

FIRST NATIONS STRATEGIC BULLETIN

FIRST NATIONS STRATEGIC POLICY COUNSEL

Unmasking Trudeau's Redface: *The Liberal Government's White Paper 2.0 Leads Us On a Path of Termination*



Prime Minister Justin Trudeau in a Headdress.

By Russ Diabo

For the past four years the Trudeau government has operated in secret, using public relations techniques to hide from our First Nation Peoples, the media and the public its real intentions about their

renewed federal-First Nations Termination Plan.

Much of their rhetoric sounds nice, but you have to put the Trudeau government's **Special Words and Tactics (SWAT)** into context by being aware of the **Two-Track Termination Plan** the Trudeau government has put in place and in motion over the past four years.

The Trudeau government has manipulated the terms "**reconciliation**," "**decolonization**," and "**Nation-to-Nation**" by going around our Original Nations and negotiating two top-down agreements with the **Assembly of First Nations (AFN)**. One on developing a **new funding policy** for First Nations and one on **shared priorities** with the Trudeau government.

The Trudeau government also created a new **Federal-AFN Cabinet Committee** to include **AFN** in the federal decision-making process to develop **new law and policy**. The **AFN budget** has been substantially increased to tens of millions of dollars to implement these two agreements with the federal government.

The re-election of a Liberal minority government in November 2019 means Prime Minister Justin Trudeau will continue with his government's **Two-Track Termination Plan** (White Paper 2.0) for First Nations (Indian Act Bands) into 2020 and beyond, with the collaboration of the **AFN**.

Special points of interest:

- Trudeau's false "Reconciliation" is really a White Paper 2.0 for First Nations leading to termination of rights
- Wet'suwet'en reject BC Supreme Court approval of Interlocutory Injunction prepare to defend lands
- The Guardian reports RCMP was ready to shoot land defenders in January 2019
- Trudeau is playing divide & rule on Aboriginal Title across Canada

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PM Justin Trudeau receiving an AFN jacket as a present from NC Bellegarde.

“The federal Two-Track approach is the latest iteration in the continuation of the Termination Doctrine from the 50 year old 1969 White Paper on Indian Policy”



PM Trudeau and NC Bellegarde signing Canada-AFN MOU on Joint Priorities, June 2017.

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The **2019 Liberal Platform Chapter “Building a Better Future with Indigenous Peoples”**, along with the re-appointment of Carolyn Bennett as Minister of Crown-Indigenous Relations and the appointment of Marc Miller, reportedly **“a close friend of Trudeau”**, as Minister of Indigenous Services, along with their **2019 Mandate Letters**, all affirm the continuation of the **2015 Liberal Platform Agenda**.

Justin Trudeau will continue working with Ministers he can trust to manage the Chiefs and keep the lid on First Nations discontent while leading the **Two-Track Termination process** into his government’s second mandate.

The Trudeau government will also continue to rely on their **“partners”** such as the **AFN** to help control potential First Nation Peoples dissent. The **2019 Liberal Platform section** entitled **“Supporting First Nations Priorities”** confirms the Trudeau government’s continued reliance on the **AFN** in advancing its **Two-Track Termination Plan**.

The fact is the **2017 AFN-Canada MOU on Joint Priorities** formalizes a national top-down Liberal government political process, to the so-called **“Nation-to-Nation”** relationship, which the federal government controls and manages, because it has an effective veto over the **Canada-AFN MOU** process, agenda items, and funding. This is being peddled by the Trudeau government as **“co-development”** of policy and law, when, in fact, as we’ve seen since 2015, **AFN** has been co-opted by the Trudeau government.

As the **2019 Liberal Platform** puts it:

Continu[e] to make progress on Indigenous priorities, meeting regularly through the Assembly of First Nations – Canada Memorandum of Understanding on Joint Priorities.

Two-Track Termination Plan



It was in December 2015, that Prime Minister Justin Trudeau announced his government’s **Two-Track approach to a Pan-Indigenous Policy (First Nations, Inuit, Metis)**: 1) closing the socioeconomic gap between Indigenous Peoples and non-Indigenous Canadians (programs); and 2) making foundational changes

to laws, policies and operational practices based on the federal recognition (definition) of rights to advance (a federal interpretation of) self-determination and self-government (rights).

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The federal **Two-Track approach** is the latest iteration in the continuation of the Termination Doctrine from the 50 year old **1969 White Paper on Indian Policy**.

The "**new**" legislative & policy "**Framework**" is designed to continue to take advantage of our people's poverty and financially pressure Indian Act bands and band councils (Treaty & Non-Treaty) into signing new modern, municipal type self-government agreements, ending our existing sovereignty, jurisdiction & original relationship with our lands, territories and resources as Indigenous Nations!

The core of the "**new**" relationship is to convert Indian Act bands into 4th level ethnic "**Indigenous governments**," using the existing Land Claims and "**Self-Government**" Final Agreements as templates. This became clear when at a public event organized by "**The Economist**" magazine in Toronto, in the summer of 2016, the interviewer asked the Prime Minister how his government was going to liberalize and deregulate inter-provincial trade within Canada. Trudeau responded:

"The way to get that done is not to sit there and impose, the way to have that done is to actually have a good working relationship with the Premiers, with municipal governments, with Indigenous leadership, because Indigenous governments' are the fourth level of government in this country." [emphasis added]

We know that Prime Minister Justin Trudeau wasn't referring to Indian Act bands when he used the term "**Indigenous governments**" at that event, because the federal government makes a distinction between Indian Act bands and "Self-Governing First Nations," which are referred to as "**Indigenous governments**" in federal policy.

During the first mandate of the Trudeau government we saw massive, unprecedented changes to First Nations policy, law and the re-structuring of the federal machinery of government by dissolving the **Department of Indian Affairs and Northern Development** and creating two new federal departments for processing Indian Act bands and band councils into a "**new relationship**" as 4th level ethnic "**Indigenous governments**" using the existing municipal type **Self-Government Agreements** and **Comprehensive Land Claims Settlement Agreements**, now called "**Modern Treaties**" as the templates for negotiations and Legally Binding Final Agreements.

This is what I call signing onto "**Canada's Termination Pact**"!

In order to get those remaining Indian Act bands to the table who did not previously agree to negotiate under Canada's Termination Tables



PM Trudeau at "Economist Magazine" event where he announced Indigenous Gov't's are 4th Level Gov't's.

"The core of the "new" relationship is to convert Indian Act bands into 4th level ethnic "Indigenous governments," using the existing Land Claims and "Self-Government" Final Agreements as templates"





Fathers of Canadian Colonization 1867.

“Trudeau’s Two-Track Termination Plan is based on using the federal constitutional jurisdiction and authority over “Indians and lands reserved for the Indians” in section 91.24 of the Constitution Act 1867 to continue to control and manage Indian Act band councils and bands, until they agree to opt out of the Indian Act and define their section 35 rights”



‘White Paper 2.0’ continued from page 3

(Comprehensive Claims or Self-Government) the Trudeau government created a new class of tables called the “**Recognition of Indigenous Rights and Self-Determination discussion tables.**”

As of December 2018, there were over 75 tables which represent more than 390 Indigenous communities (FN’s, Metis & Inuit), with a total population of more than 850,000 people. To date, 28 preliminary-type agreements have been signed as a result of **Recognition of Indigenous Rights and Self-Determination discussions.** Over \$118 million has been allocated to support **Recognition of Indigenous Rights and Self-Determination discussions.** (SOURCE: Federal Government)

Trudeau’s **Two-Track Termination Plan** is based on using the federal constitutional jurisdiction and authority over “**Indians and lands reserved for the Indians**” in section 91.24 of the **Constitution Act 1867** to continue to control and manage Indian Act band councils and bands, until they agree to opt out of the Indian Act and define their section 35 rights by:

- 1) Signing and ratifying legally binding “**Modern Treaty**” Final Agreements (where eligible);
- 2) **Self-Government Final Agreements** that are based on federal pre-conditions to negotiations to define federally recognized “**Indigenous Governments**” or “**Nations**” that will have **authority delegated to them** by the Government of Canada. They will be **subject to the Canadian Constitution** as a 4th order of government—below not only the federal and provincial governments, but also with less power than municipal governments.
- 3) This option is for Indian Act bands is to opt out of the Indian Act into **alternative federal legislation** designed to assimilate Indian Act bands and reserves into Canada’s property and tax systems through the **National Institutions** created by the federal government via the **First Nations Land Management Act** and the **First Nations Fiscal Management Act.**

Federal Pre-Conditions to Negotiations

Canada’s position regarding the domestication (watering down and re-writing) of **UNDRIP** is set out in the **10 Principles respecting the Government of Canada’s Relationship with Indigenous peoples**, issued in June 2017, by the then federal Justice Minister, Jody Wilson-Raybould, which refer to “**Canada’s constitutional framework**” and “**Canada’s constitutional arrangements**” as the basis for interpreting **UNDRIP** and the **10 Federal Principles** within Canadian domestic law, where the **10 Fed-**

'White Paper 2.0' continued from page 4

eral Principles acknowledge "*self-determination*" on one hand, but then put it squarely under the umbrella of "*European assertion of sovereignty*" on the other.

