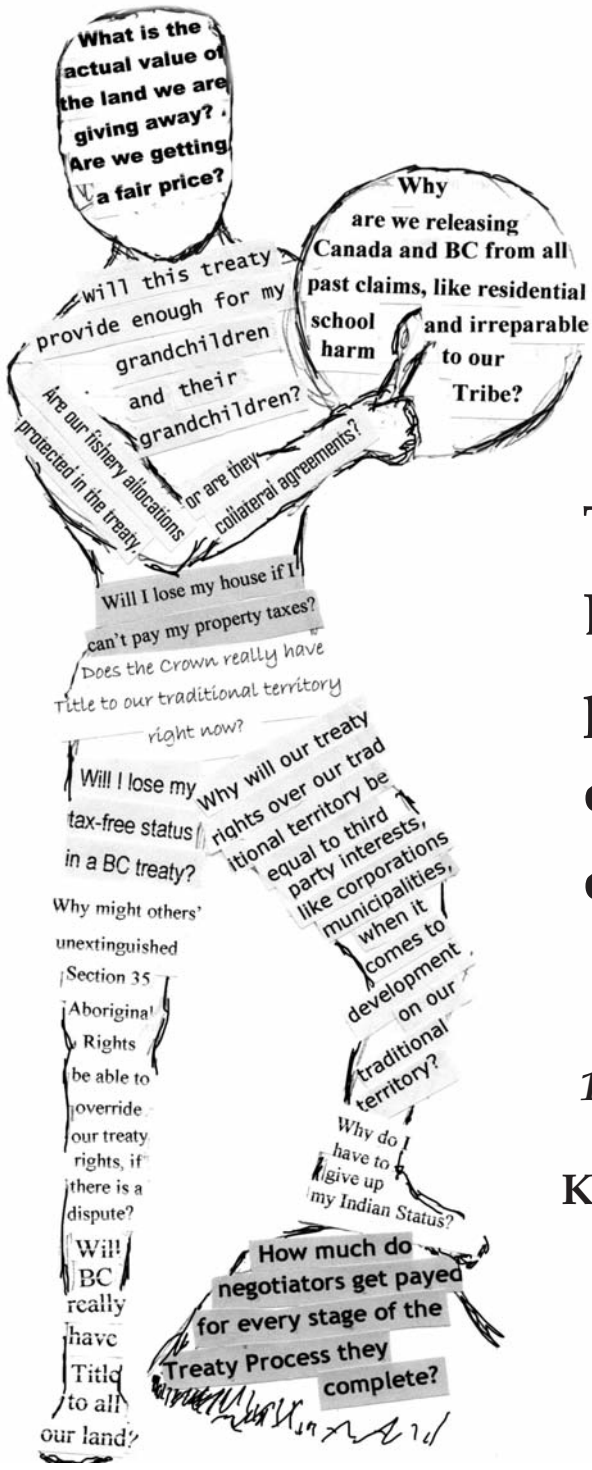

The BC treaty process: dealing in duress

15 articles
by
Kerry Coast

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June 2010, The St'át'imc Runner

BC's got time.

Ottawa never feels further away than when a herd of local headlines bleat about "bilateral" "agreements" between indigenous nations and the province of British Columbia. Haida, Treaty 8, even St'át'imc, over the past month alone have caved over what they have none of, and what BC has in spades.

There's no time. People are out of work. Ottawa doesn't pay. If time is money, then there really is no time.

BC has the both. And how did they get it? They bought the one with the other, really, and they took the money from the land. But you can only have bilateral agreements between equal powers - nation to nation. Not nation to province.

When people can't start businesses on Reserve, when Indian Bands or First Nations don't actually own any real property, and nor do their members, because that is under BC's legislative lock and key, or actually Canada's, if you read the fine print, communities do a lot of things to pay the bills, to keep people in houses, to pay for the health department.

While Ottawa cuts back on funding to community and economic hubs like Friendship Centers, BC jingles the change in its

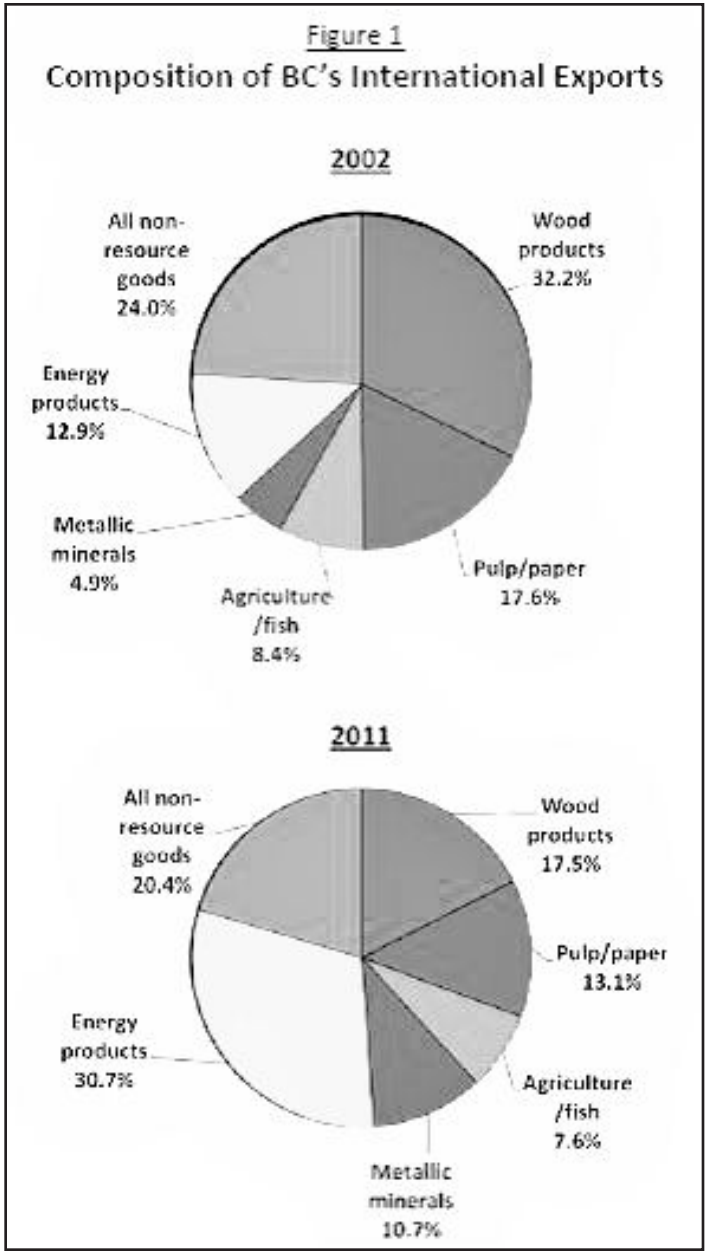
pockets flowing from mineral, forest and water tenures. As long as BC is paying for itself, welfare to the Reserves is comparatively cheap for the feds.

While First Nations require corporate partners to access their own land's wealth, much of industry turns down partnership, preferring to pay some small levy in the form of a Benefits Sharing arrangement. (BS)

They don't provide the BS because they are nice, they pay it because BC and Canada can no longer deny, after *Delgamuukw,* Supreme Court of Canada 1997, identified aboriginal title as a property right to the land itself, that indigenous nations do undeniably own the land developers are interested in, or, at minimum, have a very likely claim that would be best kept out of court.

Most aboriginal communities cannot afford court justice anyway, and many of their strong cases are never followed up. And they can't afford to wait for that change. There's no jobs. Maybe that's why so many signed on to BC Forest and Range Agreements - the province's scheme followed up *Haida,* 2004, where a Supreme Court of Canada judge rule that government actors must consult and accomodate aboriginal people whenever government-sanctioned actions, like logging in a Cutting Permit, might impact aboriginal rights. In the FRA, First Nations signed on the bottom line to admit that a per-capita annual stipend would suffice to compensate their economic interests in the land being logged for five years. And they didn't have to prove title.

Would you like to go to court to prove title? That will be seventeen years, please. And $20m in legal fees.



Figures from the Business Council of British Columbia, 2012

You can see BC leveraging their time with money, their money with time. The Site C hydro dam is coming, and BC has the credit rating to hire all the consultants, lawyers and scientists it needs. And where did they get the credit rating? From the lands and resources they claim title to, which they use as collateral.

But how did they get title to the lands and resources? Well they didn't, but they have a handy clause in their financial statements, which is that the BC Treaty Commission has identified and is paying off that title issue, one Final Agreement at a time. And, according to BC, two-thirds of aboriginal people in BC are represented in the treaty process.

62 PROVINCE OF BRITISH COLUMBIA
PUBLIC ACCOUNTS 2005/06

Notes to Consolidated Summary Financial Statements for the Fiscal Year Ended March 31, 2006—Continued

25. Contingencies and Contractual Obligations

(a) GUARANTEED DEBT

The authorized limit for loans guaranteed by the province as at March 31, 2006 was $129 million (2005: $168 million). These guarantees include amounts where indemnities have been made for explicit quantifiable loans. Guaranteed debt as at March 31, 2006, totaled $111 million (2005: $142 million). See Statement of Guaranteed Debt on page 81 for details.

Aboriginal Land Claims

Treaty negotiations between the province, Canada and First Nations commenced in 1994. The province anticipates these negotiations will result in modern–day treaties defining the boundaries and nature of First Nations treaty settlement lands. As of March 31, 2006, there were 47 treaty tables in various stages of negotiation, representing two–thirds of the aboriginal people in British Columbia.

Maybe 66% were involved at one time, but active treaty tables in BC are just 20% of First Nations, according to BCTC's 2009 report. The others are still technically "involved," because they can't afford to formally withdraw and face the negotiating loan payments that would come due at that moment.

The BCTC slipknot of "Stay in or pay up" is so illegal that the UN Committee for the Elimination of Racial Discrimination had only to glance at a complaint from Xaxl'íp, last summer, for Canada to produce a letter assuring the CERD that those loans were in abeyance. They hadn't told Xaxl'íp that.

But that is how they buy that time, that credit rating, and keep the revenue streaming - and buy more time. And keep the legislative lock on the land: no bank loans to people who don't own land. And nobody in Canada has proven they own aboriginal title land. They keep trying: 17 years, $20m and a 50/50 chance the lawyer phrased the title claim correctly.

So maybe it's time to change the locks. Put away the key. Aboriginal title is supported by international Covenants, Conventions and Declarations; by Canada's Supreme Court and its Constitution, and by Indigenous Peoples generally. Why make deals with a province that spends billions to extinguish that title? Why add to their stack of customary law evidence, dealing under their legislation?

But who can afford to forego those deals and live without a little cash flow in the meantime? BC can; indigenous communities can't. And the general public seems to be quite satisfied with this.

Summer 2009, The BC Treaty Negotiating Times

Consultation standards in BC
- or -
The trilogy of despair

Halfway River, 1999, *Taku River Tlingit*, 2005, and *Douglas*, 2007, have brought consultation standards spiraling down to a single unreturned phone-call.

