The Political Struggle Behind the Delgamuukw Case: The 1994-1996 Trilateral Treaty Negotiations with the Gitxsan and Wet'suwet'en

Dorota Kupis

A Thesis in the Department
of
History

Presented in Partial Fulfilment of the Requirements
For the Degree of
Master of Arts (History)
Concordia University
Montreal, Quebec, Canada

April 2022

CONCORDIA UNIVERSITY
School of Graduate Studies

This is to certify that the thesis prepared

By: Dorota Kupis

Entitled: The Political Struggle Behind the Delgamuukw Case: The 1994-1996 Trilateral Treaty Negotiations with the Gitxsan and Wet'suwet'en

and submitted in partial fulfillment of the requirements for the degree of

Master of Arts (History)

complies with the regulations of the University and meets the accepted standards with respect to originality and quality.

Signed by the final examining committee:

V.K. Preston — Chair

Eric H. Reiter — Examiner

Peter Gossage — Examiner

Gavin Taylor — Thesis Supervisor(s)

_____ Thesis Supervisor(s)

Approved by Gavin Taylor — Chair of Department or Graduate Program Director

Pascale Sicotte — Dean of Faculty

ABSTRACT

The Political Struggle Behind the Delgamuukw Case: The 1994-1996 Trilateral Treaty Negotiations with the Gitxsan and Wet'suwet'en

Dorota Kupis

This thesis examines the political struggle behind the *Delgamuukw* court case, particularly the 1994-1996 trilateral treaty negotiations with the Gitxsan and Wet'suwet'en.
The Gitxsan and Wet'suwet'en's quests to have their Aboriginal rights and title recognized, and to prevent resource depletion in their hereditary territories, were intricately connected and multi-faceted. The *Delgamuukw* court case, which is often treated as a distinct issue, should be examined in the context of all significant events, both those which took place in the Gitxsan and Wet'suwet'en territories, as well as those at the negotiating tables. Although Aboriginal peoples' struggle to preserve their cultural identity dates back to their early contact with the newcomers, colonial governance changed significantly in the 1980s. The neo-liberal governments of Canada and British Columbia moved from the paternalistic policies of the *Indian Act* to supporting industrial encroachment on a large scale. Neo-liberal governments tend to show benevolence. In fact, their policies may be as harmful as the colonial policies from the first half of the 20th century. In 1990, British Columbia joined the treaty negotiations and commissioned the establishment of the B.C. treaty negotiations process. The Gitxsan and Wet'suwet'en were among those First Nations who undertook negotiations with the provincial government soon after the process had been established. Therefore, their experience provides valuable insight into how this new process started in the 1990s. Since that time, the B.C. treaty process has been extremely unproductive, and the Gitxsan and Wet'suwet'en trilateral treaty negotiations are among the many examples of its failure.

Acknowledgements

I would like to start by acknowledging the ongoing Gitxsan and Wet'suwet'en struggle for recognition of their cultural identity, which is intricately connected to their land. I am grateful to Don Ryan/Chief Hanamuxw and Linda Matthews for the help they provided. Your collaboration on this project is precious to me.

I would like to thank Professor Gavin Taylor for accepting me as his student and supporting me despite his loaded agenda as Chair of the Department. Many people contributed to this research, both directly and indirectly. I'm grateful to Concordia faculty, including Professors: Gossage, Reiter, Chalk, Jacob, Lorenzkowski, and Pucan, as well as Professor Sims from UNBC; our librarians, Vince Graziano and Joshua Chalifour, our Interlibrary loan team, and our irreplaceable Donna Whittaker.

I would like to extend my appreciation to Michael Carter from the Royal B.C. Museum, to the British Columbia Freedom of Information Requests Team, and to Mark Stevenson. Moreover, I would like to thank my long-term language consultants: Karen and Brant. Lastly, I would like to thank my family in Poland, and Patrick and Kiwi- my family in Canada. Thank you for accepting that I might wake up in the middle of the night and run to my computer to write down a new idea before I forget it.

