, Hereditary
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OTHER

PRESENTATIONS

"Aboriginal Land Rights in British Columbia" Materials prepared by P. Geoffrey Plant (Russell & DuMoulin), Vancouver, B.C. for the Asia Pacific Institute, *Conference*, "New Aboriginal Claims Settlement Process," February 4, 1993.

"Rejection of the "Postage Stamp" Approach to Aboriginal Title: The Tsilhqot'in Nation Decision," prepared by Jack Woodward, Pat Hutchings and Leigh Anne Baker of Woodward & Company, for the Continuing Legal Education Society of British Columbia, January 18, 2008.

"Silk purse or sow's ear? Legislating the New Relationship with first nations in BC," Notes for an address to the Association for Mineral Exploration British Columbia. Geoff Plant, Q.C. LLP (Heenan Blaikie), April 27, 2009.

SPARROW, Kitty; unpublished interview March 24, 1996, in North Vancouver with Stephen Samuel, Steve Kisby, and Valerie vanCleaf.



NKUKWA TA TMUCWA
OURGRANDMOTHEREARTH.ORG

Purposes of the Society:

To advance spiritual health
by sharing traditional
Indigenous spiritual
teachings and stories
and the values
and principles
and observances
upon which
they are
based,
by:

**"In this land acknowledgment,
we recognize the land itself.
The Earth is our grandmother.
She loves us unconditionally and
provides everything for us, always.
Everything we have ever eaten,
drank, clothed ourselves with; or
slept in, worked on, or walked on;
it all came from Her."**

· Gathering,
preserving,
discussing,
and sharing
Indigenous
spiritual beliefs,
practices and
knowledge;

· Providing safe
places where all
peoples are
welcomed to
explore relation-
ship with Great
Spirit and all
creation;

· Relieving
conditions of
poverty and
hunger and
loneliness
for people
needing
assistance;
and much more!





BC Association for Learning & Preserving the History of WW II in Asia (ALPHA)

*remembrance, redress,
and reconciliation*

BC ALPHA is a non-profit organization dedicated to the remembrance, redress and reconciliation of events in World War II in Asia, in the Asia-Pacific War.

By documenting survivor and witness testimony, ALPHA has published important historical works and sponsored touring exhibitions to discuss the history with schools, community groups, and government commissions.

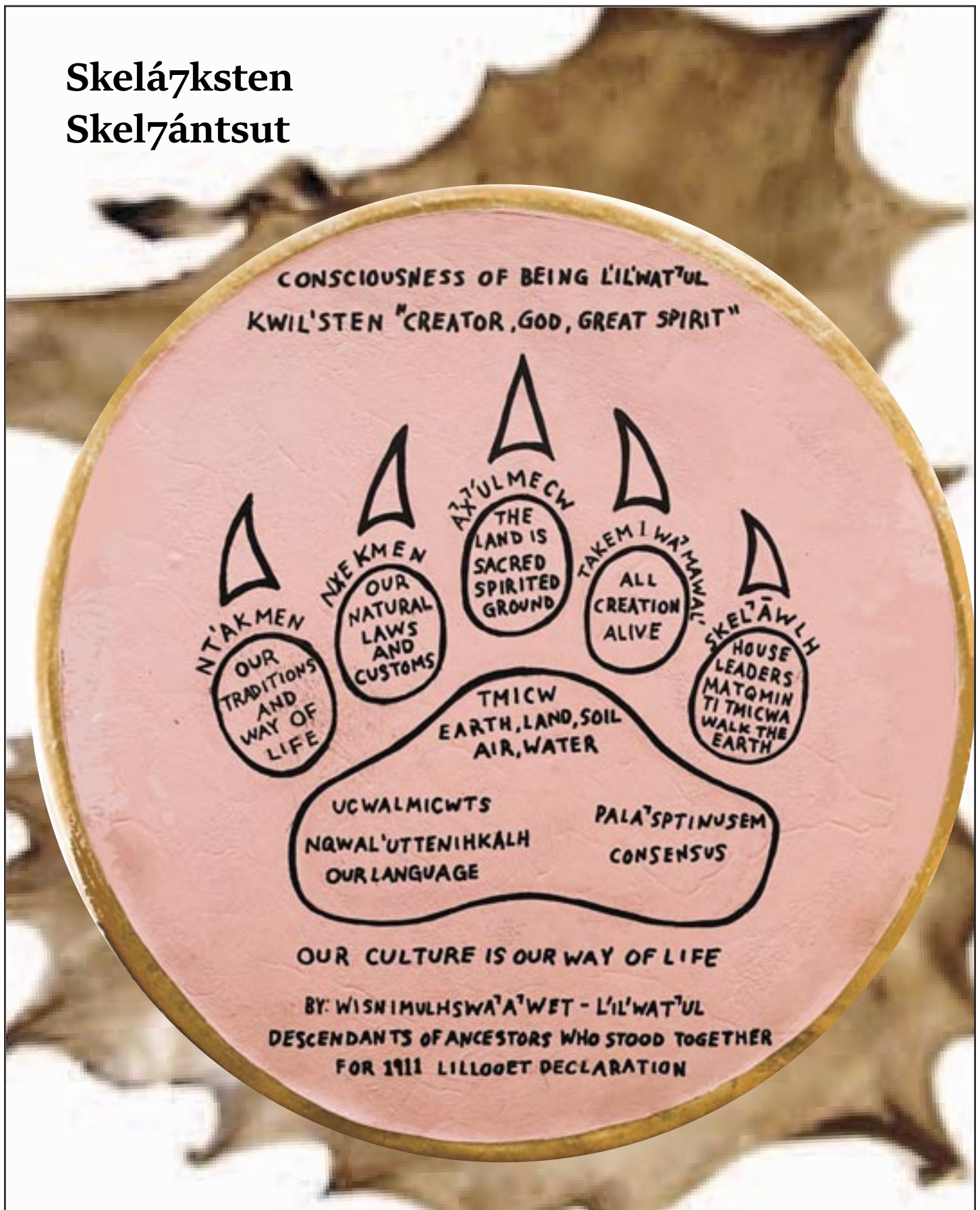
BC ALPHA partnered with the BC Ministry of Education to develop the Teacher's Guide, "Human Rights in the Asia-Pacific 1931-1945: Social Responsibility and Global Citizenship," Grades 11-12.