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

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

Halfway River people contested that logging had infringed their way of life to an unjustifiable extent. The *Halfway* case found the

province free to infringe their Treaty 8. *Halfway* also concluded in an obligation on the part of Aboriginal peoples to participate in the consultation process, and not frustrate it with such "unreasonable" demands as those of sustainability, regardless of the foregone-conclusion nature of such BC-led procedures.

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

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

The Department had faxed and telephoned invitations to meet on the subject to the Cheam Band prior to the sport openings. Cheam had not been able to participate in the processes on the

schedule DFO offered. Nevermind, the fact that DFO offered them meetings fulfilled their duty to consult, ruled the judge. And since the Department has the privilege of managing the fishery, no notices of later management changes were necessary when the DFO decided how to accommodate the fishing right.

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

January 2007, The St'át'imc Runner

Negotiating under duress: *Pitawanakwat*

Are treaty and land negotiations being carried out by First Nations under duress? Is there an undeclared war against Indigenous Peoples?

A United States District Court held in Oregon dismissed Canada's extradition request based on the fact that the Defendant, OJ Pitawanakwat, had committed crimes "of a political character." The Extradition Treaty between the USA and Canada does not permit release of political prisoners.

At Gustafsen Lake in 1995, a Sundance ceremony turned into a Canadian military operation. The Sundancers refused to leave the site on sovereign, unceded Secwepmc land. The RCMP and then the military were brought to force the people's removal from their own tribal territory. Over 77,000 rounds of ammunition were fired on the camp.

There is no treaty or other agreement between Secwepmc and Canada to legitimize Canada's or BC's presence in Secwepmc. The defendant and Defenders were "attempting to alter their political relationship with the Canadian government by regaining the right of self-government over their own lands," wrote Justice Stewart in her denial of the extradition request.

Is this military force what awaits any traditional people who wish to use their own lands as they see fit? Is negotiation the only avenue, and a limited one at that, for gaining use of the territory at the whim and will of the illegal occupier? If so, it would seem that any and all negotiations continuing at this time do so under threat of open war.

In the extradition hearing, Justice Stewart allowed as evidence the Defenders' assertion that "the tribes in British Columbia never ceded or sold their lands to the Canadian government and have a right to occupy their land, rather than settle land claims through peaceful negotiations with the governments of British Columbia and Canada." There was certainly no dispute of this by Canada, as it is the undisputed truth. If it weren't, Canada would have a deed or a treaty or a letter showing a sale or treaty or agreement, but they can produce no such document. Without that agreement, they are no more than trespassers.

Canada has admitted to escalating the confrontation between a cattle rancher and the campers by providing the armed presence of 300 police, military personnel, six armoured personnel carriers, giving 'shoot to kill' orders, using C-4 explosive, or land mine, and forcing the Defenders into a defensive posture, after which point many people were charged and convicted of weapons offenses. Still Canada insisted that the defendant Pitawanakwat should be extradited because of common criminal activity. The extradition request was denied by Oregon District Court, allowing the defendant protection under the Extradition Treaty's political exception clause:

> Article IV (1)(iii): "Extradition shall not be granted in any of the following circumstances: … (iii) When the offense

> in respect of which extradition is requested is of a political character, or the person whose extradition is requested proves that the extradition request has been made for the purpose of trying or punishing him for an offense of the above-mentioned character."

Inside Canada, the Canadian media, police and military were involved in what the US Judge Janice Stewart accepted was "a complex web of inter-connected political agenda." The events surrounding the Gustafsen Lake stand off in the summer of 1995 were misreported by the press, as misinformed by a negotiations / media relations team led by Mike Webster, who was the government 'negotiator' in the Waco massacre a few years earlier in the USA. Justice Stewart recorded in her Opinion and Order that "the defendant had submitted uncontradicted evidence that 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."

The defendant was seeking refuge in the United States. He was arrested in Oregon on June 20, 2000, pursuant to a warrant of arrest seeking his extradition to Canada. Pitawanakwat had served nearly one year in custody, was released on parole, and fled to the USA against his probation orders.

The Canadian government wanted Pitawanakwat extradited to serve the remaining 702 days of his three-year sentence of imprisonment imposed in 1997 for his convictions for one count of mischief causing actual danger to life and one count of possession of a weapon for a purpose dangerous to the public peace.

These convictions come from his part in the 1995 Gustafsen Lake incident near 100 Mile House in Secwepmc.

Pitawanakwat's situation was compared favourably with many famous extradition hearings which favoured the defendant, including Irish Republican Army incidents, Palestinian Liberation Organization actions, and other instances of protest from occupied nations.

Testimony from witness Professor Anthony Hall, an instructor of First Nations Studies in Canada, supplied that Canada's army has been called to action only three times since World War II: during the Quebec Independence Movement, 1970; at Oka in 1990, and at Gustafsen Lake in 1995. Gustafsen was the largest Canadian military operation on land since the Korean War. The scale of the event combined with the similar uprisings across Canada at that time - particularly at Ipperwash, provided a context in which Justice Stewart was able to identify that Pitawanakwat was indeed engaged in a widespread political dispute.

The Canadian government argued that it was a "land claims dispute," which position the Cariboo Tribal Council supported. Justice Stewart reasoned that "to characterize the Ts'peten Defenders [of Gustafsen Lake] as engaged in a mere land dispute or disagreement with government policy is to trivialize the nature of the controversy. Control over land is one of the primary reasons for the existence of a government and often is the cause of wars between nations." The judge also acknowledged the distance that the Ts'peten Defenders placed between themselves and the elected Band Councils.

In January of 1995 the Native Sovereignty Association, members of which were present at Gustafsen Lake, had petitioned the Queen of England, the Canadian Head of state, "to restore the jurisdiction of the native people over their 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." The petition was later followed by further requests to the Attorney General of BC, Ujjal Dossanjh, the Premier, Mike Harcourt, the Governor General, and again to the Queen of England when the others refused to carry out the sworn duty of their official positions - to call for an English court to hear the conflict.

The political event had many political consequences. One of them was undoubtedly the signing of the Nisga'a Final Agreement, which followed quickly after the Gustafsen Lake trial. The Nisga'a received many one-time limited offer promotional 'side-deals,' including half a billion dollars in hospital, school and road construction, to become the first signatories of a BC treaty.

"Having studied the matter it is my expert opinion that the charges and convictions placed on Mr. Pitawanakwat were manifestly of a political character. Indeed, the inter-related standoffs at Ipperwash and Gustafsen Lake became extremely charged political events, where the police, the military and many of the media reporters covering the event became ensnared in a complex web of inter-connected political agendas.

These agendas involved efforts to manipulate public perceptions to safeguard a fragile status quo in about 50 treaty negotiations then and now underway in British Columbia involving fundamental readjustments in the relationship between Aboriginal and Crown land title over the largest mass of this resource-rich province.

These negotiations are very political exercises, whose very existence serves to illustrate that the Aboriginal land title in British Columbia is an extremely charged subject of political controversy, where the future disposition and rights to almost unimaginable natural-resource wealth hangs in the balance."

- Professor Anthony Hall, University of Lethbridge, Alberta, Canada, testifying at the Pitawanakwat extradition trial, Oregon County, USA, 2000.

April 2007, The St'át'imc Runner

Nisga'a now

Interview with Rose Doolan, Kincolith, Nisga'a

"We lost our aboriginal title. Kincolith lost 100% of their ancestral lands. 8% was given back in fee simple title. Our Status is gone. It's taken quite a bit of our dental coverage."

Rose Doolan lives in Kincolith, Nisga'a. She wrote letters of support when she heard the Lheidli T'enneh had voted against their Final Agreement.

"Whenever we asked questions about it, they would shut us up. They would tell us to sit down. One person would answer the question and say, 'He'll answer the question.' Then that one would say, 'Oh, someone is going to answer that.' Then another one would say, 'Oh, that per- son can answer that question.' We came out of those meetings more confused than when we went in. Once they drummed out Mercy Thomas in a meeting in Terrace. We want to speak out at those meetings, but we don't want to upset our Elders. One of young men went to a meeting and he raised a bit of a ruckus, and the Elders were upset with that, but he had a message to bring, and they wouldn't listen to us.

"They payed the Elders $350 a day to sit in those meet- ings and keep quiet. After the treaty was signed, and they payed them the $15,000 that was promised, they dumped them. We have been sitting in on our Elders'meetings, and they're not doing too well.

"They're preparing for 2012 when they're going to start taxing us. I don't know how they're going to do that, because the majority of people here are not working. They have $185 a month. It's like that in all four villages. There's only a few that aren't like that, and they work for the Lisims Government. Some of them that work there now were against the treaty, but then they get these huge cheques, they've got jobs, and they say, 'I'm getting $4,000 a month,'and they say, 'this is OK.' I know they're going to run out of money before time.

"They have started selling off rights to the land. They are forging Elders' signatures to sell ancestral lands. They were handing out certificates to our Elders for 1,500 shares. It's the Nass Valley Gateway Project, and Mineral Hill Industries. That's going to come to nothing, $300 or less after the broker's fees. Men were here about a month ago, handing out shares. My husband just turned 65 years old. A lady from New Aiyansh brought my husband's 1500 shares and his certificate and the packages and said, 'Don't worry about signing these, we already signed them for you.' They're mining in Chief James Mountain's homelands, and others have interests there. Last year all our young men left to go to Alberta for work. With this treaty we were supposed to become self-sufficient.

"Our Chief Councilor has stated in public that the government would not tax poverty. So I wasn't sure if this is the vision they

have for us? To keep us in poverty? In 2012 they will start the house tax. They didn't explain that to the people, they just flashed around how much the Elders were going to get and how well-off we were all going to be.

"When they gave the books to the people, for the Final Agreement, the people couldn't understand most of the words in there. Some people didn't receive theirs until two weeks before the assembly. We didn't get ours until we got there.

"A lot of the people who voted for it, they thought it was going to be a real good treaty. They're just finding out now that they're losing their identity as Status Indians. They're just finding out now that they'll have to pay taxes on their own houses."

> In the Nisga'a Final Agreement, the Nisga'a retain title to 1,992 km^2 out of their original claim area of 20,000 km^2 and receive a cash component of $190 million, and $11.5 million to purchase commercial fishing vessels and licences. The land includes 62 km^2 of former reserve lands.
>
> The total cost including treaty implementation, infrastructure and other commitments is quoted at $487.1 million in 1999 dollars, with the federal share being $255 million, according to Mary Hurley, Library of Parliament.
>
> The Nisga'a Final Agreement addresses the issue of uncertainty by exhaustively listing the section 35 rights of the Nisga'a peoples and modifying them into treaty rights. Any rights not set out in the treaty are 'released.'
>
> *- Our Place At The Table,*
> First Nations in the BC Fishery, 2004

May 2010, The St'át'imc Runner

Nisga'a: ten years after treaty

This month, on May 11, is the ten year anniversary of the Nisga'a treaty. BC and Canada have spent a lot of time and money promoting that treaty, which extinguished Nisga'a title.

