



**ALTERNATIVES TO THE BRITISH COLUMBIA TREATY
PROCESS: COMMUNITY PERSPECTIVES ON
ABORIGINAL TITLE AND RIGHTS**

by

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"I have heard talk and talk, but nothing is done. Good words do not last long unless they amount to something. Words do not pay for my dead people. They do not pay for my country, now overrun by white men. Good words will not give my people good health and stop them from dying. Good words will not get my people a home where they can live in peace and take care of themselves. I am TIRED of talk that comes to nothing. It makes my heart sick when I remember all the good words and broken promises."

Chief Joseph, Nez Perce (Nimiputimt)

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	<u>ii</u>
EXECUTIVE SUMMARY	<u>iii</u>
INTRODUCTION	<u>1</u>
PART ONE: THE BRITISH COLUMBIA TREATY PROCESS	<u>3</u>
A Process of Good Faith Negotiations?.....	<u>4</u>
A Modern-day Negotiation Model: The Nisga’a Final Agreement.....	<u>7</u>
A Process of Extinguishment.....	<u>8</u>
RESEARCH METHODS	<u>14</u>
PART TWO: COMMUNITY PERSPECTIVES ON ABORIGINAL TITLE AND RIGHTS	<u>15</u>
Question One: What were the political relationships between your nation and neighbouring Indigenous nations?.....	<u>16</u>
Question Two: Can traditional political relationships be reconciled?.....	<u>21</u>
Question Three: What are the roles of women?.....	<u>27</u>
PART THREE: ALTERNATIVES TO THE BCTC PROCESS	<u>29</u>
Question Four: Do you see any alternatives to the BCTC process?.....	<u>29</u>
Question Five: What can Indigenous political organizations do to help communities with nation building and treaty making processes?.....	<u>44</u>
Question Six: Is there a need for Indigenous communities to unite?.....	<u>48</u>
Question Seven: What are national or international possibilities that would advance treaty-making processes for Indigenous peoples in BC?.....	<u>53</u>
CONCLUSION & RECOMMENDATIONS	<u>61</u>
BIBLIOGRAPHY	<u>69</u>
APPENDIX A: UBCIC INDIGENOUS SOVEREIGN-TERRITORIAL MAP ...	<u>73</u>
APPENDIX B: COLONIZATION & DECOLONIZATION: Nlaka’pamux & Secwepemc Nation Building Model	<u>74</u>
APPENDIX C: BIOGRAPHIES	<u>75</u>
APPENDIX D: GLOSSARY	<u>78</u>

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EXECUTIVE SUMMARY

The findings of this report, which explores alternatives to the British Columbia Treaty Process, are based on interviews with ten community leaders, three women and seven men, from six distinct Indigenous Nations in British Columbia: Carrier (2), Nlaka'pamux (1), Nuu-Chah-Nulth (3), Secwepemc (1), Sto:lo (1) and Tsilhqot'in (2). Guided by seven questions, each participant tells of their diverse and unique relationship to the land affirming their inherent title, rights and authority over the land and resources:

1. Based on oral histories, describe the political relationships between your nation and neighbouring Indigenous nations?
2. Can the traditional political relationships between the nations be reconciled or reconsidered?
3. What are the roles of women in the treaty making process?
4. Do you see any alternatives to the current BCTC process?
5. What can Indigenous political organizations do to help communities with nation building and protecting aboriginal title and rights?
6. Is there a need for Indigenous communities to unite, as unified nations, as a prerequisite to treaty making?
7. What are national or international possibilities that would advance the treaty-making processes for Indigenous peoples in BC?

Based on the interview responses, I find that Indigenous Nations in British Columbia have always possessed sovereign authority over their lands and resources as reflected in oral testimonies and historical accounts presented; it is also their right to initiate and maintain treaty relationships according to their laws and right of self-determination.

The following recommendations have been identified as multi-pronged strategies to protect Aboriginal Title and Rights, and more importantly, identify fundamental components as alternatives to the British Columbia Treaty Commission process:

1. Reaffirm Indigenous Nationhood and Sovereignty.
2. Develop strategic treaty-making models based on traditional treaty relationships.
3. Promote Indigenous Nationhood through decolonization.
4. Recognize Treaties as binding International Agreements.
5. Indigenous political organizations to support grassroots movements and initiatives towards nationhood and sovereignty.
6. Reconceptualize Indigenous – Crown Relationships in the context of decolonization.
7. Indigenous representatives and delegates to participate at international forums and conventions to affirm their status as self-determining nations.

INTRODUCTION

The ownership of Indigenous territories, once occupied exclusively by Indigenous Nations, has never been surrendered, sold or bartered to colonial powers. Indigenous nations in what is called the province of British Columbia, still maintain their inherent title and rights over lands and resources granted to them by the Creator. The objective of this research is to demonstrate, through oral testimonies, that Indigenous nations still possess the true authority and ownership over their respective territories. Based on oral testimonies and traditional knowledge, which are key practices in keeping historical memories strong and alive, it is clear that the sovereign authority and ownership of territories are still being acknowledged amongst Indigenous Nations in British Columbia.¹

This project is divided into three parts. Part one provides an overview of the British Columbia Treaty Commission. Namely, it examines why the BCTC was established and the guiding principles behind the comprehensive land negotiations. According to the federal and provincial governments, the BCTC is the only avenue for indigenous communities to engage the federal and provincial governments in formal political discussions on land title and governance issues.²

Part two examines the historical perspectives of pre-colonial treaty relationships between sovereign Indigenous Nations. The first three questions are based on the premise that Indigenous Nations had nation-to-nation relationships (treaties) that existed since time immemorial. What were these relationships like? Can the traditional

¹ Sampson Interview 2004; UBCIC Newsletter, Winter 1999.

² Alfred, Taiaiake. "Deconstructing the British Columbia Treaty Process." *Balayi: Culture, Law and Colonization*, Volume 3, 2001.

relationships or treaties be reconciled or reconsidered as political alternatives to the BCTC process? And, is the participation of women becoming more inclusive in political decision-making processes? Part three examines various alternatives and recommendations to the current British Columbia Treaty Commission process. From a grassroots perspective, what are the alternatives to the current treaty-making process? What can Indigenous organizations (UBCIC, AFN, etc.) do to advance traditionally based approaches to treaty making at the grassroots, national and international levels? Is there a need for Indigenous communities to unite, as unified nations, prior to engaging in treaty negotiations? And, are there national or international possibilities that would advance treaty-making processes for Indigenous peoples in BC?

PART ONE: THE BRITISH COLUMBIA TREATY PROCESS

Historically, Indigenous nations and Europeans nations/peoples came together at treaty tables as equal sovereign peoples. The first treaty between Indigenous Nations and the Crown is the 1763 Royal Proclamation³, which stands as a recognition of Indigenous Nations' sovereignty. This pre-confederation treaty was made to secure peaceful relationships with Indigenous peoples and demonstrates that Indigenous peoples were not passive objects, but active participants in the formation and ratification of treaties.⁴ Since confederation, however, the focus has moved from peace and friendship treaties to land cession agreements. Although the peace and friendship treaties were often referenced, the contemporary treaty negotiations had become essentially land transfers.⁵

The province of British Columbia and Canada refuses to recognize that aboriginal title and rights exist. BC asserts that such title does not exist, and if it did, it was extinguished prior to confederation. This premise is used to rationalize the subjugation of Indigenous Peoples from their land and resources through title extinguishment, the procurement of land settlement, and the exploitation of resources.⁶ This section focuses

³ For further research on the 1763 Royal Proclamation see John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government" in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*, ed. Michael Asch. UBC Press, 1997.

⁴ Borrows, John. "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*, ed. M. Asch (UBC Press, 1997), pp. 155-172.; Foster, Hamar. "Canada: 'Indian Administration' from the Royal Proclamation of 1763 to Constitutionally Entrenched Aboriginal Rights", ed. Paul Havemann, *Indigenous People's Rights in Australia, Canada & New Zealand*. Oxford University Press, 1999. pp. 351-377.

⁵ Dickason, Olive Patricia. *Canada's First Nations: A History of Founding Peoples from Earliest Times*. Oxford University Press, 1992.

⁶ Alfred, Taiaiake. "Deconstructing the British Columbia Treaty Process" in *Balayi: Culture, Law and Colonialism*, Volume 3, 2001; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*, UBC Press 2002, Pp. 320-321; Howard Adams. *Prison of Grass: Canada from a Native Point of View*. Fifth House Publishers, 1989, pp 60-69.

on the legislated policy which claims will bring certainty and finality over the land and resources in British Columbia – the British Columbia Treaty Process.⁷

A Process of Good Faith Negotiations?

In 1993, the B.C. Court of Appeal issued its decision in *Delgamu'ukw v. British Columbia*, a land claim brought by the Gitksan and Wet'suwet'en First Nations. The Court of Appeal recognized that aboriginal rights continued to exist and noted that these questions are better resolved through negotiations rather than through the court system.

The federal policy that underlines the British Columbia Treaty Commission process is known as the 1986 Comprehensive Claims Policy.⁸ This policy divides claims into two broad categories - specific and comprehensive. Comprehensive land claims (i.e.: the Nisga'a Final Agreement) is based on the assertion of continuing Aboriginal title to lands and natural resources. The federal policy stipulates that land claims may be negotiated with Aboriginal bands in areas where claims to Aboriginal title have not been addressed by treaty or through other legal means.

The British Columbia Treaty Commission (BCTC)⁹ process was legislated on September 21st, 1992 through agreements between Canada, the province of British Columbia and the First Nations Summit.¹⁰ The BCTC is considered to be an independent

⁷ Bartlett, Richard H. *Indian Reserves and Aboriginal Lands in Canada: A Homeland*. University of Saskatchewan Native Law Centre, 1990.

⁸ It is the position of the Government of Canada that provincial governments must participate in negotiations and contribute to the provision of benefits to Aboriginal groups. The lands and resources that are the subject of comprehensive claim negotiations are under provincial jurisdiction – a process to establish certainty of title to lands and resources; claims settlements benefit the provinces. <http://www.ainc-inac.gc.ca/ps/clm/brief_t_e.html> [January 2005]

⁹ See The British Columbia Treaty Commission website at: <<http://www.bctreaty.net/>> [January 2005]

¹⁰ Leaders from First Nations across British Columbia appointed three members to the BC Claims Task Force at a meeting called the First Nations Summit. Two members are appointed by the Government of Canada and two by the Province of British Columbia. The FNS is comprised of a majority of First

and neutral body responsible for facilitating treaty negotiations between the governments of Canada, British Columbia and the First Nations in BC. According to the protocols laid out by the BCTC, the Treaty Commission does not negotiate “agreements”¹¹ between the parties; this is done at each negotiation table. Negotiations are guided by the agreement and the 1991 Report of the BC Claims Task Force¹², which is the blueprint for the BCTC process. The Treaty Commission and the six-stage treaty (agreement) process are designed to advance the negotiations and claims to facilitate “fair and durable treaties.” This process is deemed as voluntary and is open to all First Nations bands in British Columbia.

The BCTC process is intended to accomplish five goals: reconcile the interests by establishing new relationships based on trust, respect and understanding through political negotiations; certainty of ownership and resources; reduce conflict over the lands and resources; constitutional protection as the treaties and rights will be protected under the Constitution Act; and, economic development for First Nations self-sufficiency.¹³

The six-stage process is designed to facilitate the negotiation process through:

1. A Statement of Intent: First Nations wanting to initiate treaty negotiations must file a statement of intent to the Treaty Commission. This statement identifies the nations

Nations and Tribal Councils in BC and provides a forum for First Nations in British Columbia to address issues relating to Treaty negotiations as well as other issues of common concern. The First Nations Summit does not participate in the negotiation process. See the FNS website at: <<http://www.fns.bc.ca/about/about.htm>> [January 2005]

¹¹ The BCTC gives the impression that negotiations between First Nations, the provincial and federal governments are treaties. The negotiations are not treaties as defined by international law, but domestic land claim agreements and transfers. For more information on the principles of treaty making, see Taiaiake Alfred’s “Deconstructing the British Columbia Treaty Process” in *Balayi: Culture, Law and Colonialism*, Volume 3, 2001.

¹² See *The Report of BC Claims Task Force*, June 28th, 1991 <<http://www.gov.bc.ca/tno/rpts/bcctf/toc.htm>> [January 2005]

¹³ See “What’s the deal with treaties? A lay person’s guide to treaty making in British Columbia.” <http://www.bctreaty.net/files_2/pdf_documents/What%27s%20the%20Dealv3.pdf> [January 2005]

and membership; describes their traditional territory; provides a mandate to enter into and represents its members in negotiations and appoints a formal contact person. The First Nations band is then recognized as a governing body established by aboriginal people within their traditional territory mandated by its constituents (Band Council Resolution or Tribal Council Resolution) to enter into negotiations on their behalf with Canada and the province of British Columbia.

2. Preparation for Negotiations: the First Nation band, the province of British Columbia and Canada then confirm their commitment to negotiate an agreement; establish that they have the authority and resources (funds) to commence negotiations; and, broadly outlines the negotiations. The BCTC allocates support funding so that First Nations bands can prepare for and carry out negotiations with the governments of Canada and British Columbia. For every \$100 of negotiation support funding, \$80 (or 80%) is a loan from Canada, \$12 is a contribution from Canada and \$8 is a contribution from BC. Since its inception, the BCTC has allocated approximately \$325 million in negotiation funding to 57 First Nations bands, equaling \$260 million in loans and \$65 million in contributions.¹⁴ Prior to moving to stage three all parties must submit documents to the BCTC identifying community interests.
3. Negotiation of a Framework Agreement: Defines the issues each party has agreed to negotiate; establishes the objectives of the negotiation; identifies the procedures that will be followed; and, sets out a timetable for negotiations. The party expands its public consultation in local communities and initiates a program for public information and discussions.
4. Negotiation of an Agreement in Principle (AIP): Substantive negotiations take place in this stage. Land, resources, self-government and financial components usually form part of the negotiations. The agreement in principle sets out the key objectives and elements to be part of the agreement.

¹⁴ Balance as of February 2006. To view the BCTC Annual Reports, see http://www.bctreaty.net/files_3/annuals.html.

5. Negotiation to Finalize a BCTC agreement: At this stage, outstanding legal and technical issues are resolved. Formal signing and ratification of the agreement advances the parties to Stage Six.
6. BCTC Agreement Implementation: The plans to implement the agreement are put into effect or phased in as agreed.

To date, there are 55 bands at 42 negotiation tables, which are currently engaged in the BCTC process. According to the BC Treaty Commission statistics, this number represents 65% of BC's aboriginal population!¹⁵ The BC and federal government leaders are adamant that the BCTC process is the only viable option to resolve the land question in British Columbia; no other option is to be considered.¹⁶

A Modern-day Negotiation Model: The Nisga'a Final Agreement

Prior to the BCTC process, the Nisga'a Nation had been seeking a treaty settlement with the federal government since 1887. For the federal and provincial governments, the Nisga'a Final Agreement¹⁷ provides an insight into what a modern-day treaty might look like. Many First Nations criticize this agreement as Canada's template to extinguish Aboriginal title and rights over the land and resources. Ratified in August 1998 by 61% of eligible voters, the Nisga'a Final Agreement designated 1,992 square kilometers, which is equivalent of 8.6% of their traditional territory, as Nisga'a land; and,

¹⁵ "What's the deal with treaties? A lay person's guide to treaty making in British Columbia." <http://www.bctreaty.net/files_2/pdf_documents/What%27s%20the%20Dealv3.pdf>, Page 8.

¹⁶ Kunin, Roslyn. *Prospering Together: The Economic Impact of the Aboriginal Title Settlements in B.C.* The Laurier Institution, 1998.

¹⁷ In February 1996, negotiators for the three parties signed an Agreement-in-Principle (AIP). On 4 August 1998, Nisga'a representatives and government negotiators signed the Nisga'a Final Agreement. See the Nisga'a Final Agreement at: [http://www.parl.gc.ca/information/library/PRBpubs/prb992-e.htm#\(2\)](http://www.parl.gc.ca/information/library/PRBpubs/prb992-e.htm#(2)).

guaranteed various Aboriginal rights relating to fishing, wildlife and other matters subjected to Canadian laws. As summarized in the Union of BC Indian Chiefs, *Modern Land Claims Agreement: Through the Nisga'a Looking Glass*:

The net impact of the certainty language in modern land claims agreements, as evidenced in the Nisga'a Agreement, is the creation of a double standard with regard to title and interests in the land. Canada, the province, and third parties have their rights and interests recognized and protected. These rights are not defined or in any way limited by the Agreements. The Indigenous group, on the other hand, has all of their rights reduced to the written word of the Agreement. Their Aboriginal Title to their traditional territories ceases and is replaced with fee simple title. Their Right of Self-Determination ceases and is replaced with the right to self-government and self-administration under Canadian law.¹⁸

The government claims that its main objective in treaty making is to produce certainty and to ensure finality in the land claims question. It is apparent, however, that this process is intended to assimilate Indigenous Peoples into Canada as a minority with no unique feature as a "Peoples" or status in international law.¹⁹

A Process of Extinguishment

The following viewpoints reflect opposing views and positions against the BCTC process, its goals and the six-stage formula that governs the tri-partite agreements. The BCTC process, emphasized by many Indigenous leaders, is a facade, a cynical manipulation that perpetuates the problems that negotiations are supposed to resolve; it is veiled as another form of domestication, an advanced form of co-optation, control, manipulation, denial and assimilation. Indigenous peoples are continually fighting for survival both against the state and the choices made by Indigenous representatives who

¹⁸ See UBCIC Nisga'a Summary – *Modern Land Claims Agreements: Through the Nisga'a Looking Glass*, at: http://www.ubcic.bc.ca/files/PDF/UBCIC_ModernAgreements_LookingGlass.pdf, Draft 7, September 1998, page 22.

¹⁹ *Ibid*, page 1.

claim they speak for their people, to resolutions based on the state's premise, policies and interests.²⁰

The foundation of the current British Columbia Treaty Commission (BCTC) process arose from the premise that the British Crown owns Indigenous lands. Indigenous peoples who oppose this assertion must submit to the BCTC process in hopes to regain title and rights over the lands they inherently possess. Why then, should Indigenous peoples have to prove, or make claims to the land and resources they rightfully own? Despite the federal and provincial governments' repeated attempts to attain certainty through "treaty-like" agreements, Indigenous leaders recognize that to enter into the current BCTC process is to surrender and extinguish their inherent inalienable ownership and relationship to the land and its resources. Through this process, the titles and rights will be reduced, defined and limited out of existence into treaty rights as set out in clauses in the agreements.²¹

It is argued that First Nation bands participating in the BCTC process are members of a nation who were never granted the authority to enter into treaties, or agreements, on behalf of the entire nation. Traditionally, authority and ownership of lands and resources belonged to the entire Indigenous Nation.²² The collective nature of aboriginal title means that no band has the authority to treaty for lands and resources,

²⁰ Alfred, Taiaiake. "Modern Treaties: A Path to Assimilation?" in *Peace, Power and Righteousness: An Indigenous Manifesto*. Ontario: Oxford University Press, 1999. Pp. 119-128.; Alfred, Taiaiake. "Deconstructing the British Columbia Treaty Process" in *Balayi: Culture, Law and Colonialism*, Volume 3, 2001; Schulte-Tenckhoff, Isabelle. "Reassessing the Paradigm of Domestication: The Problematic of Indigenous Treaties" in *Review of Constitutional Studies*, vol. 4, no. 2. 1998. pp. 239-289.