Table of Contents

Introduction

As the *Delgamuukw* case trial approached its conclusion in the Supreme Court of British Columbia, the plaintiffs' attorney Michael Jackson referred to an event related to the very beginning of the colonial presence in the American continent. Jackson spoke about a lecture that the Spanish thinker Francisco de Vitoria delivered in 1532 at the University of Salamanca. De Vitoria argued that the original inhabitants of the newly "discovered" lands possessed natural legal rights that were equal to those of any Christian European.[1] Despite this early plea for equality, however, such words would usually fall on the deaf ears of colonial governments through the centuries. As 1992 marked the 500th anniversary of the arrival of Christopher Columbus in the "New World," as well as the beginning of the colonial era, it seemed that the winds of change were finally blowing in British Columbia, where a new treaty negotiations process was underway.

Following the 1973 *Calder* case, which recognized for the first time that Aboriginal title had a place in Canadian law[2], the federal government stated that negotiations would be a better way to resolve Indigenous land claims. This led soon after to the establishment of the Comprehensive Land Claims Policy. Some modern treaties were signed between 1975 and 2018.[3] Yet, many scholars criticized, in particular, the implementation of the Comprehensive Land Claims Policy in British Columbia. In 2013, Brian Egan wrote the following:

---

[1] *Delgamuukw v. The Queen* (1991), 79 D.L.R. (4th) 185 (B.C.S.C) (Trial Transcript at 23708, 4 April 1990) https://dx.doi.org/10.14288/1.0018501.

[2] David A. Cruickshank, "Calder Case," *The Canadian Encyclopedia*. Historica Canada. Article published August 24, 2006; Last edited September 02, 2020. https://www.thecanadianencyclopedia.ca/en/article/calder-case.

[3] The first treaty signed under the Comprehensive Land Claims Process was the James Bay and Northern Québec Agreement (1975). The Lhedli T'enneh Treaty was the last signed (2018). The Lhedli T'enneh Treaty has not been ratified.

> Treaty making in British Columbia has proven to be a highly contested and painfully slow process. After two decades of negotiation, only two treaties have been finalized while negotiations at some four dozen other treaty tables are stalled or progressing at only a glacial pace.[4]

This thesis will address one example of its failure, namely the 1994-1996 trilateral treaty negotiations with the Gitxsan and Wet'suwet'en. These negotiations represented a lesser-known chapter of the landmark *Delgamuukw* case, which in 1997 led the Supreme Court of Canada to clarify the content and definition of Aboriginal title and affirm the legal validity of oral history. In 1984, two British Columbia First Nations, the Gitxsan and Wet'suwet'en, filed a lawsuit against the province, claiming ownership and jurisdiction over 58,000 square kilometers of land. The court proceedings began in Smithers in May 1987, and went through several stages, namely the Supreme Court of British Columbia (concluded in 1991), the British Columbia Court of Appeal (concluded in 1993), and the Supreme Court of Canada (concluded in 1997).

While a great deal has been written about the *Delgamuukw* court case and its consequences, the political struggle behind it has received less attention. Although getting Aboriginal title recognized had been a longstanding issue in British Columbia, other challenges, such as encroachment from an aggressive logging industry, also became apparent in the 1980s. The Gitxsan and Wet'suwet'en, like many other British Columbia First Nations, had been compelled to take action and to pursue either litigation or negotiations, depending on which alternative was more likely to successfully defend their resources from being depleted. The *Delgamuukw* court case was one form of political struggle, but it was not the only one.

[4] Brian Egan, "Towards Shared Ownership: Property, Geography, and Treaty Making in British Columbia," *Geografiska Annaler*: Series B, Swedish Society for Anthropology and Geography 95(1), 2013, 33.

In 1994, the Gitxsan and Wet'suwet'en joined the newly established B.C. treaty process. This case study aims to provide valuable insight into what failed in the implementation of this process in the treaty negotiations with the Gitxsan and Wet'suwet'en. No in-depth case study of the 1994-1996 treaty negotiations with the Gitxsan and Wet'suwet'en exists. I will argue that the limitation of the B.C. treaty process and the attitudes that prioritized big industry over Indigenous sovereignty meant that a historic opportunity to address the 150-year-old Aboriginal land question was missed. The Gitxsan and Wet'suwet'en governance model was likely to address many long-standing issues, and it could have benefited all negotiating parties. One often overlooked point is that the appeal to the Supreme Court of Canada was not only an outcome of prior court proceedings, but also a consequence of the broken negotiations.