But what is it really like to live in Green River, New Aiyansh, or Kincolith? How has the treaty changed people's lives, in terms of resource access, education, health care, wealth? A week before the recent election there was a fuel shortage - no gas available for four days. Clearly not everything runs like greased lightning in BC's flagship Treaty Settlement Lands.

Ginger Gosnell-Myers, a Nisga'a Masters student, wrote an oped for the Terrace Standard in the week this March's Presidential election. 2,500 Nisga'a live at home in the Nass Valley, and Ginger is one of the 3,500 Nisga'a who live elsewhere. She wrote, "Young educated Nisga'a like myself are wondering if we could ever find meaningful employment in the Nass or find a house to live in if we did."

Nisga'a have their own school district, fine arts magnet school and K-12 institution, but high school graduation levels have not improved. There are a number of complete post-secondary programs available in the Nass Valley. Still, economic development

and employment rates are among the lowest in the province.

Perhaps the new President of the nation was elected for his zeal on this subject. Mitchell Stevens was elected with 299 of the 1,459 votes cast on March 25, an election in which only 33% of eligible voters cast ballots - for nine candidates. Stevens supported his campaign with statements like: "You should own a hotel in Terrace, Prince Rupert, Vancouver. You should own a casino!" He spoke about the 300,000 cubic meters of water that Nisga'a has as part of its allocation in the treaty: "That's millions and millions of dollars of water running into the salt chuck."

Chief James Mountain, a longtime opponent of the treaty, spoke about the lack of promised change. "I bet if we took a re-vote on this treaty now, ten years later, our people wouldn't vote for it. There's a total division - the haves and the have-nots. The haves buy all the things they want, and big vehicles, and they charge the ones on welfare to go and take them shopping. It hasn't come to a head yet, but people can only take so much."

Employment has only grown in Lisims Government positions, Gosnell-Myers charges. Alternatively, the Nisga'a Lisims website claims: "The primary industries in the Nass Valley are fishing and forestry, which are complemented by employment in the government, education, and healthcare sectors."

The Secretary-Treasurer for Nisga'a Lisims Government recently reported to the people: "On December 23, 2005, the Nisga'a Nation provided to Canada and British Columbia its submission respecting the global funding proposed by the Nisga'a Nation for agreed-upon public programs and services. Canada did not respond..."

Fiscal financing is a part of the treaty, and agreements are renewed every five years. A renewal was due for 2006. The feds responded in 2009, and made a new six year deal for the municipal-style transfer payments- for $57.4 million in 2009/2010. With that money, and what they make in business, the Nisga'a run a hospital, a health center in each village, education, lands, resources, fisheries, infrastructure and social development.

The spokesperson for the Chief Mountain angooskq, the hereditary lands of the house, James Mountain, is concerned about the Lands Transfer Act that will come into place soon. Official communications describe the Act this way: "A Nisga'a citizen who obtains fee simple title to their residential property under the Act will subsequently be able to mortgage their property as security for a loan, or to transfer, bequeath, lease or sell their property, to any person." Says Mountain, "More than half of our people have lived on welfare all their lives. When the Act comes in, they're going to have full responsibility for that piece of land, they can put it up for mortgage. That might be great for some of the young entrepreneurs, but for the one who has always been poor, what's he going to do? Get a mortgage loan that he can never repay, just to have a little money? We see it as the White Paper Policy in action - get the Indians off their land."

Chief Mountain has a court case in progress against the treaty, for the last ten years, and people are moving to support it in number. "Joe Gosnell's brother-in-law signed an affidavit supporting our court challenge because they logged his angooskq and he couldn't stop them." The court case is an attempt to get the land back.

In 2012 the Nisga'a will be paying full taxes. The state of the

economy does not make it look like the government or the people will be able to afford them. Rose Doolan, a Nisga'a Elder, says, "I don't know how they're going to collect, because the majority of people here are not working. They have $185 a month. It's like that in all four villages."

Mountain recalls, "as a child in Kincolith, my cousin was running around yelling, 'We're going to get land claims! We're going to get land claims!' So we've grown up expecting that, but we didn't expect this. Joe Gosnell told everyone, 'No longer will we be beggars in our own lands.' And that hasn't happened."

> "The rights outlined in this treaty are the final rights of Nisga'a - we're not interested in defining title for other aboriginal groups to come at us with, and that's the end of it - no debate.
>
> This is not really a nation. All I care is what limitations, restrictions, restraints upon their rights are!
> The Nisga'a Nation would have attributes in this treaty, no more no less. This is all they get, this is all the rights they have (smiling). I don't care if they call themselves Tribal Council or Nation."
>
> - Ujjal Dossanjh, NDP Attorney General and Minister for Human Rights, during the Provincial Government's debate: "Nisgaa Treaty - Final Agreement Act - Bill C51 - Committee Stage," January 18 & 19, 1999.

Summer 2007, The BC Treaty Negotiating Times

Lheidli T'enneh: "No"

The first Final Agreement reached through the BC Treaty Commission fails even a 51% approval criteria for ratification.
On October 29, 2006 the Lheidli T'enneh became the first First Nation to reach a Final Agreement under the BC Treaty Commission. On April 30, 2007, the membership rejected it. Now members are being offered cash to go back and vote it in.

The treaty would save a great deal of money for Canada: the cash value of the deal was about the same amount of money the Lheidli T'enneh receives in a few years anyway, by way of federal transfer payments to service their Indian Act obligations. Canada stood to be released from their current fiduciary obligation to the people, and the numerous liabilities they must hold for past transgressions, and to own a vast territory, which currently belongs to the Lheidli T'enneh outright. The land to be ceded is worth more as real estate or even timber than many times the cash value of the treaty. The money offered was $12.1m one-time transfer, $13.2m over ten years, $1.8m a year ongoing (like a municipal transfer) $3m one-time (for fisheries), and $400k a year, for 50 years, to increase in accordance with inflation (for a side deal in timber and gravel). Negotiator Mike Bozoki said that there is no business or investment projections, but they, "do have a Development Corporation."

From the

Quaw family statement
March 17, 2007

We have a number of problems with the proposed agreement with Canada and British Columbia that is leading to a ratification vote to a final treaty.

First off, the family of Quaw will not ratify the Treaty because it will not re-establish for the Lheit-Lit'en a quality way-of life. The backdrop to what we are saying is the years and years of oppression and degradation of the Lheit-Lit'en way-of-life by the majority society and the lack of proper retribution for that loss. ...The LLTN must recall the treatment our peoples have been exposed to since the non- native has come to our lands. We must remember we were and still are subjected by the Government of Canada and its enforcement arm is, and continue to be, the Indian Act of Canada. We became WARDS of the Government and not our own people. We were captured and placed on plots of land

where the Federal Government of Canada could plan our demise where eventually our people can be assimilated into the majority society. In addition to this, our rights, our form of freedom, our institutions were taken away.

To further brainwash our people they took our children away and put them into Residential Schools to further the integration process. There is a price to all of this and that price we have paid and continue to pay.

Has any of this been discussed in the treaty negotiations? If it has not, why hasn't it been discussed?

The Lheit-Lit'en has an Aboriginal Right and should the Treaty survive the ratification vote, it will extinguish those rights. In effect, our tribe is extinguishing our own freedom, our own inherent Aboriginal Right, not the white society; our people are doing this now.

We are not against a Treaty, we are against the content of the present Treaty and will vote "NO" for numerous reasons.

LHEIDLI T'ENNEH BRIBED TO VOTE YES ON BCTC FINAL AGREEMENT

Indigenous Rights Alliance
Press Release
Prince George, June 19, 2007

On April 3rd, 2007, the Lheidli T'enneh band held a Community Treaty Meeting to discuss options following their rejection of the proposed Lheidli T'enneh Final Agreement.
A total of only 20 Lheidli T'enneh band members attended. Instead of respecting the voice of the people, the chief and council and the BCTC and federal and provincial governments have devised this new "mandate" to entice the Lheidli T'enneh to change their minds and support the Final Agreement.
The centerpiece of the scheme is a proposal to negotiate a slice of funding out of the proposed financial payment in the agreement. This money is to be used as a one-time compensation payout of $3000 to each member, $5000 for those 55 years of age and older.

Fall 2007, The BC Treaty Negotiating Times

Maa-nulth, Tsawwassen choose cash and extinguishment.

The Huu-ay-aht voted in favour of their treaty almost unanimously in a rush vote their Chief Councilor justified as "not giving the other side too much time."

The other four communities in the Maa-nulth treaty group voted to approve Final Agreements in September. Tsawwassen voted away their title to land in July. For these people, now there are no "lands reserved for the Indians."

They have released BC and Canada and anyone else from all claims, past present and future. Treaty Settlement Lands are held in fee simple title, and can be sold and removed from the First Nation's treaty lands.

Are the economic benefits of the treaties enough to ensure that these Peoples can hold their own and thrive in the future? With settlements around $30,000 per person, it doesn't look like it.

Each Final Agreement has different economic sides.
Tsawwassen has received some compensation from the ferry terminal expansion, prior to treaty negotiations. Pursuing treaty

was actually a detail of that lump-sum agreement. The Maa-nulth, further from major industry, have arrived at a "resource revenue sharing" agreement in their Final Agreement. Like a Forest and Range Agreement, the Province will compensate Maa-nulth for logging that takes place on their Treaty Settlement Lands. Maa-nulth will get a percentage of what BC collects in stumpage - averaging $1.2 million for 25 years.

The Maa-nulth lands will be 24,500 hectares. Judging by the 12% of stumpage fees they are getting, and the amount of money that adds up to, it seems that most of that land is going to be logged in the next 25 years, the life of this benefits-sharing arrangement.

Existing Final Agreements and draft Agreements show settlement capital amounts of about $40 thousand or less per person. That's before you subtract the treaty loans, usually 30-50% of the settlement.

$40k is not a living wage for a year in the Tsawwassen neighbourhood. An old two-bedroom home in Tsawwassen costs $500,000. The $39,000 per person settlement capital to Tsawwassen First Nation is payable over ten years. Remember, it has already promised each person $10,000 in cash once the treaty comes into effect.

Each treaty First Nation will have annual financing arrangements with the province. These transfers are similar to municipal-transfers that the provinces of Canada pay to municipalities, villages, districts or towns each year, to pay for things like sewage treatment, roads, maintenance, recreation and so on. Costs are shared between municipal, provincial and federal governments.

The financing arrangements for treaty First Nations are to include the First Nation at the municipality level of sharing these regular costs. The Fiscal Financing Arrangements are to be renegotiated every five years and no minimum amounts are protected in the treaty.

The Lheidli T'enneh, with a similar number of members to Tsawwassen, was offered for the first term of annual transfers a rate of $1.8 million per year. Up until 2007, Tsawwassen's annual INAC budget has been about $7 million per year to run the affairs of the Band.

The financing arrangements for treaty First Nations will be to pay for health, social development, education, local programs and services, lands and resources management, physical works / operations and maintenance, treaty management, fisheries management and self-government. If and when the treaty First Nation generates revenue, it will have to contribute to these regular costs and transfer payments will be reduced and possibly phased out altogether.