²¹ See UBCIC Nisga'a Summary – *Modern Land Claims Agreements: Through the Nisga'a Looking Glass*, at: http://www.ubcic.bc.ca/files/DF/UBCIC_ModernAgreements_LookingGlass.pdf, Draft 7, September 1998, page 3.

²² Chief Myers, 2004.

only Indigenous nations, as a whole, have this right.²³ Through a democratic process, a simple majority vote could decide the fate of an Indigenous nation with 50 + 1% of the voters to extinguish aboriginal title and rights of an entire Nation forever.²⁴

Another contentious issue being stressed by First Nations members is having third parties and their interests considered and protected at BCTC negotiation tables. The rationale behind third-parties inclusion, including those now using and profiting from Crown land resources, is that they too will pay part of the cost of treaty settlements as their access to the resources will be limited or the cost of such access will increase; therefore, it is argued that third-parties must have input into the treaty negotiation processes.²⁵ Indigenous leaders also argue that while they are trying to resolve the land question, or to protect their aboriginal title and rights, third-party businesses are allowed to exploit natural resources in territories owned by Indigenous nations. While negotiations are being discussed at the BCTC tables, leaders find themselves proceeding through the Canadian court system applying for injunctions against forestry, fisheries or mining companies that are exploiting unceded resources. It is apparent that the governments of Canada and British Columbia are insincere in seeking to reconcile or recognize Aboriginal title, rights and ownership.²⁶

²³ UBCIC, *Aboriginal Title Implementation*, 1998. <<http://www.ubcic.bc.ca/implementation.htm>>

²⁴ A member of the Nisga'a Nation, who resides in Vancouver, traveled to her territory to ensure her vote against the Nisga'a Final Agreement was counted. She felt this was an unfair process as the majority of Nisga'a members were either underage or living off reserve for various reasons. She was concerned that members who lived off reserve, and who were not in favor of the agreement, might be excluded from the voter's list.

²⁵ Kunin, Roslyn. *Prospering Together: The Economic Impact of the Aboriginal Title Settlements in B.C.* The Laurier Institution, 1998, page xxxiii.

²⁶ Alfred, Taiaiake. "Deconstructing the British Columbia Treaty Process" in *Balayi: Culture, Law and Colonialism*, Volume 3, 2001; Robert Morales, chief negotiator for the Hul'qumi'num Treaty Group, spoke at the United Nations seminar on indigenous rights, "Under international law and domestic law, the government is obligated to enter into treaty and to compensate the Hul'qumi'num people for land taken in the 1800's. But the government is saying the past is gone and will only deal with Crown land...both the BC and the federal governments are not allowing private land into negotiations in any

Many First Nations leaders who oppose the BCTC process, feel it is “unfair and unequal” as the provincial government and the Crown will receive complete recognition of assumed sovereignty with an underlying title to the land and supremacy of laws over Indigenous governments and peoples. Indigenous peoples will get limited recognition of title reduced to pieces of land, the right to co-manage resources along with government and third parties; and, self-government will be restricted under Canadian and provincial laws.

The Union of BC Indian Chiefs proposed an umbrella treaty-making process to settle the Indian Land Question in BC. Chief Saul Terry, the former president of the Union of British Columbia Indian Chiefs stated:

First, our Nations collectively must negotiate a comprehensive framework treaty with the federal and provincial governments. We do not want a land claims agreement negotiated by only one tribe to be used as a precedent for us all. Instead of this piecemeal “divide and conquer” approach, a pan-tribal framework treaty would set out fundamental principles, arrangements, structures and timeframes to guide the negotiation of specific treaty agreements with each of our tribal nations. A framework treaty also could set out interim arrangements to protect Indian and third-party interests until specific tribal treaties are concluded. Specific tribal treaties would comprise the second stage of the treaty-making process.²⁷

The federal government rejected the UBCIC’s proposal. In its place, a tripartite process-oriented procedure was legislated through the newly formed BC Land Claims Task Force²⁸. The UBCIC’s response was that the UBCIC chiefs could not sanction an extinguishment strategy that endangers the title and rights of Indigenous peoples.

form, which could be co-management of resources or direct monetary compensation. International law has the principle of restitution, where if the state confiscates property the state must provide equal property of size and value, or provide compensation. It should be a matter of negotiation. It’s not even allowed for discussion.” *Ladysmith Chronicle*, October 4, 2005.

²⁷ Union of BC Indian Chiefs, *A Bilateral Nation-to-Nation Option for Treaty-Making and Treaty Implementation in B.C.* Draft Paper, October 3, 1994.

²⁸ The Task Force was created on December 3, 1990 by an agreement between representatives of First Nations in British Columbia (First Nations Summit), the Government of British Columbia and the

Chief Stewart Phillip, the current president of the UBCIC, reaffirmed the UBCIC's political stand against the BCTC process.

What the UBCIC is known for is consistency. And, we're defending the same principles that we were in '69 in the new millennium and shall continue to do so. I think that there's a lot of soul searching going on out there in Indian country right now with respect to the First Nations Summit constituent group. I'd like to say very clearly that all native communities that subscribe to the BC Treaty Process did so in good faith, and they've dedicated a great deal of time and effort towards resolving the outstanding land question, but it's the government that has not negotiated in good faith and is responsible for the collapse of that particular process.²⁹

UBCIC warns that once a band enters into the BCTC process, they will relinquish their inherent aboriginal title and rights to their lands and resources. The treaty settlement agreements are intended to be the "full and final settlement" of aboriginal title and rights, which are closed for future renegotiations.

As summarized in the UBCIC's, "*Certainty: Canada's Struggle to Extinguish Aboriginal Title*,"³⁰ the modern land claim (treaty) agreements will:

- Represent the "full and final settlement" between the parties, including of past wrongs. The Indigenous group will agree not to pursue any legal claims against Canada or BC with respect to any past wrongs.
- Contain language in which all parties agree not to challenge the "validity or enforceability" of the Agreement. This means that if the Indigenous group in the future does not think that the Agreement was a fair deal, they have agreed not to go to Court to challenge it.
- If BC decides that it cannot afford to make the payments required under the treaty, or if it minimizes the co-management agreement provisions of the agreement, the Indigenous group will not get their lands and rights back.

Government of Canada. The terms of reference asked the Task Force to recommend how the three parties could begin negotiations and what the negotiations should include. For more information see: http://www.bctreaty.net/files_3/pdf_documents/bc_claims_task_force_report.pdf.

²⁹ From the *Voice of BC*, "Interview with Chief Stewart Phillip," Wednesday, October 18th, 2000.

³⁰ UBCIC, *Certainty: Canada's Struggle to Extinguish Aboriginal Title*, 1998.

- Loan funding is provided to cover negotiation costs such as professional and technical staff and the provincial government closely monitors its use. All loans become interest bearing upon the approval of AIPs.
- Treaty settlement land will be equivalent to fee simple private property. Current reserve lands are tracts of land that have been set aside by the federal government for the use and benefit of an Indian Band. (Indian Act, section 2).
- The repayment of loans will be deducted from the compensation obtained through negotiations.
- First Nations who withdraw their application from the BCTC process are to repay monies incurred while in the negotiation process – a demand loan with interest.

Despite numerous flaws in the BCTC process, fifty-five First Nations bands believe that the BCTC process is still a viable solution for their people. To date, only two First Nations bands have withdrawn their application from the BCTC negotiation process. Many leaders who oppose the BCTC process argue that it is another paradigm of domestication; to enter into this process is to accede to colonial authority and governance, as its intent is to relinquish aboriginal title and rights. Until a just and legitimate relationship is established, one that acknowledges existing aboriginal title and rights, schemes like the BCTC will not work – alternatives must be examined.

RESEARCH METHODS

The findings of this report are intended to promote dialogue between Indigenous community leaders and to explore viable alternatives to treaty making processes in British Columbia. This qualitative research design incorporates face-to-face and telephone interviews with leaders, elders and community members from six indigenous nations in British Columbia. Ten interviews were completed over a period of four months, January to April 2004, three person-to-person interviews were conducted at the UBCIC office, two by pre-arranged teleconferences, and, five were completed in the participant's community or place of employment: Cheam, Hupacasath, Siska, the University of British Columbia and Vancouver.

The regulations and guidelines set forth in the University of Victoria's Indigenous Governance Program's "*Protocols and Principles for Conducting Research in an Indigenous Context*"³¹ have been followed in this research project. The participants, whose words have been used in this project, have verified the accuracy of their transcribed interviews and have consented to their use. A copy of the final report will be sent to each participant upon completion. Additionally, the project will be made available at the Union of British Columbia Indian Chiefs' Resource Library located at the Water Street location in Vancouver and can be accessed through the University of Victoria's Indigenous Governance Program website.³² All audio recordings and written material will remain with the researcher in a locked file cabinet and will not be released or used without prior authorization from each interviewee.

³¹ *Protocols & Principles for Conducting Research in an Indigenous Context*. University of Victoria, Indigenous Governance Programs, June 2000. <<http://web.uvic.ca/igov/research/index.html>>

³² See the University of Victoria, Indigenous Governance Programs website at: <<http://web.uvic.ca/igov/research/student.html>> [January 2005]

PART TWO: COMMUNITY PERSPECTIVES ON ABORIGINAL TITLE AND RIGHTS

“To the Nlha’7kapmx people, sovereign authority was commonly recognized as the power that determined ownership, entitlement, inherent rights, laws, autonomous government and self-determination. The Nlha’7kapmx people made treaties with the Secwepemc and Stl’atl’imx peoples because they had the sovereign power to do so. There are specific sites that indicate the boundary lines between these nations. When a meeting was to take place, a messenger was sent to invite the people where we met to trade and to strengthen the relationship.”³³

This section examines, through oral testimonies, Indigenous perspectives on treaty making as distinct, sovereign nations. These interviews allow one to step away from a colonial mindset in order to fully appreciate the sovereign authority of Indigenous nations being examined here. The first question focuses on the historical knowledge and history of Indigenous Nations prior to colonial contact. Based on oral histories, what were the political relationships between Indigenous nations? The second question asks about the status of original treaty agreements between the nations and whether they can be reconciled or reconsidered as a solution to the BCTC process. Question three focuses on the roles of women in the Indigenous treaty making process.

³³ Elder Arthur Sam quoted in Jennie Blankinship’s, *The Significance of “Place” in Nlaka’pamux and Secwepemc Territories*, University of Victoria, unpublished paper, Spring 2003.

QUESTION ONE

JB: Based on oral histories, what were the political relationships between your nation and neighbouring Indigenous nations?

June McCue (Carrier): As I grew older, I became aware of how rich our culture is and our governing system and how much we have to protect it and use it. Our languages are quite strong and from my understanding that is where the laws and customs are embedded in, therefore, I know our governing systems are still there, we have to find a way to reinstitute our governing system... whether it is a member of a clan and whether it is to be a hereditary chief, whether it is to have rights as children of a hereditary chief.

We have to ask ourselves “what are our sovereign attributes?” “What makes us who we are? Not what the western world defines, what is a state? So, if language is key, if spirituality is key, if participation and consent is key, if territorial boundaries is key and how we relate to one another is part of that picture, we have to start describing that. It will be different because in my understanding we had overlapping territories and sovereignties. It was not so mutually as you see with western states structures of sovereignty. We did have overlaps and we did have the sharing of territories. It is identifying what are those mechanisms that allowed us to have overlaps without killing each other. It was respecting each other and so that ordering involves that overlap - that nature of independence and connection in the same space at the same time. That is already different than the way the state is constructed. I am curious as to how that would look like in the future. Can we replicate it?

Roger Jimmie (Carrier): It was just pretty well understood on both sides and we kind of stayed out of each other's territories. Today, you would look at it in terms of trap-lines, ownership of who owned what trap-line. And, the biggest reason for that were the sacred sites, the protection of sacred sites. Every family has a sacred site in their area and there was always someone responsible for it and these areas were so powerful. Sometime, about 10 years ago, some white loggers logged off one [sacred site], there were four of them, and they all died in the same year. In terms of protection for these areas, it was understood by [neighboring] people they stayed out of these areas and we stayed out of areas like that within their territory too. So, that reinforced our really rough boundaries. Basically, that was used by Carriers and Chilcotin and part of the treaties is that, it was understood, if we lived in their territory we have to basically respect Chilcotin law and the same went for Chilcotin moving into southern Carrier territory that is how it was understood.

Fred Sampson (Nlaka'pamux): What I can rely on is some of the things my grandparents talked about. They talked about relationships and treaties with outside nations, treaty with Okanagan. I know there was a real war-like attitude within the far end of Nlaka'pamux territory but there was a trade-oriented relationship at this end of Nlaka'pamux territory. It was quite an active trading with the coastal tribes. So, in a sense there were two different types of treaties. And, in some cases there might have

been three different types of treaties touching boundaries of nations. At certain points in time, with the Lillooet people – it was a war treaty. They were at war and they fought each other and they did raids on each other. But, in a sense it was a treaty because they understood that was the relationship, whereas, down in the far end with the coast people, there were trade treaties. They had trade-relationships set up, and that's how they would trade products back and forth. That was that type of treaty.

Up in the far end with the Shuswap and Okanagans – they were quite war-like, very aggressive. But, there was still a treaty in place, which would reflect a peace treaty. Within each nation there could be several different types of treaties that were on-going relationships to the nations around them reflecting what ever their current relationship was. At the same time, when the white people or contact came, it was the interior tribes of BC that didn't want to get into a treaty relationship with the new comers. They basically swore an alliance to each other at Spences Bridge 1910 and the Constitutional Express that came years later. Before that there was a huge gathering at Spences Bridge where the five nations came together and basically declared their independence from staying under any kind of sovereignty or jurisdiction of the white people, the new comers. In traveling with my Mom, she was always very conscious of where she was going. She would stop along side the highway and offer tobacco before going into another nation's territory. And, she eminently reminded me when I was public speaking anywhere that I acknowledge up first, front and foremost the nation that I'm in, and the respect and honor to step into their territory. Prior to that, it was those treaties that determined whether you lived or died when you cross that line. You would walk across that line and you were fully aware of your risk. So, I'm here to do business, even in a nasty way. I'm going down there to steal me a woman or steal something – fully aware that knowing when I cross that line that I better be aware of what is surrounding me because I could die anytime. If it were a different type of relationship, a peace relationship, you would probably send a runner in to announce to the village or community that you were coming in under a peace treaty. They would have a name for it...they would call it something "our relationship." It would be used as an announcement as you came into the community – so, they are fully aware. "This is our peace treaty brothers that are coming in, they are not another war tribe, they are not here to steal, they come under this banner "peace treaty" or "trade treaty." They would announce their arrivals. We're coming to trade. There was a lot of honor in their approach, unless it was war.

Cliff Atleo, Jr. (Nuu-chah-nulth): There has been a fair discussion amongst the Nuu-chah-nulth about this. One of the benefits of having quite a few nations isolated on the west coast, they tend to retain some of the older practices. A lot of the West Coast nations are still really strong - the potlatch nations. And, of course it's the potlatches where they pass on the names or whenever there's a wedding. Often times, there's links between communities and links between families. We're actually uncovering a lot of information through research, like I said there is a court case going on and the court case basically is a claim to these resources off the west coast. All the researchers have been uncovering a lot of the documentation, but also interviewing elders and people, historians within Nuu-chah-nulth who have an understanding of ownership, which is the key question in cases. Who has ownership or access to the resources?

The elders always speak of knowing and having place names for everything, for everywhere they went there was an understanding of this and that. The boundaries between the nations...they often had families living along those boundaries. And, there are stories about beached whales that would be right on the line and they literally had tug-of-wars of who got the whale. But, there was always a strict understanding, there's a quote in the research for the litigation that said, "*Nuu-chah-nulth nations monitored and oversaw their territories and anytime their jurisdiction was threatened, anytime the jurisdiction of the chiefs were threatened, they would use force to capture, torture or kill trespassers.*" There was a pretty strict understanding amongst, not only the Nuu-chah-nulth, but the other nations like the Haida. Often times, there was a lot of trade and commerce.

Shawn Atleo (Nuu-chah-nulth): Our governance system carries on and we have nation-to-nation relationships – we have very strict boundaries. We have lots of oral history. We are a whaling nation as well and we have lots of stories about whales that might have died from natural causes, drifting over boundary lines that extend from points on the coast. If the whale was on one side or the other, it determined who owned the whale. We have many examples of very specific boundaries and ownership.

With reference to your question, we absolutely had nation-to-nation relationships prior to colonial contact. We have them between one another; we have them between the Coast Salish nations and ourselves. And, so we have many stories about canoes passing through our territories and other nations requesting permission to pass through. I know of whaling sites where my late great great-grandfather, Keesta would travel far and wide in his canoe on the whale hunt. He had landing sites. He requested permission from chiefs from neighbouring territories so that he could conduct his business of whaling. And, so the chiefs of the neighbouring territories said, "*Yes, that could be your landing site for your whaling expeditions.*" There were agreements of how to do business with one another. And, of course, there was trade. At the time of contact there was previously untranslated evidence of the Spanish explorers in my territories remarking on the nation-to-nation trade, they were acknowledging the ownership of the territories of my ancestors. And, so the issue today of course, is that these are not being recognized in federal and provincial laws and policies. That's a snapshot of this unquestionably very strong evidence in my territories probably because we were so isolated. As a result, the oral traditions in my communities are very, very strong.

Judith Sayers (Nuu-chah-nulth): The Somass River coming up through our territory is a very rich river. There's all species of salmon and we often have to fight off other First Nations because they wanted it, so we have had wars with Comox. There's an island out in Sproat Lake called Massacre Island where one of the wars took place and a lot of people died there. We know we had wars with the Cowichan. We know when we were being attacked by other First Nations, if we needed help, we would call on the Ucluelet or we would call on these other nations we always met with to come and assist us and protecting our territories, in that way there was an acknowledgment of our sovereignty.

Amongst our own First Nations, some of them honoring treaties agreements and respecting one another's territories, some of that are no longer effective because people have expanded their territories beyond what it used to be, whether that's a lack of information, oral history being passed down, or just a misunderstanding. Because often times when one nation or one group of people wanted to come in and exercise the right to fish in our territory, they would ask, they would go to the chief and say, "I would like to go fishing in your territory, could we do this" and he would say, "yes" and they would go fishing and they would give a certain portion of that to the chief. The chief would distribute it between his members who needed it and that was, almost a form of taxation. Some of that was knowledge of being given permission to come into the territory and exercise rights are forgotten. The people went up and down the Sound and there was often areas where people camped, there was traditional areas where people always stopped and they would just camp there. And, it wasn't their land but some people thought it was their land. Somewhere along the line people misunderstood what was theirs. The whole observance of boundaries caused the issues of overlap amongst the First Nations and that has become a critical issue in the treaty process. The political ties are still there, we all work together, we still honor who we are, as a collective Nuu-chah-nulth tribe.