In making this case I will place the negotiations with the Gitxsan and Wet'suwet'en in a broader political and economic context. Some have questioned whether the B.C. treaty process was put in place to be successful, or whether it had a hidden agenda.[5] A closer look at the negotiations under investigation may shed more light on this contentious issue. The overall objective of this thesis is to contribute to the debate about the causes of the failure of the modern treaty process. This research makes extensive use of primary sources and of accounts by journalists related to the Gitxsan and Wet'suwet'en trilateral treaty negotiations and their on-going "War on the Land." Some of these documents have never previously been used or analysed in scholarly literature. It is hoped that a glimpse behind the curtain of the negotiations, and a clear understanding of what failed in the case of the Gitxsan and Wet'suwet'en, will help the reader determine why the B.C. treaty process has so little success.

[5] For example: Janice Switlo, *Gustafsen Lake Under Siege*: *Exposing the Truth Behind the Gustafsen Lake Stand-off*, (TIAC Communications, 1997).

The Gitxsan and Wet'suwet'en are two distinct peoples that inhabit the watersheds of the Skeena, Bulkley and Nechako rivers in northwest British Columbia. Their languages derive from different language families. The Gitxsan language has been categorized as belonging to the Tsimshiamic family of languages, and Wet'suwet'en as an Athapascan language. Nevertheless, over millennia they developed a very similar kinship and land tenure system. Their societies are traditionally organized in clans and houses.[6] Each individual belongs to the house, which owns a specific territory. The house also possesses something akin to intellectual property: songs, dances, totem poles, and its oral history. These narratives, called *adaawk* by the Gitxsan and *kungax* by the Wet'suwet'en, have several functions, including recording a house's history and providing the foundation for laws. According to scholar Antonia Mills: "Each house has a house chief presiding over and taking care of the house's territory."[7] The chief is responsible for establishing relations with other houses and clans, but also with non-humans, such as animals and fish. The connection between the chief, the house, the community, and the territory is affirmed in the potlatch, also known as a feast. The chiefs' names are handed down from one generation to the next, ensuring the continuity of the house. The most capable individual in the house takes the name of the deceased chief to ensure a high standard of governance and stewardship. All these changes in authority are validated during the feast. In the past, more so than today, the potlatch was linked to the Indigenous economy, in which gifts played an important role. Gifts and reciprocal gifts created and validated relationships. Much attention was paid to ensuring that the gifts were not seen as transactions.[8] Anthropologist Richard Daly

[6] The Gitxsan words *pdeek* and *wilp* are translated into English as clan and house.
[7] Antonia Mills, *Eagle Down Is Our Law: Witsuwit'en Law, Feasts, and Land Claims* (Vancouver: UBC Press, 1994), 37-38.
[8] Richard Daly, *Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs* (Vancouver: UBC Press, 2005), 30-34.

explains that: "Feasting is ontogenic. Its gifting relations enact the succession of generations with their corresponding rights and duties, actor by actor. Feasting marks individual House members' sequential phases of life and social connections that accompany these changes."[9] Feasting was practiced for millennia. The Gitxsan and Wet'suwet'en would gather in the summer, for example, for fishing, and separated into small groups in the winter, for hunting and trapping. They also exchanged goods with their neighbors, and the First Nations of the coast.[10] The feasts took place when people gathered together in villages. These seasonal occupations were supervised by the chief. The Wet'suwet'en Chief *Lilloos* of the house of *Namox* (*Tsayu* /Beaver clan) Emma Michell recounted that in the not-so-distant past, there existed a perceptible synergy in the universe. For example, the famous Chief *Bini* would decide when the band would return to the village for the time of the salmon run based on the setting of the sun.[11] As the following example illustrates, the chief was also responsible for conservation. Starting from the 1960s, members of the Wet'suwet'en house of *Kweese* observed that the beavers they trapped were in poor health. They called for a meeting in which Chief *Kweese*, Florence Hall, declared a moratorium on beaver trapping in the Burnie Lakes area. Hall explained that a possible reason was a change that occurred in the forest. Traditionally, beavers would eat alder and willows, but these had disappeared from the area. It was important for the house members to give the beaver population a chance to restore itself, as important as it was to resume their trapping activities. Once in a while, a family member would fly into the territory to verify the situation.[12]