What financial shape are First Nations in as they consider these deals? Indian and Northern Affairs Canada just released a study showing that federal spending for basic services on-reserve have dropped by 6.4% since 1996-97. Catch-up funding alone would total close to $1 billion, across Canada, in addition to annual budget increases of $500 million a year.

BC First Nations' share of that figure is worth more than all the modern-day BC treaties combined.

Excerpts from David Dennis'

AN OPEN LETTER TO HUU-AY-AHT RE. THE MAA-NULTH FINAL AGREEMENT

July 24, 2007

I am writing this letter to explain why I will not be participating in the upcoming vote on the Final Agreement. Contrary to what folks might be telling you, its not out of a personal attachment to the *Indian Act*, a motivation to stay with the status quo, or to make light of the work that's been done on our behalf. It is because I believe we are being tricked.

...Very high stakes are at play, and from what I have witnessed over the past month since it was announced that the vote would take place on July 28th, I do not feel that the membership has been fully informed of the consequences of each chapter of the Final Agreement and how it will impact their lives and the lives of their children.

...we have only heard from sources that want you to vote "yes" on the "treaty", NOT try to produce a clear understanding of what the treaty means. ...coming generations of our nation will have to endure the non-native governments of Canada and the province of British Columbia as their ultimate authority FOREVER! This in itself should be enough cause to reject what is being proposed. But there are more problems the closer you look...

Excerpt from a letter by Bertha Williams, Tsawwassen,
to
Dr. Rodolfo Stavenhagen,
UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples,

July 23, 2007.

People are not informed about the real content of the agreement they are voting on, but rather the provincial government is paying for the preparation of propaganda material that points to the few mainly cash incentives of the agreement, but fails to point out all the downfalls, such as the extinguishment of our Aboriginal Title to our territories, the loss of the tax exemption and the long-term loss of programs and services that will all result in the further impoverishment of our people.

Such an important vote should be held following basic principles for constitutional votes and should be monitored independently.

After all, our people are the poorest people in our traditional territories and poverty can be and in this process is being used to manipulate our people to give up their most valuable goods: their land and their resources.

Core Provisions of all "modern day treaties" in British Columbia:

Elimination of Tax Exemption:
"Section 87 of the Indian Act will have no application to (X First Nation) citizens."
Section 87 of the Indian Act reads: ...the following property is exempt from taxation, namely, (a) the interest of an Indian or a band in reserve lands or surrendered lands; and (b) the personal property of an Indian or a band situated on a reserve.

Termination of Reserves:
There are no "lands reserved for the Indians" within the meaning of the Constitution Act, 1867 for the (X First Nation), and there are no "reserves" as defined in the Indian Act for the use and benefit of a (X First Nation) Village, or an Indian band referred to in the Indian Act Transition Chapter, and, for greater certainty, (X First Nation) Lands and (X First Nation) Fee Simple Lands are not "lands reserved for the Indians" within the meaning of the Constitution Act, 1867, and are not "reserves" as defined in the Indian Act.

Release of Past Claims:
The (X 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 (X 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 (X First Nation)

Modification of Aboriginal Title:
For greater certainty, the aboriginal title of the (X First Nation) anywhere that it existed in Canada before the effective date is modified and continues as the estates in fee simple to those areas identified in this Agreement as (X First Nation) lands or (X First Nation) Fee Simple Lands.

Modification of Rights:
Notwithstanding the common law, as a result of this Agreement and the settlement legislation, the aboriginal rights, including aboriginal title, of the (X First Nation), as they existed anywhere in Canada before the effective date, including their attributes and geographic extent, are modified, as set out in this Agreement.

Section 35 Rights:
This Agreement exhaustively sets out (X First Nation) section 35 rights, the geographical extent of those rights, and the limitations to those rights, to which the Parties have agreed, and those rights are:
a. the aboriginal rights, including aboriginal title, as modified by this Agreement, in Canada of the (X First Nation) and its people in and to (X First Nation) Lands and other lands and resources in Canada;
b. the jurisdictions, authorities, and rights of (X First Nation) Government; and the other (X First Nation) section 35 rights.

Bands Dissolved:
On the Effective Date, that (X Indian Band) will be dissolved.

December 2009, The St'át'imc Runner

Wait 30 years for a better BC treaty

- says a new study by Pricewaterhouse Coopers.

The longer BC treaties take to get settled, the more land will be allocated to First Nations. That's what the auditing agency Pricewaterhouse Coopers has discovered.

Benefits to First Nations would also increase by 10%, indexed to inflation, if a treaty took 30 years rather than 15 to conclude.

The study, "Financial and Economic Impacts of Treaty Settlement in BC," was commissioned by the BC Treaty Commission. It points out that costs to "other British Columbians" increase as more time goes by without Final Agreements.

One of the factors the study reviews is the "Own Source Revenue" part of the Final Agreements. This is the clause whereby a First Nation relieves the governments of funding contributions as it begins to generate wealth. PWC estimates that government funding to Treaty First Nations would be zero, 12 years after implementation of the Final Agreement.

Another factor of interest is the financial company's observation that Resource Revenue Sharing Agreements will not exist for Treaty First Nations, and that is seen as a cost-savings to the

government. The meaning of this should be clear - once a First Nation has extinguished its title to its traditional territory, it is not eligible to demand benefits sharing on resource extraction from that land.

It tells how First Nations will begin to pay income and other taxes, provincially and federally, where they currently do not.

While the report details how much the governments of BC and Canada stand to gain from concluding Final Agreements, it does not offer any explanation for its projections of increased First Nations wealth, which is what would enable them to pay taxes and finance their own governments. It merely assesses benefits to British Columbia, and surmises those would be "much greater if greater numbers of treaties were settled."

PWC is a company that analyzes trends and advises corporate stakeholders globally.

> **"Who am I to say if it's a good deal? Chief Kim Baird was so happy she did a dance in the Legislature."**
>
> - Chuck Strahl, Minister of Indian and Northern Affairs, December 2009, in answer to criticisms of the governments' extinguishment treaty with Tsawwassen, during a visit to Lillooet Friendship Center.

December 2009, The St'át'imc Runner

Westbank First Nation:

"100% community support" to withdraw from BC treaty process.

At the start of the First Nations Summit meeting in November, Chief Robert Louie of Westbank and Chief Gary Feschuk of Sechelt announced that they are formally suspending their negotiations under the BC Treaty Commission.

Chief Robert Louie of Westbank explained.

"It's going nowhere. It's absolutely a waste of time. We've been at this negotiating table since its inception. Even before this treaty process started I was advocating to get treaty settlements underway. I became Chief in 1986, and at that time the Social Credit government under Bill Vanderzalm started an Advisory Council – mostly to do with economic and social development, and education. The Council held meetings in a lot of communities, and everyone said the same thing – you have to deal with land claims.

"We were successful. That was around 1990, and Oka, and there were rail blockades and protests all across Canada. So they admitted one, Nisga'a, and invited them to a negotiating table.

That was the first time since the 1800's that the government had approached an indigenous nation to talk about treaty. I wouldn't have accepted the terms they agreed to, but that's for us to decide.

"Then the NDP got in to government, and brought us the Task Force and the 19 Recommendations. Everyone thought, finally we've got a process we can deal with. That was early in the '90s. Since then, the governments' mandates have gotten more entrenched. They say, 'if you want land, you have to give up your title and rights and accept our authority,' and our communities here have said, 'no, no, no.'

"They're getting communities to bend to their wishes now, but we've always said no. I've been heavily involved in the First Nations Summit, the Common Table, and in the negotiations following the Tsilhqot'in court abeyance, where they had a year to get something arranged with the province after the *Williams* decision. I was their lead negotiator. So I know these issues. And I know the government is not prepared to move. They dance around for awhile and then come back with absolutely nothing to offer.

"In the Common Table we identified six key areas that we need better negotiating mandates from the government in. There's the Constitutional Status of our lands, that we should still have our Reserve lands; there's Fiscal Relations - that we should still be receiving some monies for our governments to function properly. Third is Shared Decision making - they have been really reluctant to bring First Nations in to the decision making about what goes on in our lands. Then there's Governance – where does our jurisdiction extend to? The province wants concurrent

jurisdiction with us, and in some cases they want their jurisdiction to overreach ours. If we have our Reserve lands, that's never going to happen. Then there's the issue of Fisheries, which is really important for those of us with the salmon rivers and lakes. Sixth, they want extinguishment of our rights and title under the Certainty clause. We don't want that.

"It took over a year for government to respond to that Common Table report. And we got a non-response. So are they tuned into getting settlement and revising their response and mandates? Absolutely not. We are going to go to court. We will be filing, I have to go back to the community now, where there is 100% support for that. Back in 1986 was the only other time we had unanimous support for a decision, and that was when we sued the government for trying to take away our land management authority. Then in the late '90s we went to court over a logging issue at Hidden Creek. We negotiated a settlement in 2002, and we got control over 150,000 acres of land. If you do not go to court you get nothing.

"What we're after is absolute aboriginal title over our lands. We're going to be very strategic. With these first tracts of land we're going after, there is no hope that the government can prove we don't have title. Then we will go to other tracts. By that time, the government will have to see our title, and the courts will make that Declaration of our title.

"They save billions of dollars by not making settlements. They do these negotiations, but that's cheaper for them than settling."

December 2009, The St'át'imc Runner

BCTC's Annual Report & The Common Table

The BC Treaty Commission released its Annual Report in October. The Commission is charged with producing Final Agreements, so there are the usual warnings about how First Nations' debt is sky-rocketing in the process and therefore Agreements should be made quickly now. First Nations borrow money from the governments to enagage in negotiations.

There are some points of interest. One is that, out of 50 negotiating tables reported on, 21 of them have been inactive for as much as ten years. In spite of this inactivity, the Commission always refers to the full number of First Nations to explain its operations. The report does not list the First Nations that have formally removed themselves from the process. Individuals from the "inactive" tables have explained that they do not formally withdraw on account of the loans they took out to negotiate coming due at that point. The report does not mention that, either.

The Common Table is the most relevant thing that has been happening with regard to the BC treaty process. It's a Table formed by all but one of the Chief Negotiators in the province. They are

united to get the governments to budge on some immovable positions - not including the general consensus that the loans should be forgiven.

After two years of work, the Common Table has been officially snubbed by both Canada and BC this summer, when the governments refused to meaningfully respond to the Table's report on a set of six issues that require better negotiating mandates on the parts of the governments.

Taxation, the Constitutional status of lands, Certainty, Fiscal Relations, and Fisheries are among the issues that the Chief Negotiators at the Common Table have identified as being unacceptably limited in negotiations. When asked for a detailed explanation as to how they would mandate their negotiators to raise the governments' uniform bottom-line position, the Ministers - Strahl and Abbott, gave the Table their speaking notes where they generalized about aspirations.

The Treaty Commission reports that they are pleased with this, and will continue to monitor progress.

The Common Table negotiators are not pleased, and the indigenous participants have called the Common Table's work "the end of the line" for the treaty process.