Mike Retasket (Secwepemc): The main thing about the treaties, the oral treaties – they are public, and that has been lost. What hasn't been lost is my ability to have the knowledge and being from the Bonaparte Band, we have a map, which shows our territory. But, if I have needs outside of the territory, at least within the Shuswap Nation and the Stl'atl'imx Nation, I can go get those resources without having any problems because of the nation-to-nation relationships we have between one another, which have been carried on for many generations. So, with the principles and what we do around them, we take just what we need and nothing more.

June Quipp (Sto:lo): I never used to really think of it as treaties, I thought of it more as relationships. One of the things we're really losing today is, when my parents were alive, they knew everybody from kingdom come! From the Island to the states and they had the connection and since then we have really lost a lot of it. My mom talked to me about the people they had called the "runners", she always talked about the mountains, they went from mountain to mountain probably running, this was the basic duty of the runners to bring news, communications, that was their way of communicating, if there was a death in the community, if there was going to be a feast in the community. Having the runners was a way of the trade industry, when we talk about; every now and then you find artifacts here that belonged to somebody from the Okanagan or from the states, which was a sign of trade. We respect it, one another's traditional territories and resources because the resources, I think, there's a big issue today and the treaties. That is where we really respected one another and that I would say would be treaties, whether there're written or sat around in a circle with the feather and the fires and everything to discuss about, you don't come into my territory without coming to me and stuff like that.

There was an understanding of the boundary lines but there was also a very clear understanding of common areas, common shared areas. That's something we've really

lost, I think, and partly due to our own people being greedy as well. When you look at the different nation-to-nation relationships, I would never go into your territory or another territory and I'm sure our people in the past didn't go into someone else's territory and tell them how to log or take gravel or take the trees down or whatever.

Ervin Charleyboy (Tsilco'tin): We know where our boundaries are because with the Chilcotin [Tsilhqot'in] nation, it is different, because in pre-contact we had wars with other nations, the Stl'atl'imx and Carrier from the north we were always warring with those people.... there were bloody battles that took place with the Shuswap, Stl'atl'imx and Carrier people and, not so much with the Bella Coola people. There were trades going on between the Bella Coola and the Chilcotin people.

Ivor Myers (Tsilco'tin): Our people are traditional, they have a spiritual background...this is what we need to keep hammering to the government. The water, trees, medicines have spirits, this is what we need to protect and we have a responsibility.

Question One Summary

Based on historical relationships between the Indigenous nations, it is clear that protocols over territory reflected sovereign political authority, ownership and governance. Historically, nation-to-nation relationships were reflected through trade, commerce, peace alliances and war treaties. It is an understanding that the Creator granted ownership, jurisdiction, laws, language and resources to Indigenous peoples as curators – or keepers of the land.

Traditionally, Indigenous people knew where boundary markers and sacred sites existed; and, in many areas, the resources were shared amongst neighboring nations. Today, however, boundaries are now identified as reserved areas (reservations, bands) designated by the Department of Indian Affairs. An alternative to these allotted bits-of-lands is to expand the markers to identify the traditional territorial boundaries. Visual markers will help affirm the jurisdiction, authority and responsibility to the land – not to be limited to DIA bands or reservations.

QUESTION TWO

JB: Can traditional political relationships between the nations be reconciled or reconsidered?

Roger Jimmie: And, I guess a person's life has to be very important and that is one area we can start. Whereby, in the past our aboriginal rights were encroached on and everybody stood up and opposed these cannot happen and the present government of today they're pretty good at that, they're still encroaching, still pushing their papers, but, in manner where they're just sneaking it by. And, the money is used as a weapon. The government funds are used as a weapon - one that is very dangerous to aboriginal communities. And, there are different areas with such words such as 'confidential.' The word confidential has pretty well killed off a lot of our Indian people, all in terms of deeds and stuff like that. And, you ask information from the government and they'll tell you "that's confidential"; and, unknowingly some of the communities [who] used to have contacts with these "hymies" used such words as that, that's really bad.

Fred Sampson: Reconciled? In my mind, it's more than that...it's not need, we have to. We're at that point, as First Nations people, we're in a critical 100 years in our entire history of aboriginal people. Considering the speed and rate of the provincial and federal governments are moving at assimilation. They don't like that word, but, I use it all the time in public because it is the absolute truth - it's still happening today. They are trying to absorb us into mainstream society and yet throughout the whole process they marginalize us as nations. We have no voice in our own land anymore. And, it's only through re-establishing ourselves as Nlaka'pamux Nation and re-establishing those relationships with other nations that are around us that we're ever going to retain our status as sovereign people in our own traditional territories.

Cliff Atleo, Jr.: I think it has been severely altered in the biggest way. I can see it happening, the disempowerment of the hereditary chiefs. So, through the Indian Act process, through the residential school process, when you take away... I should explain Nuu-chah-nulth territory has a fairly complex hereditary system that is often misunderstood. Often when people think of hereditary systems, they think of all the guarded royal, sort of a tyrannical king and commoners. And, while we did have terms that acknowledged different groups of people, in terms of nobility, or in terms of, like the chiefs had advisers, what they call thinkers, they had speakers and there was a term, *muschim*, basically it means the people. It was a very symbiotic relationship and the chiefs had the ultimate authority to make decisions, they didn't make those decisions in isolation, they had a whole group of advisers. Each family, each house had a speaker, or a spokesperson, that would sit behind the council, or Ha'wiih (Hereditary Chiefs) in the potlatch house. You have the chiefs and you have the various ranking chiefs and as well as the heads of families that will be seated in the house. So, from that point of view, each family had a voice. Ironically, it was more democratic if you take the classic term or word for democracy in terms of people power. There was much greater representation

than there is today. We have a lot of in fighting, where we have large families that are able to dominate the politics and other families that felt like they are being cheated. Whoever is chief (councilor) - their families got hired in positions, that sort of thing. So, when you take away that system, essentially then you take away the hereditary chief's ability to take care of the people, or provide opportunities in terms of managing the territory and managing the jurisdiction, you completely disempower that chief, you disempower that community's ability to function in ways that it understands. So, from that point of view, everything collapses including nation-to-nation relationships or relationships between nations because of course, chiefs had through marriage and through other agreements and alliances secured relationships with their neighbors. So, whether it was for trading for various different types of seafood or meat they did not have access to, once you remove the power and the jurisdiction and enforce the foreign system, the old system just can't survive.

It is really obvious today. We see it amongst the fourteen or fifteen nations in the Nuuchah-nulth with variant degrees of Ha'wiilth'mis. So, some nations adhere to Ha'wiilth'mis in a pretty strong way still, even though they have an elected council on paper. In reality they don't really do anything without the blessing of the chiefs; and, other nations have gone quite strongly the other way where they're pretty strong on an elected council and [hereditary] chiefs are relegated to a token status. When I mentioned symbiotic that is important too because the chief is only as strong as the people are and visa-versa. Without good leadership, the people tend not to have as many opportunities afforded to them, in terms of economics and health opportunities and of course without strong support of the people, it does not have legitimacy in the real sense. Today, is a prime example of seeing the chief and council clearly having this budget of x million dollars to cover health care, travel and education needs, by having those systems acknowledged and meeting even in a very basic way the needs of the people. Obviously the old system will help; being able to provide for that and any time we have hereditary chiefs with a circular authority, especially on the West Coast. They often end up going to court and the court cases end up being Supreme Court cases where someone cut down a tree or fished and they're arrested. And, they acknowledge that a hereditary chief pursued a lawsuit, so this whole thing of aboriginal rights gets instigated at the court.

Shawn Atleo: Alterations? In many communities, especially in the West Coast, there are two sets of authorities that are recognized today – the elected and the hereditary systems. In my view, that's the biggest alteration that has occurred because the nation may go to the chief and council who are recognized by federal and provincial law as being the legal governance entities when in fact if we look at this from a first nation's perspective they are only agents of the Indian Act. The leaders are the rightful owners, if we look at the law of chiefs, Ha'wiilth, there is only one owner of the Ha'hoolthee in my territory and that is the Ha'wiilth, the hereditary chiefs. The traditional treaty agreements still exist but have been altered substantially.

We have these two competing accountability flows. Essentially, if we use the BCTC process as an example, the elected chief and councils are provided with funds from the federal government. From the two levels of government they have the support to pursue

treaties. The Indian Act chief and councils are provided funds to negotiate against themselves – that’s what is going on. It’s a bizarre arrangement because they’re agents of the federal and provincial governments, federal more directly, yet, they are provided with the funds to negotiate against the federal government! It’s like an arm of the federal government negotiating against itself! I’m saying that from a strictly traditional perspective, this is my observation. Anytime you see funds from the governments you run into this double-edged sword. It’s even more pronounced at the community level when you have an Indian Act government who is responsible for carrying out negotiations. You are negotiating against yourself! In my community that meant the hereditary chiefs taking the lead. And, still have to lead if we’re to protect negotiations, which are not happening. It’s a big problem. We’re in the in-between space right now. There has been no magic ball found, yet, that’s why we have to keep struggling.

If there is one thing...I would love to see is...to find a way for hereditary and elected leaders to bring our people together. And so, it is very important for me to get out to the communities and to listen to what the leaders have to say. You have a great map that roughly outlines the tribal break-up of BC [referring to UBCIC’s territorial map]. That’s how our elders see BC; they don’t look at it as band councils or tribal councils’ perspectives. What an incredible dream it would be to have agreements, treaties between these nations coming together and of course it won’t be restricted to BC. There is lots of trans-boundary, federal, provincial, municipal trans-boundary overlaps. If we start looking at it from our ancestors’ perspectives, the lay of the land looks a lot bigger. What I’m hoping is to have these kinds of discussions about pursuing this kind of mutual recognition between nations. And, of course we have to have a feast, because we have to bring out our songs!

Can they be reconciled? Yes, they can, if we do away with the Indian Act they can. If First Nations will renew the principles of traditional governance, and then I think, they can be reconciled. There are many nations who are going through the process of finding out what that is, they are rediscovering for themselves, who their chiefs are and who their chiefs were. There are also many others who will never go back to a traditional system. Even in BC where there are matrilineal and patrilineal systems. There are many who feel that the system has been so tainted or so changed within the last 150-200 years that we can’t go back to them, and they simply want to pursue an elected system of governance. There are many, like myself, who feel that historic systems of governance are far superior in terms of real democracy in modern forms of elected governance. When I was placed in my seat there was close to 1,000 people in the hall who were there to witness. There were hundreds who participated in the planning of the passing of the seat from my father to me. And, there were hundreds who were involved from the time I was born in the development for me to take care and serve my people and my territories. How does that compare to holding an election where 80-90 people of 1700 show up for an election, and then you have a chief and council with “legal” authority? We live in a tension between these two, right now. That is the reason why I felt compelled to honor the request of a number of hereditary chiefs who recognized that I come from that system of governance and they asked me to step into this elected roles. “We need you to keep working on helping to sort these things out so that my son and daughter don’t get shouldered with so

much of the burden of sorting it out.” I think, they can be reconsidered and reconciled, but it is a big chunk of work.

Judith Sayers: We had our own structure of governance and the contemporary tribal council, which is not based on tradition, is part of the Nuu-chah-nulth treaty negotiations and they have a central government for some of the Nuu-chah-nulth issues. My argument at the negotiating table is, at any time our nation wants to take over fisheries, health and forestry we should have the authority to do so. Traditionally, we wanted to build capacity and take back what we had before. At the Nuu-chah-nulth negotiating table, they said no, we’re just going to have a central government where we’re going to build a governance structure. That was one of the reasons my community withdrew from the Nuu-chah-nulth negotiating table, there was no acknowledgment of nations going on their own. Nuu-chah-nulth Nation was made up of small communities; there was no large Nuu-chah-nulth nation as we know it today. We did bind together socially, politically and otherwise but there was no real governance structure. Each of our chiefs had certain authorities: we had beach keepers, forest keepers, we had people who fished and hunted, everyone had a role and responsibility in the community. We had our system and our governments that kept the peace and justice in the communities and that was all done on our own, it was not done by anybody else. That is why we think we have the ability to enter into treaties.

Mike Retasket: Every [modern day] treaty has been negated, it hasn’t been followed through by the non-Indigenous people, it has been broken by them, and every treaty has been broken by the non-Indigenous people. Altered? The interpretation through the English language can mean many different things, so when they were signed I can imagine that the aboriginal people believed, when they signed, that the treaty would actually follow through with what it said, what it was going to do along the way. I can imagine the non-Indigenous people were able to, through the language, change the meanings of what they wrote down and what they said they were going to do.

With treaties on both sides of us, and the boundary lines going right through our traditional territories and sacred areas, the focus is not on the treaties. When we do sit at the same table, the talks should be about the resources of the land and those things and the focus is on protecting the land. Then, the treaties in my mind, does not even matter as long as we focus on the land when we sit together and talk. If we focus on the treaties they are going to hear all of the negative things I have to say regarding the treaties. But, if we focus on the resources on our land, we own all of it, we own all the land in BC and if we focus on that, then we can have a really good relationship. But, if we focus on the differences between non-treaty and treaty, it will create dissension between us.

Just like we’re sitting here, I had the opportunity to sit here with two other chiefs and I was able to tell them, “What makes you think you have the knowledge or the right to negotiate a treaty for children who are not even born yet? You don’t have to be a rocket scientist to know the residential school you went to and received a grade six or eight

education! That is pretty good, but not good enough to negotiate treaties to impact everyone forever. I just wanted to raise this with you because you're talking about our land, it's ours, and you cannot take it from us."

June Quipp: There are still relationships and some of them are pretty bad. It's because of what the government has done. I always have to go back to fishing because that's one of the areas I've seen the government's tactic of divide-and-conquer. The DFO would run upriver and ask the chief to write a letter to Cheam requesting us not to fish anymore and that they said we should be thinking of our brothers up country! That sort of thing! It went on for quite a few years.

The laws that are here today, all the laws and regulations, even the judicial system, do not have the process to accommodate or recognize our full rights. Because, I've been sitting in the courts for the last 5 years, and when you say to the lawyers that this has to come up, they say you can't address it here because the judges won't look at it. When everything was put into place, it was put in place by the Europeans. And, when they say it will be fair for everyone, it isn't.

We have a fishing right, a right to go out to fish. Now you have the commercial and sports fisherman who say they are second generation Canadians. And, now they've been fishing for those two generations, now they think that they have a right. And, they get totally upset when they get displaced from "their economy." We were displaced. And, so when we look at it, when you look at it for the past ten years, nobody came out to say "we're here for the best interest of all British Columbians or Canadians." We still have constitutional rights. We're supposed to abide by their laws even though they don't address our inherent rights not being addressed by their laws. There is no accountability, its recognition and acknowledgement of our rights. That's our fault too because we don't push for it.

But, when you're talking about breached rights there is also another issue that comes up, and no one wants to talk about it. And, that's contempt of court. When the provinces and the feds make decisions in regards to economic development or different things. Like the little battle that we are having here with Cattermole Timber and Logging. I feel that they [the province or company] were contempt of court because they did not accommodate Cheam or didn't consult us properly. Or, they didn't compensate us, so they are actually contempt of court because they are not following the court decisions. You go into some of these courses where they teach you how to be assertive and not aggressive...I say you can't be assertive anymore, you have to be aggressive.

Ervin Charleyboy: The Stl'atl'imx and Chilcotin people, over the summer, met at Graveyard Valley where the last battle took place and where there is a mass grave. We buried the hatchet with the Stl'atl'imx tribe at that meeting. We're still meeting with the Stl'atl'imx people and in July we are meeting at the same location again for one week and we're making it right between each other. The same situation arises with the northern

Carrier in Fort St. James, where we fought the last fierce battle – at Chinlak. They came down into Chilcotin territory asking to make things right, like a treaty between us and we are going to be discussing that with them.

Question Two Summary

Based on historical knowledge of treaty relationships between the Indigenous nations, their relationships have been significantly altered since colonization. The colonial systems of governance have delegated authority and responsibility to elected DIA leadership, who are held accountable to the federal government. It is apparent that in order to achieve a treaty with the colonizers, the rightful Indigenous governing systems and their authority must be recognized, respected and enforced.

Treaty processes must be initiated and founded on Indigenous sovereign authority and laws. To do this, Indigenous nations must empower their hereditary chiefs/leaders as well as traditional systems of governance - no foreign government has the power to grant or delegate this authority. The power of hereditary chiefs/leaders signified their legal ability and responsibility to take care of the people and their territory. Today, the elders and hereditary leadership must choose spokespersons who will represent them at elected or delegated colonial positions with limited authority.

As the BCTC negotiations are being conducted, many Indigenous communities are forced into the court system to stop government and third parties' business-as-usual dealings. This willful disregard of their own authority or laws is evident that any agreement will be secondary to their own laws and interests. The courts and the federal and provincial governments refuse to recognize the existence of aboriginal title and rights.

QUESTION THREE

JB: What are the roles of women in the treaty making process?

June McCue: You cannot just decolonize at the individual level, it has to happen at the family, clan and nation level as well. I am still trying to figure out how to be effective and because I am young and a woman, sometimes I feel like my people are not ready for me or for the ideas I express. I am being patient and trying not to get angry about it. I am waiting for that time when people will listen, mobilize, and want to take action.

Mike Retasket: This is my personal opinion; it comes to women taking charge again. Right now the men are in charge and it shouldn't be like that, women are the organizers. And, maybe that's why we're disorganized right now because the men are in charge. Even though the men are in charge, the women still have a job to do and that is to kick those men off their butts when they see them sitting down. That's why I think things are disorganized right now because men are in charge.

Judith Sayers: Having negotiated at the table for 8 years with men, the lateral violence, the put-downs, the non-support, I've been through all, I have felt the worse discrimination or worse gender biased from my own people than I ever had from anywhere else. It wasn't until we left the table that I really found my voice and I was able to come out strong as I did. I'm doing what I am doing now because I'm not hindered and I'm not being put down by the men, it's a pretty interesting evolution of different things. I see women being much more aggressive and much more visible and not afraid to speak and I think it is all for the good because I think we approach leadership differently.

Cliff Atleo, Jr.: Gender issues are a big impact because basic economics today are different from the economics of 200 years ago. So, the roles and functions of various people in the community are going to change. So, now there is no reason why you can't have a woman with certain roles as men with certain roles. So, that aspect even has to change or has to adjust in terms of principles of how you manage the resources, those are all pretty fundamental.

Question Three Summary

When discussing the BC Treaty Process with Indigenous women, one woman summed it up succinctly:

“The BCTC process? It’s a man’s process; it’s based on paternalistic-patriarchal set of views, values and assumptions of power. It’s not an Indigenous process; women had no input on its design or mandate. How then can it be ever considered a just process?”

