



Modern Day Treaties and Agreements



The Federal Land Claims Process

In 1969, the Nisga'a peoples of British Columbia took the Provincial Government to court in order to get their Aboriginal Title to the land recognized. The B.C. government stated that the Nisga'a title to the land had been extinguished through pre-Confederation land legislation and that furthermore, the Royal Proclamation, which had outlined how the Crown was supposed to acquire First Nations land, did not apply to the province.¹ The Nisga'a peoples, under the leadership of Frank Calder, took the case all the way to the Supreme Court of Canada, where in 1973 the court ruled that Aboriginal Title did in fact exist prior to contact. The court was split, however, on whether Aboriginal Title had been extinguished. Three of the Justices ruled that pre-Confederation government action had extinguished the title while the other three Justices ruled that the Nisga'a had never surrendered the "rights to the land and resources."² A seventh Supreme Court judge ruled against the Nisga'a on the basis that they "had violated a relic of British parliamentary law"³ because they had not received the Crown's permission first when they began their legal odyssey against the Provincial Government. As a result of the Calder case, the Government of Canada realized that uncertainties regarding Aboriginal Title could affect several regions in Canada such as British Columbia, where the majority of the province was not covered by Treaty.

As a result of the Calder Case the Federal Government created the Federal Land Claims Process in 1974 to deal with both Specific and Comprehensive Claims. Specific Claims arise in situations where "the federal government has

not honored its treaties, agreements or legal responsibilities"⁴ in the administration of First Nations lands and money. Comprehensive Claims arise when First Nations claim that their Aboriginal Title to the land has never been dealt with. In Canada, Aboriginal Title claims affect most of B.C. as well as parts of Newfoundland, Quebec, the Yukon and Atlantic Canada.⁵ In British Columbia, where the majority of the Comprehensive Claims are filed, 53 First Nations are currently negotiating 42 agreements with the Federal and Provincial governments.⁶ Since 1974, 12 Comprehensive Claims have been settled in Canada, including the James Bay and Northern Quebec Agreement, the Nunavut Land Claims Agreement and the Nisga'a Treaty.

James Bay and Northern Quebec Agreement

In April of 1971, Quebec Premier Robert Bourassa unveiled a \$5.6 billion hydro-electric project around north-eastern James Bay. The project however, was going to be built on the traditional hunting lands of the Cree and Inuit of Northern Quebec.⁷ Neither the Cree nor the Inuit were consulted about the project and so they took the Provincial Government to court. No Treaty had ever been negotiated in Northern Quebec and as a result, the Cree and Inuit felt that they still held the Aboriginal Title to the land. The Cree and Inuit won a lower court decision to block the construction of the project, but the Quebec Court of Appeal overturned the decision and lifted the construction ban.⁸ The Appeals court stated however, that the Cree and Inuit had the right to sue for damages caused by the hydro-electric dam to their traditional lands.⁹ Premier



Modern Day Treaties and Agreements



Bourassa was forced to negotiate with the Cree and Inuit for two reasons: he was afraid of a “legal impasse, which in turn might give investors in the hydroelectric project cold feet”¹⁰; and the 1973 Calder Case had created legal uncertainty surrounding Aboriginal peoples claims of Aboriginal Title to land in areas not covered by a Treaty, such as Northern Quebec. Fearing a drawn out court case, Bourassa headed to the negotiating table and on November 11, 1975, the James Bay and Northern Quebec Agreement was signed. The Agreement and the rights that flow from it are protected by Section 35 of the Constitution, which protects Aboriginal and Treaty Rights.

The terms of the final agreement were wide-ranging, affecting every aspect of the lives of the Cree and the Inuit people in the area. They received \$225 million in compensation which was paid out over a 21 year period. As well, the territory was divided into three categories:

- land that was reserved solely for the use of the Cree and Inuit;
- provincial land that the Cree and Inuit had exclusive hunting, fishing and trapping rights to; and
- land that was surrendered to the province by the Cree and Inuit “but with the understanding they would have special consideration for their traditional activities.”¹¹

Other provisions in the Treaty included the use of Cree and Inuit languages in administering services within the Treaty area; Cree and Inuit control over social services, education and health; the creation of an “income-security program for hunters and trappers”¹²; the establishment of an organization to help the Cree and Inuit with financial investments; and the

participation of the Cree and Inuit in the management of the resources in the area.

Nunavut

In 1976, the Inuit Tapirisat of Canada, a group representing the Inuit of the central and eastern Arctic, put forth the “*The Nunavut Proposal* to Ottawa, and negotiations for a land claim agreement and territory begin in earnest.”¹³ The Inuit wanted to “bring government closer to the people – both physically, and in spirit”¹⁴ as the capital of the Northwest Territories was in Yellowknife, an extreme distance from those in the eastern Arctic. The people of the central and eastern Arctic are “very different economically and culturally than those in the western Arctic”¹⁵ and they wanted to ensure that their government reflected their needs and values. The Tungavik Federation of Nunavut took over the negotiations in 1982, the same year that a majority of Northwest Territory residents voted “yes” in a plebiscite to divide the territory. In April of 1990, the TFN and the Federal Government reached an agreement in principle and in May of 1992, the people of the Northwest Territories agreed to a boundary which would divide the Northwest Territories from Nunavut. Finally, in the Fall of 1992, a final agreement was negotiated and the Inuit ratified the agreement with an over-whelming 85% approval rate.