Failures in the treaty process have been spectacular. 19 Recommendations were accepted in 1992 by all three parties to the BC Treaty Commission as guidelines for the process. The three parties are BC, Canada, and the First Nations Summit. One of the Recommendations is specific to overlapping or communally held territory between communities or over inter-tribal boundaries. The BCTC is supposed to ensure that "overlaps," or disagreements about territorial boundaries, are resolved before a negotiating First Nation enters the Agreement in Principle phase of the process. They have not done this with any of the negotiating parties to date, including the now ratified Tsawwassen and Maanulth, and all those First Nations in the latter stages of negotiations. All those Final Agreements have faced court challenges as a result. BC and Canada didn't fulfill this "overlap" recommendation with Nisga'a either - a deal in which negotiations began before the BC Treaty Commission was invented and was completed outside the BCTC parameters - and Gitxsan has taken BC to court over that as well.

The year-end report recommends, "Make the Resolution of Territorial Issues a Priority" in its unprecedented "Call to Action," at the end of the document. The BCTC is actually the only body that can do that – or withhold support from negotiators until those conditions are met. They approve loan funding to the negotiators. It is unclear who else they are calling on to make this a priority.

Without a hint of self-conscious irony, the Report's concluding remark on the process thus far is, "One major concern in treaty making would be resolved if implementation dollars were sufficient to fully establish self government." Again, the Commission has apparently slipped its role of being the "independent voice of treaty making," and is appealing to someone – the reader? - to solve this trifling oversight.

Tsawwassen Chief Kim Baird has elaborated publicly on how much money they had to borrow once the Final Agreement was ratified. Loan funding quits at that point.

What is either an oversight or a lie of omission is the status of people who have had to appear in front of United Nations early warning human rights committees of the Committee for the Elimination of all forms of Racial Discrimination, CERD, in Geneva, because of the BC treaty process. The Commission's annual report does not mention the international pleadings of two different First Nations, Tsawwassen and Xaxl'íp, reeling from the impacts of the treaty process on the extinguishment of their aboriginal title and the collection agents trying to reel in loans once they quit the process.

Xaxl'íp sent a submission to CERD about this, and they took it very seriously. Canada responded to the UN Committee that the Xaxl'íp loan is "in abeyance," but Xaxl'íp, the Fountain Indian Band, was mysteriously never notified of this. Apparently the collections agent didn't know about it either as they pursued the Band for payments.

Bertha Williams of Tsawwassen explained to CERD how her aboriginal title had been extinguished without her consent. Canada has apparently not come up with a response to this, except to say that aboriginal title has never been proved in Canada. One wonders, then, what are they negotiating about?

In every First Nation that has voted
on a Final Agreement, community members
have made the same outcry:
people have not received the information they need to
understand the Agreement.

8. The Committee, while noting with interest Canada's undertakings towards the establishment of alternative policies to extinguishment of inherent aboriginal rights in modern treaties, remains concerned that these alternatives may in practice amount to extinguishment of aboriginal rights (arts. 1 and 27).

The State party should re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights.

CCPR/C/CAN/CO/5
20 April 2006

HUMAN RIGHTS COMMITTEE
Eighty-fifth session
CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT
Concluding observations of the
Human Rights Committee
CANADA

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
Thirty-sixth session
Geneva, 1-19 May 2006

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT
Concluding observations of the Committee on Economic, Social and Cultural Rights
CANADA

16. The Committee, while noting that the State party has withdrawn, since 1998, the requirement for an express reference to extinguishment of Aboriginal rights and titles either in a comprehensive claim agreement or in the settlement legislation ratifying the agreement, remains concerned that the new approaches, namely the "modified rights model" and the "non-assertion model", do not differ much from the extinguishment and surrender approach.
It further regrets not having received detailed information on other approaches based on recognition and coexistence of rights, which are currently under study.

UN COMMITTEE
ON THE ELIMINATION OF RACIAL DISCRIMINATION

2007, IN response to Canada's report:

While acknowledging the information that the "cede, release and surrender" approach to Aboriginal land titles has been abandoned by the State party (Canada) in favour of "modification" and "non-assertion" approaches, the Committee remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach.
In line with the recognition by the State party of the inherent right of self-government of Aboriginal peoples under section 35 of the Constitution Act, 1982, the Committee recommends the State party to ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights.
Wherever possible, the Committee urges the State party to engage, in good faith, in negotiations based on recognition and reconciliation, and reiterates its previous recommendation that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts.

August 2009, All Chiefs Assembly, North Vancouver

The Common Table Report

"For those of us in the treaty process, this is our last chance."

On August 10, First Nations involved in negotiating treaties met with BC and Canada to address the concerns of the Common Table.

The Common Table represents 64 First Nations in treaty negotiations, a little more than 50% of the treaty tables listed with the BC Treaty Commission.

The Table was formed two years ago. In negotiations, the First Nations have found that BC and Canada come to the table with fixed negotiating positions on key issues, and no one has been able to advance them at all.

For the August 10th meeting, the Common Table had requested written responses to their concerns about the government's bottom-line positions. Instead they received speaking notes for BC Minister of Aboriginal Affairs and Reconciliation, MARR, George Abbott, and federal Minister of Indian and Northern Affairs Chuck Strahl.

Responding to the legislative proposal at the All Chiefs Meeting in Vancouver last month, Chief Negotiator Robert Morales said, "Our challenge is, how do we get the government to move on recognition?"

Currently the BC Treaty Commission does not require that the governments recognize aboriginal title before entering treaty negotiations. In fact, recognition is explicitly denied in the governments' approach. "We can do it through negotiation under the BC Treaty Commission, through legislation, or through litigation. Our group (Halkomelem Treaty Group) is currently in Washington with a petition that has a lot of support. Canada says we shouldn't be there because we haven't been to court in Canada, but we have had a lot of nations come and tell us that they have tried to win what we want in court, and failed." Morales was one of the founders of the First Nations Unity Protocol which developed the Common Table.

Tim Raybold spoke for Chief Robert Louie of Westbank First Nation: "The Common Table, for Westbank, was basically our last hope for the BC treaty process. What the Common Table has shown us is that the federal and provincial governments are not prepared to do what it takes to meet the needs of Treaty First nations in this province. They're not going to do it for treaty First Nations outside the Common Table, either."

Gwaans, Beverly Clifton-Percival, is the spokesperson for the Common Table. "We are still waiting for the written response to our concerns, so we can get a legal analysis of that and we will add it to our litigation strategy."

In *Luuxhon*, 1999, the people argued that Canada was guilty of

bad faith negotiations in the treaty process, as it was negotiating over the same lands simultaneously with three First Nations.

Now the people will be arguing that the governments are engaged in bad faith negotiations because they simply will not negotiate these several matters.

The aspects that have proved to be non-negotiable for the colonial governments are in six somewhat overlapping areas. The constitutional status of treaty settlement lands is currently that aboriginal title is extinguished, and any lands held by the First Nation are in fee simple, with underlying title held by the province. In the area of governance, treaty First Nations would, under the current mandates, be reduced to municipal powers of law making, constantly overshadowed by provincial and federal law. The Common Table argues that treaty First Nations must be able to pass "distinct laws" that are the laws that govern in key areas. In fisheries, the Common Table seeks better management roles for treaty First Nations, and the guarantee of the Food, Social and Ceremonial right, rather than a straight allocation. Fiscal relations - including own-source revenue and taxation, are an area where would-be treaty First Nations want to be secure that their communities will not be allowed to fall below socio-economic levels of other comparable communities.

Shared decision making on traditional territory is currently reduced, within the government mandates, to the treaty First Nation's ability to sit on a regional board along with other stakeholders: they want this changed to ensure meaningful co-management of the territories.

Recognition and certainty, which includes overlapping claims, is

a chapter of the six complaints that identifies the governments' unwillingness to allow the treaty to develop over time, and that the governments do not recognize pre-existing aboriginal rights within the treaties being negotiated.

BC responded to the Common Table, through George Abbott, that they would negotiate the outstanding issues at individual tables. BC referred to the incorporation of their work in the New Relationship into treaty language as progress.

BC, Canada and the First Nations Summit are the Principals in the treaty negotiating process. While they are meant to have meetings twice a year, they have not actually met for years.

While many First Nations have either voted out of the treaty process or simply stopped engaging in negotiations, none of them are repaying negotiating loans.

Many First Nations are therefore listed as “inactive” in the Treaty Commission’s reports, because those communities do not want to trigger the process of loan collections by formalizing their leaving.

Negotiating loans add up to an average 40-60% of the Settlement Capital in the Final Agreements.

December 18, 2009
extract from:

WET'SUWET'EN TREATY UPDATE
Smithers, BC

Through 14 years of Treaty negotiations, the Wet'suwet'en Chiefs have worked diligently to develop a LIVING TREATY to ensure Wet'suwet'en title, rights and interests are recognized, respected and reconciled over the entirety of their traditional territories.

Treaty negotiations have put Wet'suwet'en in debt to the Crown for almost $13 million over the course of these negotiations. Throughout negotiations, Crown agencies have continued to alienate lands, impact water quality, and permit the development of resources. In October 2009, Wet'suwet'en attending an All Clans meeting clearly stated their frustration with Treaty negotiations, and recommended the Chiefs step away from the Treaty process.

"We are seeking a distinctly Wet'suwet'en Treaty... recognizing Wet'suwet'en title, and respects our right to determine land use and resource development within our territories."

Unfortunately, both the Federal and Provincial government have refused to engage in negotiations outside of their 5% land selection model.

As a result of the inequities of the Treaty Process, the Wet'suwet'en have not signed any treaty related agreements with the Crown(s).

February 2010, The St'át'imc Runner

Yale Final Agreement inked in private

"If the Ministers need to hide away at a secret spot to sign this Final Agreement with the Yale Band, what are they hiding from the public? And where is their respect for the 7000 Sto:lo who are all the true aboriginal title and rights holders in the Fraser Canyon?" This question was asked, very publicly, by Grand Chief Clarence Pennier of the Sto:lo Nation Tribal Council.

This latest "modern day treaty," the fourth to reach Final Agreement since the process began in 1992, will end up in court like all the others have, if it proceeds to ratification by the community.

Yale is a Sto:lo community, and is home to strategic fishing sites which have long been used in summer for dry racks by many Sto:lo who live further down the Fraser valley. 217 hectares of Indian Reserves are scheduled to be included in Yale Treaty Settlement Lands, land held under fee simple title, with underlying title held by BC. Those Reserves line the Fraser and are not inhabited, but were reserved as fishing spots.

Yale has made it clear, reportedly by running other Sto:lo fishermen off the fish racks at gunpoint, by burning down the dry racks, and by dismantling grave markers, that they will not

permit those fishermen and women to access the fishing grounds freely. Chief Robert Hope of Yale, the Band's Chief Negotiator in the treaty process, has declared at a meeting with the Sto:lo Nation Council last year that Sto:lo fishermen will be treated "the same as any other white or Chinese fisherman. They can get their permit from me."

This satisfies BC and Canada. The Sto:lo Nation Society and the Sto:lo Tribal Council, however, have asserted their interests in the Fraser canyon at Yale with letters, newspaper submissions and protest.