Thus, Canada maintains its assertion of Crown sovereignty and territorial integrity by continuing to rely on the **Christian Doctrine of Discovery**. This is in violation of international legal standards!

The **10 Federal Principles on Pan-Indigenous Relations** is a re-write of, but maintains, these previous **2012 federal pre-conditions** to negotiations with First Nations (Indian Act Bands):

- **Extinguishment (modification) of Aboriginal Title;**
- **Legal release of Crown liability for past violations of Aboriginal Title & Rights;**
- **Elimination of Indian Reserves by accepting lands as private property (fee simple);**
- **Removing on-reserve tax exemptions (Converted as Own Source Revenue);**
- **Respect existing Private Lands/Third Party Interests (and therefore alienation of Aboriginal Title territory without compensation);**
- **Acceptance of existing federal & provincial laws;**
- **Program funding on a formula basis being linked to taxation/own source revenue (suspended for 3 years);**

Two New Fiscal Policies (Indian Act bands & Self-Governing First Nations)

The federal Two-Track Termination Plan is driven by the new fiscal relationships set out in:

- 1) the **INAC-AFN Memorandum of Understanding on Fiscal Relations** for Indian Act bands; and
- 2) the **Collaborative Self-Government Fiscal Policy** jointly developed by the members of the **Land Claims Agreement Coalition** outside of the **INAC-AFN MOU** process.

The Indian Act band councils are being offered 10-year (or less) grants if a band administration is certified by the federally created **First Nations Financial Management Board**, and if the band adopts a **Financial Management Law (FAL)**. There is no new funding to meet the local needs, but band councils can control the funding themselves without interference by the new **Department of Indigenous Services Canada (ISC)**, except in extreme circumstances.

For "**Self-Governing First Nations**" a new funding formula is being jointly developed. The **Own Source Revenue/Taxation policy** is suspended for three years, while baseline research is being conducted to determine



NC Bellegarde and INAC Minister, Bennett signing an INAC-AFN MOU on Fiscal Relations, June 2016.

"The Indian Act band councils are being offered 10-year (or less) grants if a band administration is certified by the federally created First Nations Financial Management Board, and if the band adopts a Financial Management Law (FAL)"



Standing in Back: Harold Calla, Financial Management Board, Robert Louie, First Nations Lands Advisory Board, and Ernie Daniels, First Nations Finance Authority, **In Front:** Manny Jules, First Nations Tax Commission.

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“Essential to accelerating the Trudeau government’s Two-Track Termination Plan is to re-organize the federal bureaucracy to process (prepare) Indian Act bands for signing onto modern agreements to become 4th level ethnic “Indigenous governments””

what comparable Canadian towns and cities pay for delivering services and local government operations. In the meantime, the “**Self-Governing First Nations**” get to keep their **Own Source Revenues/Taxation** without the federal government reducing the current transfer payments included in the funding formula until the funding formula is revised.

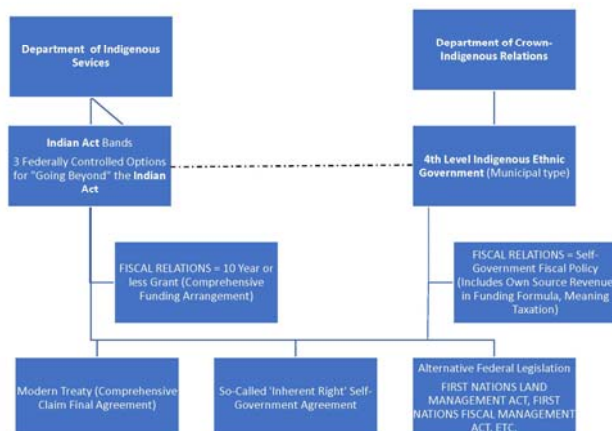
Two New Federal Departments for Recolonization Until Termination

Essential to accelerating the Trudeau government’s **Two-Track Termination Plan** is to re-organize the federal bureaucracy to process (prepare) Indian Act bands for signing onto modern agreements to become 4th level ethnic “**Indigenous governments**”. Thus, moving from the **Department of Indigenous Services Canada** to the **Department of Crown-Indigenous Relations**. As the federal government openly states “*the [Indigenous Services Canada] Department will disappear over time.*”

In August 2017, during a Cabinet shuffle, Prime Minister Justin Trudeau announced the eventual **dissolution of the Department of Indigenous Affairs** and **replacement with two new federal departments** (Indigenous Services & Crown-Indigenous Relations) with the changes to be overseen by the two Ministers. There was no prior consultation with **AFN**, as National Chief Bellegarde has admitted, or more importantly no consultation with First Nations (Indian Act bands).

Bill C-97 – On August 28, 2017, Prime Minister Justin Trudeau announced the federal government was dissolving the **Department of Indian Affairs & Northern Development** and creating two new federal departments: one for **Indigenous Services** and one for **Crown-Indigenous Relations**. This federal restructuring of government is central to the Trudeau government’s **White Paper 2.0 Framework** approach to Indigenous policy, law, funding and is unilaterally defining a “**new**” relationship with Indigenous Peoples (First Nations, Metis & Inuit).

Federal “Legal Reconciliation Technique” for Converting Indian Act Bands into 4th Level Indigenous Ethnic Governments
To Terminate Indigenous Nations Band-by-Band (Completion of Canada’s Colonization Project)



On April 8, 2019, the Trudeau government introduced a 400 page omnibus **Budget Bill C-97** into the House of Commons. Buried within **Bill C-97** was legislation to dissolve the **Department of Indian Affairs and Northern Development** in order to create the two new departments (**Indigenous Services & Crown-Indigenous Relations**) in law.

Bill C-97 became law on June 21, 2019, without any meaningful discussion or debate from First Nations.

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Two-Track Termination Framework Legislation

Bill C-86 – a 900 page Omnibus Bill that became law in December 2018, making substantive amendments to the **First Nations Land Management Act, First Nation Fiscal Management Act, Additions to Reserve** and **First Nation Matrimonial Property Act**. All of this legislation facilitates eliminating reserves by transitioning communally held reserve lands into a new land regime that eventually leads to individually held private property (fee simple) that would come under provincial laws and lands registry.

Bills C-91/92 – the **language and child welfare legislation** is intended to take our existing Inherent Rights and convert them into federally defined section 35 rights, which are subsumed under Crown Sovereignty (to be dictated by the limitations stemming from section 35 federal doctrine/ court decisions), as well as provincial controls into Indigenous jurisdiction. These Bills became law on June 21, 2019.

This **suite of federal legislation (Bills C-86, C-91, C-92, C-97)** will now be used by the federal government to continue the attack on our sacred Treaties, Inherent Title & Rights and sovereign jurisdiction, particularly with the creation of two new federal departments (Indigenous Services & Crown-Indigenous Relations) to continue to implement the **1969 White Paper objectives** through the current Trudeau government's **White Paper 2.0 Framework** (2019).

Recognition and Implementation of Rights Framework Bill Delayed

On February 14, 2018, Prime Minister Justin Trudeau announced his Liberal government intended to introduce a Bill into Parliament regarding a **Recognition and Implementation of Rights Framework** in 2018 that he wanted to become law before the 2019 federal election.

According to a September 2018, federal "**Overview Document**" the federal "**Rights Recognition Framework**" law will—if passed—form the basis for **ALL RELATIONS** between the federal Crown (government) and Indigenous Peoples (First Nations, Metis, Inuit) including "**pre-1975**" **Treaties** and:

- Will contain federal "**definitions**" of "**key terms**" [like Inherent Right to Self-Government, "Self-Determination" "Aboriginal Title and Rights", "Treaty Rights"].
- Federal and Provincial/Territorial powers and jurisdictions will continue to dominate over First Nations and provincial governments have a veto over any agreements affecting their jurisdiction.
- A federally established advisory committee or institution would be



"This suite of federal legislation (Bills C-86, C-91, C-92, C-97) will now be used by the federal government to continue the attack on our sacred Treaties, Inherent Title & Rights and sovereign jurisdiction, particularly with the creation of two new federal departments (Indigenous Services & Crown-Indigenous Relations)"



During happier times, Jody Wilson-Raybould & PM Trudeau in HoC on Feb. 14, 2018.