[9] Daly, *Our Box Was Full,* 57.
[10] Mills, *Eagle Dawn is Our Law*, 39.
[11] *Delgamuukw v. The Queen* (1991), 79 D.L.R. (4th) 185 (B.C.S.C) (Trial Transcript at 16, Commission Evidence of Emma Mitchell, vol. 1, 26 August 1986) https://dx.doi.org/10.14288/1.0018365
[12] *Delgamuukw* (Trial Transcript at 45-46, Commission Evidence of Florence Hall, vol. 1, 13 October 1987) https://dx.doi.org/10.14288/1.0018349

It was paramount for the house chiefs to have community support, and the consensus-based approach to decision-making was an important part of strengthening the community. For the Gitxsan and Wet'suwet'en, ownership was not a synonym for an "exclusive possession." Daly explains:

> Ownership is vested in the person of the *simgiget* (Gitksan) or *dinize'yu* (Witsuwit'en), the high chiefs (singular *simoogit*, *dinize'*). Each territory has a House chief designation and a geographical name. The *simoogit* or *dinize'* represents the House groups' right to exclusive possession of land and resources, and he/she has responsibility for securing and directing the House's production components: the fruits of land, labour, knowledge, and skills necessary to produce an appropriate standard of living.[13]

To balance their access to resources, the Gitxsan developed a system of laws regulating access to their territory within their kinship system (as did the Wet'suwet'en). Although their kinship system was matrilineal, the paternal side also played an important role. The rights and obligations associated with the stewardship of the territory (*lax'wiiyip*) were passed along with the chief's name,[14] but those interested in the territory could acquire various kinds of permission depending on their place in the kinship relations (*anjok*).[15] For example, children have access to their father's territory when their father is alive under the principle of *amnigwootxw*.[16] Moreover, the principle of *xkyeehl* allows the granting of a temporary privilege to a person interested in a specific territory or resource.[17] Similarly, regulations based on kinship relations applied to fishing. In fact, the fishing regulations were in place long before the Europeans arrived. The

[13] Daly, *Our Box Was Full,* 243.
[14] Patricia Dawn Mills, "Reconciliation: Gitxsan Property and Crown Sovereignty," (Ph.D. dissertation, University of British Columbia, 2005), 80.
[15] Mills, "Reconciliation: Gitxsan Property," 89.
[16] Mills, "Reconciliation: Gitxsan Property," 90.
[17] Mills, "Reconciliation: Gitxsan Property," 94.

arrival of settlers and the introduction of the common law assumption that fishing was unregulated and unrestricted had, at best, undermined the pre-existing laws.[18]

This hereditary system in which *simoogit/dinize'* played a vital role outlived the colonial attempt to replace it with an administrative structure introduced by the *Indian Act* of 1876.[19] However, these sophisticated principles of kinship relations and land tenure were largely unknown to white settlers. Although in the first half of the 20th century ethnographers Marius Barbeau and Diamond Jenness carried out studies among some First Nations peoples in British Columbia[20], general knowledge of Aboriginal people consisted largely of oversimplified and derogatory stereotypes.

Literature Review

In the 1970s, the government intended to build a pipeline along the Alaska Highway. It was generally believed that the affected areas were "pure wilderness," with little or no activities associated with Indigenous subsistence practices. To confirm this hypothesis, the government sent an anthropologist, Hugh Brody, to map the area that they suspected might be used by the Dane-Zaa First Nation. Yet, Brody discovered exactly the opposite of what the government was trying to prove. For the Dane-Zaa, their land not only played an important role in their economy but also in their spirituality.[21] In the 1980s, new anthropological studies were undertaken with the Gitxsan and Wet'suwet'en to prepare for the future court case. The outcome of this research, conducted by Richard Daly and Antonia Mills, among others, form important anthropological

[18] Douglas C. Harris, *Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto, University of Toronto Press, 2001), 27- 33.
[19] Daly, *Our Box Was Full,* 243.
[20] For example: Diamond Jenness, *Three Athapaskan Ethnographies* (Rock's Mills Press, 2015). Marius Barbeau, "A Recent Native Art of the Northwest Coast of America," *Geographical Review*, vol. 20 no. 2 (Apr 1930):258-272.
[21] Hugh Brody, *Maps and Dreams: Indians and the British Columbia Frontier* (Vancouver: Douglas & McIntyre, 1981), Preface.