Since February 5th, they have had no response to their demand for a meeting with Chuck Strahl, Minister of Indian and Northern Affairs and Member of Parliament for Chilliwack / Fraser Canyon. "That's typical," says Tribal Chief Tyrone McNeil; "he ducks us more often than not. You would think he would meet with us, we are supposed to be his constituents. Strahl knows our position, and he knows Yale is part of Sto:lo. He just wants to ink the deal to make themselves look good."

Meanwhile, the BC Treaty Commission is mandated to hold back any negotiations that have unresolved border disputes at the 'Agreement in Principle' stage, which occurred years ago in this case. Every modern day treaty inked in BC has avoided this criteria and has ended up in court with its neighbours.

Ernie Crey, Fisheries Advisor to Sto:lo Nation Tribal Council, says of the problem "You can see what's going on here, the feds and the province are saying to Yale, 'well you can go and sort it out with Sto:lo.' We're trying to tell them they're negotiating a lot of land in the canyon, including the existing Reserves, which are part of the larger Sto:lo community's interest. They are taking that land and assigning it to Yale without any consideration of our interests there.'" The Fraser Canyon is the only place where people can make ts'wan, the dried salmon so close to the hearts and traditions of river people.

Some of the Yale people have always and still identify themselves as Sto:lo people. Chief Tyrone McNeil clarified, "We haven't heard from the community members, just from the present elected Council, which is taking this route of getting a treaty signed."

Crey: "In the final analysis, this is going to put us in a very difficult position with Yale Indian Band and the surrounding communities. There will be battles in court and conflict and tension on the river. In the meantime the feds and the province will have gone away patting themselves on the back. They know their treaty process is flagging, it's moribund. Other people have said this, 18 years later, over a billion dollars, and only one treaty to show for it, Tsawwassen."

Maa-nulth's Final Agreement has not passed the federal adoption, and Lheidli T'enneh was rejected at the community level. The Yale Final Agreement is for 2,000 hectares of land in fee simple title and $12 million in capital transfers over ten years. The Agreement is effectively a sale of title and rights to the rest of the claimed traditional territory for the price of about $5 a hectare.

Ernie Crey has some expectations of what this summer will look like: "People will be able to see clearly the shortcomings of the BC treaty process, which has been touted as the way to proceed

into the future. This conflict is supported by the process that is funded by BC and the feds, for their ends. The BC treaty process needs to undergo a major reformation."
The Sto:lo Nation Society and its member Bands are still engaged with the BC treaty process, but the Tribal Council got direction from its members to step away until BC and Canada come back with better negotiating mandates.

Says Chief McNeil, "Our people will never accept taxation and paying taxes to Canada. We left for the same reason all those other nations left: the government negotiators are coming from a bottom line position that is unacceptable.

"This treaty will fail because both levels of government decided to underwrite a deal with the Yale Band that will be tested in the courts and fought out on the rock walls of the Fraser Canyon. Our fishing families will not subordinate their fishing rights to the Yale Band. And our people will not go cap in hand to the Yale Band to get access to their ancient fishing spots and dry-racks. It's just not on.

“Given this reality, Ministers Strahl and Abbott just committed both Ottawa and Victoria to spend millions of dollars in the courts defending their decision to ignore the broader Sto:lo community in favour of extending a highly doubtful treaty to the Yale Band. Policing agencies such as the RCMP and the DFO will need to ramp up their budgets to oversee the fishery in the Fraser Canyon. The Yale Band will be forced to forfeit much of the money promised to them under the treaty to future court costs.”

October 2011, HTG news release, www.hulquminum.bc.ca

The Hul'qumi'num Petition

The Hul'qumi'num Treaty Group represents over 6,600 members of the Cowichan Tribes, Chemainus First Nation, Penelakut Tribe, Lyackson First Nation, Halalt First Nation and Lake Cowichan First Nation. It has petitioned the American regional body of the United Nations, the Organization of American States, and their Commission on Human Rights for recognition of the ongoing violations by Canada of Hul'qumi'num human rights to property, culture, religion and equality under the law.

The Inter-American Commission on Human Rights (IACHR) has admitted the case against Canada. The Hul'qumi'num Treaty Group case centers on the 1884 E&N Railway Grant, made by the government of BC, which legislated the transfer to a private company of the entire southeast coast of Vancouver Island. The IACHR admitted the case on the grounds that the Hul'qumi'num had exhausted the legal remedies to the situation which are available within Canada.

The Hul'qumi'num Treaty Group and Canada attended a hearing with the Inter-American Commission on Human Rights in Washington, DC, on October 28th, 2011 for the final hearing on their case. A result is not yet available from the Commission.

The following are excerpts from the IACHR report (#105/09) on the admissibility of Hul'qumi'num Treaty Group petition 592-07 The Commission admitted the case for hearing for reasons including the following:

37 "...the BCTC process has not allowed negotiations on the subject of restitution or compensation for HTG ancestral lands in private hands, which make up 85% of their traditional territory. Since 15 years have passed and the central claims of the HTG have yet to be resolved, the IACHR notes that the third exception to the requirement of exhaustion of domestic remedies applies due to the unwarranted delay on the part of the State to find a solution to the claim."

37 "...Likewise, the IACHR notes that by failing to resolve the HTG claims with regard to their ancestral lands, the BCTC process has demonstrated that it is not an effective mechanism to protect the right alleged by the alleged victims."

37 " ... there is no due process of law to protect the property rights of the HTG to its ancestral lands"

38 "...the treaty negotiation process is not an effective mechanism to protect the rights claimed by the petitioners."

39. "...none of those judgments [of Canadian courts on aboriginal title cases] has resulted in a specific order by a Canadian court mandating the demarcation, recording of title deed, restitution or compensation of indigenous peoples with regard to ancestral lands in private hands."

41 "...The Commission notes that the legal proceedings mentioned above [the Canadian court cases on aboriginal title] do not seem to provide any reasonable expectations of success, because Canadian jurisprudence has not obligated the State to set boundaries, demarcate, and record title deeds to lands of indigenous peoples, and, therefore, in the case of HTG, those remedies would not be effective under recognized general principles of international law"

43 "...With regard to remedies under the Heritage Preservation [sic] Act ... the IACHR notes that those remedies are not suitable because they cannot be used to comprehensively and permanently protect all HTG ancestral lands from the actions of their parties because their purpose is not to recognize the HTG's property rights to those lands or the obligation of the State to provide restitution. ...
The Heritage Preservation [sic] Act [remedies] are ineffective in permanently resolving the claims of the HTG and of other indigenous groups because those remedies must be filed each time a request for a permit or license is made that could impact their ancestral lands that are in private hands."

June 2012, Vancouver Media Co-Op

BC treaty advocate elected Chair of UN Permanent Forum on Indigenous Issues

The 11th Session of the top forum for indigenous peoples in the world began with a lurch. The sixteen-member Forum elected, by acclamation, Grand Chief Edward John to be their Chair. The announcement was made during a preliminary meeting, May 6, 2012, before the two week meeting in New York City. Hailing from Tl'azt'en (northern BC), this Chief will be familiar to anyone who has followed the machinations of the BC treaty process over the last twenty years: John was the founding Chair of the First Nations Summit, an organization formed to "represent First Nations" involved with the BC Treaty Commission.

Perhaps, in 1992, the election of a man affiliated with this Summit to Chair the Permanent Forum on Indigenous Issues – understood to be advancing the cause of self-determination, land rights, and everything else contained in the Declaration on the Rights of Indigenous Peoples, would not be an obvious contradiction in terms. However, twenty years later, after the ratification of two extinguishment treaties in that process, this election must be a point of confusion.

When Nisga'a ratified an agreement with British Columbia and

Canada in 2000, they released their claim to 100% of traditional Nisga'a territory in exchange for about 8% of the land back, in Fee Simple Title and with BC holding the underlying title. No alarm bells were rung by Chief John. Every First Nation in BC was watching that process very closely, as they believed, rightly, that future negotiations in the BC treaty process would follow the Nisga'a template.

When, in 2007, Tsawwassen became the first indigenous people to ratify a Final Agreement produced in the BC Treaty Commission, the text of that document stated "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." This clause is also to be found in the Nisga'a Agreement. It is a surrender, rather than the basis of continuing nation-to-nation relations. Tsawwassen made these concessions for a settlement of less than 1% of their traditional territory, held in Fee Simple. 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 – according to government press releases.

Perhaps Chief John takes a leaf out of then-Indian Affairs Minister Chuck Strahl's book, who declared at the time, "Who am I to say if it's a good deal or not?" John is still the Chair of the First Nations Summit today.

Maa-nulth agreed to the same releases when it ratified a Final

Agreement in this process later in 2007. Other identical provisions in all three Agreements include the release of Indian Status, including tax-free status; the "modification" (extinguishment) of their aboriginal rights to be only those rights exhaustively defined in the Agreements; the dissolution of the Indian Band; and the termination of Indian Reserve lands: "Fee Simple Lands are not "lands reserved for the Indians" within the meaning of the Constitution Act, 1867, and are not "reserves" as defined in the Indian Act."

The role of the First Nations Summit in these "negotiations" is, in part, to give advice to the federal government for the allocation of treaty negotiating loans to First Nations for the purpose of developing and ratifying Final Agreements under the BC Treaty Commission. These negotiating allowances average a million dollars a year, and the 80% which is a loan comes due the moment a First Nation leaves the process or begins implementation of their Final Agreement. Staying at the table is an offer most First Nations cannot afford to refuse, especially for those who have been at it since 1993, but the only alternative is to ratify an Agreement and extinguish title. Treaty negotiating loans are not included in government audits of First Nations accounts – perhaps because such a loan would immediately place that community in third party remedial management.

Chief John has stayed with the process throughout and failed to take any meaningful action to indicate his disapproval of the situation, if he does indeed disapprove. He obviously hasn't resigned in protest.

Self-determination, recently enshrined in the UN Declaration on the Rights of Indigenous Peoples, goes out with ratification of

these Agreements as well, replaced by what the governments, the Treaty Commission, and the First Nations Summit call "self-government" – powers which amount to little more than municipal business under the heavily qualified "Governance" chapters. The presence in each Final Agreement of identical chapters which circumscribe any exercise of self-determination betrays a theme, one which previous leaders dubbed "the BCTC Death Row."

According to Chief Negotiator Robert Morales, Hul'qumi'num Treaty Group, in 2007, "there is one negotiation going on at 47 tables. These were to be government-to-government negotiations, but that's not how it turned out." By 2006, the First Nations Unity Protocol Agreement included all but one of the treaty-going groups in the province, and had made clear the flaws in the process. Morales said, while Chair of the First Na-

> "So called "Canada's" ignorance of our existing and affirmed Title and Rights and the threat of limited financial support for non-participating Nations forced my people into entering the treaty process.
> And they keep us on the negotiation table by threatening to demand all the negotiation funds back at once or to limit our financial support by the federal government accordingly. For my Nation it is impossible to pay the amount back or to forgo financial aid."
>
> - MukSamma, Sliammon Hereditary Chief

tions Summit Chief Negotiators' table at the time, "The experience we're having at the Tables and in meetings is that government comes to every table with the same language, with one approach, whether the Nation is small or large, urban or rural. We have realized that we can't change those policies on our own, even at my table where 6,000 people are represented."