“Canada’s
“partners” are
the AFN and
the Chiefs who
are
negotiating at
“Modern
Treaty” tables,
“Self-
Government”
tables, and
having
discussions at
the
“Recognition
and Self-
Determination
tables”

‘White Paper 2.0’ continued from page 7

created to decide what Indigenous Nations or “**Collectives**” would be federally recognized and have the authority of a government possessing “**the legal capacity of a natural person**”, meaning a **federal corporation**. This will all be subject to agreements with the federal and provincial governments (where their jurisdiction is affected).

- The federal legislation will include a “**list of powers**” for “**Indigenous Governments**”, which can be amended by the federal government.
- The Prime Minister has said these “**Indigenous Governments**” are a lower order of government than municipalities (City Council) as the “**4th level**” of government in Canada. A “**new**” order of government.
- New funding arrangements are to go with new agreements and Indian Band’s **tax exemption will be removed** to promote the new “**Indigenous Governments**” exercising powers to collect “**own source revenue**” the same as existing “**Indigenous Governments**” under self-government agreements, comprehensive land claims settlements or federal legislation.
- The new law will likely use existing, or new federally created national institutions for First Nations, Metis and Inuit to: 1) provide an advisory role to the federal government, 2) oversight of Indigenous Rights implementation, 3) dispute resolution and 4) public education.

In September 2018, after reviewing an overview of the proposed “**Framework**” law, there was widespread rejection by Chiefs and First Nations across Canada. This resulted in a delay of the proposed “**Framework**” legislation being announced in a **CBC news report** on November 14, 2018.

What the **CBC news report** didn’t mention was a **Statement from the Office of the Minister of Crown-Indigenous Relations**, also released on November 14, 2018, saying

“the Government is committed to advancing the framework, and to continue actively engaging with partners on its contents... through policy changes and the development of the Recognition of Rights and Self-Determination Tables.”



AFN & Minister’s Group
Photo in Ottawa, 2019.

Since the fall of 2018, while the proposed “**Framework**” law was delayed, Crown-Indigenous Relations Minister Carolyn Bennett and Senior Assistant Deputy Minister Joe Wild continued working with their “**partners**” on a piecemeal approach to implementing the “**Framework**” through legislative and policy changes.

'White Paper 2.0' continued from page 8

As already mentioned above, Canada's "**partners**" are the AFN and the Chiefs who are negotiating at "**Modern Treaty**" tables, "**Self-Government**" tables, and having discussions at the "**Recognition and Self-Determination**" tables.

The land claims and self-government policy changes being pursued are in addition to the federal suite of legislation cited above.

Trudeau Government 2.0 and White Paper 2.0

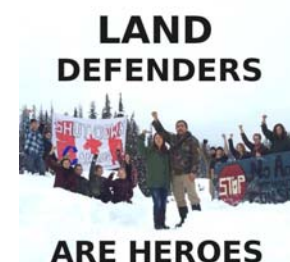
During the post-election AFN Special Chiefs' Assembly on December 4, 2019, Minister of Termination (Crown-Indigenous Relations), Carolyn Bennett, told the Chiefs-in-Assembly "***It feels good to be able to get back to work on the things that matter so much to the future of Canada - the unfinished work of confederation***", and she then set out the Trudeau government's priorities for their second mandate, which are summarized as follows:

- Bennett acknowledged the **AFN Honouring Promises** (2019 Federal Election Priorities for First Nations and Canada) Document.
- Bennett said her government will be "co-developing" an **UNDRIP Bill** by end of 2020.
- Bennett said her government will be "co-developing" a **National Action Plan as called for by the MMIWG National Inquiry**.
- Bennett said her government will continue the "co-development" of "**meaningful reforms to comprehensive claims, specific claim and Inherent rights policies.**"
- Bennett said her government will establish a **National Treaty Commission**. "***To make sure that Canada implements the spirit and intent of Treaties going forward - we will together co-develop a process for the ongoing review, maintenance, and enforcement of Canada's treaty obligations between the Crown and Indigenous communities.***"

So, in 2020, we can expect to see the continued piecemeal approach to implementation of the Trudeau government's "**Rights Recognition Framework**," likely re-packaged in the pending federal Bill to implement a Canadian watered down and re-written version of the **United Nations Declaration on the Rights of Indigenous Peoples** with the collaboration of AFN and Termination Table Chiefs!



"If Termination is on the Table then Turn the Tables, take action this coming year to take #LandBack!"



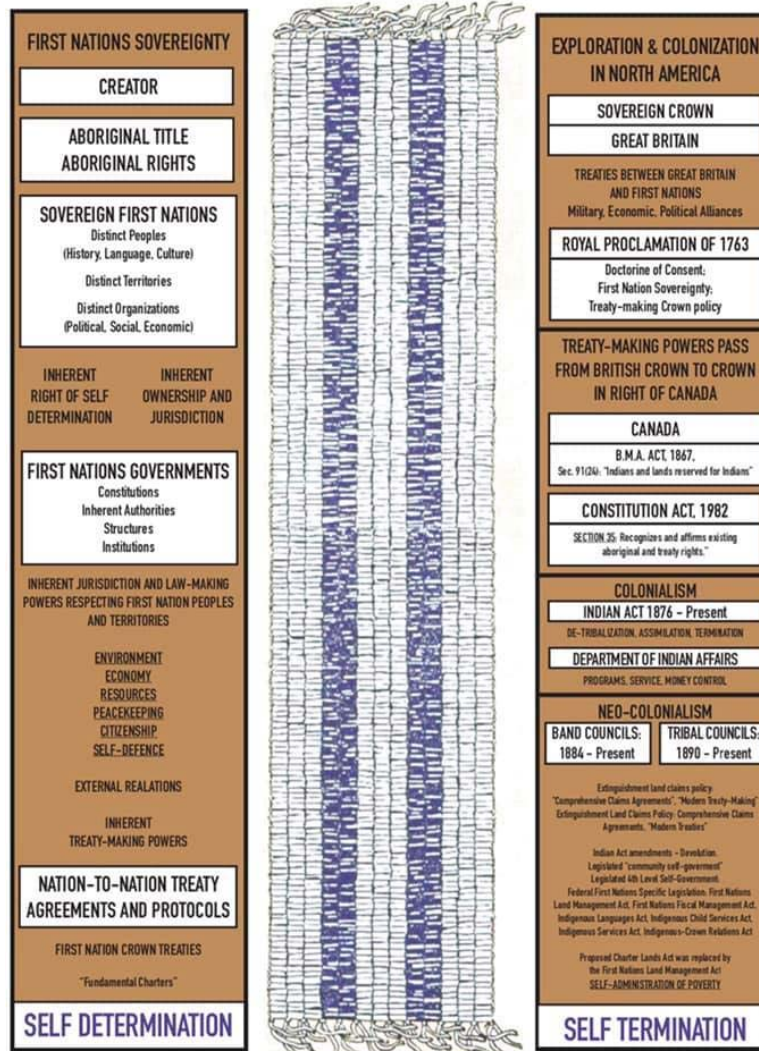
'White Paper 2.0' conclusion from page 9

The Trudeau government spin on all of these changes will remain that its objective is “*to accelerate self-determination, contribute to the closing of socio-economic gaps, and to advance reconciliation.*”

As I've already said on social media, I hope that 2020 is the year that many grassroots Peoples will wise up and rise up! The international right of Self-Determination & Free, Prior, Informed Consent belongs to the People **NOT INDIAN ACT** Chiefs & Councils!

If Termination is on the Table then **Turn the Tables**, take action this coming year to take **#LandBack!**

SELF-DETERMINATION or SELF-TERMINATION



IROQUOIS TWO ROW WAMPUM - GUSWENTHA (1613)

"The Grandfather of Treaties"

"We will not be like father and son, but like brothers. These two rows will symbolize canoes, travelling down the same river together. One will be for the Original People, their laws, their customs, and the other for the European people and their laws and customs. We will each travel the river together, but each in our own boat. And neither of us will try to steer the other's canoe".

Reading of Two Row Wampum from Akwesasne Notes.