Many Indigenous women leaders agree that the BCTC process is a patriarchal process that excludes the rights and concerns of women, elders and youth. Linda Tuhiwai Smith examines the issue of “*Gendering*” in Indigenous relations.³⁴

Colonization is recognized as having had a destructive effect on indigenous gender relations, which reached out across all spheres of indigenous society. Family organization, child rearing, political and spiritual life, work and social activities were all disordered by a colonial system which positioned its own women as the property of men with roles which were primarily domestic. Indigenous women across many different indigenous societies claim an entirely different relationship, one embedded in beliefs about the land and the universe, about the spiritual significance of women and about the collective endeavors that were required in the organization of society. Indigenous women would argue that their traditional roles included full participation in many aspects of political decision making and marked gender separations which were complementary in order to maintain harmony and stability...A key issue for indigenous women in any challenge of contemporary indigenous politics is the restoration to women of what are seen as their traditional roles, rights and responsibilities.

Indigenous women are actively participating and recognized as being important decision-makers in their communities and territories. Patricia Montour-Angus³⁵ explains that, “Most women recognize that their children’s future depends on restoring balance and health in the community, and especially returning to respect for the special role and power of women.” In many communities, elders and their councils are also seen as fundamental advisors in community governance, spiritual beliefs, language resurgence,

³⁴ Smith, Linda Tuhiwai. *Decolonizing Methodologies: Research and Indigenous Peoples*. Zed Books Ltd, 1999. Pp. 151-152.

³⁵ Montour-Angus, Patricia. *Thunder in My Soul: A Mohawk Woman Speaks*. Halifax: Fernwood, 1995.

education, and community/nationhood responsibilities. Only when Indigenous Nations advance collectively as equal individual stakeholders, can any process be truly effective.

PART THREE: ALTERNATIVES TO THE BCTC PROCESS?

So, what are the alternatives? The following questions look at the sovereign authority of Indigenous peoples from a traditional community perspective. Based on the information shared in the interviewees, the political relationships between the nations are still being acknowledged.

QUESTION FOUR

JB: Do you see any alternatives to the BCTC process?

Roger Jimmie: One of the alternatives that I would like to see some bands, some nations take in the future is, you can make a treaty with anyone you want, but I would really like to recommend that someone put their treaty out for bid internationally. Canada, under the present treaty process is the only bidder and they can down bid that process any time they want and in today's present treaty system you can see that there is no aboriginal rights, there is no real ownership of resources, such things as gold.

Most times what I see with the bands under the present treaty process is they are getting some sort of government funding to work under treaties, like in terms of a loan, loan to a nation by the government of BC. I don't see any reason why that could be bought out by some other country and put a treaty out for international bid.

I don't see why we shouldn't have seats in Victoria and I think these are some of the things that could be put into a treaty process where aboriginal people should be allowed to have seats. On some of the larger government ministries such as forestry, mining and fisheries, it would be nice to see aboriginal people sit at that level of government and they should have jobs in other areas because I don't see why aboriginal people shouldn't have jobs in other countries representing Canada and aboriginal people in embassies worldwide and those are definite areas we are missing out on and should pretty well put into a treaty process.

And, I think that type of government thinking has to be broken right now and under the present treaty system that's not happening. I guess one of the reasons, why shouldn't the treaty process somewhere have a section in there that says [Indigenous] people have to

have seats in Victoria? The government of BC is going to wake up very fast and I think that's an area the treaty process should really look at and that is having seats in Victoria. And, I know in any given country, they just don't give up seats like that and when they give up seats like that, it may mean that they will lose power of controlling or running that country, that's one area. That is a strategy thing that should happen in the aboriginal treaties, we have to be hollering out for in Victoria.

A think tank, where everybody has different ideas, like no two is the same, and take the best from every person you have interviewed; and, eventually what you could see is another treaty process born or reborn. Some treaties date back a long time between aboriginal groups, from these one can get reborn.

June McCue: With all the money in the treaty process and other government processes, the time spent so far in that process we could have rebuilt our nations. That is not the case and because we have not done this work. Canada's goal is to complete its title and jurisdiction over us is becoming more of a reality. This confirms the oldest game of taking one's land, by conquest. Our people, whether they accept it or not, will have to know this difference. If they do not know the difference because they are not informed or they are informed and but no one is listening to them, then we own those issues. We can work on this through education. Education is key to decolonization and self-determination. You can have treaty awareness workshops with your family and your community. If you want to make your own decisions and be self sufficient, it starts with yourself, family and clan members and your people.

With the treaties, if you allow Canada to define it and you submit to Canada's jurisdiction, they're domestic treaties and not international treaties. That reality is in the minds of Canadians and Indigenous people will argue against that, they know they are not domestic and they are international. Treaties are entered into on a Nation-to-Nation basis. Today, the courts do not recognize our treaties as being international binding agreements. So there is a double standard. Maybe, in a century from today, we keep that difference alive and work towards it as our numbers increase, maybe that recognition will be at the national level one day. Today, we are still colonized and are still under such dominant control by the state, that Canada has set in their law they do not recognize this. They see it somewhere between a personal contract and international law, somewhere in between, but it's neither, it is *sui generis* (of its own kind). It is their way of maintaining control.

Fred Sampson: I see a 100% alternative. The treaty process they are using here in the province it doesn't even follow the international treaty laws. When I look at the international treaty laws, and look at what is happening at some of the international treaty tables, I can't believe that this government is actually doing that when they were the ones who signed the international treaty laws with rules on how to conduct treaty relationships. We're not even reflected in the BC treaties. I don't even see it. I don't see the strength or the transparency that's called for in the international rules, it is not happening on the

ground. I see aboriginal peoples getting locked into these agreements in principles that are economically devastating. I look at what is happening with the Lheidli T'enneh AIP, and I can't believe that they would sacrifice so much of their traditional territory. It's a dot! – What they are getting is a dot compared to their traditional territory. I couldn't believe it. I talked with Don Bain, who works at the Union, about their AIP. He is devastated with what is happening, and he can't stop it – only the people can stop it! Right now the chief and counselors are into the loop with over 2 million dollars, with another 2 million before they are done, that's over 80% of their settlement that's going to payout. And, the aboriginal rights are not going to exist outside the box. So, they are giving up everything. And, they are stuck in it. I told Don that I'll pray that his people will stop this, because the council cannot, it's the people who have to step in. The people can say "We don't care, if we're losing \$4 million dollars, there is a lot more at stake. Those four AIPs that are out there, I was looking at it, and I can't believe what people are getting themselves into.

Prior to contact we had our own laws, the laws of the land, and the laws of our ancestors to govern our people. What was being discussed was so far away from what we are as people. When the whites came and took away our ability to administer justice within our own communities, they stripped from us a big part of our culture. And, it was the foundation of our government, the foundation of our treaties with the existing nations around us were based on our laws. So, when I hear of restorative justice or justice circles there is something fundamentally wrong in the sense that we are not going back to what is traditionally ours, for the Nlaka'pamux people it is referred to as "heatly."³⁶ That's where we need to go back to; we need to practice our own form of law. Once that starts happening, what will flow out of it is the background knowledge of existing treaties that are still on the ground between us and them. It was only 300 years ago since that was taken away, they are still there waiting to be revitalized and brought back up. This is the relationship of nation-to-nation building that you are referring to.

We need to start setting up the relationships between ourselves. I tell that to all the chiefs in Nlaka'pamux territory. "*When are you going to leave your God-damn luggage at the door so that we can sit down together and rebuild that trust together as Nlaka'pamux people?*" From there, if we can do that, we become the example. And, everyone will see the good that comes from joining of all the people. If I had it my way we wouldn't be Siska band, there wouldn't be bands, there would be Nlaka'pamux Nation under one roof the way it was before. I would give up this chair in a second if we could have sovereignty within our nation. If I could build this community to the point where I sit here as purely as a figurehead, as chief, then I have accomplished my goal and brought independence to my community. For me, it wasn't a matter of being chief and running a community, I want the community to run itself. And, that's the same way the whole nation needs to operate – we need to knock down those barriers that have been imposed by colonial mentality. Some band chiefs are saying, "*You can't tell me what to do, I'm the chief of the "X" Indian band!*" How can we ever get anywhere if that's going to be the attitude?

³⁶ *Heatly*: Nlaka'pamux law.

Presence on the land and use of the land is so critical. The white people with colonial attitudes are, "If you don't use it, you'll lose it". And, they impose that on us constantly. Why is it so easy for them to do any forestry stuff, any mining stuff, it's because we're not out there. That was part of the Siska traditions, is to get the people out there picking the medicines, the berries and eating them and using them. Because we're sick people, we've left our traditional diets behind. And, there were no diseases like that before, until "they" showed up.

You can look at all of the court cases that people try to get injunctions to get people to stop the logging, they haven't been too successful. The Haida people have been wonderful, I really like what Guujaaw, has done up there, his ability to cut back the actual cutting in their territory to 50 per cent, to have preserved 40 per cent of Haida Gwaii, that they have protected. Those are the kind of measures we need to take and leaving this issue to be negotiated at some point. Our final hammer with the governments is going to be that certainty that they want. They are going to need something at some time because of the uncertainty of our aboriginal title, they won't get it until they come and sit down and talk with us and sell. It's an issue that has to be resolved somewhere, sometime and someplace. In BC the Ministry of Forestry, is offering a revenue sharing based on some formula and it is \$500.00 per person, so in my community it is \$113,000.00 per year and they are taking millions out of our territory in stumpage fees, millions of dollars, it is not just something small, it's really big. So, they think that is going to keep us quiet, tossing us a coin, at this point in time they recognize they have to do it. My philosophy, or my thoughts, we really need to build up our nations to be economically independent, so we are not tied to the government, therefore, it does not matter what they say, we have enough wealth, they cannot just cut us off because that has been their biggest thing, they have kept us down because we rely on them for money, so, if we don't have to do that and if we're economically independent, if we have so many allies around us, that we all stand together and say to the government, "you need to settle with us NOW on these issues.

Today, we are not on a level playing field, the BC treaty process was supposed to put us on a level playing field and that was all a joke. We have never ever been on the same playing field as the federal and provincial government. The little bit of money they give us is not good enough, we don't have a battery of lawyers like they do, we don't have the negotiation skills or the entire bureaucracy to draw on. We just have a small amount of things but we can hire with something they give us. That's my thought, I am not in any hurry right now to settle a treaty because this community will not extinguish, I believe Nisga'a extinguished. I believe that their acceptance of 'fee simple lands' is extinguishment; and, that they have nothing in their whole territory, they don't have anything on the lands - they accepted. I see the way these treaties, all these AIPs are signing are doing the same thing, so in my mind it's extinguishments because under 'fee simple land', its crown title, its no longer aboriginal title on that.

Cliff Atleo, Jr.: It is critical to the legitimacy, as I said, “there is this whole 57 odd years, where they became de-legitimized,” where they were treated as token representatives or token members. Essentially, the bottom line comes down to money, you don’t have the money, they don’t have the ability to spread the wealth or resources as traditionally would have. So, in this case, taking the example of justice, this is a good example of safety in the crown case. That is a natural case of resource allocation; there are opportunities to resurrect the authority of the chiefs. That is a special privilege because right now we have a lot of young people who do not necessarily have the same amount of baggage as our parents do, in terms of residential schools, what you would call a generational thing but it is not as acute, it is not exactly the same.

Ultimately when it comes to the test of a final agreement that’s where there are stricter standards as far as approval from the tribes. So, the one hope is that by the time they get to the final agreement that they won’t be able to win or be able to go down that route. I don’t know if that is going to happen or not. There are people that are feeling it and there is enough unrest amongst the Nuu-chah-nulth people that they don’t agree with the path the leaders are taking.

How do we unify? Can we unify? These ideas are, “Can the Nuu-chah-nulth nation persevere?” The idea was introduced about various levels or types of unity that people talked about; political unity, which seemed pretty far fetched at this point, people talked on unity in terms of programs and service delivery but the primary thing to focus on is cultural unity.

Shawn Atleo: The alternatives are slim right now. There are only three strategies.

1. **Engage in negotiations:** which most people want. The negotiations have to be fair and equitable, and can’t be out of balance on the government side of the table because we are minority at 5% of the national population. Yet, again it only takes 5% of any population to make change, so if there were enough of us around if we work together we can impact change.
2. **Litigation:** 1 of 10 claimants are suing the provincial and federal government. We are going to prove that we have the right to participate economically in the fisheries. We’ve always done it, pre-contact and at the time of contact. To have our rights and title acknowledged, recognized and respected, and a way to get my people involved in the economy so that they can care for themselves, which they are absent from. My tribal council is the second largest in BC, but we have the second smallest per capita area reserves in BC. Because my territories’ sites were chosen as a launching point for fishing, we are a fishing people, saltwater people. We have tiny little reserves for us set aside because there is an abundance that we are to have access to...we’ve been cut off from. The federal government has continually set us aside, so litigation is one way.

3. **Direct Action:** places direct pressure on governments, it raises the issues to the eyes of the public. So, I think we need a multi-prong strategy. All these are very political in nature. The most important strategy is the education of our people. I think our people need to be supported through the process of decolonization; post-residential school trauma is still a large factor in our communities.

So, education and addressing the social issues in our communities, renewal of our cultures and teachings, all our language, this is something I have been working on personally. The language helps us solidify, clarify and strengthen who we are and where we come from. Ultimately, we will need clear agreements, and the various treaty agreements that exist between the nation state and the First Nations across Canada have to be implemented and have to be respected. We have a long ways to go.

People need so much support to get comfortable in their skin, to have basic necessities taken care of day-to-day, week-to-week, and month-to-month. We have all these responsibilities right now in leadership to get the people comfortable, cultural renewal and making sure people understand where they come from. When they do, when the lights go on about who they are – it's powerful. Get rid of all that oppresses us – its not as easy. Decolonization is a hard process. When people come to understand that, when they get a sense of who they are it becomes clear.

If you ever wonder what your relationship is with the Federal and provincial governments, just sit in the supreme court for a couple of days, listen to the attorney generals of the provinces attack your very existence as a human being, you very quickly understand there is a direct link between, the courtroom and the debates in Spain in the 1500's between Sepúlveda and Las Casas³⁷ debating about whether we were human or not, we have a span of how many hundreds of years where we can find this debate finding its way to policy and law in the Supreme Court in 2004! Some ways it's mind boggling, in other ways it's been such a huge machine against us for so long, and for us to think over night there will be a magic bullet. There has to be a multi-prong strategy that begins with helping our people to survive first, get back to the health and well-being our people once had...that's where the strength is going to be.

Judith Sayers: What I have never liked about the BC Treaty Process was the fact that the province sits at the table. I know that the province does not have an authority defined to make treaties. It's the federal government that has that authority, it's a convenience of the province to sit at the table because according to their law they own the land and resources and according to our law we own the land and the resources. The province seems to have absolute power over fisheries, self-government and all those issues that are going to be provincial heads of power and the federal government has given them the absolute power and we have given them the power also by consenting them to be at the table, we've allowed them to have that authority to negotiate with us.

³⁷ See "*Bartolome de las Casas Defends the Rights of Native Peoples, 1484-1566*" at: <http://campus.northpark.edu/history/WebChron/Americas/DelasCasas.CP.html> > [March 2005]

We got involved with the treaty process because it was a table, because it was the first time since 1920 that the governments would actually talk to us about aboriginal rights and title. A lot of us really believed and thought that we had a table. Let's see what we can get. Maybe we can get enough land and resources and enough power to make it worth our while. Let's see what we can do. And, we think over the years, it has shown us that the governments want to give you enough land for your population! Right now, at this very second, they don't want to worry about your population growth, they don't want to talk about the number of people who have come back to our community because we are now defining who our own citizens are. They just want to give you a small end, your negotiating, so tell us. We are not here to look at your needs; we're just here to give you a start, EXCUSE ME! This is really scary. We were about to be given an agreement in principle and the offer they were going to give us was \$7.3 million dollars and 1,200 hectares of land. I told them I don't think we have won the Super 7! I know one of the other Indian nations that have already signed an AIP just recently and it's a very small nation, they were offered \$3 million dollars! So, I have gone to my community and showed what was being offered and I said you know the micro hydro projects, it's costing us between \$11 to \$13 million dollars, it's not even enough, \$3 million is probably for one project. We're entering into a quarry project and we're going to need about \$7.5 million net worth. In our tourism facility, we want to build and that's \$3 to \$5 million, "I said are you people starting to get the picture here of what the governments are really offering us? When we can actually show people, this is our vision, this is what we want to develop, this is where we want to go in the next few years and this is what we're going to need - then they can see it. But, otherwise people sit back and hear the millions and think it's a good agreement.

I think the strongest position or the best alternative position, I have seen, as First Nations we need to assert our rights and title. And, the example is my community put together our 'land use plan', we have mapped out all our territory, what can happen on our lands and what cannot happen and we released that document to the public. You can find this on our website.³⁸ It's a higher-level plan and we're working on the second level. We are doing an old growth strategy, which is going to dictate how much old growth has to be in each watershed of our territory. We are tired of people coming in and doing what they want to do and imposing whatever they have to on it, exercising our rights and title. Another example is, this summer DFO refused to shut some of the mouths of the river to fishing, so we declared them to be closed and went to the media letting the people know fishing was closed in certain areas. The people are exercising their rights to the fullest, hunting, fishing, trapping, gathering, spiritual, using every corner of our territories and showing there is real necessity to do that.

We need to make this an election issue and we have never been an election issue and why aren't we? You need to get support, we have a small amount of support, but it's not enough, it's just not enough. That's the kind of stuff we need, we need political muscle on our side. Right now we look like we have: environmental groups, social groups, then labor steps in when it's convenient to them but we just don't have enough of the people.

³⁸ Hupacasath Land Use Plan, see website at: <<http://www.hupacasath.ca/>> [March 2005]

I don't think a court system will ever say we're a sovereign nation. It is definitely something that has to be done in a political process. One assertion and there's varying degrees of attaining assertion with the First Nations in BC and across Canada, it varies from place to place. BC, we have the strongest authority, the strongest position for that process because we don't have treaties and because we never consented to be a part of Canada. We have always had our own governments and authorities, even though they may not be as active as they were once upon a time, we still have it and we still have that traditional knowledge to rely on and those laws that were set down.

Something as simple as citizenship, I believe my citizenship lies in the Nuu-chah-nulth Nation. The Citizenship Act of 1965 was amended to allow First Nations people to be citizens of Canada. This happened in 1965, before that there was no mention of First Nations people in the Citizenship Act. A government cannot just declare you are their citizens. People have to apply to become citizens, so none of us ever have. My thought is one of the things is that we would apply and have dual citizenship. If we ever get to that point, in what we wanted our treaties to be and one of them will be dual citizenships, Canadian citizenship and Nuu-chah-nulth citizenship. That was our view of the world.

All the elements are in place for asserting that we are a sovereign nation but we have not asserted those elements to enforce our nationhood. The nations have to start asserting their nationhood. The majority of nations who are negotiating treaties are negotiating to become a part of Canada and agreeing to the Charter of Rights and Freedoms and agreeing to be that, so that is consciously giving up of that sovereignty.