Since Morales' statements, letters, and FNUPA actions, which included blockading a Nanaimo ferry sailing with canoes, the HTG has been in abeyance from the negotiating table and entered a petition describing the exhaustion of domestic remedies within Canada to resolve the outstanding land title issue. That Petition was heard in Washington last year by the Organization of American States' Inter-American Commission on Human Rights, and a result has not yet been announced.

At the Opening Ceremonies of the PFII 11th Session at UN Headquarters, Deputy Secretary-General of the United Nations Dr. Asha-Rose Migiro noted in her address, "…we don't have to go far to see examples of indigenous peoples facing discrimination, even extinguishment." Chief John was sitting not far in front of her.

On the second day of the meeting, an intervention by the North American Indigenous Peoples Caucus delivered by Steven Newcomb claimed that "Negotiations such as in Canada under the Comprehensive Claims Policy… lead to the extinguishment of indigenous peoples." The CCP is the basic platform of the BC negotiations, in direct contrast with the 19 Recommendations by the BC Task Force which formed a terms of reference or guidelines for the process in 1992. Those guidelines attracted people to the process because they said, in sum, that the government

would be open to all types of discussion and conclusions that would lead to real, workable treaties.

Several independent members of First Nations involved in the treaty process have taken their concerns to an urgent action committee of the United Nations' Committee for the Elimination of all forms of Racial Discrimination, the CERD, in 2009. In reports on Canada's human rights record regarding indigenous peoples, the CERD has criticized the process, as in 2007: "While acknowledging the information that the "cede, release and surrender" approach to Aboriginal land titles has been abandoned by the State party (Canada) in favour of "modification" and "non-assertion" approaches, the Committee remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach."

To date, only four Final Agreements have resulted from the negotiating process implemented by the BC Treaty Commission, one rejected in the community ratification vote, one awaiting federal approval, and two in implementation, but all of them leading to the extinguishment of title of the indigenous nations concerned. Aside from these, the negotiation process in BC remains stalled largely due to the evident desire of the governments to pursue policies of extinguishment of indigenous sovereignty rights, and the equally evident desire of the BC indigenous nations to resist this demand. But they cannot leave the process without triggering the maturation of the negotiating loan.

While Chief John and the Summit Executive exchange polite letters and press releases with Canadian government officials conducting studies on the BC treaty process, and welcoming

"recommendations which outline how the federal government can accelerate treaty negotiations in BC" (First Nations Summit Press Release: May 4, 2012), the cost of remaining in the process grows – and the process remains one of municipalization of indigenous nations which currently have the internationally recognized right to self-determination and demonstrable title to their territories.

Sliammon First Nation is about to go to a ratification vote this summer. Jackie MukSamma Timothy, a Sliammon Hereditary Chief, wrote of the situation, "So called "Canada's" ignorance of our existing and affirmed Title and Rights and the threat of limited financial support for non-participating Nations forced my people into entering the treaty process. And they keep us on the negotiation table, by threatening to demand all the negotiation funds back at once or to limit our financial support by the federal government accordingly. For my Nation it is impossible to pay the amount back or to forgo financial aid. Moreover, the longer the process takes the more power shifts to the benefit of so called "Canada" and "BC", because in the end any agreement resulting in any kind of payment is better than none, given the fact that we have to pay the loans back. Loans that would not even be necessary without Canada's wrong-doings and their ignorance of our existing Title and Rights."

The number of irregularities in the BC treaty process is staggering and climbing. It is not unusual for communities to fail to hold a vote annually in order to approve continued borrowing for negotiation funding, or to have votes against continuing the loans ignored, according to vocal indigenous dissidents. Hereditary Chief Kakila, Tenas Lake, wrote in a letter to the BC Treaty Commission, 2007: "We are advised by the Honourable Minister

of Indian and Northern Affairs Jim Prentice that these twelve people (the IN-SHUCK-ch Treaty Society) have since 1993 borrowed $9,717,059.00 to engage in these negotiations. We remind that those are the debts of those people alone. In fact, on October 15, 1994, at a duly convened Samahquam General Assembly, for said purpose, the membership specifically voted, by majority, "no" to any proposed Loan Agreements emanating from the British Columbia Treaty Commission."

Most of the original nineteen recommendations of the British Columbia Task Force, which were agreed on by the three negotiating parties forming the BC treaty process, have long since been abandoned: for example, every Final Agreement produced has been taken to court by neighbouring nations for failure to resolve "overlap" claims. Most negotiations currently underway were initiated by a small minority of community members – over whom the rest of the people in the communities cannot regain control: court actions such as *Spookw v.Gitxsan Treaty Society et al*, 2011, and the recent blockade by members of the Gitxsan against the Gitxsan Treaty Society show how serious this flaw is. By insisting that the small, mostly isolated communities are "autonomous" in their dealings with the treaty process, the First Nations Summit has absolved itself of any responsibility to those First Nations which it claims to represent.

Both the Tsawwassen and Maa-nulth Final Agreements were ratified in votes where "public relations crisis-management" firms were hired by the government to produce pro-treaty propaganda, and where treaty negotiating teams promoted only those prominent community members who endorsed the Final Agreement, and where immediate fiscal rewards for a "yes" vote were offered to community members. Bertha Williams, a

Tsawwassen Member, wrote in a letter to Rudolfo Stavenhagen, Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People of the United Nations Commission on Human Rights, July 23, 2007: “I would like to reference some very key items that raise very serious question about the legitimacy of this vote. Under “Members Benefits” two cash incentives to voters are stated.

“In particular it states that “each elder over 60 will receive $15,000, shortly after ratification day” and “approximately $1,000 per member on Effective Date”. I feel that these cash incentive are a bribe to vote YES to the Final Agreement. These are the cash guarantees that are written right into the agreement and that are openly promoted, but I know that there are additional monies paid out just to get people to vote on this agreement. As already set out above, the vote will take place without meeting basic requirements for such a fundamental, constitutional vote.

“People are not informed about the real content of the agreement they are voting on, but rather the provincial government is paying for the preparation of propaganda material that points to the few mainly cash incentives of the agreement, but fails to point out all the downfalls, such as the extinguishment of our Aboriginal Title to our territories, the loss of the tax exemption and the long-term loss of programs and services that will all result in the further impoverishment of our people.”

Many feel that, as a lawyer whose organization gives advice on the allocation of negotiating loans, Chief John is and was aware of how the loan process itself would leave small and isolated communities trapped between descending into a deeper cycle of debt the longer they stuck to their negotiating claims - or acceding to the extinguishment terms offered by Canada, which can afford to wait the process out. That message has been clearly and repeatedly delivered to the Executive of the First Nations Summit by such groups as the First Nations Unity Protocol, as early as 2006.

But Chief John is considered respectable. Earlier this year he received a National Aboriginal Achievement Award, and he is on the Board of “Cultural Survival,” an international agency which claims to, "publicize Indigenous Peoples' issues through our award-winning publications; mount letter-writing campaigns and other advocacy efforts to stop environmental destruction and abuses of Native Peoples' rights; and we work on the ground in Indigenous communities, always at their invitation." Most of the indigenous nations whose territories lie within the Canadian Province of British Columbia have no treaties with Canada.

The recent appearance of Edward John on the Aboriginal People’s Television Network to state that he does not support extinguishment is not an adequate gesture, when read together with his continued involvement, as Chair of the First Nations Summit, in this well-documented extinguishment process. The Permanent Forum on Indigenous Issues sends the world a mixed message in its choice of Chair, when considering its stated mandate. The Permanent Forum reports its recommendations to the UN Economic and Social Council, which advises member states on indigenous peoples’ rights the world over.

July 2012, Vancouver Media Co-Op

Sliammon Treaty Ratified Amid Total Voting Chaos

With incomplete voter eligibility guidelines, payments dangling over a "yes" vote and hard questions unanswered, the Final Agreement passed with 57 percent approval

Sliammon members who voted on their First Nation's Final Agreement yesterday, July 10, may or may not have been Sliammon members. "The Eligibility and Enrolment Committee did not even have an appeal process," said Brandon Peters, a university student from Sliammon. Peters opposes the present treaty process actively, and says he "never meant to get this involved."

"An Elder went to Tacoma and saw her niece voting on this treaty under aliases - they are members of another Band," said Peters.

There was 57 percent voter approval for the Final Agreement that has cost their community almost two decades in negotiations under the British Columbia Treaty Commission. The First Nation owes at least $18 million of their $30 million Settlement Capital Transfer in loans undertaken to finance those negotiations. In the Agreement, Sliammon First Nation secures Fee Simple Title to five percent of their traditional territory; BC takes possession of underlying title to that as aboriginal title “anywhere that it existed in Canada” is released and surrendered, and BC gets the other 95 percent of the territory in full. A month ago a group of exasperated citizens pulled their vehicles up snug against the polling station doors on the Reserve and prevented voting on that day, while votes in two other locations off-Reserve had already gone ahead.

Jackie Timothy, Muk’samma, a Hereditary leader of the Sliammon, explained why people were moved to stop the vote. "All the issues in the treaty are concerns to the people. It was the Elders who were seeing something wrong here."

The Sliammon Anti-Treaty group then sought a BC court injunction to prevent the second voting day from happening. Some voters had received three ballots; some had been offered $20 for a "yes" vote; and Elders were promised $15,000 on ratification of the Final Agreement. These affidavits were filed to support the request for an injunction - to provide time to unravel proper voting procedures from the present confusion and get answers to the questions skeptics have been asking for a decade. They were denied that time by a BC court.

A lawyer for the Sliammon Treaty Group, Greg McDade, represented the pro-treaty concern at the hearing for the injunction against the ratification vote. He told the court the same thing that every other opponent of a Final Agreement has been told when, in the final hours of desperation, they appeal to the foreign court system for relief: they're too late. They should have raised these concerns a long time ago.

Both Final Agreements ratified in the BC treaty process, and the Nisga'a treaty, came up against major opposition in court and in United Nations Committees - objections coming from concerned citizens within the treaty-going community and from neighbouring nations. And all of it at the last minute. Or so it would seem.

The mainstream press has never mentioned the endless unanswered letters, the voices of opposition that are drummed out of treaty meetings in the process, the demands for access to audits of treaty negotiation budgets, as well as - just in the case of Sliammon - the fact that the Agreement in Principle was rejected by a margin of 78 votes in 2001. None of these forms of dissent slowed the treaty machine, and all of these efforts were discounted or dismissed by the BC judge in court on July 9th.

As Hereditary Chief MukSamma (Timothy) recalls events after voting down the AIP, "they just shuffled the Chief and Council and kept on going with the treaty...We wrote letters asking questions and raising concerns, and we just got letters back saying that our suggestions would be considered. They weren't. This has been going on for years."

Peters never expected the injunction against the vote to be made. "He didn't want to rule on it. The government and the Supreme Court go hand in hand. The government has been supporting the treaty because they stand to gain Sliammon territory in Fee Simple Title once the treaty goes through. It's a conflict of interest for them."