The creation of the territory of Nunavut in June of 1993 incorporated both a comprehensive land claims agreement, the Nunavut Land Claims Agreement Act, which delegated powers to both the Government of Canada and the Inuit within Nunavut, as well as the *Nunavut Act*, which physically created the territory of



Modern Day Treaties and Agreements



Nunavut. In June of 1993, the Federal Government passed both the Nunavut Land Claims Agreement Act and the *Nunavut Act* and the territory came into existence on April 1, 1999. The Government of Nunavut has all the powers and restrictions of the other two territories. For example, the Federal Crown controls all the land in Nunavut that was not specifically designated Inuit land by the Nunavut Land Claims Agreement Act.¹⁶ As well, the Federal Government has control over some of the affairs typically designated as provincial powers “such as school curriculum.”¹⁷ However, since Nunavut was created along with the passing of the Nunavut Land Claims Agreement Act, the Inuit were able to maintain control over some areas of jurisdiction that the Federal Government usually controls in Canada’s other two territories.

The Nunavut Land Claims Agreement confirms Inuit title to 355,842 square kilometers of land, as well as mineral rights to 35,257 square kilometers of that land. The remaining land in Nunavut is Federal Crown land, but the Inuit get a share of the royalties from the minerals and resources on Crown land, as well as equal representation and joint control over such issues as land planning, wildlife, environmental protection and offshore resources. The Nunavut Land Claims Agreement also guarantees that in the future, the Government of Nunavut will resemble the ethnic make-up of Nunavut itself.¹⁸ The Inuit also received \$1.1 billion and that will be paid out per annum until 2007. The most important part of the Nunavut Land Claims Agreement Act and the *Nunavut Act* is however, that it gives the Inuit of eastern and central Arctic the ability to control their own lives in their own way.

The Nisga’a Treaty

The Nisga’a peoples attempt to get their Aboriginal Title to the land recognized by the provincial and federal governments began in 1887, when a group of Nisga’a traveled to Victoria to meet B.C. Premier, William Smithe.¹⁹ Even though the Nisga’a claim was denied by the province, they continued to press for the recognition of their Aboriginal Title to the land. The Nisga’a were prohibited from using the court system to get their claim heard for the majority of the 20th century because the *Indian Act* banned First Nations people from doing so. The Nisga’a peoples attempt to get their right to land recognized culminated in the Calder case, which went to trial in 1969. The Nisga’a stated that neither the Province nor the Federal Government had extinguished their Aboriginal Title to the land. The Government of British Columbia countered by stating that the Royal Proclamation, which had outlined how the Crown was supposed to acquire First Nations land, did not apply to B.C. As well, the province contended that pre-Confederation land ordinances had extinguished Aboriginal Title to the land. The province won the case in both the B.C. Supreme Court and the B.C. Court of Appeal, but the Nisga’a continued to press all the way to the Supreme Court of Canada. In 1973, the Supreme Court of Canada ruled that the Nisga’a had Aboriginal Title to the land before Europeans arrived and only three of the 7 judges ruled that the Aboriginal Title had been extinguished by pre-Confederation land ordinances. While the decision was not a clear victory for the Nisga’a, it did force the Federal Government to begin negotiations with the Nisga’a.



Modern Day Treaties and Agreements



The negotiations between the Federal Government and the Nisga'a Tribal Council began in 1976. The Provincial Government did not partake in the negotiations at first, but eventually they agreed to take part because several issues, such as those surrounding land and resources, needed their input.²⁰ The Framework Agreement between the parties was signed on March 20, 1991 and the Final Agreement was inked on August 4, 1998. The Nisga'a Agreement came into effect on May 11, 2000.

The Nisga'a Agreement provides the Nisga'a peoples with 1,992 square kilometers of land which they have fee simple ownership over. The Nisga'a also have ownership over all the resources on their land, including the subsurface minerals and forest resources. Other provisions in the Agreement include the protection of important cultural sites by designating them as heritage sites, the right to harvest approximately 26% of the salmon in the Nass River and the right to harvest steelhead and other non-salmon species for domestic purposes. The Nisga'a government is also no longer subject to the provisions of the *Indian Act* and has legislative jurisdiction and authority over several areas including Nisga'a Government, citizenship, culture, language, lands and assets.

Endnotes:

- ¹ Arthur J. Ray. *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People*. (Toronto: Lester Publishing Ltd. and Key Porter Books, 1996) 336.
- ² Ken Coates. *The Marshall Decision and Native Rights*. (Montreal: McGill-Queen's University Press, 2000) 85.
- ³ Tom Molloy. *The World is Our Witness: The Historic Journey of the Nisga'a into Canada*. (Calgary: Fifth House Ltd, 2000) 27.
- ⁴ Indian Claims Commission. *The Facts: What are Indian Land Claims?* 1999.
- ⁵ Ibid.
- ⁶ British Columbia Treaty Commission. *Status of Negotiations*. <<http://www.bctreaty.net/files/status.html>>
- ⁷ Ray 338.
- ⁸ Ray 340.
- ⁹ Ward Churchill. *Struggle for the Land: Native North American Resistance to Genocide, Ecocide, and Colonization*. (Winnipeg: Arbeiter Publishing, 1999) 299.
- ¹⁰ Churchill 300.
- ¹¹ Olive Patricia Dickason. *Canada's First Nations: A History of Founding Peoples from Earliest Times*. 2nd Ed. (Toronto: Oxford University Press, 1997) 383.
- ¹² Ray 340.
- ¹³ Information Gateway to Nunavut. *Nunavut: Basic Facts*. <<http://www.nunavut.com/basicfacts/english/basic-facts.html>>
- ¹⁴ Ibid.
- ¹⁵ Ibid.
- ¹⁶ Ibid.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ Molloy 21.
- ²⁰ Molloy 27.