Land claims agreements will be the Noah's Ark of Aboriginal Rights.³⁹ Any title or rights not on the ark and nailed down with words in the Agreement, at the time of the treaty will not survive. Aboriginal title and rights flow from the land and the historic relationship that Indigenous Peoples have had with our Lands. The legal language proposed for certainty will flood the land with Crown title and forever dam the flow of rights from the Land to the people. Crown title will replace aboriginal title. No title or rights will ever flow from the Land again. Instead, all rights will flow from the written Agreement.

Modern land claims agreements will create a double standard in which the interests of the federal and provincial Crowns and third parties are recognized. These rights will simply continue to exist, they will change and adapt over time - they will continue to live. There is no provision, which releases all undefined rights or interests of Canada, B.C. or third parties to the Indigenous group. The rights of the Indigenous Peoples, on the other hand, will be frozen and will not grow and adapt. If these rights are not written into the Agreement, they will no longer exist, they will be dead.

They say BC is really setting some examples and I see us continuing to do that; and, if we start accepting things in treaties you're going to hurt our First Nations in BC, let alone people across Canada. We're going to have problems because the other issue that I think is always at risk is the issue of taxation. You know section 87 allows us not to be taxed

³⁹ This is also referenced in the Union of BC Indian Chiefs, *Certainty: Canada's Struggle to Extinguish Aboriginal Title*, see: <<http://www.ubcic.bc.ca/certainty.htm>> [February 2005]

on reserves, all the treaties signed to date in Canada have given up taxation exemption. At what point is the federal government going to yank that from us? We've known there is a big source of revenue there and when they get desperate enough they're going to want to do that.

Mike Retasket: Everyday for approximately ten years, I say that those doors are going to close for the BC Treaty Commission because extinguishing title and rights and then going to the federal table to negotiate bits and pieces of those rights back, rights that we are going to negotiate -- hunting and fishing? We have so many other rights out there, that we're not asserting, but there are alternatives to the BC Treaty process. It's to assert our title, to assert our unextinguished title, that's protection and it cannot be extinguished. Time and time again people that do go out on their own, to assert their title, often times, end up in court. But, at the same [time] that title cannot be extinguished, all it needs to be is asserted by individuals, myself, as a chief, I have no more aboriginal title than that child that has been born on the reserve, we have the same title and rights. In our community, it is up to the people to assert their own title, to go back out on the land. I don't think there is anything the government, crown or the police can do if we all chose to all go back on the land, but it's just too easy for the rest to extinguish their rights.

The focus is on the land and that is a hard thing to do because either you are addressing forest development plans or mining proposals and things, and I'm just an Indian! There was a time I really believed that I was fighting a losing battle, there was no way, I thought, I could stop West Fraser Logging Co. from doing what they wanted. But, I'm going to win because I'm fighting on the side of nature and nature is going to win every time. They can cut the entire world down, everybody will die and nature will survive. So, I'm not fighting a losing battle, I'm fighting a winning battle by protecting number one, to protect the water. The first aboriginal principle is to protect water, always; our ancestors looked after that water so we could have some fish.

Where it's at is, the bands can extend their own rules on their title and territories but the right to fish is mine, it's my right and I believe that right all the way to the court. I believe that, all the way over to DFO and I tell them that I'm going to resolve it with lawyers at the top level. Secwepmxcin, that's my language and the language that the DFO is telling me, is not a language. It's not from here, it's not ours, and it's not from here. Our language is from here, the DFO does not even have a language to speak to us and when we speak to them in our language, they don't even know what we're saying.

June Quipp: Instead of putting in all these treaties, we should put one application in for all of BC. And, I still think then, we can be really united. But, we still have to look at the territory. And maybe, the territory might not be an issue. The only thing that would cause conflict is money. Who and how are we going to share the money, if there is a treaty and there's compensation? I think that would be one barrier.

I get really frustrated because there are a lot of people out there who feel the same way but don't have the energy. I always say there's 3-4 reasons why people do the things they do or don't do. And, in particular our leaders:

1. **Are not educated enough, unfortunately.** It took me years to understand, but, enough to fight for what I believe in. A lot of our chiefs have 2-3 year terms. That's usually one reason why people don't stand up and take an assertive or an aggressive position.
2. **They're afraid.** It might be a residential school syndrome where opinions weren't worthwhile voicing because nobody heard it, and probably is still today with government. Although they listen now when I speak; they never used to.
3. **They get bought off.** They are afraid to lose their program dollars.

The dictatorship, what the province and what the feds will put on the table and what they refuse to put on the table, we don't even have a say, we just either agree with them or disagree with them, if we agree with them we sit at the table and we get peanuts, if we disagree we go and do what we have to do, either go to court or go on the line [blockade].

I think the only way we can accomplish anything is if all our chiefs can get together and say this is the stand we are taking, whether Secwepemc, Okanagan, Sto:lo or Haida...everybody has to get together. There are probably a handful of leaders who will do that. If you look at those areas, the Taku Tlingit, the Haida and Cheam, we've probably accomplished more in the little standoff approach that we've taken. The way the treaty process is set up right now it's not going to work.

Ervin Charleyboy: For one thing the treaty has to be between sovereign nations such as Canada and the natives. With the treaty commission there is so many flaws in the agreement. Such as BC is no position to sign a treaty with no one because they are a small part of Canada. Canada should be signing treaties. The Chilcotin Nation never agreed to the BC Treaty Commission.

Alternatives? We discussed that with the BC government because of the Chilcotin specific claims they didn't know how deal with our specific claim, they called it a unique claim, they wanted to call it 'a claim of a third kind' and we still want to pursue the claim in that way. In 1872 there was a Peace treaty made with the Chilcotin nation and they sent surveyors to this area to survey lands. They were afraid of another uprising, so they set aside this whole country in sort of a peace treaty with hunting and fishing reserves, we don't know what happened to that, so, we are still pursuing that treaty, we need research done on that treaty. A lot of that has been changed over the years because of the white man coming in and messing our traditional systems up big time.

Ivor Myers: We have to work together because we all have a common goal. All [Indigenous] Nations are watching us to see what we will do. As for the treaties that have been negotiated outside the consensual unity of the entire nation they are all illegitimate. The bands are not nations therefore have no authority to enter into treaty with the government.

Regarding the BC Treaty Commission process, I do not believe that this process will work for my community. The Yunesit'in people jointly own the land with the Tsilco'tin Nation as caretakers of the land, its subsurface, the air, water, etc. I also don't believe in overlapping territories...we need to iron this out with the neighbouring nations.

Question Four Summary

As indicated in the interviews, self-determination is an inherent right of Indigenous Peoples to determine their own future and destiny in accordance with their own laws, traditions and systems of governance. These inalienable rights existed prior to colonization and still exist today. As identified by leaders who oppose the principles behind the BCTC, they feel that it is a legislation designed to deny, dispossess and eradicate Aboriginal Title and Rights. Since the BCTC's inception in 1993, many leaders continually oppose the "divide and conquer" process not only for their own community but also for the communities within their nation. And so, what are the alternatives?

Decolonization

Decolonizing Indigenous communities is a difficult but necessary process. Decolonization must be a multi-pronged strategy conducted simultaneously amongst individuals, families, community members and the nations. Currently, all the elements are in place for asserting that we are sovereign Indigenous peoples, however, we have not asserted those principles to enforce our nationhood. The majority of bands who are negotiating treaties are negotiating to become a part of Canada, and in doing so, agree to the Charter of Rights and Freedoms, forfeiting their Indigenous sovereign authority and

rights. Since we have never applied to become Canadian citizens, Indigenous people must consider themselves a member of his/her respective Indigenous nation first, as governments cannot declare you their citizen.

Other suggestions for the decolonization process would be to increase culturally based education programs in communities; language resurgence; spiritual revival and traditional teachings that would solidify, clarify and strengthen who we are as Indigenous people.

Nationhood

In order to stop the negotiation process with the BCTC, community membership must direct their leaders to withdraw from the process despite the pressures (or duress) from the BCTC government representatives. No amount of money should ever justify the sale of Indigenous title and rights. Being economically dependent, the colonial government has narrowed the ability for people to be independent – we must break these attitudes of dependency as a necessary step towards decolonization.

Another option would be for each unified nation to place a claim over their entire territory. Based on the historical relationships between the Indigenous nations and the knowledge of protocols and boundary sites, the claims should be inclusive, as a nation, rather than negotiating as fractured communities.

The Lands & Resources

Presence on the land, and its continual use, is critical to protect and affirm the inherent title and rights that existed prior to colonization. In a few communities, leaders have established land use plans, which identifies and protects sacred sites, harvesting areas and

no-go zones. Until communities reaffirm their traditional protocols, or reestablish unified regulations, the majority of the land and resources remain unprotected. Presence on the land reaffirms the relationship we have with the land for spiritual ceremonies, language, laws, medicines, cultural and our identity as Peoples. It is our obligation to protect sacred sites, territorial boundaries, natural resources and the sacredness of water as given by the Creator. Any policy that threatens, denies or eradicates these rights is detrimental to the survival of our nations.

All agreements made outside the consensual unity of the entire nation should be deemed as illegitimate by Indigenous nations. Bands are not nations; therefore, they have no legal authority to enter into treaties. What is being negotiated is limited to what the government wants; there is no mention of compensation, redress or accountability of past wrongs (i.e.: Indian Residential Schools, the acknowledgement of breaching the UN Genocide Declaration).

Treaty Language

Treaty processes must be founded and based upon Aboriginal Title and Rights. Treaties must be written in and defined by Indigenous languages as colonial terminologies are easily altered or redefined in favor of colonial interests as revealed in the numbered treaties across Canada. The BCTC language diminishes treaties as being domestic agreements within Canada and not subject to international treaty laws as defined by the United Nations. The Nisga'a Final Agreement is an example of BC's template for treaty making. The Nisga'a land is now considered "fee simple" lands owned by the crown.

By allowing the provincial government to sit at the table, the provincial government will assume absolute power over fisheries, resources, lands, courts, etc.,

while Indigenous authority becomes secondary to the Crown. The BCTC agreement creates a double standard in which the interests of the federal and provincial Crowns, and third parties, are recognized. The rights of Indigenous people will not be able to grow and adapt whereas the colonizers' rights and third-party interests will. Each negotiation table should be representative of Indigenous nations and the Crown. Third party and provincial interests should be directed through the Crown negotiators.

Canadian Courts

The Canadian court system has not, nor will it ever work for Indigenous peoples, as it will never accept us as sovereign nations. While communities are negotiating in the BCTC process (and those not involved) they are often forced to apply for court injunctions to stop third parties, as well as the province, from exploiting the resources being negotiated at the treaty tables. Many Aboriginal Peoples have actively tried to stop the exploitation of natural resources on their lands by blocking access to mining and logging sites. In response, affected corporations seek injunctions where Canadian courts weigh economic loss against the interests of Indigenous Peoples.⁴⁰

This attitude is proof that colonial interests are regarded as having precedence over Indigenous rights and titles. If Canada were truly sincere in its effort to resolve the treaties, the exploitation of natural resources would cease. Unfortunately, debates of whether Indigenous peoples have rights are still ongoing in the courtrooms today. This attitude is also reflected in the policies and laws created by the crown and provincial governments; and, their actions exemplify their arrogance as they continually bombard

⁴⁰ Manuel, Arthur and Nicole Schabus. "Indigenous Peoples at the Margin of the Global Economy: A Violation of International Human Rights and International Trade Law." *Chapman Law Review*, Volume 8, Spring 2005, Number 1. p. 232.

their colonial agenda of encroachment and colonization upon Indigenous peoples and the land.

Public Awareness and Support

The Union of BC Indian Chiefs has a resource library, which holds a vast collection of materials on Aboriginal Title and Rights. More material needs to be published and made attainable on the history and effects of colonization and Indigenous Peoples. Information workshops must be conducted in communities regarding alternative treaty processes, decolonization strategies, land-use plans, traditional treaty relationships, traditional laws and governance.

Public awareness is also important. This can be attained through the media (television, newspapers, radio and internet), documentaries, visible boundary markers and academic research to raise awareness of Aboriginal title and rights.

QUESTION FIVE

JB: What can Indigenous political organizations do to help communities with nation building and protecting aboriginal title and rights?

Shawn Atleo: The accountability flows from chief and council to INAC. The accountability to the hereditary system flows straight from the people. You can take this to another level to “provincial organizations,” who receive funding are faced with this double-edged sword of having these dual interests of government as well as the people. It is a precarious place to be in and it requires extreme care and caution to the effect of it. This is the reason why I was hesitant because I know we have to double speak at senior levels to ensure that funding keeps flowing, so that we can carry out work for our people. If the government finds out what we are really up to then they would not necessarily want to be funding us – maybe!

I would like to see the three provincial groups in BC: the AFN, the Union of BC Indian Chiefs, and the Summit Task Group to work together to push for unity, to push for identifying the common concerns and common issues. There is a mass frustration out there with the governments’ attempts at legislation that has been pushed through. Both the hereditary and elected leaders have responsibilities right now, especially the three BC political groups that represent First Nations. I would hope the dialogue will continue. I’ve learned a lot from the politicians, from the other two organizations. I know that if we hang onto being guided by our teachings we shouldn’t go wrong, we must try to help each other out, find a way to work together which means we need to talk, sit down. I will be pushing to support our nations reuniting; and, also supporting aboriginal peoples who are outside their traditional territories.

Judith Sayers: I think First Nations could be powerful if we were united, if we had the same voice and it does not necessarily mean we are getting the same things. We were all fragmented in relation to the First Nations Governance Act. For example, if we’re not unified and speaking with one voice and being collective, then we have a problem; and, it’s the whole issue of being vocal. When something happens in this province, whose voice do you hear - Stewart Phillip’s! There are certain voices that are being heard but nobody else is coming to the forefront and talking about it and why is that? Why are we not being more vocal? I think First Nations leaders have to get out there and start talking about issues, start being visible. They have to learn how to lobby and getting out there into the communities and talking to the Rotary clubs and just networking and getting people on side and understanding and supportive.

I’m starting to see this in BC. The First Nations Summit, UBCIC and UNN and some of these groups are starting to come together and look at things. One thing that I have noticed throughout the BC Treaty Process is that, we’ve never been able to be united through that; and, there are many issues, which are going to be similar to the treaties and instead of us coming together and negotiating. We’ve allowed the government to isolate us and to make us weak as a smaller negotiating unit and getting what they want, instead

of staying together and really strong and sometimes its just because we think we can do a better job than the other nation and that we are going to be able to do this. I see that, about two years ago, we decided we should be negotiating some of these issues together and we came up with common principles that we're going to negotiate. And, the federal and provincial governments refused to come and sit at that table to negotiate on behalf of all the treaty nations that we're negotiating treaties and they understand the power of that.

If First Nations are not going to follow through on what we're doing then if we allow the government to come in and negotiate an agreement with us, then we're in trouble. Certainly, there is the opportunity and a lot of alliances internationally, with other Indigenous nations around the world and that would be exciting and we had one summit with the American First Nations but that didn't go very far. There was not enough follow through, that's the problem with all our nations is that we're stretched to the limit, we do not have enough capacity to do everything we need to do. We really need to have an international person, all the other people that we do not have.

George Manuel is definitely a leading voice; I have been apart of the war council. For us as war warriors we're the defenders and protectors of our nations. I have no hesitations or no qualms if we have to protect our land and resources against something, I would not hesitate to do it.

International communication is another entire issue; it's a huge commitment. I think just taking advantage of those foreign laws that are in place against the thing of time to educate people, you know it's become so huge, when we first went to the United Nations all we used to, a working group of five Indigenous peoples and then we were working on the Declaration of Indigenous Rights. Now we're into human rights, we're into sustainability and we're in... like it's just huge and we don't have the people or the money to be able to do the international lobbying that we could really use. I loved to have been able to just have an international institute there to do some of this but we haven't been organized to do that. I remember we used to hang around in the early eighties. People would tell us how powerful the settlement is going to be when the Indigenous issues takes the forefront, it hasn't happened yet. Yet today, people around the world have the right to life, it's the basic issue. You feel funny going over there and complaining about everything happening in Canada when people are fighting for their very lives. There is such a spectrum of things that are happening there might be actually lives, but I mean our lives are being destroyed through social and other things.

June Quipp: They're not dealing with overlaps. I believe there needs to be tier-one talks, which means all First Nations. And, that's not really happening. The [FN] Summit should, being that they're the representatives of the treaty process. Maybe, they're the ones to pull everyone together and say, "Let's Hammer All of This Out!" What do we want out of the treaty process? I don't think we've ever asked each other, "What do you want out of the treaty process?" And, we have to know what we want.

Then if you get that going, you go forward with a strong voice to the Summit or the Union of BC Indian Chiefs. Having the two groups is another tool for the government. Who asked to be represented by the Summit? There's a lot more people that asked the Union of BC Indian Chiefs to represent them than the Summit. And the Summit is a process for the treaty process; it's a forum for the treaty process. But, they don't speak on behalf of everyone, nor does the vice-chief of BC. When Herb George was there, he supported us in certain ways, but on the other hand, unlike the UBCIC, didn't speak out very much publicly to support anything we did. But, he did behind the scenes.

Ervin Charleyboy: Political organizations? I don't know. I don't have very much faith in the AFN, they don't represent us out here in the west, and they mainly represent eastern Canada, similar to the federal government. Their governing system is the same as the Canadian government system and it shouldn't be that way, they should represent everyone.

I think their focus can be changed, for a few years we have been out of the union [UBCIC]; we are not part of that affiliation anymore for approximately 5 years. From where I come from, people put the chiefs there and I think they could structure the governments differently. The union [UBCIC] was there once and at a conference a hereditary chief said they wouldn't let us speak at the conference. Yet, other (elected) chiefs were there and they were allowed to speak. A chief from the north was also not allowed to speak. I used to be able to speak at the union meetings and I don't know what they have changed since.

I want to find out more on the Alliance for natural resources. The government gave the Alliance approximately \$50,000.00 at the conference in Prince George and as usual it was a way of keeping the noise down, since then they have been asking for more money. They are forgetting where it all started with the timber resources in our area and with our title and rights. There are too many organizations like that where they go crazy and they forget why the issue was addressed in the first place. All they want is jobs and another bureaucracy is formed again for aboriginal people to jump through the hoops. The work is not done, there are too many organizations in Canada and people are pulling away. These organizations are government funded and they owe their lives to the government, therefore, they have to follow the Canadian government bureaucracy. The aboriginal people should go fight international through their international tribunals, like the Hawaiians did. Because going through the Canadian courts to fight for our aboriginal title and rights is not the way to go we are fighting the hand that feeds us.

There needs to be a lot of push from all the First Nations organizations because there is so much dissensions amongst all the native political organizations. Perhaps a unified voice is what is needed; I would like to see it across Canada with native people having one voice. As it happens now when someone makes a lot of noise the government throws money at them and starts a commission and messes things up to keep them quiet and the natives shut right down.