The treaty opposition got a lot of last minute calls and e-mails of support and amazement at irregularities being revealed in the process, but none so heavy as the support coming to the Treaty Society's aid.

All the elected Chiefs of Maa-nulth Treaty Society signed a statement supporting Sliammon's negotiators and their pro-treaty Chief and Council. The press release was issued June 26, slamming the Sliammon anti-treaty demonstrators and demanding Canadian law be applied to ensure ballots could be dropped in boxes on the appointed day. There seems to be some confusion over the fact that the question of whether Canadian law applies in unsurrendered indigenous lands is one that is ultimately settled by the Final Agreement itself – if not by international proceedings following it to nullify these land claims made in an era of extreme duress. Maa-nulth ratified their Final Agreement in 2007, the second and most recent First Nation to accept the Treaty Commission's extinguishment terms, after Tsawwassen in the same year.

Maa-nulth's statement went on to say that the Chief Negotiators "go to extensive lengths to ensure that their citizens are fully informed about the treaty." But is that a statement that Brandon Peters would agree with? "Not at all. A lot of the treaty workers don't even know what is in the treaty. For instance, we are going to be taxed. In a few years we're going to lose our Indian Status, but they're telling us we're not. We were just informed that we had to register our Certificate of Possession lands back in Stage 4 of negotiations in order to protect them from the treaty process, but that was never brought up. Nobody I know has done that, and we will have to pay tax on that land to the Treaty First Nation or have it be absorbed by them.

"They (the treaty group) say that only people who can afford to

pay taxes will be taxed, but I can't see it. We have an 80% unemployment rate. Then they told people they will raise welfare rates after treaty, but you can't just change provincial or federal welfare rates; that money will have to come out of our pocket. As it stands, we have no fishery rights in this treaty; no underwater rights; we cannot sue the government for past wrongs; the list goes on. And they didn't tell us these things."

The question of whether "informed consent" has been given is answered by the Chief MukSamma in another way. Are people informed? "Well, go around Sliammon and see for yourself who's informed - they are the ones with nice cars, nice homes. The other ones are not informed.

"You have to dig deeper. Who are the Chiefs? They are government employees - imposed on us by the Indian Act, replacing the Hereditary Chiefs. So, it's the government negotiating with itself. And the government employees have becomes the 'haves' and everyone else is on welfare: the 'have-nots.' Under the Hereditary system, people were equal."

Peters got an outside legal opinion. "People laughed at me and said, 'why don't I go up to the treaty office and get informed?' Well, I can go to a used car salesman and he will tell me the car is great - but I'm not going to do that. I'm going to get an independent opinion. And that's what I did.

"I'm about to become a university graduate and I couldn't understand the Final Agreement. It's in legalese; it's in a different language. The lawyer explained to me what each part means. That lawyer told me, 'Brandon, this is probably the worst deal your people are ever going to make.'"

June 2013, Vancouver Media Co-Op

First ever court victory against a “modern day treaty” in BC

Tla’amin Elders won a shot at the Sliammon Treaty Society’s Enrolment Appeal Board, where they hope to prove the need for a re-vote.

The Tla’amin Elders Against Treaty won an unprecedented concession in BC Supreme Court, although it’s hard to spot, on May 21. The Sliammon First Nation, their community spelled in the older anglicized way, may have to go to a re-vote on their Final Agreement with Canada and BC, after the new Enrolment Appeal Board has reviewed some glaring problems.

Being thrown into question is the eligibility of at least a dozen individuals who have been enrolled as Tla’amin First Nation members. The people in question will not, however, attend that review which will determine whether they should have been enrolled as a Tla’amin Member. They won’t be able to defend themselves because they are dead. They were dead at the time they were enrolled.

Perhaps a new vote without them will not result in ratification of the Tla’amin Final Agreement - the vote last summer resulted

in the required 57% "yes" to treaty. A vote without them, and without other voters who were neither Tla'amin Members nor Sliammon First Nation members but allegedly friends, colleagues and more distant relatives of employees of the Sliammon Treaty Society who belong to other Bands, may have different results.

The eligibility and enrolment procedure which the Sliammon Treaty Society used to get its narrow win a year ago has been implicated in a court proceeding brought by opponents of the treaty process within Sliammon. Hereditary Chief Muksamma, Jackie Timothy, led the Anti-Treaty Elders to the wafer-thin court victory: Judge Savage said in court, according to Muksamma, that neither BC nor Canada could ratify the Final Agreement at this stage. His written ruling stated that the newly formed Enrolment Appeal Board can be used by the Sliammon now to answer the Elders' concerns about votes cast by unlikely Sliammon members.

Lawyer Greg McDade praised and defended the Treaty Society's "A+" enrolment procedure in court last summer, where the Treaty Society defeated the Elders who pleaded for an injunction against the vote. At that time, the Elders had collected 223 signatures on a petition asking for a delay in the voting: "The undersigned strongly believe that everyone on the Band list should have a say on the treaty vote."

Current procedure under the BC Treaty Commission's near-uniform ratification chapter is that individual Band members must enroll in the yet-to-be Treaty First Nation, a First Nation which will only exist once the people enrolled in it ratify the Final Agreement, relinquishing their membership in the Indian Band

to-be-extinguished, before they can vote on the Final Agreement. There are just over one thousand Sliammon Members.

The Sliammon opponents to the treaty actually used their vehicles to blockade the doors to the on-Reserve polling station on June 16th of 2012, creating their own delay, but the court follow-up to get a BC injunction was unsuccessful. Although the Sliammon Agreement in Principle had been voted out by a margin of 2% in 2001, McDade managed to persuade the judge that action to stop the treaty was now too late.

Objections to the Sliammon Treaty Society's methods are extensive. Eammon Murphy of Woodward and Company lawfirm is representing them. Noreen Galligos-Paul, Ratification Coordinator for the Society's voting, was apparently sending so many text-messages on June 15, the day before the vote last summer, that she mis-fired:

> "Hey rib vote tomorrow (happy face) I was hoping that I can count on your support for final agreement vote to morrow. Let me know if you have any questions."
> "Oops sorry wrong Robert"

Robbi Wilson, the Sliammon Councilor who Galligos-Paul accidentally urged to vote in favour of the Agreement, wrote a formal complaint to the Treaty Society. Other Sliammon members complained of other widespread harassments and inducements: they had been offered cash for their vote, treated to expensive boating tours of the traditional territory, and possibly been influenced by the promise of large lump-sum cash payouts to Elders in the community upon ratification of the Final Agreement. Affidavits swearing to these statements were presented to the courts last year and this Spring, finally yielding the somewhat

obtuse and disinterested ruling of Judge Savage, BC Supreme Court, on May 21, which nevertheless concealed in its verbiage the real rub:

> [19] Although at times the plaintiffs made broad reaching assertions about past wrongs, the jurisdiction of the courts, the jurisdiction or lack of jurisdiction of the Province, Canada and the Queen, the plaintiff's core allegations in this proceeding are that the Society and others acted without or in breach of lawful authority, and contrary to the principles of natural justice in conducting the vote, the results of which they oppose.
>
> [20] This is, in my view, properly the subject of judicial review. A tort action is a collateral attack which should not be permitted as it is contrary to the authority of the Court of Appeal in Cimaco International Sales Inc. v. British Columbia, 2010 BCCA 342 at para. 61. Moreover, there is now operative under the Final Agreement a process in place to address the very challenges which form the gravaman of the plaintiffs' complaints, which are alleged irregularities in the enrollment and voting process.
>
> [21] As noted by the Society, the Enrollment Appeal Board has now been established. The rules governing the Enrollment Appeal Board make provision for the very kind of challenges which are referenced in the materials before me. The decisions of the Enrollment Appeal Board are not final, but subject to judicial review under the Judicial Review Procedures Act. I am satisfied that that process is one which can appropriately address the plaintiffs' complaints.

Revisiting the 57% "yes" vote

Aside from the concerns about how the Final Agreement was voted in, opponents of the Tla'amin Final Agreement are even more upset by the contents of the settlement itself.

The maps which depict Tla'amin Treaty Lands, the lands the new First Nation would own, use a scale of hundreds of meters. That is to say, each inch on the map represents a few hundreds of meters of land. Most stretches of Tla'amin Treaty Lands are not more than one kilometer wide.

Sliammon traditional territory crosses the Georgia Strait, or Salish Sea, at the landmarks we now know as Powell River and Comox. Their lands include the following popular Gulf Islands: Texada, Lasqueti, Denman and Hornby. There are no Treaty lands there. The Tla'amin people have unmistakable interests in the lands on both sides of the Strait which brings the map they submitted to the BC Treaty Commission, with their Statement of Intent to negotiate, to span about a hundred kilometers north-south and nearly fifty east-west, or nearly 5,000 square kilometers of coast, island, and resource rich waters.

The Final Agreement provides for 8,322 hectares (83 square kilometers) of Treaty Settlement Lands, and 1,917 hectares of this is existing Reserve land. The deal also includes a capital transfer of $29.7 million over 10 years. Tla'amin Nation will receive an Economic Development Fund of approximately $6.9 million and a Fishing Vessel Fund of $0.25 million. The Tla'amin settlement also includes three shellfish aquaculture tenures and commercial recreation tenures along several creeks.

As with all "modern BC treaties," in ratifying this Agreement the Tla'amin will relinquish their aboriginal title "anywhere it existed in Canada," and release and indemnify the province, Canada, "and anyone else," for all past harm or infringement of their title. They will retain some fishing rights, prescribed in the Agreement; cede to BC the highway that passes through their territory; submit their traditional lands and Settlement Lands to formal British Columbia Planning Processes; and give up tax free status, the constitutional status of their lands, and rights and federally supported entitlements accorded to others with Indian Status.

A letter from Muksamma to the Governor General dated June 12, 2013, advises that "I, along with the Elders, do not accept giving up our lands and resources and consider this Sliammon Band Council in breach of our Trust."

Friday June 21, 2013, Sto:lo Tribal Council press release

MEDIA ADVISORY:

Stó:lō To File Statement of Claim in BC Supreme Court

The Stó:lō people reject Canada and BC decision
to give exclusive title of 5 Mile Fishery to Yale First Nation

The Yale First Nation is, without question, a Stó:lō community and is entitled by virtue of their collective rights and title to enjoy the area known as the 5 mile fishery. The evidence is undeniable. Unfortunately their treaty will grant them constitutionally protected authority to gate-keep an area that has for thousands of years belonged to all of the Stó:lō people. This is unacceptable and will result in harmful conflict. The Governments of Canada and BC are prepared to compromise the rights and title of the Stó:lō – almost 10,000 people – in order to demonstrate that the treaty process is working.

"This is a divide and conquer strategy by the Federal and Provincial Governments." Grand Chief Doug Kelly, Stó:lō Tribal Council.

"Treaties were meant to bring certainty and harmony for First Nation and non-First Nation people. The Yale treaty totally

misses the mark in that regard and worse yet establishes a harmful precedent for all remaining treaty tables in BC." Grand Chief Joe Hall, Stó:lō Nation