Wet'suwet'en Hereditary Chiefs Reject the BC Supreme Court Decision to Criminalize Wet'suwet'en Law

FOR IMMEDIATE RELEASE—December 31, 2019

Smithers (BC) – **Wet'suwet'en Hereditary Chiefs** representing all five clans of the **Wet'suwet'en Nation** reject the BC Supreme Court decision to extend **Coastal GasLink's injunction order**, which has criminalized the practice of **Anuk 'nu'at'en** (Wet'suwet'en law) and inflicted violence against **Wet'suwet'en people** on our own unceded lands.

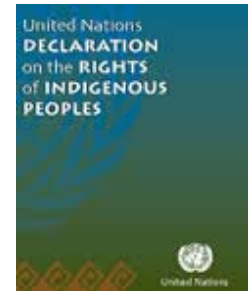
Coastal GasLink (CGL) has never obtained consent from the **Wet'suwet'en Hereditary Chiefs** to enter or work on our territories. Since obtaining the initial interim injunction order, **CGL** has bulldozed through our territories and destroyed our archaeological sites, while **private security firms** and **RCMP** have interfered with the constitutionally protected rights of Wet'suwet'en people to access our lands for hunting, trapping, and ceremony. **CGL** has violated the conditions of their permits with impunity, facing no consequence from Canadian regulatory authorities.

We cannot rely on Provincial law to protect Wet'suwet'en land, people, or interests. Under the threat of continued police violence, the Wet'suwet'en have complied with the interim injunction order imposed throughout our territories. However, the Wet'suwet'en have never ceded our lands to Canada or British Columbia, and colonial governments have never lawfully obtained the authority to render decisions on our lands.

The **interim injunction**, which was **granted by Justice Church in December of 2018**, six months before the Wet'suwet'en were able to present any legal defense, has already done irreparable harm to our territories, people, and the practice of our laws. The decision ignored the legal efforts of our ancestors, who spent more than a decade in court with the **Delgamuukw-Gisday'wa v. Queen** case to have the **Supreme Court of Canada** recognize that Aboriginal title had never been extinguished across 22,000 km² of **Wet'suwet'en yin'tah** (traditional territory).

At a time when the Province of British Columbia is celebrated for adopting the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**, the Wet'suwet'en people are actively denied the protections of **UNDRIP** on our own lands. When we enforced our own laws and required that industry seek **Free, Prior, and Informed Consent for development on our lands**, we faced a brutal display of militaristic police violence and an ongoing police occupation of our territories. We have learned, through the reporting of **The Guardian**, that **RCMP** are prepared to kill unarmed Wet'suwet'en people if we continue to uphold our laws.

We urge the Province, in the strongest terms, to meaningfully uphold its commitment to implement **UNDRIP**, and to withdraw the **RCMP** from our territories where they oppress our people and criminalize our authority to the benefit of industry. Enforcement of this injunction by the **RCMP** will



“We urge the Province, in the strongest terms, to meaningfully uphold its commitment to implement UNDRIP, and to withdraw the RCMP from our territories where they oppress our people and criminalize our authority to the benefit of industry”





L to R: Tsake'ze Howihkat (Freda Huson) & Na'moks (John Ridsdale) at a UN Side Event in NYC, 2019.

“We have a responsibility to enforce Wet’suwet’en laws and to ensure the health of our territories for future generations, as we have done for thousands of years. We have always held the responsibility and authority to protect our unceded territories and we will continue to do so”



‘Wet’suwet’en Reject Court Decision’ conclusion from page 11

lead to the forcible removal of Wet’suwet’en people from our own lands and the bulldozing of our homes, continuing the violent displacement that our ancestors experienced.

We are disappointed that the Supreme Court has rendered a decision that contradicts **Wet’suwet’en law**, but we reaffirm that **Anuk nu’at’en** remains the highest law on Wet’suwet’en land. **Coastal Gaslink** continues to operate as though Wet’suwet’en law does not exist, and to trespass on our unceded lands.

We have a responsibility to enforce Wet’suwet’en laws and to ensure the health of our territories for future generations, as we have done for thousands of years. We have always held the responsibility and authority to protect our unceded territories and we will continue to do so.

Quote from Dini’ze Na’moks (John Ridsdale):

“In this time of reconciliation, with BC being the first province to legislate UNDRIP, this ruling by a court in BC against Indigenous rights and recognition truly proves that industry, not the people, can control the Province and its laws. Ultimately, we are our own government, and we decide who comes on our territory. We are the hereditary chiefs. British Columbia and Canada only have assumed and presumed authority on our lands.”

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Tsake’ze Howihkat (Freda Huson) speaking at UNPFII 2019, while Na’moks (John Ridsdale) looks on with other Indigenous representatives.

Media Backgrounder: Wet'suwet'en 101

Overview:

An Indigenous nation in Northern BC, Canada is occupying their unsurrendered territories, and resisting the construction of several proposed hydraulically fractured gas and bitumen pipelines across their territory.

The Wet'suwet'en and Canadian Law:

The Wet'suwet'en nation have lived on and governed their territories for thousands of years. They have never signed treaties or sold their land to Canada. In 1997, **Wet'suwet'en Hereditary Chiefs joined with Gitksan Hereditary Chiefs, and won the landmark Delgamuukw-Gidsaywa Supreme Court of Canada case.** The court recognized that the Wet'suwet'en people have never given up title to 22,000 km² (8500mi²) of land in northern British Columbia - an area the size of New Jersey. The court decision also recognized Wet'suwet'en Hereditary chiefs as the rightful representatives of the Wet'suwet'en title holding collective.

Wet'suwet'en hereditary decision making processes were recognized and described in the 2011 **Canfor V. Sam** ruling of BC's Supreme Court, which stated: ***"Each Wet'suwet'en chief has rights and responsibilities specific to the particular territory over which that chief is given a duty to protect. The rights and responsibilities are confirmed, coordinated, and directed to the common good, in other words, governed, through the feast."***

Despite these rulings, the governments of Canada and British Columbia continue to assert jurisdiction over this territory and have issued permits for resource projects without the consent of the Wet'suwet'en Hereditary Chiefs. Wet'suwet'en people upholding decisions made in accordance with Wet'suwet'en law have been criminalized by the Canadian state, and face the risk of arrest for occupying and controlling access to their house territories.

Wet'suwet'en Governance Structure and UNDRIP:

The Wet'suwet'en nation is comprised of five clans (Gilseyhu, Likhts'amisyu, Laksilyu, Tsayu, Gidimt'en), **which are further divided into thirteen house groups. Each house group has several distinct territories. Hereditary chiefs** are responsible for the health and sustainability of their house group territories, and Wet'suwet'en law protects against trespass or harvest from the house group territories of others. Wet'suwet'en law is enacted through the **Bahtlats** (feast hall), where decisions are ratified and clan business is conducted. The Wet'suwet'en feast was made illegal for 100 years through the Canadian potlatch ban, effectively criminalizing Wet'suwet'en governance and political systems. Despite this, Wet'suwet'en people have retained their legal traditions and continue to govern themselves in the feast hall in accordance with Wet'suwet'en law.

The **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** aligns with Wet'suwet'en law by describing the right of Indigenous peoples to require **Free, Prior, and Informed Consent (FPIC)** before any development occurs on their traditional territories. Despite BC's intent to implement **UNDRIP**, the Province has continued to deny the right of **FPIC** to Indigenous peoples, and has used police force to support non-consensual development on unceded Indigenous territories.

'Wet'suwet'en 101' continued from page 13

FROM MONTNEY TO THE B.C. COAST

(If LNG Canada gets the go-ahead, part of the proposed involves building the Coastal Gas Link pipeline starting in the Montney and ending at Kitimat, B.C.)



“Several Wet'suwet'en clans have re-occupied their traditional territories (outside of the reservations allotted by Canada), in order to revitalize their culture, traditional harvesting practices, and generations of storytelling embedded in the land”

Coastal Gaslink and LNG Canada:

The Wet'suwet'en people, under the governance of their hereditary chiefs, are opposing the largest fracking project in Canadian history. **The Coastal Gas Link pipeline (CGL)**, owned by **TC Energy** (formerly TransCanada) aims to connect the fracking operations of Northeastern B.C. with a **Liquefied Natural Gas (LNG)** facility in the coastal town of **Kitimat**.

This export terminal, called LNG Canada, is owned by a consortium of multinational oil giants (Shell, PetroChina, Petronas, KOGAS, and Mitsubishi). In a previously attempted **LNG pipeline** (Pacific Trails Pipeline) there was an agreement for the stakeholders to consider transition to bitumen after five years of operation.