Question Five Summary

Based on the views of provincial and national political organizations, there are varying strengths and weaknesses typified in each Indigenous organization. Elected DIA chiefs are often seen as agents of INAC who represent the membership of provincial organizations such as the Union of BC Indian Chiefs, the BC Assembly of First Nations and tribal councils. The Assembly of First Nations is often criticized as being politically weak in defending Aboriginal Title and Rights of Indigenous Nations in British Columbia. The UBCIC is criticized as not including hereditary chiefs in their quorum. It is essential that alternatives to the BCTC process be grounded in traditional laws and governance of the nations. Leaders must stress to his/her communities that they must collectively defend and protect their aboriginal title and rights; and, that the onus of responsibility cannot be placed solely on political organizations or external forces.

QUESTION SIX

JB: Is there a need for Indigenous communities to unite, as unified nations, as a prerequisite to treaty making?

Roger Jimmie: One of the biggest problems that I see is we're always dragging each other down. We're just going to have set aside our broad axes and swords and say we have to work together. Even though our differences are so far apart but we're going to have to respect that. We are losing our land at a very fast rate and we're losing our timber at a very fast rate - our resources, and the salmon we can't even eat salmon out of the Fraser River any more. And, we're going to have to respect that, we're going to have to stand together on this. There is a lot of differences between us but we're going to have to support each other one hundred per cent.

June McCue: We should have our own cards/passports issued among us. Our crests did this, they identified which clan we belonged to or who was our father clan. The artwork in the crest also defines who we are. I guess it is getting to know each other again. We always say non-aboriginal people do not know us, they do not know who we really are, we do not know them. Their artificial state structure and Euro-centric views of our peoples is what prevents us from really knowing each other.

Many current leaders do not believe in nationhood... what our peoples were talking about in the seventies. Some do not believe in autonomy within Canada, to the extent of having our own jurisdiction. I am still hoping that the people will talk about nation building. I was empowered by that thinking and came to the realization that nation building cannot happen in a day. We are still setting a foundation block for it. Once I realized that, it was not so over whelming. It is a hard task to do but I am still hoping that our people will awake to nation thinking again. Whether our current leaders believe in that or not, I cannot let that deter me right now. True, it is not the "nations" negotiating treaties right now. It is leaders under the Indian Act that are negotiating treaties. The government is negotiating with itself, in a way. We have to deal with consent.

I would prefer an alternative way to bring the people together. If they are going to break off, there should be a way to do it with appropriate processes and protocols respected and where everyone has the ability to participate, not just a community assembly once or twice a year. There should be time to discussion it even if take years. The elders have to walk through it all and understand such a decision as well as the youth. If they really are informed and decide that is what they want to do, they have to reach back into their traditions and see how they may have done that in the past or if this is lost, begin a process of self-determination today to deal with this nation issue.

Cliff Atleo, Jr.: Yeah, I think there has to be because right now we're experiencing a split. Basically a little bit of philosophical and ideological split, we do have a group of people that think plugging into the system is the best thing for them. And for the most part, they do have, from what I can tell good intentions or what they feel are good

intentions. They feel the best way for them to move their people forward is to plug into Canada, so all of the mandates and the agendas of economic development creates certainty in the province for forest and mining companies and that sort of thing; and, then providing new jobs or partnerships for Indigenous nations and they feel that is the way to go.

The reality of the situation is a lot of our people are convinced we are not in crisis, as long you have a situation like that, as long you have approached to address your needs and your interest and people are going to plug into that and keep going. In terms of unity at some point a group of people and nations are going to have to lead the way. In doing so the ultimate conflict will have to happen with government and you'll see people look at that for what it is and will determine for themselves whether that is a righteous just stand and they will support that or not.

Whatever function you look at, in terms of revitalization or revolutionary approach, you cannot ignore the simple fact of having to go and be able to do. And, so whatever it is that you propose, a political association for change you will never be successful unless you address that economic aspect. So, at that same time your challenging political jurisdiction of the state or the crown you have to challenge economically at exactly the same time because you have to be able to have a system that feeds your people because you cannot let people starve. Talk about the rejection of funds in 1975! That was a disaster because there was nothing to replace it or at least there was not enough thinking in there when we talk about nation-to-nation relationships. We have to rebuild the trade relationships with other nations because you have to address that economic need and if you don't, you're constantly a radical on the outside who is always complaining. There is never any change and you are ostracized or isolated because you're not able to address that specific need of the people.

We have to assert Indigenous laws in Indigenous lands. A lot of these people are not going to wait. They're actually not going to commit to you. However, there needs to be recognition of laws in our territories and in the same way the [hereditary] Chiefs addressed a problem. There is that opportunity for us to address a role of non-Indigenous people in our territories, and so we do have a possibility of a situation where they may be willing to pay taxes to you for the services you provide and it stays within the community. It is consistent with "X" values. One of the key principles is basically, everything is one, and everything is connected. It just means you don't compartmentalize everything and say we'll just deal with this and we're done. You look at the effect on everything

Shawn Atleo: Between First Nations peoples, we seem to be harder on each other, quicker, than we are on the non-Indigenous people in our territories. We are so quick because we know that you, as an Indigenous person, should be living up to your responsibilities to make sure you're respecting protocol. But, we are quicker to deal with Indigenous person and as a result we seem to be battling one another more often than taking care of a multi-national conglomerates who are busy raping and pillaging our

territories and extracting billions of dollars of resources. This is where working together makes the most sense. There are pockets of Indigenous peoples battling these huge battles and they require support. That's the role of provincial political organizations – the Union of BC Indian Chiefs is a great example. I want to contribute to where we're requested. If we work together to resolve political issues, if we remain polarized we will not be as effective, we are playing right into the government's hands. Why should we talk to you about your problems when to us it's working, when to this group over here, we feel we are making progress with, so, it must be you who has the problem! If we are divided, then we are not as strong.

Mike Retasket: We are, there is no choice, we are already, and we were never un-united, we always have been united. What make us appear un-united are the leaders, “Why should I trust him”? or “Why should I trust an Indian”? or “Why should any of you trust me”? I have no confidence in you, what I want to do, and I'm going to go do that. So, it's the leaders who are the ones who make us in disunity, the people aren't.

By focusing on the land, if we focus on anything else, we own the land collectively we own all of it, from Alaska, USA to the country of Chile, it was a gift given to us and we share that gift. I'm going to say it this way, that the black nation would have to come here and I'm going to say in order to survive, but there is a different way, they survived if they didn't come here, the creator needed the black nation to end up here and the white nation to end up here and the yellow nation to end up here and gave us everything we need, everything in a bundle to share and its not being shared. The greed is more powerful, I need all the trees, I need all of the water, I need all of the coal and I need all of the copper. So, we focused on the land and we're getting major beneficial exercise to the resources within the confines of our traditional area.

I want to focus on choosing our fight, picking our fights on the lands as well collectively, we're not going to win every fight, we're going to win some and we're going to lose some so, focusing on culturally sensitive areas, focusing on archaeological areas, sacred areas those things that we can protect. That's what we need to be doing, have the ability to identify those areas, to let third parties or the province know that there are no-go zones. By focusing on the land, I think we can work collectively, if it goes any other direction, it will fall off course and there will be division again and it's right where they want us to be.

June Quipp: Actually, I think we have to. We really have to. It's a very, very sensitive, hot and irate and everything to begin with. I think in the end we could probably come to some agreement. Although, I think some people are too far-gone to the other side, too assimilated in my mind, those are going to be difficult things to change. It looks like even within our traditions and our culture, we have to do some alterations, where you have the results of mixed marriages in our culture and how that's being altered. Again, you look at treaties; there are some older workers from the long house that are really set against entering; and, being initiated into the long house. So, that creates conflict.

Number one, you have to start from the circle – the self, you have to start internally. And you're working up right to the top where you've got to be united within the community; then, you have to go locally. Maybe there are not as many people in the same situation as Cheam and the Sto:lo nation with the 24 bands. But there are a few, like Port Alberni, there are 14 bands there. And, I guess there are a lot of areas where there are 6-7 communities within a tribal council. When you look internally within a community you have to work locally with the tribal councils. Tribal councils are ways of government stomping all over you too. They can consult with the tribal council and say that they have justified their consultation process without even coming to Cheam. That's another area of concern that I've had.

We've become beggars by saying, "What can we have from you?" It's not even what we want from them, but it's what they owe us. That's where we're weak. When you're begging for something you don't often get what's adequate. That is a real important thought and some people will get very angry at that statement.

Ervin Charleyboy: The governments are not going to get anywhere with the BC Treaty commission because there are so many flaws in their agreements. The treaties are creating too much conflict amongst aboriginal nations and in return dividing the people. And, all that is on borrowed money. A band should not enter into a treaty because they are not really nations; they are only a small part of a nation. The chiefs should take a strong hard look at it and ask their people because some chiefs in the treaty process are making decisions on their own and not including their grassroots people or members too. To most chiefs, money is a very important factor and the treaties should not be fully based on a monetary system. The AFN, they need to be more involved with aboriginal nations.

Ivor Myers: The Tsilhqot'in National Government looks after the interests of the people. We need to educate the people: we need to teach them where the ancestors are from. All indigenous nations must do ceremonies together – all nations as one – revitalize our brotherhood, our spiritual ties with Mother Earth. Traditionally, our medicine people controlled the territory – the shamans. We call all our territory within our territory - sacred, each tree contains medicine whether it is spruce or pine. We are caretakers of the area that belongs to the entire nation as a whole. In order for our past warriors to stand firm behind us, we have to get them on board through spiritual ceremonies. That is how we will become strong again, without them we cannot win, we are nothing and they are watching us.

Question Six Summary

One of the interviewees indicated that unity will be a challenging effort as Indigenous people seem to be harder on each other than we are on the non-indigenous

people in our territories. As a result, we seem to be battling each other more than focusing our attention on multi-national conglomerates that are busy raking and pillaging our territories and extracting billions of dollars in resources.

Currently, there is no nation where 100% of the communities are negotiating treaties as a unified body. The BCTC process has created too much conflict within and between Indigenous nations. Unfortunately, community members feel that some chiefs have assumed responsibility for making treaty decisions on their own, without input from the grassroots people or the membership. Being divided has created a political polarization amongst the communities as unity has been displaced through colonial processes.

Community plans must be strategically devised to address long-term economic and security needs of the members. Without this, viable options will be unattainable and cohesion will be impossible. All aspects of treaty making cannot be compartmentalized; you have to look at everything at once – through a symbiotic connection. Traditionally, medicine people (shamans) or spiritual leaders controlled sacred sites and territories that belonged to the entire nation. From a spiritual viewpoint, it is recommended that nations do ceremonies together – all nations as one – to revitalize the brotherhood and the spiritual ties with Mother Earth. In order for the past warriors (ancestors) to stand firm behind us, we have to get them on board through spiritual ceremonies. That is how we will become strong again, without them we cannot win, we are nothing, and they are watching us. We must educate the people regarding our spiritual connections and responsibilities.

QUESTION SEVEN

JB: What are national or international possibilities that would advance the treaty-making processes for Indigenous peoples in BC?

Roger Jimmie: They say diamonds are 100 feet under ground and most times under mineral rights, probably; they will only give you under the present treaty process, the top six inches, which is moss and topsoil. All the rich resources of diamonds and gold are 100 feet underground where it starts. It is an area all the Indian nations are missing out on and in this case when you put your treaty out for international bid, you can have Japan, United States, Canadian government and European governments bidding on your treaty. And, the main criteria is [that] aboriginal rights cannot be sold and the boundaries and areas that we stay in are sacred sites can be protected under that type of treaty process. And, with the idea of putting out treaties for bid internationally, you can make it so all the resources forestry, hunting and fishing; can be re-negotiable anytime, five years, ten years and twenty five years. With the present bands under the present treaty process, they can still put that treaty out for bid and some country can buy that treaty bid. One of the areas most bands are missing out on is economics because most bands have high unemployment.

In this case, when you put it [treaty] out to bid you can put any criteria in there and one could be to maintain aboriginal [title &] rights, 'I will be an Indian as long as I live, even though I marry a white person, you can put it in there. And, in terms of economics, forestry and mining, these areas could be re-negotiated. The areas of hunting and fishing could be re-negotiated. And, other things that could be negotiated is the policing of our treaty right from the police or to have our own army to protect aboriginal [title &] rights, that could be put into a treaty.

When you put your treaty out for bid internationally, we can put it right into the treaty that we can share our medicines with the rest of the world. It will create a lot of jobs in our communities and with the present treaties in the system, jobs can't even be offered.

Some of the agreements in education, you can pretty well send your kids to any schools you want, whether it be Harvard Law school in USA or different parts of Europe or in Japan and when they finish school eventually... I have seen a good 99 per cent of aboriginal people finishing school and college and come home or are usually close to home and they bring jobs along with them.

The biggest thing is to know the strength of all the individuals in your community and work towards those strengths that they have and at that point you will have a lot of support, some people have strengths in forestry and some people have strengths in medicine, some people have strengths in wildlife protection, that's an area you could really tap into. There is a bigger enemy out there and we view each other as enemies instead. That has to change. And, there is another thing in terms of non-treaty lands, we know we own this country and we have to change our thinking, such as; we have to quit

calling ourselves non-status Indians. We should be looking and viewing that as “non-status white men”, we have to change our thinking, which is the biggest part.

June McCue: Put treaties out to bid internationally? In the Royal Proclamation of 1763, which was the British policy for purchasing Indian lands, the key colonial elements were “Indians can only alienate their lands to the crown.” If you accept that part of your treaty relationship, you are preventing your nation from treaty with others. For example at that time, a nation that accepted newcomers coming into their territory may have created space for them in their clan system, there may have been marriages, but space was created for them to be in a clan. The government said “no” to this practice. The British Imperial Crown policy was that you could not sell to individual colonialists. You have to deal with us only. Now the Canadian crown monopolizes who we treaty with so that historic policy is still operating in the treaty processes across this country. I fully agree with making treaties with others because that would be your assertion of your people being able to treaty or exercising their sovereignty. If your people want to have investment take place on their land from another state or another peoples who has money, then set up a relationship. We need patience to create agreements that can be enforceable because our peoples can create trouble and not honor agreements. Patience takes time and developing relationships will take time. We have the chance to share with each other as Nations, information on how to decolonize. We need strength in numbers to do that and we do not have the numbers yet. If our political organizations were able to work together and on the same wavelength, they could be so powerful. There is a point when you take that information, that you share amongst each other and you have to divide it with the people internally of what you’re going to do, that self-determination amongst your people has to be respected.

Some nations have changed their land system and their traditional clan system in order to treaty. They have to live with their treaty. They have to do institution building. They set their path and that is their self-determination. The difference is that the same model is used by Canada to try and force it on us. As an Indigenous person, you can get up and say what is colonial about the model; this is the impact on our traditional institution, if you go that way. We are now making the decisions that either go in the western way or the Indigenous way. My people are on the other side of that model and we have not figured out which way to go yet.

Shawn Atleo: International? These are not new ideas. There are stories of people standing up at chiefs’ gatherings in my village. “*Let’s break away from this land...let’s join Japan, we’ll join Japan in all seriousness!*” There are probably no Indigenous nation in North America who haven’t thought of themselves and expressed that this is our territory, especially in BC where there are no treaties - no reconciliation, no recognition mutually. Just to survive you get these funds flowing into the community operating in organizations established under the Indian Act. By in large the efforts being made are as good as they probably can be under the circumstances. The energy needs to be towards supporting the development of autonomous self-government of the individual, the family

and community levels. That's where the work begins. Self-government begins right from home, the individual then the support from within the family. Once they know that they matter and are stronger with their own identity in relationship with the community – get out of the way! You will have a community ready to roll. If you want to break away and join Japan – why can't that be contemplated? On the other hand – what will our ancestors say? They would ask us to look hard at the reality of the day, which includes the state of our own communities. They would ask us to be conscious of the reality that we are 5% of the majority, 5% of the population of the country that we are in. They would ask us to be aware of our place globally of the process of globalization. They would probably say, "Are you living in a post-colonial period or still in a colonized era?" And, that's a good debate. No, we're not in post-colonization; we're still in a very colonized and colonizing period. When we get a change in BC, from one government to the next, all of a sudden we thought we made a couple steps forward and your five steps back! We get new people in power and they bring in their ideals that are very far to the right, their neo-liberal ideals. All of a sudden the sieve opens and these global notions come pouring through provincial and federal policies and my little community on the west coast is inundated with international fish farm companies coming in and exploiting the lack of regulation. My little community has to deal with companies that are 80% owned by the Norwegian federal government. Maybe we need to deal with Norway instead of dealing with Canada and BC.

Our efforts often come back to some very basic things. We have to help people be comfortable in their own skin; there is still a lot of violence in the communities. We still don't have legal recognition from the governments. Maybe we don't need that; maybe at the end of the day we don't need them to recognize us.

Nationally, I work with nine other regional chiefs and the national chief on national unity. We have the same issue on the national basis. One of the first things is to have the Atlantic coast fishers, chiefs and leaders, to come to the west coast and discuss the Marshal decision and the implementation of it on the Atlantic seaboard. Let's have an exchange of information and then send leaders to the east. What about the inland people? They're stuck because Canada has delegated their authority to the provinces. So, First Nations in the prairies, who have active fisheries in the lakes and active intention to participate economically, the authority, has been delegated to the provinces, and, so they're further removed. We have to support them too. There is a lot of work to be done nationally.

Mike Retasket: International and accountability! By making them aware that Canada is a signatory to the United Nations by virtue of biological divisions. By showing them the website and really recommending that they have a linkup. That's the position that we have to take. We're going to hold Canada and Ministry of Forestry, through Canada, accountable to implement article 8J and 10C, other related provisions in the Convention of Biological Diversity.⁴¹ So internationally, those agreements have been signed and we

⁴¹ See articles 8J & 10C in the Convention of Biological Diversity at: <http://www.biodiv.org/convention/articles.asp> [March 2005].

have to hold them accountable. They're not even going to tell us about our forestry, we have to go and find it out ourselves and hold them accountable to it; they're not going to share information with us that is going to put limits to their ability to get the resources they want.

That's like the ability to lobby other countries into getting the wording in. Like I was talking about a little earlier there are those international agreements created and provides an opportunity for aboriginal people to create hooks into the planning, hooks which hold third parties in the province accountable and Canada too. And, by creating the hooks it creates leverage, creating leverage creates opportunity.

Question Seven Summary

Various international forums are being used as a catalyst to address Indigenous peoples' issues and struggles worldwide. If Indigenous nations were to make international agreements, it would affirm their right as self-determining peoples. An example of this would be to negotiate a treaty with Norway regarding fish farms in west coast traditional waters. If Indigenous peoples negotiated stringent agreements, perhaps there wouldn't be so much contention, confusion or exploitation of resources.

Linda Tuhiwai Smith explains that the international mobilization of Indigenous peoples in Canada and the United States needs to be seen within the context of Indigenous struggles for self-determination, which is occurring at the grassroots level:⁴²

One of the first post-war initiatives by indigenous groups in the international arena was mounted by an organization called the North American Indian Brotherhood (NAIB), which originated in British Columbia in the 1950's...sent a delegation to the United Nations. Ties between the First Nations communities in Canada and the United States were already closely bound by traditional relationships. These small-scale initiatives were followed by the American Indian Movement, which facilitated a major international meeting involving a wide range of international indigenous delegations. From these meetings and under strong leadership...emerged the International Indian Treaty Council in 1974. Almost simultaneously across the border in Canada the National Indian Brotherhood established the World Council of Indigenous Peoples in 1975. Both

⁴² Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*. Zed Books Ltd.1999. Pp. 112-115.

these organizations sought status as non-government representatives to the Economic and Social Council (ECOSOC) of the United Nations.