www.alpha-canada.org



At the Toronto 2010 International Conference for Educators on WWII history in Asia.

Skelá7ksten Skel7ántsut



Introducing *Archive Quarterly*

Journal of *the west wasn't won* archive project.

This publication is the unexpected result of an ongoing investigation into Indigenous “roadblocks” in British Columbia.

Asking the questions, “what led up to a “stand-off” position?” and, “what has happened since then? Court case? Resolution? Conflict? Change?”, the answer is that so many events contribute to the situation, amid such extensive acts of colonialism, concerning 26 distinct nations, that the result would be too long for a book; even a series of books.

That’s where AQ emerges. This journal accompanies the research process as an intermittent communication; a curated cluster of materials that should be read together.

In the meantime, the collection of archival material and interviews has taken on a life of its own, both by being sought out and retrieved from forgotten places, and by being

donated to the Roadblock project. The collection asks for its own rightful place, where people can access the evidence and information.

AQ is here to promote the work of keeping that history, west of the Rocky Mountains, that it should serve the positions of Indigenous Peoples today in building a self-determining and viable future.

It is also here to bring attention and support to creating a comprehensive and focused archive, and help prevent further acts of genocide by promoting education, understanding, and memory among non-native people.

With a clap of thunder for the people of the land; for the generosity and grace of the tireless indigenous instructors at the University of the Kitchen Table; with thanks to our supporters, and the hope you will benefit by and engage in this work,
Kerry Coast, editor.

In every issue:

Original sources
in Archival documents
Touchstone essays
for context
Related events
giving insight
Quotes
for the ages
Interviews
with the Elders
Book reviews
Maps
Timelines
That Day in Court
Fact check
Anniversaries
to remember
In print and digital copy: April, July, October, and January.



What can AQ do for you?

Online Collection

Digitization is an ongoing work in progress. As stored materials are retrieved and digitized, they are uploaded to www.thewestwasntwon.com where they are free to download. A subscription to that will help keep you advised on new entries and articles.

Deposit

The Archive Project is working to offer a safe repository for collections, original or copied. We can work together to preserve materials and digitize them, making them accessible to others.

Travelling Exhibits

Curated exhibits provide experiences of history in motion. A binder full of roadblock news clippings mimics a stop-motion film that transports the viewer along a somber narrative. Surround-displays of timeline pieces reveal the cyclical progress of relapsing affairs, particularly visible in a year-by-year diorama of the power struggle.

Research Assistance

The Archive is not publicly accessible - yet - but that’s the goal! Meantime, contact AQ for more.

Special Issues

When today’s news announces a change, or progress, it can be hard to put it in context. Providing detailed overviews, extra issues will focus on Aboriginal Title in the courts, the Non-Status Indian era, and Fisheries.

Take this QR key to follow, subscribe, reply, and find more archived resources:



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