CGL is one of many proposed pipelines attempting to cut across the Wet'suwet'en traditional territories. If built, it could expedite the construction of subsequent proposed bitumen and fracked gas pipelines, and create an incentive for gas companies to tap into shale deposits along the pipeline right of way. This project aims to blaze a trail, in what has been envisioned as an energy corridor through some of the only pristine areas left in this entire region. If **CGL** were to be built and become operational, it would irreversibly transform the ecology and character of Northern B.C. This is why the Wet'suwet'en Hereditary Chiefs have all unanimously opposed the construction of **ALL** pipelines through their territory, ratifying this numerous times in the **bahlats**.

Wet'suwet'en Land Re-occupations:

Several Wet'suwet'en clans have re-occupied their traditional territories (outside of the reservations allotted by Canada), in order to revitalize their culture, traditional harvesting practices, and generations of storytelling embedded in the land. These re-occupations include:

Unist'ot'en Village: Gilseyhu clan, Dark House

Talbits Kwa territory, which belongs to Dark House
Head Hereditary Chief Knebeas
Spokesperson: Hawilhkat / Freda Huson

Unist'ot'en Village is an Indigenous re-occupation of traditional territory. Over the past 10 years, Dark House members and supporters have built a series of cabins, a permaculture garden, greenhouse, and a Healing Center to support members of the Wet'suwet'en community who are healing from addiction and colonial trauma. Unist'ot'en has implemented a Free Prior and Informed Consent protocol in accordance with UNDRIP and Wet'suwet'en law that requires any visitors to the territory to seek the consent of Dark House Hereditary Chiefs. This protocol was in place until the Coastal Gaslink Pipeline company, with support from the RCMP, forcibly entered the territory without consent to



‘Wet’suwet’en 101’ conclusion from page 14

begin work on the Coastal GasLink Pipeline in January 2019. Unist’ot’en village is located 66km along the Morice River West forest service road, across the Morice River (Wedzin Kwah) Bridge. Dark House continues to run healing programs for clients at the Healing Center, despite continued industry destruction and police harassment.

Gidimt’en Access Point: Gidimt’en clan, Cas Yikh (Grizzly) House

Lhudis Bin territory, which belongs to Cas Yikh house

Head Hereditary Chief Woos

Spokesperson: Sleydo / Molly Wickham

In Dec. 2018, in the Witset feast hall, the Gidimt’en clan announced their intention to set up a checkpoint at 44 km along the Morice River forest service road. The checkpoint would serve to protect Cas Yikh territory, as well as Dark House’s neighbouring territory (Talbits Kwa), including the Unist’ot’en Healing Center. The access point includes a number of canvas tents, a yurt, an outdoor kitchen, timber frame cabin, children’s play areas and gathering places. They host cultural events, hunting and berry picking workshops, and provide a space for Wet’suwet’en families, elders and children to access the land for cultural practices. The camp is located beside Ts’el Ka’i’ kwe (Lamprey creek), which is a traditional campsite, fishing site, and gathering place. On January 7, 2019, the camp was violently raided by heavily militarized RCMP in order to enforce Coastal GasLink’s interim injunction and ensure CGL’s access to Dark House territory for pipeline construction. After the raid, CGL demolished a number of camp structures to make room for construction equipment, and the RCMP temporarily occupied the site as a surveillance post until it was reclaimed by Gidimt’en clan members. It continues to operate as a gathering place for Wet’suwet’en people and the revitalization of their culture.



Exclusive [The Guardian]: Canada police prepared to shoot Indigenous activists, documents show

By Jaskiran Dhillon in Wet'suwet'en territory and Will Parrish, December 20, 2019

Notes from strategy session for raid on Wet'suwet'en nation's ancestral lands show commanders argued for 'lethal overwatch'

Canadian police were prepared to shoot Indigenous land defenders blockading construction of a natural gas pipeline in northern British Columbia, according to documents seen by the Guardian.

Notes from a strategy session for a militarized raid on ancestral lands of the Wet'suwet'en nation show that commanders of Canada's national police force, the Royal Canadian Mounted Police (RCMP), argued that "**lethal overwatch is req'd**" – a term for deploying an officer who is prepared to use lethal force.

The RCMP commanders also instructed officers to "**use as much violence toward the gate as you want**" ahead of the operation to remove a road-block which had been erected by Wet'suwet'en people to control access to their territories and stop construction of the proposed 670km (416-mile) Coastal GasLink pipeline (CGL).

In a separate document, an RCMP officer states that arrests would be necessary for "**sterilizing [the] site**".

Wet'suwet'en people and their supporters set up the Gidimt'en checkpoint in December 2018 to block construction of the pipeline through this region of mountains and pine forests 750 miles north of Vancouver.

On 7 January, RCMP officers – dressed in military-green fatigues and armed with assault rifles – descended on the checkpoint, dismantling the gate and arresting 14 people.

The checkpoint lies 22km east of a camp operated by a house group of the Wet'suwet'en called the Unist'ot'en, which has been at the center of the struggle against the pipeline.

The camp is one of several instances where Indigenous people in British Columbia have reinhabited ancestral territory that falls outside of demarcated reservations, in what they refer to as "**reoccupation**".

Unist'ot'en spokesperson Freda Huson (Howilhkut) said that the RCMP's militarized posture during the raid was consistent with a long history of colonial violence.

"In our experience, since first contact, RCMP have been created by the federal government to dispossess Indigenous peoples of their lands," Huson said. **"They have proven [that] through their harassment of my people to support Coastal GasLink in invading our territories."**

Police records seen by the Guardian include transcripts from police strat-



RCMP assault Wet'suwet'en Territory with automatic weapons in January 2019, prepared to shoot land defenders!

"Canadian police were prepared to shoot Indigenous land defenders blockading construction of a natural gas pipeline in northern British Columbia, according to documents seen by the Guardian"



RCMP armed assault on Wet'suwet'en Checkpoint in January 2019.

‘police prepared to shoot’ continued from page 16

egy sessions, reports filed after the raid and audio and video files.

One document noted that the Wet’suwet’en possessed “**firearms for hunting/sustenance**” but police intelligence indicated that there was “**no single threat indicating that [land defenders] will use firearms**”.

An RCMP spokesperson declined to comment on the specific content of the documents, saying they were merely carrying out a December 2018 injunction against people who interfere with the CGL pipeline.

“During the planning for the enforcement of the court-ordered injunction, the RCMP took the remote location of the Morice River Bridge into account and ensured that enough police officers were present in the area to keep the peace,” the spokesperson said. ***“We also took into consideration the unpredictable nature of what we could face in the remote area, and so we moved additional police resources including members of the tactical and emergency response teams to provide support.”***

The revelations come as the Wet’suwet’en camps brace for a provincial supreme court ruling on an injunction applied for by the pipeline builder TC Energy (formerly TransCanada), which seeks to permanently restrict the Wet’suwet’en from blocking access to pipeline work sites.

The pipeline would run from the Dawson Creek area of northern British Columbia to a facility near Kitimat on the Pacific coast. CGL has begun road-building and clear-cutting on the right-of-way, and the company intends to start construction in early-2020.

Founded in 2009, Unist’ot’en camp was the first among a constellation of Indigenous-led uprisings against fossil fuel pipelines in North America – including Keystone XL, Trans Mountain, Enbridge Line 3, Dakota Access and Bayou Bridge.

Like most Indigenous people in British Columbia, the Wet’suwet’en have never relinquished their land to the Canadian government by treaty, land sale or surrender.

In a 1997 ruling, the supreme court of Canada determined that aboriginal land ownership had never been given up across the Wet’suwet’en’s 22,000 km sq of territory.

Wet’suwet’en leaders say they are defending their right to protect themselves and future generations from irreparable harm. The pipeline would run directly beneath the Morice River, a river system several municipalities rely on.

The documents show that ahead of the raid, the RCMP deployed an array of surveillance, including heavily armed police patrols, a jet boat, helicopter, drone technology, heat-sensing cameras and close monitoring of key land defenders’ movements and social media postings.

Police established a “**media exclusion zone**”, blocking reporters from accessing the area. They took care to hide their carbine rifles on the approach to the roadblock because the “**optics**” of the weapons were “**not good**”, according to one of the documents.

The documents also show close collaboration between the RCMP and TC Energy: police officers attended company planning sessions and daily “**tailgate**” meetings, and were privy to CGL’s legal strategy.