As expressed by Arthur Manuel, spokesperson for the Indigenous Network on Economies and Trade:

Indigenous Peoples around the world have won important constitutional recognition of their inherent rights and jurisdiction. Yet, despite these gains, the socio-economic status of Indigenous Peoples has not improved and they continue to be the poorest populations of those countries in which they live...despite certain gains, many governments still refuse to implement constitutional provisions recognizing the rights of Indigenous Peoples. Tribal sovereignty is under attack by the courts...that want to abolish the tribes' economic and legal independence.⁴³

When Indigenous Peoples first started organizing at the international level in the 1970's, they vowed to work together to overcome their socio-economic marginalization through recognition of their inherent rights. The agreements being conducted between Indigenous bands and Canada will be recognized as domestic agreements subject to Canadian laws.

44

Alan Cairns states that international law and international legal arenas have been used to impact the Canadian legal system and political realms:

...domestic developments could not have brought us to where we are now without the support offered by the international environment. Indeed, Aboriginal Nationalism, cultural pride, and the pursuit of self-government would all be much weaker in the absence of supportive messages by the international environment...International law, which formerly 'facilitate[d] empire building and colonization...[now] provides grounds for remedying the contemporary manifestations of the oppressive past.'⁴⁵

⁴³ Manuel, Arthur and Nicole Schabus. "Indigenous Peoples at the Margin of the Global Economy: A Violation of International Human Rights and International Trade Law." *Chapman Law Review*, Volume 8, Spring 2005, Number 1. Pp. 222-224. See: http://www.chapman.edu/images/userImages/mthomas/Page_8425/Manuel.pdf.

⁴⁴ *ibid*, page 224.

⁴⁵ Cairns, Alan. *Citizens Plus: Aboriginal Peoples and the Canadian State*. UBC Press, 2000. Pp. 40-42.

An example of international influence on the Canadian legal system is a human rights case filed by Sandra Lovelace to the United Nations Human Rights Committee. The results of this case found Canada in breach of Article 27 of the International Covenant on Civil and Political Rights, which denied Lovelace Indian band membership and return to the reserve. This case was decided in 1981, prior to the enactment of the *Canadian Charter of Rights and Freedoms*. In this case, Sandra Lovelace lost her status under the Indian Act because she married a non-status man. In addition to bringing the *Indian Act* into accord with the equality provisions of the Canadian Charter of Rights and Freedoms, Bill C-31 expanded band control over membership and community life, enabling Indian people to take an important step toward self-government.⁴⁶

Although Indigenous peoples seek international support to compel Canada to uphold and be accountable to international laws, there are instances where Human Rights violations have been ignored. Roland Chrisjohn points out that Canada, who is a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, violated the human rights convention with the continued operation of Indian residential schools across Canada. The fact is that the Canadian government implemented a legislation requiring the surrender of children to their agents is an act which caused mental [spiritual, emotional, cultural] and physical harm. Genocide, he states, does not require killing. The federal government of Canada bears primary responsibility for adopting and implementing an explicitly genocidal policy. Canada, he adds, cannot exempt itself from the Common Law of Nations or interpret the law to its own

⁴⁶ *Sandra Lovelace v. Canada*. <http://www.lawsite.ca/WLSC/Lovelace_w.htm.> Also, see the Indian Act, Bill C-31 at: http://www.johnco.com/native/bill_c31.html.; Jennifer E. Dalton. "International Law and the Right of Indigenous Self-Determination: Should International Norms be Replicated in the Canadian Context?" Working Paper 2005(1), in *IIGR*, Queens University. Page14.

advantage.⁴⁷ Signatory governments must be held accountable to international agreements and covenants.

Other international forums include the United Nations Working Group on Indigenous Populations⁴⁸; the United Nation Committee on the Elimination of Racial Discrimination⁴⁹; the Permanent Forum on Indigenous Issues⁵⁰; the Convention on Biological Diversity⁵¹; the United Nations Human Rights Commission⁵²; the Convention on the Prevention and Punishment of the Crime of Genocide (1948)⁵³, the International Covenant on Economic Cultural and Social Rights (1966)⁵⁴, the Inter-American

⁴⁷ Chrisjohn, Roland. et al. *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada*. Theytus Books Ltd. 1997. Pp. 40-48.

⁴⁸ The Working Group has a two fold mandate: to review developments pertaining to the promotion and protection of human rights on fundamental freedoms of Indigenous peoples; and, to give attention to the evolution of international standards concerning Indigenous rights. See: www.unhchr.ch/indigenous/groups-01.htm.

⁴⁹ For more information on The United Nation Committee on the Elimination of Racial Discrimination see S. James Anaya, *Indigenous Peoples in International Law*. Oxford University Press, 1996. Pp. 162-166. Also, see a landmark decision made by the CERD on the Western Shoshone case at: <http://www.turtleisland.org/discussion/viewtopic.php?p=6787&> and [http://www.wsdp.org/US-Western%20Shoshone%20Decision%201%20\(68\).doc](http://www.wsdp.org/US-Western%20Shoshone%20Decision%201%20(68).doc).

⁵⁰ The Permanent Forum on Indigenous Issues was passed by resolution in 2000 by the United Nations Economic and Social Council (ECOSOC). Issues discussed include indigenous peoples' economic and social development, culture, environment, education, health and human rights. The forum provides expert advice and recommendations to programs and agencies of the United Nations and raises awareness about indigenous issues. See: <www.un.org/esa/socdev/unpfi> [November 2005].

⁵¹ See United Nations Environment Programme at: <http://www.biodiv.org/convention/articles.asp>.

⁵² The Human Rights Commission has recognized the right of indigenous peoples of self-determination and is the treaty monitoring body of the International Covenant on Civil and Political Rights. See: http://www.unhchr.ch/hchr_un.htm. [November 2005].

⁵³ The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by Resolution 260 (III) A, of the UN General Assembly on 9 December 1948. See: <<http://www.hrweb.org/legal/genocide.html>. >

⁵⁴ The International Covenant on Economic, Social and Cultural Rights was adopted by UN General Assembly resolution December 16th 1966. The Covenant contains some of the most significant international legal provisions establishing economic, social and cultural rights, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress. As of 12 April 1996, 133 States had ratified the Covenant thereby voluntarily undertaking to implement its norms and provisions. A key issue is the right of self-determination, as specified in article one: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Commission on Human Rights⁵⁵; and, the United Nations International Covenant on Civil and Political Rights.⁵⁶

More energy needs to be spent towards supporting and engaging in proactive multi-pronged approaches in developing autonomous self-determination of the individual, families, communities and nationhood. That's where the real work begins.

⁵⁵ The inter-American human rights system was born with the adoption of the American Declaration of the Rights and Duties of Man in Bogotá, Colombia in April of 1948. The American Declaration was the first international human rights instrument of a general nature. The IACHR was created in 1959 and held its first session in 1960. Since that time and until 1997, the Commission has held 97 sessions. In 1969, the American Convention on Human Rights was adopted. The Convention entered into force in 1978. For more information see: <http://www.cidh.org/what.htm>.

⁵⁶ Article 1, paragraph: 1) All peoples have the right of Self-determination. 2.) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligation arising out of economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3.) The States Parties to the present Covenant ... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the charter of the United Nations. For more information see: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

CONCLUSION & RECOMMENDATIONS

Based on the oral testimonies of the participants, Indigenous nations have always possessed an inherent responsibility and jurisdiction over their lands, resources and the laws of their people. Various protocols affirmed ownership, authority, territorial boundaries, power, alliances, peace, war, trade, commerce and governance between the Indigenous nations.

Since confederation, however, the political relationship changed drastically between Indigenous nations in British Columbia and the colonial powers. In an attempt to settle the land question in BC, it is evident that Indigenous bands proceeding through the BCTC process is accepting the Crown's authority and sovereignty over their land and resources, which in reality is the extinguishment of their title and proprietary rights.

Given the history of broken treaties in the past and other problems Indigenous peoples have encountered, Sharon Venne⁵⁷ points out:

“The difficulties encountered by Indigenous Peoples relate directly to the colonizer state's failure to recognize the true nature of the treaties. The main failure is the refusal of the state governments to recognize the sovereignty of Indigenous Peoples. Indigenous peoples who entered into treaties negotiated and concluded treaties as nations not a domestic dependent nations as claimed by various colonial courts.”

In reference to the Union of BC Indian Chiefs' Sovereign Nations Territorial Boundary Map,⁵⁸ there are twenty-three distinct sovereign Indigenous nations in British Columbia. The oral testimonies, and histories of the interviewees affirmed that Indigenous nations engaged in nation-to-nation relationships (treaties) with each other.

⁵⁷ Ms. Sharon Venne. *Expert Seminar on Treaties Agreements and Constructive Arrangements between States and Indigenous Peoples*, Geneva 15-17 December 2003.

⁵⁸ See APPENDIX A: *Sovereign Indigenous Nations Territorial Boundary Map*, page 73.

Each treaty validated the authority and protocols over the land and resources, which were strictly maintained and enforced since time immemorial. Indigenous nations have never sold, bartered, nor abandoned, their sovereign ownership of lands and resources to colonial powers – Indigenous nations still possess the true title and rights of the land and resources.

Indigenous independence and nationhood cannot be gained or recognized through Canadian courts, as it has no authority, nor desire, to relinquish its own sovereign authority. It is apparent that the courts serve Canada, and exist to protect, perpetuate and serve Canadian authority and its interests. Using the litigation process to defend Indigenous Peoples' interests requires the recognition of the legitimacy of this colonial power, as judicial courts are instruments designed to protect colonial rules and interests.⁵⁹ Proceeding through the Canadian judicial system is to deny the rightful ownership and authority over the lands, resources and people in their territories. As quoted by Linda T. Smith, "*The master's tools will never dismantle the master's house*"⁶⁰ is an appropriate metaphor to describe the BC Treaty Commission, the Canadian Judicial system, or any colonial based structure. There are myriads of court cases⁶¹ where Indigenous peoples are forced into court in an attempt to have their treaty or aboriginal title and rights affirmed and recognized. The judicial process fails to acknowledge or refuses to

⁵⁹ Adams, Howard. *Prison of Grass: Canada from a Native Point of View*. Fifth House Publishers, Saskatoon Saskatchewan, Revised Edition, 1989; Maracle, Lee. "The Operation was Successful, But the Patient Died." In *Box of Treasures or Empty Box? Twenty Years of Section 35*, edited by Ardith Walkem and Halie Bruce, 308-314. Penticton: Theytus Books Ltd., 2003.

⁶⁰ Smith, Linda Tuhiwai. *Decolonizing Methodologies: Research and Indigenous Peoples*. Zed Books Ltd, 1999. Page 19.

⁶¹ In *Regina v. Bartleman* (1984) and *Claxton v. Saanichton Marina Ltd.* (1989) the Tsawout Band successfully obtained a permanent injunction restraining the construction of a marina in Saanichton Bay on the grounds that the proposed facility would interfere with fishing rights promised to them by their 1852 treaty. For more examples, see the Union of BC Indian Chiefs at www.ubcic.bc.ca; and, The Aboriginal Justice Implementation Commission at: <http://www.ajic.mb.ca/volumel/chapter5.html>.

understand the fundamental nature of Indigenous Peoples claims about the nature of Aboriginal Rights as flowing from, is intricately tied to and bound by, the land.

As mentioned in June McCue's interview, "Lee Maracle wrote about our leadership and where we are as peoples, "*Colonialism is more than half a millennium old...*"⁶² she has it right; she is saying our colonial past and our acceptance of it is leaving us politically and economically paralyzed. So, even though we want to restore, we want to reconstruct our nationhood, if we continue to accept that past, then it's going to defeat our efforts to get to a self-determining position of power. In other words, she contends that we have to get out of our paralysis. It is clear that this paralysis is a result of colonization of the mind. Many of our people have internalized colonial oppression; it has immobilized our very being by our inability to think on a political level. We need to free ourselves from this oppression by becoming politically and socially conscientized. So, if you wanted to look at psychological thinking of how our people can get out of such paralysis, maybe on a physical level, in a body sense, maybe we can start thinking on a political level, "*How do we get out of that paralysis?* If colonial law is the problem, the political solution is: Original Indigenous Law and Nationhood is the only cure for the disease of colonialism...anything else will result in the greater death – the death of the hopes of Self-Determination."⁶³

As Indigenous Peoples seek ways to negotiate land claim agreements, or treaties, the process through which these agreements are made must flow from the inalienable sovereign authority of Indigenous Peoples. We are fighting for Nationhood! As voiced by Mildred Poplar, "Instead of cooperating with the government we have to remember

⁶² In *Box of Treasures or Empty Box? Twenty Years of Section 35*, edited by Ardith Walkem and Halie Bruce, 308-314. Penticton: Theytus Books Ltd., 2003. Page 314.

⁶³ *Ibid*, p. 313.

that we are Nations of peoples, and remember what we are fighting for - to preserve our Nation-to-Nation relationship. We are fighting for the recognition as Sovereign nations and to rebuild and decolonize our people.” We cannot cede the responsibility granted to us by the Creator – ownership, jurisdiction, spiritual beliefs, language, laws, traditions and our systems of governance – We must stand united as Indigenous nations to assert our inherent rights and title for the future generations of our people.⁶⁴

As Indigenous peoples seek for alternatives to the BCTC process, it is evident that they must be the initiators of a process that is grounded on Indigenous authority, laws, responsibilities and respect for the land. Any process that threatens, replaces, or refuses to acknowledge Indigenous sovereignty is accepting colonial laws as paramount over the original laws of the land and people. Indigenous nations must take proactive measures (direct action) to regain authority for the people, lands and resources - it cannot, nor will it, be given freely by the colonizers.

As reflected in the oral testimonies and historical accounts presented in this research, Indigenous nations in British Columbia have always possessed sovereign authority over their lands and resources. Indigenous peoples have the right to initiate and maintain treaty relationships according to their laws and their right of self-determination. Finally, we must not allow our aboriginal title and rights to be extinguished by proceeding through the BCTC process. The following recommendations have been identified as multi-pronged strategies to reaffirm and protect Aboriginal Title and Rights of the land and resources; and, to identify alternatives to the British Columbia Treaty Commission process:

⁶⁴ Poplar, Mildred. “We Were Fighting for Nationhood Not Section 35.” In *Box of Treasures or Empty Box? Twenty Years of Section 35*, edited by Ardith Walkem and Halie Bruce, 23-28. Penticton: Theytus Books Ltd., 2003. Page 27.

Recommendation One: Reaffirm Indigenous Nationhood and Sovereignty.

Publicly announce and acknowledge Indigenous nations as having inalienable sovereign authority over lands and resources in British Columbia. The oral testimonies and historical accounts attest to the existing authority between Indigenous Nations; and, that they have the right to modify and enforce treaty relationships in accordance to their traditional laws and their right of self-determination. Strategic initiatives must be devised to publicly claim Indigenous territories by land markers, signs and maps, as identified in the UBCIC's territorial boundary map. (See Appendix A) For an in-depth example of how land use plans can be implemented and governed, see the Heiltsuk's Land-Use plan and the UBCIC's *Researching the Indian Land Question in BC*.⁶⁵

Recommendation Two: Develop strategic treaty-making models based on traditional treaty relationships.

Traditional Indigenous nation-to-nation agreements must take precedence over colonial style negotiation processes, jurisdiction and authority. Robert A. Williams, Jr. describes this diplomacy as the customary bonds created by treaty relationships, which were relied on, as a matter of constitutional practice, in times of need or crisis. This principle meant that the relationship or multicultural unity created between treaty partners should be continually reaffirmed and strengthened. These covenants, or treaties, sustained the sacred bonds that, as a matter of constitutional principle, were relied upon for survival in a hostile and chaos-filled world.⁶⁶

⁶⁵ See the Heiltsuk Land Use Plan, *For Our Children's Tomorrows*, at: <<http://www.ecotrustcan.org/heiltsuk.shtml>>; and the Union of BC Indian Chiefs, *Researching the Indian Land Question in BC* at: <<http://www.ubcic.bc.ca/Resources/rilq.htm>>

⁶⁶ Williams, Robert A. Jr. *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*. Oxford University Press, 1997. Page 113.

Negotiation processes must be designed and controlled by an entire Indigenous nation (nationhood), not Indian Act communities (bands) or tribal councils. A multi-pronged approach must be initiated by reviving historical treaty relationships and protocols recognized by/between Indigenous nations. Treaty models must be written and defined in respective Indigenous languages.

Recommendation Three: Promote Indigenous Nationhood through Decolonization.

Leaders and communities must continually assert a multi-pronged political strategy to decolonize their members: emotionally, physically, spiritually, mentally and culturally. The revival of traditional governing institutions and laws is fundamental to environmental protection, resource management, conservation, peacekeeping, social development, education, spiritual, cultural and economic development. For an example of a multi-pronged decolonization process, see the “*Colonization and Decolonization: Nlaka’pamux and Secwepemc Nation Building Model*”⁶⁷ in Appendix B. One of the greatest tasks is to unite the nations around similar obstacles and circumstances that have impeded the recognition and significance of nationhood.

Recommendation Four: Recognize Indigenous Treaties as binding International Agreements.

Based on international law, treaties are agreements entered into between and among sovereign nations and are interpreted and enforced through international tribunals and courts. Indigenous nations must advocate for their historical nation-to-nation treaties be

⁶⁷ The design of this particular model is based on Poka Laenui’s “Process of Decolonization” in M. Battiste (ed.) *Reclaiming Indigenous Voice and Vision*, UBC Press, 2000. pp. 150-160; and, Michael Yellow Bird’s “A Model of the Effects of Colonialism.” *Office for the Study of Indigenous Social and Cultural Justice*, (1998).

comparable to those recognized in International law. It is also suggested that Indigenous people emphasize Canada's violation of the Convention on the Prevention and Punishment of the Crime of Genocide, with its legislated Indian Residential Schools policy.

Recommendation Five: Indigenous political organizations to support grassroots movements and initiatives towards nationhood and sovereignty.

It is recommended that the UBCIC revisit their proposal, "*A Bilateral Nation-to-Nation Option for Treaty-Making and Treaty Implementation in BC*," drafted in November 1994. This process was initially presented to the federal government as a comprehensive treaty-making framework, which sets out the principles and arrangements between Indian Nation-Crown treaty negotiations. Community forums and workshops are needed to raise awareness and dialogue amongst grassroots peoples in BC. This in turn will strengthen alliances amongst the nations. It is recommended that the political organizations assist grassroots communities to combat the colonial assimilationist and extinguishment agendas at all political levels: community, regional, national and international.

Recommendation Six: Reconceptualize Indigenous–Crown Relationship in the context of decolonization.