The RCMP were prepared to arrest children and grandparents: “**No exception, everyone will be**

‘police prepared to shoot’ continued from page 17

arrested in the injunction area,” a document reads. Another makes reference to possible child apprehension by social services – a troubling disclosure given the violent history of residential schooling in Canada and the disproportionate number of Indigenous children currently in the child welfare system.

“The police are here to support the invasion of Indigenous territories,” said Tlingit land defender Anne Spice. **“It is what they’ve always done. Now, they watch us when we travel to pick berries. They ‘patrol’ the roads where we hunt. They harass us and profile us under the guise of ‘public safety’.”**

Since the January raid, an RCMP detachment known as the Community Industry Safety Office has maintained a large presence in an effort to forestall any resistance to pipeline construction.

Armed RCMP officers can be seen patrolling the area, and three police trailers are tucked away in the woods alongside the access road. Drones and helicopters often circle overhead. CGL has also retained two private security firms that track Indigenous people’s movements.

According to the RCMP spokesperson, the police detachment will remain in place in Wet’suwet’en lands **“as long as deemed necessary”**.

The RCMP Community Industry Response Group (CIRG) has also recently been deployed to monitor and suppress Indigenous people fighting the proposed Trans Mountain tar sands pipeline, which would pass through a separate area of British Columbia and which officially began construction last month.

One of the Gidimt’en land protectors, Molly Wickham (Sleydo’), from the clan’s Grizzly House, described the CIRG detachment in her people’s territory as a violation of **“free, prior and informed consent”** between a settler state and Indigenous people -- a principle enshrined in the United Nations Declaration on the Rights of Indigenous People.

“What I’ve witnessed over the last year is not only violent oppression by RCMP and the state on 7 January, but the continuing occupation of our territories and surveillance of our people and camp by CIRG,” she said.

The RCMP’s suppression of Indigenous dissent against resource extraction is rooted in its founding as a paramilitary entity 150 years ago.

In the late 1800s, the RCMP (formerly the Northwest Mounted Police) carried out surveillance, violent displacement and relocation of Indigenous peoples onto reserves, and the forcible removal of Indigenous children from their families in order to place them in residential schools. Advocates say it was the police force which enabled the Canadian government to seize Indigenous homelands and undermine Native sovereignty.

More recently, the Canadian state has thrown its national security apparatus behind oil and gas development – often directly at Indigenous people’s expense.

The 2015 Anti-Terrorism Act, Bill C-51, sanctions the criminalization of Indigenous environmentalists by enhancing surveillance and legal powers against any potential interference with Canada’s **“critical infrastructure”** or **“territorial integrity”**. Land defenders such as Freda Huson

‘police prepared to shoot’ conclusion from page 18

have been identified in RCMP intelligence reports as “**aboriginal extremists**”.

Despite the onset of winter, Wet’suwet’en land defenders remain at the camps to protect their lands and waters. As construction crews dynamite the land in preparation for laying pipe, and RCMP and private security forces patrol the territory, they trap for food and build new cabins.

“We will continue to resist, to insist on respect for our way of life,” said Spice.

• This article was amended on 30 December 2019. An earlier version described “**lethal over-watch**” as “*a term for deploying snipers*”. To clarify, it describes the deployment of an officer who is prepared to use lethal force, who may or may not be positioned as a sniper. An earlier version also included the quote “**sterilizing the site**” from an RCMP record. The word “**the**” does not actually appear in the record. [Reprint courtesy of THE GUARDIAN from a December 20, 2019 online article]



Wet’suwet’en Hereditary Chiefs

SUMMARY OF ISSUES FOR FIRST NATIONS OUTSIDE OF BCTC PROCESS AND ACROSS CANADA

In June 2014, the Supreme Court of Canada issued its Tsilhqot'in decision on Aboriginal Title that:

- Re-Affirms the principles & tests in previous SCC decisions, including **Delgamuukw-Gisdayway** and **Haida** decisions.
- Sets out a framework for “**progressive**” recognition of Aboriginal Title from “**assertion**” to “**establishment**” of Aboriginal Title.
- Maintains “**Doctrine of Discovery**” in finding that the “**radical or underlying title to all the land**” acquired by Crown.

The Tsilhqot'in decision also maintained the burden of proof on the group asserting Aboriginal Title:

[50] The claimant group bears the onus of establishing Aboriginal title. The task is to identify how pre-sovereignty rights and interests can properly find expression in modern common law terms. In asking whether Aboriginal title is established, the general requirements are: (1) "sufficient occupation" of the land claimed to establish title at the time of assertion of European sovereignty; (2) continuity of occupation where present occupation is relied on; and (3) exclusive historic occupation.

Federal Response of Tsilhqot'in—Termination!

In September 2014, the then federal Minister of Aboriginal Affairs, Bernard Valcourt issued an “**interim**” policy entitled “**Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights**”.

The “**interim**” policy is merely a restatement of previous federal section 35 policies regarding extinguishment of Aboriginal Title and municipalization of Indian Act Bands.

At the same time the “**interim policy**” was released the Harper government appointed a Vancouver lawyer and federal claims negotiator, Douglas Eyford, as a “**Ministerial Special Representative**”. Eyford announced an engagement process Sept. 2014, resulting in the release of an “**Engagement Report**” with 47 Recommendations released on April 2, 2015.

The Eyford Report noted there are:

- 14 Comprehensive land claims negotiations outside of British Columbia.
- 8 Trans-boundary (NWT & Nunavut) negotiation tables.
- 53 Negotiation tables in the British Columbia treaty process.

This Eyford Report did not give a number to how many groups refuse to negotiate under the federal policy “**framework**” (Comprehensive Land Claims/Self-Government).

‘Aboriginal Title Issues’ continued from page 20

Trudeau Government Post-Tsilhqot’in Response—Divide & Rule

On September 4, 2019, the Government of Canada, the Government of BC and the First Nations Summit officially endorsed the “**Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia**”, which the three parties have jointly developed in secret, excluding the Union of BC Indian Chiefs, its member bands and First Nations in regions outside of BC who hold Aboriginal Title across Canada.

The **2019 BC Treaty Negotiations Policy** maintains the **British Columbia Treaty Commission (BCTC) process**, which is the delivery system in BC for the federal **Comprehensive Land Claims Policy** for the federal and BC governments to obtain “**certainty**” over Crown Title by obtaining essentially the surrender of First Nations to asserted Crown Title and sovereignty, a Crown objective for the past 256 years.

Following the SCC **Calder** decision in 1971, in 1973 the federal government announced a **Native Claims Policy**, establishing two parts to the “**land claims**” policy: **Comprehensive Claims** to obtain the extinguishment of uncaded Aboriginal Title across Canada and **Specific Claims** to settle outstanding lawful obligations regarding illegal disposition of Indian lands or trust funds.

In 1975, the first **Comprehensive Land Claims Settlement Agreement** was signed in Canada, the **James Bay Agreement** in Quebec. The **Crees of Quebec** agreed to extinguish their Aboriginal Title in exchange for benefits under the Agreement.

In 1983, following the adoption of the **Constitution Act 1982**, an amendment to **section 35** was made to add: “(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.**” [emphasis added]

This 1983 constitutional amendment was added through the lobbying efforts of the **Grand Council of the Crees of Quebec (signatories to James Bay Agreement)** and the **6 Actively Comprehensive Claims Negotiating Groups: Nisga’a, Council for Yukon Indians, Dene-Metis, Tungavik Federation of Nunavut, Council Attikamekw-Montagnais, Labrador Inuit Association.**

The **1983 amendment to section 35** constitutionalized a legal distinction between historic pre-1975 Treaties with Great Britain and the post-1975 “**Modern Treaties**”, which placed the burden of proof on an Aboriginal group asserting Aboriginal Title to prepare a “**Statement of Claim**” under the **Federal Comprehensive Land Claims Policy (CCP)** criteria. The main purpose of the **CCP** was to obtain extinguishment of Aboriginal Title.

From the beginning of the **1973 Comprehensive Land Claims Policy until 1990**, there was a cap of **negotiating only 6 comprehensive claims at a time**. Thus a waiting list formed, particularly in BC as the **Nisga’a Comprehensive Claims Negotiations** dragged on until 2000.

In 1990, following the “**Oka Crisis**” the federal government removed the cap on negotiating only 6 Comprehensive Claims at a time.

In 1991, a Report of the **British Columbia Claims Task Force (1991)** made 19 recommendations that led to the signing of the **1992 British Columbia Treaty Commission Agreement** establishing the **BCTC process**.

‘Aboriginal Title Issues’ continued from page 21**2019 BC Treaty Negotiations Policy**

The **2019 BC Treaty Negotiations Policy** is the first post-**Tsilhqot’in** policy regarding Aboriginal Title & Rights and maintains the problems with the **BCTC process**, particularly for those First Nations who never agreed with Canada’s Comprehensive Claims extinguishment of Aboriginal Title policy.

Even the Assembly of First Nations recognizes that:

The federal implementation of Canada's Comprehensive Claims Policy (CCP) has led to three classes of Aboriginal Title First Nations:

- i. First Nations that have entered in final comprehensive claims agreements;***
- ii. First Nations that were or have been in comprehensive claims negotiations; and,***
- iii. First Nations that have never agreed to negotiate under the federal CCP. [Source: AFN Special Chiefs’ Assembly Resolution no. 47/2015]***

The issue of “**overlap**” or shared territories between Aboriginal Title First Nations in classes i, ii, and iii, as referenced above is a problem stemming from the federal and B.C. creation of the **BCTC process** in 1992, which simply allowed “*statements of intent*” along with maps from groups that were not required to do any research (oral & written) to back up the maps, as groups in other regions of Canada had to do through the federal **Comprehensive Land Claims Policy** in developing a “*statement of claim*”.

The **BC Treaty Negotiations Policy** perpetuates the fundamental problems arising from the federal **Comprehensive Land Claims Policy**, and the **1992 BCTC process**, including “**overlap**”, particularly between Indigenous Nations and communities who hold Aboriginal Title vs. Modern Treaty groups, such as the Nisga’a Nation, which the 2018 Supreme Court of B.C. decision in the **Gamlaxyeltxw v. British Columbia (Minister of Forests, Lands & Natural Resource Operations)** case, addressed regarding moose hunting in an “**overlap**” area with Gitanyow.

It is not just “**overlap**” that is a problem, it is the principles the Policy is based on, lawyers Kate Gunn and Bruce McIvor, wrote an article dated September 18, 2019, entitled “**Recognition without Reconciliation?: The New Rights Policy for BC Treaty Negotiations**”, that “*the new policy continues to implicitly rely on the doctrine of discovery as the basis for treaty negotiations in British Columbia*”. <https://www.firstpeopleslaw.com/index/articles/412.php>

The interpretation of **UNDRIP** by the governments of BC and Canada—particularly with the introduction of **BC Bill 41** and the expected federal Bill on **UNDRIP** during the mandate of the Trudeau minority government—are central to the First Nations Aboriginal Title and Rights in BC and how the **BC Treaty Negotiations Policy** may impact on First Nations outside of the **BCTC process** in BC and across Canada.

Canada’s position regarding the domestication (watering down and re-writing) of **UNDRIP** is set out in the **10 Principles respecting the Government of Canada’s Relationship with Indigenous peoples**, issued in June 2017, by the federal Justice Minister, which refer to “**Canada’s constitutional framework**” and “**Canada’s constitutional arrangements**” as the

‘Aboriginal Title Issues’ continued from page 22

basis of interpreting **UNDRIP** and the **10 Federal Principles** within Canadian domestic law, where the federal principles acknowledge “*self-determination*” on one hand, but then put it squarely under the umbrella of “*European assertion of sovereignty*” on the other. This is in violation of international legal standards!

While the new **B.C. Treaty Negotiations Policy** contains many nice sounding words the **BCTC process** still has many qualifications to negotiations and is still an unequal political negotiation process controlled by the federal and B.C. governments, who retain essentially a veto in the “*co-development*” of negotiation mandates over matters that may affect federal or provincial jurisdiction, within Canada’s constitutional framework.

This includes the **section 35 legal principles and tests** the Supreme Court of Canada has set out over the past 29 years that place the burden of proof on Indigenous communities and Nations asserting Title and Rights and as noted above the new **B.C. Treaty Negotiations Policy** remains based upon the **Christian Doctrine of Discovery**, despite the disingenuous statement in section 16 of the new **B.C. Treaty Negotiations Policy**, which states “*The negotiation of treaties...in British Columbia will be guided by the following...*” [emphasis added]

d. Truth and Reconciliation Commission’s 94 Calls to Action, which call for repudiation of concepts such as the doctrine of discovery.

Section 16 is clearly not an explicit “*repudiation*” of the **Doctrine of Discovery**. The governments of Canada, British Columbia and the First Nations Summit should have relied on the first recommendation of the **1996 Royal Commission on Aboriginal Peoples’ Report**, which was as follows:

The Commission recommends that:

1.16.1 To begin the process, the federal, provincial and territorial governments, on behalf of the people of Canada, and national Aboriginal organizations, on behalf of the Aboriginal peoples of Canada, commit themselves to building a renewed relationship based on the principles of mutual recognition, mutual respect, sharing and mutual responsibility; these principles to form the ethical basis of relations between Aboriginal and non-Aboriginal societies in the future and to be enshrined in a new Royal Proclamation and its companion legislation (see Volume 2, Chapter 2).

1.16.2 Federal, provincial and territorial governments further the process of renewal by

(a) acknowledging that concepts such as terra nullius and the doctrine of discovery are factually, legally and morally wrong;

(b) declaring that such concepts no longer form part of law making or policy development by Canadian governments;

(c) declaring that such concepts will not be the basis of arguments presented to the courts;

‘Aboriginal Title Issues’ continued from page 23

(d) committing themselves to renewal of the federation through consensual means to overcome the historical legacy of these concepts, which are impediments to Aboriginal people assuming their rightful place in the Canadian federation; and

(e) including a declaration to these ends in the new Royal Proclamation and its companion legislation.”

Canada’s courts are in a conflict-of-interest, including the Supreme Court of Canada. Canada bases its assertion of sovereignty and territorial integrity on the racist, colonial **Doctrine of Discovery**, as such the “**reconciliation technique**” in the new **B.C. Treaty Negotiations Policy**, in violation of international legal standards, continues a process of surrender to asserted Crown Title and Sovereignty.

The establishment of the **2019 BC Treaty Negotiations Policy** with only **BC First Nations Summit**, while excluding the **UBCIC**, its member Bands and First Nations across Canada who hold Aboriginal Title is a breach of **UNDRIP Article 27**, which provides:

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process. [emphasis added]

The **2019 BC Treaty Negotiations Policy** also fails to include all of **UNDRIP Article 28**, which provides:

Article 28

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

By Canada and B.C. developing and adopting an exclusive **BC Treaty Negotiations Policy** effectively denies “**a fair, independent, impartial, open and transparent process**” to the **UBCIC** member Bands and First Nations who hold Aboriginal Title across Canada, particularly since the Policy remains based upon the **1991 Task Force on Claims Report and Recommendations** and the **1992 BCTC Agreement**, which were developed before the 2007 adoption of **UNDRIP** by the UN General Assembly.

'Aboriginal Title Issues' continued from page 24

The 2014 SCC **Tsilhqot'in** decision essentially reaffirms the **Delgamuukw-Gisday'way** legal principles regarding Aboriginal Title so the previous work of the **AFN-Delgamuukw Implementation Strategic Committee (DISC)**, Co-Chaired by the late Arthur Manuel, should be reviewed by those First Nations outside of the **BCTC Process** and across Canada who hold Aboriginal Title in assessing the **2019 BC Treaty Negotiations Policy**.

Following the issuance of the 1997 **Delgamuukw-Gisday'way** decision, the following steps were developed for the **Interior Alliance** under the direction of the **Interior Alliance spokesperson, Arthur Manuel**.

Step 1 - Establish the Facts Related to Aboriginal Title:

This involves assembling and assessing the factual evidence required to prove the Aboriginal title. In eastern Canada, the federal government once provided financial support to First Nations so that they could gather and organize their evidence. In British Columbia, since the advent of the **B.C. Treaty Commission process**, this step has been eliminated.

Step 2 - Determine Whether Activity Infringes or Interferes with Aboriginal Title:

This step involves determining whether past, present or proposed actions by other parties stand to infringe Aboriginal title, or interfere with the free exercise of rights flowing from that title.

Step 3 - Can the Infringement be Justified?

At this stage, offending practices, regulations, legislation and actions need to be reviewed and justified.

Step 4 - Resolution:

The Court stated clearly that Aboriginal title can be reconciled with the Crown's presence without requiring extinguishment (except in exceptional cases). This last stage, then, focuses on reconciliation and remedial measures, with the objective of recognizing and affirming Aboriginal title. This could involve compensation for past actions; agreements on consultation-consent; new arrangements for jurisdiction over lands and resources ; resource revenue sharing, etc., etc.