Indigenous treaty processes must prescribe that the province be considered separate from treaty negotiations – only the Federal crown has a fiduciary responsibility to uphold its trust obligations to Indigenous Nations. Indigenous peoples must actively hold Canada to honor and respect Indigenous Peoples rights of self-determination as stated in Article 1 of the United Nations International Covenant on Civil and Political Rights.

Recommendation Seven: Indigenous representatives and delegates to participate at international forums and conventions to affirm their status as self-determining nations.

Based on international law, treaties are agreements entered into between and among sovereign nations and are interpreted and enforced through international tribunals or courts. It is a fundamental right for Indigenous Peoples to accept or reject treaty proposals, based on their inherent right of self-determination. Indigenous people whenever appropriate should attend, participate and support international forums, conventions, networks, working groups and commissions such as: the Working Group on Indigenous Populations; the Commission on Human Rights; the UN Permanent Forum on Indigenous Issues; the UN Committee on the Elimination of Racial Discrimination; International Covenant on Civil and Political Rights; the Inter-American Human Rights Commission (see OAS); the International Indigenous Forum on Biological Diversity; and, the Indigenous Network on Economics and Trade.

The Union of British Columbia Indian Chiefs is a Non-Governmental Organization (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations and has the opportunity to use it in global forums.

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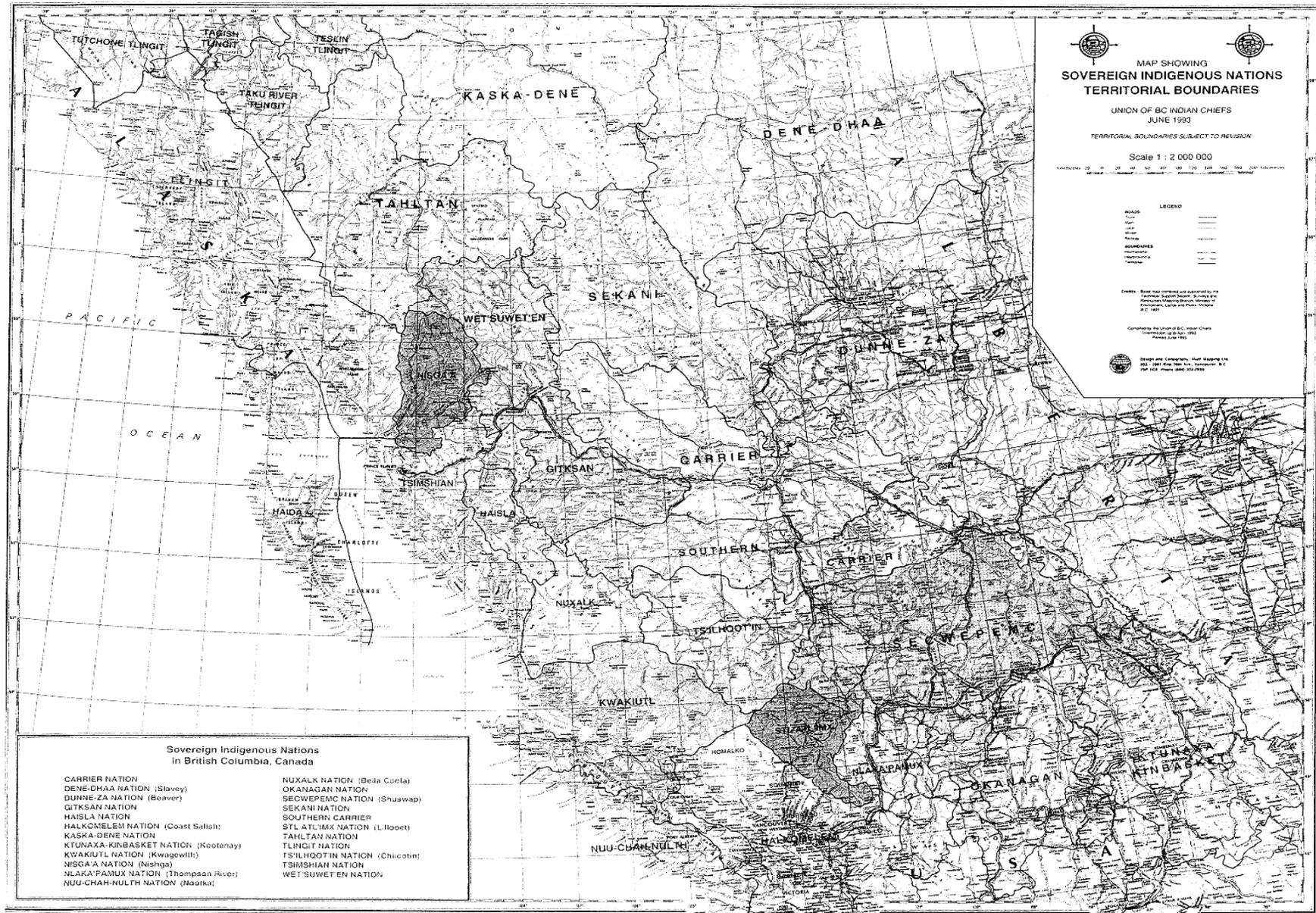
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APPENDIX A: SOVEREIGN INDIGENOUS NATIONS MAP



APPENDIX B: COLONIZATION & DECOLONIZATION: Nlaka’pamux & Secwepemc Nation Building Model

EFFECTS OF COLONIZATION

Denial & Withdrawal	Destruction & Eradication	Degeneration, Belittlement, Insult	Surface Accommodation, Tokenism	Transformation & Exploitation
European denial of legitimate culture & moral values. Conversion & withdrawal from own culture. False Information.	Physical destruction & eradication of culture, art, symbols & sacred sites. Indian Act, DIA. Indian residential Schools.	New systems created: church, health & legal. Discontinuation & prohibition of spiritual practices & medicines.	Exhibition dances, Token participation tolerated. Oral history acknowledged as myth or legend.	Traditional culture dominated by colonial society. Biopiracy - stereotyping images of “Indianess” “Healing circles.” Bands, reserves seen as Nations. Exploitation of land & resources.
INDIVIDUAL EFFECTS OF COLONIZATION				
No process of learning cultural practices as information is not transferred or familiar to younger generations. Language & generation gap. Suffering from concepts of inferiority.	Conversion into church ideologies, language & identity is radically changed. Destroy ceremonial masks, baskets, clothing, totem poles & sacred sites. Remain on reservation or enfranchised into society.	Reliance on colonial dominance of health/welfare for self & family. Condemnation causes suicide alcoholism, violence, domestic abuse, addictions, child welfare, elder abuse & dispossession of land. Internalized Racism.	Pow-wows a true “spiritual” experience, competition & payment. Biased history taught in schools promotes colonial attitudes. School & government tokenizes students / employees / Indigenous spokespersons.	Indianized churches with Indian pastors, symbols & music. Sports team with Indian identities. BCTC – land claim settlements, democracy, laws, Courts, “A Cultural Melting Pot,” dispossession of Rights, Title & LAND.

DECOLONIZATION PROCESS

Rediscovery & Recovery	Mourning	Dreaming	Commitment	Action
Recovery and pride of tradition, language, culture, identity. Seeking out and learning the “TRUE” history of their people. Reject the lies and false information that was learned. There is a way to recover from colonization – to decolonize.	Lamentation of victimization. It’s okay to talk about the abuses and consequences of residential schools – do not feel ashamed of being a victim – your family & community are also victims.	The most crucial for decolonization. All possibilities are expressed, debated & consulted. Re-evaluation of the political, social, economic & judicial structures – develop new structures that reflects indigenous values & aspirations.	Hear the voices of the elders and leaders, move with a consensual progression to unity, as one voice, one nation. Look to the traditional laws of the Creator.	A consensus of commitment, actions is choices of a decolonized nation. Educate children with culturally appropriate curriculum, based on true history. Make choices for the future in the best interests of the family and nation. Revisit <u>Rediscovery & Recovery Process</u> CYCLICAL

INDIVIDUAL DECOLONIZATION PROCESS

Curiosity of traditional ceremonies & spirituality. Learn about culture, history & language from your people, not the colonizers. Practice & acknowledge your traditional culture as your TRUE roots.	Healing the wounds of Indian Residential schools. The choice of reparation for losses of culture, language, identity, dignity & trust. Moving onto the next stage essential – letting go of pain & loss is the traditional way , there is a ceremony for life & death. Forgive - but NEVER forget.	Discuss & decide with family a process of decolonization grounded in traditional ceremonies, spiritual beliefs, laws & language. Visit & utilize sacred sites on the land. Deconstruct racism & ethnocentrism.	To actively participate in learning & promoting the language, culture, ceremonies. Foundations have to be strong – set an example. Find ways to teach family traditional ways of learning & knowing. Practice your inherent rights of the land. Consult the elders.	Utilize technology to get action plan distributed. Share models of decolonization processes; be available for action and discussion plans. Educate community of genocidal crimes. Revisit <u>Rediscovery & Recovery Process</u> CYCLICAL
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Colonization & Decolonization: Nlaka’pamux and Secwepemc Nation Building Model redesigned from Poka Laenui’s “Processes of Decolonization” and Michael Yellow Bird’s “A Model of Colonialism.”

APPENDIX C: BIOGRAPHIES

Cliff Atleo, Jr.: Na'cha'uaht is of Nuu-chah-nulth and Tsimshian heritage from Ahousaht and Kitselas/Kitsumkalum respectively. He has completed 3 years of education at Capilano College and the University of Victoria. He is planning to return to UVic in 2006 to complete his undergraduate degree before pursuing graduate studies. He currently works for the Lyackson First Nation on Vancouver Island as a community liaison worker. At the time of this interview, Cliff Atleo, Jr. was a Treaty Process Manager at the Nuu-chah-nulth Treaty Table.

A-in-chut (Shawn Atleo): is a Hereditary Chief from the Ahousaht First Nation, the Assembly of First Nations British Columbia Regional Chief and the Co-Chairman of the Nuu-chah-nulth Tribal Council on Vancouver Island. Shawn is supported and gains his strength from his partner of 18 years, Nancy, and their 2 teenage children, Tyson and Tara. Traditional teachings guided Shawn to serve First Nations for 17 years as a leader, negotiator, facilitator, mediator, strategic planner, and President of Umeek Human Resource Development.

Since Shawn's election as the AFN British Columbia Regional Chief, he has been appointed to two national portfolios of the Assembly of First Nations. Shawn is Chairman of the Constitutional and Legislative Affairs portfolio, which includes Land/Treaties, Parliamentary Liaison and Justice. He also Co-chairs the Resources and Revenues portfolio, which includes Environment, Fiscal Relations, and Fisheries/Resources. Shawn's efforts are focused on the empowerment of the people and their communities towards self-determination and building hope for the future.

Shawn exercises leadership by first listening to gain an understanding and then working with people to make positive change. He is very passionate and committed to First Nations people and issues and is honored by the opportunity to work for all First Nations of BC.

Chief Ervin Charleyboy is the elected chief of the Alexis Creek First Nation in the Tsilhqot'in National Territory. Website: www.alexiscreekfirstnation.com

Roger Jimmy is a hereditary chief and a member of the Southern Carrier Nation. He was the elected chief of the Lhoosk'uz Dene' Government Administration (near Quesnel, BC) for many years.

Professor June McCue, Director, First Nations Legal Studies, Assistant Professor, is a member of the Ned'u'ten People located along Lake Babine in northern British Columbia. Professor McCue graduated from the UBC Graduate Law Program in 1998. Professor McCue is the Acting Director of First Nations Legal Studies, since 1998, and joins the Faculty as an Assistant Professor and Director of First Nations Legal Studies on July 1, 2000.

Professor McCue has directed the development of a First Nations Legal Studies Academic Plan and supervised the process to create the conceptual development for the Centre for International Indigenous Legal Studies. From 1999-2005, Professor McCue was the founding Chair of Environmental-Aboriginal Guardianship through Law and Education (EAGLE). Professor McCue's efforts are focused on research, writing and teaching in the Indigenous law field.

Chief Ivor D. Myers is chief of the Yunesit'in Government, a community of the Tsilhqot'in nation members located 100 miles west of Williams Lake. He was first elected in 1981-82 for a two-year term then re-elected in 2000 and is now serving his third consecutive term. Born and raised 30 miles west of the Yunesit'in community (Yanah, "*way back in the fields*") Ivor is a strong believer in spiritual guidance. Chief Myers practices his inherent right to hunt and fish, and his cultural and spiritual beliefs.

June Quipp was the elected chief of Cheam for three terms and recently stepped down from this position. June has worked for the HRDC and many aboriginal organizations. She is married with two children and seven grandchildren. June has seven sisters and four brothers, many nieces and nephews. She currently resides on the Cheam reserve near Agassiz, BC.

Chief Michael A. Retasket is the youngest son of Norman Jules Retasket and Catherine Retasket (*nee*: Bob). Mike's Grandparents are Agnes Louis and Alexander Bob and Stephen and Josephine Retasket.

Mike Retasket is the elected chief of the Bonaparte Indian Band, where he is serving his second term of office. Mike is a member of the Shuswap Nation Tribal Council Chiefs Executive Committee. He is also the secretary/ treasurer for the Union of British Columbia Indian Chiefs. Mike Retasket is the Vice President of the Dogwood Initiative, working directly on First Nation Assertion strategies and on other rights based issues regarding protection of the environment. Mike currently sits on the Board of Directors, on the Indigenous Caucus, for the B.C. Forest Stewardship Council and has served as the director for the Fraser Basin Council, the Thompson Basin Fisheries Council. Chief Retasket and the community of Bonaparte Indian Band fully support the Title and Rights Alliance. Chief Retasket believes in a rights based approach to addressing on-going development.

Chief Retasket is a pipe-carrier. Mike recently received the high honor of accepting the responsibility of carrying an Eagle Bone Whistle, which was passed on to him in June, on a recent trip to Montreal. Mike and companion Valerie Morgan are members of the Native American Church, American Indian Movement and Friend of Urban Rural Mission-Canada where Mike served a four-year term.

Chief Fred Sampson was born at St. Bartholomew Hospital in Lytton B.C. in 1958 to proud parents Doreen Sampson and Kenneth Bazil Edwards and grand parents Richard and Suzzanne Swartz.

Fred attended the Kumsheen Secondary School in Lytton B.C. and then moved to Alberta where he then received his chef papers through an apprenticeship program in the hotel and restaurant industry, then worked as a head chef for six years. In 1980 he enrolled in S.A.I.T. (Southern Alberta Institute of Technology) within the Commercial Decorator's program, which was a three-year program. He then worked with McKenzie Decorating in Calgary Alberta. Returning back to B.C. in 1990 he met his soul mate Tina Edwards. Fred and Tina then opened a small construction company called Indian Paint and Dry Wall obtaining contracts with local bands in construction of new homes on reserve.

Fred then became involved in local politics with his band. Fred sat as a councilor for two years and then was elected as the Chief in 2000. Fred is now in the last year of a five-year term as the Siska Chief. Fred's vision and mandate, given by the people, was to pursue Economic Development through the combined efforts of the council and community members. The Siska people developed a fish wheel program that plays a major roll in stock assessment of Fraser River bound salmon. This program created employment for six fully trained fish wheel technicians. The Siska community also established a non-timber forest products company called Siska Traditions. They have successfully developed 8 wild berry jellies, 8 herbal teas, 8 herbal soaps and 2 wild vinaigrettes. This endeavor has created 3 part time jobs in the product development and up to forty harvests from the local communities. Both of these projects will play an important role in the management of our resources within our traditional/territory, for present and into the future of all our children.

All My Relations, Chief Fred Sampson.

Chief Judith Sayers, PhD. has served as the elected chief of the Hupacasath First Nation for the past eight years. Judith has also been the chief negotiator in the BC Treaty Commission process for over ten years. During her years at the negotiating table, Judith has been involved in 4 stages of negotiations from the Statement of Intent to the Agreement in Principle. When her First Nation left the main table, where they were negotiating an AIP, Judith had to work through many political and procedural obstacles to get her First Nation recognized as a table on their own. Judith was also actively involved in the opposition against the referendum on treaty conducted by the provincial government realizing the profound impact the referendum would have on negotiations. Dr. Sayers worked for ten years in Alberta with the Treaty 6 First Nations and gained experience in the spirit and intent of treaties and issues of implementation.

APPENDIX D: GLOSSARY

Assembly of First Nations (AFN): Canadian national Indigenous political organization.

Ahousaht: 1 of 14 communities in the Nuu-chah-nulth territory (Port Alberni, BC).

British Columbia Treaty Commission (BCTC) an independent body of five commissioners appointed by Canada, the Province and the First Nations Summit.

Bonaparte Band: 1 of 17 communities in the Secwepemc territory (Cache Creek, BC).

Carrier Nation: see map in Appendix A.

Cheam: 1 of 24 communities in the Sto:lo territory (Rosedale, BC)

Clayoquot Sound: In Nuu-chah-nulth territory.

Chinlak: In Carrier Territory.

Comprehensive claims: land where Indigenous people live, no treaties entered into.

Fee simple title: legal interest in land that is commonly characterized as private ownership.

First Nations Summit (FNS): formerly known as First Nations Congress, affiliated with BCTC.

ha'hoolthee: (Nuu-chah-nulth) word used to identify territory.

ha'wülth: (Nuu-chah-nulth) word used referring to the law of chiefs.

ha'wiih: (Nuu-chah-nulth) one of three principle hereditary chiefs.

ha'wülth'mis: (Nuu-chah-nulth) the territory governed by hereditary chiefs.

heatly: (Nlaka'pamux) traditional law of the land, people.

hymies: (Carrier) used to identify non-Indigenous or white persons.

kukwstsemc: (Secwepemc) thank you.

Lheidli T'enneh: In Carrier Nation.

momuthny: (Nuu-chah-nulth) used to identify non-Indigenous or white person.

muschim: (Nuu-chah-nulth) used to identify the people.

Nisga'a Nation: see map in Appendix A.

Nlaka'pamux Nation: see map in Appendix A.

Nuu-chah-nulth: see map in Appendix A.

Pacheedaht: 1 of 14 communities in the Nuu-chah-nulth territory.

Secwepemc Nation: see map in Appendix A.

Siska: 1 of 16 communities in the Nlaka'pamux territory. (South of Lytton, BC)

Specific claims: a claim made by a First Nation which is based upon the alleged failure of Canada or British Columbia to meet either the terms of an existing agreement, or, in the case of Canada, their fiduciary obligation, negotiated outside of the treaty process.

Stl'atl'imx Nation: see map in Appendix A.

Sto:lo Nation: see map in Appendix A.

Treaty settlement: an area of land that will be owned and managed by a First Nation pursuant to a treaty. The precise legal status of treaty settlement land and the extent of First Nation jurisdiction remain to be determined. Some areas within treaty settlement will be held in private ownership, be designated for uses incompatible with public access, or will accommodate public access as provided for in treaties.

Tseshah: 1 of 14 communities in the Nuu-chah-nulth territory.

Tsilhqot'in Nation (formerly referred to as Chilcotin), see map Appendix A.