This process is quite different from the existing Canada's Comprehensive Claims policy. There is a **Delgamuukw-Gisday'way** framework to implement, the question remains, is there the political will on the part of First Nations, and on the part of governments?

ANNEX 1

Mapping the "Sufficient, Continuous and Exclusive Tests

By David Carruthers, *BES, MSc, MCIP, RPP*
September 14, 2015

It's been over a year since the Supreme Court of Canada's unanimous ruling on the **Tsilhqot'in Case**. When I read the decision, the words of Chief Justice Beverley McLachlin jumped off the page. In describing the test for Aboriginal title, she stated that it [occupation] "**must be sufficient; continuous (where present occupation is relied on); and it must be exclusive**" (para 25). As a land use planner and cartographer, these words were read as a challenge.

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Thinking about the communities where I work, many of whom are in the comprehensive claims process, I wondered **what research products would be needed to meet these three tests**. Once this research was assembled, could we reach a reconciliation of title and avoid the Crown’s policy of extinguishment?

I’ve been working for almost 20 years on Aboriginal land management issues with a wide range of experts throughout Canada, on various pieces of land claims research. But I haven’t come across a single published study that outlines the **must-have shopping list of research products to help in title determination**.

I recently spoke with a mentor of mine, Dr. Doug Elias, and asked him specifically about this. He had a lot to say on the topic. Dr. Elias, retired professor in the Faculty of Management at the University of Lethbridge, Alberta, has worked on Aboriginal title issues across Canada since the late 1960’s.

Elias told me that the three tests have been around since the 1980’s when the **Baker Lake** ruling was decided. But the research needed to meet these tests has been quickly evolving. [He published a paper](#) on the topic for the Ontario Model Forests in 2002 – which served as a good primer to get me started. It’s a bit outdated, but certainly worth the read.

In our conversation, Elias first advised me not to oversimplify the onerous task in meeting these tests. “**A mountain of research is needed**”, he said. This, despite Chief Justice McEachern in **Delgamuukw** cautioning that “**there are limits to how much evidence a party may adduce, and a trial must always be confined within reasonable limits**.” Elias noted that research needs to be tailored to each community on a case-by-case basis. But there are some overarching or core research pieces that should be quite common between cases. And **many research products can be used to address more than one of the three tests**. Here’s a summary and a few notes for each:

1. Use and Occupancy Study

A good use and occupancy study might be one of the most important pieces of research to address the three tests. These studies carefully map out where harvesting of plants and animals take place, where there are habitations and fixed cultural sites and where trapping and cultural activities occur within a harvester’s living-memory. When done well, these studies demonstrate, in a very defensible way, where and how the land is being used. A great resource for these studies is [Living Proof](#) by Terry Tobias. These studies can also be tweaked to incorporate a time element to capture frequency of use (how often, when, etc.), and changing patterns of use over time, which may prove helpful in dealing with the sufficiency test. But mapping intensity and change of use can be expensive and a very complex undertaking. See for example the [Subsistence Mapping of Nuiqsut, Kaktovik and Barrow](#) study for what might be involved in designing a study to document subsistence patterns and measuring changes in those patterns over time.

2. Harvest Study

While a use and occupancy study demonstrates where and how the land is being used, a harvest study answers the question, **how much is being used?** In simple terms, these studies track seasonal harvesting amounts on a house-by-house basis and convert pounds of meat, berries, firewood, etc. into current market values. Of all the studies, the harvest study might prove to be the most time intensive and difficult to complete. I believe, however, that a rapid-appraisal technique can be used to approximate harvest amounts, producing enough information to help move forward in dealing with the sufficiency test. Research results can also be used when negotiating impact benefit agreements or when developing mitigation strategies to address the displacement of harvesters.

3. Toponym or Place-Name Study

Naming places is an act of claiming sovereignty, a key reason why the Crown almost entirely deleted or

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replaced Aboriginal place names from Canada's topographic maps. Peter Di Gangi, consultant and Director of Policy and Research with the Algonquin Nation Secretariat (ANS), has documented Quebec's "**Toponymical Imperialism**" between 1911 and 1928 where Quebec's Geographic Names Commission removed "**barbarous**" indigenous place names and replaced them with "**cultured**" French toponyms. I've since worked with the ANS to build a tool to help put Algonquin names back on their maps through a site titled, [The Land that Talks](#).

But naming places is more than just an act of planting flags. Indigenous place-names can help to document kinship and family connections to the land and reveal a profound understanding of local ecology which is important in all three tests of title.

4. Indigenous Knowledge (IK) or Traditional Ecological Knowledge (TEK) Studies

This is a tough piece of research. When done well, these studies can help to document sufficiency and continuity of title by demonstrating deep knowledge of place, based on experience, oral history and cultural traditions. TEK research is helpful to predict outcomes of change: how, for example, will animal behavior change given a specific change in the environment (mine, oil sands, climate change, etc.). It can also help to document laws or code of ethics in managing resources, all important for the sufficiency determination.

But these studies are difficult to pull off, or pull off well. In a recent conversation with Terry Tobias, author of *Living Proof*, Terry noted that very few TEK studies published in Canada have documented their methods and that most studies have produced questionable results when it comes down to the reliability or replicability of their findings. Elias agrees. He said that, despite just about every land and wildlife program in Canada incorporating traditional knowledge in their policy statements, these organizations have very little to say about best practices in how to do so. "**Platitudes without practice**". You can see this with [Ontario's Moose Management Policy](#) or [Canada's Species at Risk Act](#).

A good recent resource on the subject is a report by Peter Armitage and Stephen Kilburn, titled [Conduct of Traditional Knowledge Research in the Inuvialuit Settlement Region](#). One of the guiding principles from this report in designing a TEK or IK study is to "use proper social science research methods, set clear research objectives and restrict research topics so these can be achieved in the time and with the resources available". Good advice.

5. Documentation of Customary and Traditional Laws

The courts have asked claimants to make their "**Aboriginal systems of governance**" and laws known. Elias notes that there are no real best-practices in this field of study but skilled ethnographers should have no problem in pulling this research together. The outcomes from this research will not only help with the sufficiency determination for title, but can also be used for joint or co-management negotiations governing **how** lands are managed.

6. Archaeology, written history and ethnography

This might be the most straight forward research component, but may entail the most amount of work. Elias describes this work as a way to summarize all available research into a narrative that demonstrates the extent of a claimant's territory since the time of contact (and before), the extent of exclusivity and overlap with neighbours, and a record of the claimants' changing social environment. The research also demonstrate that the claimant is an '**organized society**' and that this society is connected to land. Pretty much all three tests of title will rely on the narrative from this research.

7. Genealogy

Genealogy studies can fall under general ethnographic research, but I've separated it out here because it should be tackled as a stand-alone piece of research. These studies start by asking, "**who are today's members?**" and work backwards from there. This helps to demonstrate the degree to which the commu-

Advancing the Right of First Nations to Information

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nity has maintained its continuity of membership over time. This is important for the continuity and sufficiency tests. According to Peter Di Gangi, this research is very powerful when connected to the use and occupancy research to demonstrate continuity of use.

8. Alienation Study and State of the Territory Report

I added this to the list based on my own experience in working on land issues. White spaces on maps are often interpreted as “**abandoned**” or “**surrendered**”. Once we inventory third party use and cumulative impacts in a territory, however, we get a clearer sense of why harvesters may have gone elsewhere (e.g. mining, forest development, aggregates, oil and gas, Crown dispositions, non-native harvesting and tourism, etc.). These studies are also important in negotiating interim relief while Title is being resolved. And these studies can help in determining compensation for impacts.

From this list we can clearly see that mapping is a central tool to record, package and tell the story of Aboriginal Title. We can also see that whenever a wealth of information is collected, information management standards are needed to organize and safeguard the research products. And of course, good research doesn't speak for itself – it needs to find its way into the hands of a strong leadership, skilled negotiators and experienced legal advisors.

And what about a budget and timeline to pull all of this research together? I might go out on a limb here. With some legal time thrown into the mix, I would hazard to guess that it would be around \$750,000 to \$1,000,000 and a minimum of three to five years to pull together, depending on the community and complexity of the case. This could certainly be more if a full harvest study is undertaken, not just a rapid appraisal study. Either way, this is a significant investment, especially when the outcomes for title determination aren't guaranteed.

But if done well, these research products can be used for other applications like helping to inform consultation and accommodation work with the Crown. And for education, cultural rediscovery and outreach. This alone to me is a good return on investment.