contributions published after the *Delgamuukw* case trial.[22] The authors clearly explained why the human-ecological relationship, as understood in two different governance models, led to conflicts between settlers and Aboriginal societies. Daly and Mills not only provided scholarly observations related to the traditional Aboriginal relationship to the land, but also related to the discourse that the *Delgamuukw* case trial had created. Daly, for example, argues that what the court saw as an unrealistic idea of returning to an ancient order was in reality an alternative to the capitalist economy.[23]

Much has been written about the *Delgamuukw* court case, and the scholarly literature associated with the proceedings in the courtroom and the consequences of each stage of the trial is critical to my examination of the 1994-1996 treaty negotiations with the Gitxsan and Wet'suwet'en. However, it is impossible to draw a broader picture as to why the decisions to negotiate or litigate were made without examining the origins of the Comprehensive Land Claims Policy, and its implementation in British Columbia. Furthermore, Gitxsan and Wet'suwet'en motivations to engage in litigation and in the trilateral treaty negotiations had deep roots in their world view, in traditional law, and in the political and economic situation of British Columbia in the 1980s and 1990s. More than a century of colonial policy had left deep scars on Indigenous communities in British Columbia, and the last quarter of the twentieth century brought new challenges, including encroachment from an aggressive logging industry. Since these issues are closely related to each other in the Gitxsan and Wet'suwet'en experience, the secondary literature review will provide a broad overview of interrelated themes.

[22] Antonia Mills, *Eagle Down Is Our Law: Witsuwit'en Law, Feasts, and Land Claims* (Vancouver: UBC Press, 1994). Daly, *Our Box Was Full.*
[23] See also: John Lutz, *Makuk: A New History of Aboriginal-White Relations* (Vancouver: UBC Press, 2008).

The situation in British Columbia was different from the rest of Canada. The first governor of the colony of British Columbia, James Douglas, who held the office from 1851 to 1864, anticipated the assimilation of First Nations people and neglected treaty signing. On the other hand, he did not extinguish Aboriginal title, which created an ambiguous legal situation. To explain the particularities of the situation in British Columbia, I will rely on the scholarship of Cole Harris and Paul Tennant.[24] While these two scholars provide a thorough overview of Indigenous-settler relations in British Columbia from early contact to the 1970s, Douglas C. Harris specifically addressed the long-standing dispute over fisheries.[25] Harris found parallels in the shifting land and fisheries policies of the 1880s. Access to Aboriginal fisheries was increasingly seen by the government and government officials as a privilege, not a right.[26] It is important to note that such attitudes persist in contemporary settler society. Aboriginal peoples, however, never forgot about their rights. Although the work of Paul Tennant, Cole Harris and Douglas C. Harris offers precious insight into the colonial reality of British Columbia, its timeframe does not extend to the crucial years of the 1980s and 1990s, which are under examination in the present research.

The mapping of the external boundaries of the Gitxsan hereditary territories, which started as early as 1975, proved to be an important project that would provide key evidence in the *Delgamuukw* case trial. Neil J. Sterritt, from the house of *Gitluudaahlxw,* devoted several years to this effort, which involved not only producing maps, but also interviewing Elders.[27] The book

[24] Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002). Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia 1849-1989* (Vancouver: UBC Press, 1990).
[25] Douglas C. Harris, "Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia*,"* review of *Fish, Law and Colonialism,* by Daniel Marshall and Adrian Clark, *Pacific Northwest Quarterly,* vol. 96, no.1 (Winter 2004/2005):48-49.
[26] Harris, *Making Native Space.*
[27] Neil J. Sterritt, *Mapping My Way Home: A Gitxsan History* (Smithers, B.C.: Creekstone Press, 2020), 303-306.

that Sterritt wrote years after the *Delgamuukw* case, *Mapping My Way Home: A Gitxsan History,* is central in explaining the factors that led to choosing litigation rather than negotiation in the 1980s. In addition to the political situation in British Columbia, the knowledge of the Elders was an important factor in deciding whether to litigate or negotiate.[28] For the Gitxsan and Wet'suwet'en, the knowledge that Elders possessed was priceless, but Western society was unaware of the richness of their cultures. Confronting the colonial system at the trial, while their Elders were still available to share their stories, was an opportunity to make settlers appreciate Aboriginal cultures. This continuing requirement to adapt and take advantage of all opportunities would be a recurring theme in the Gitxsan and Wet'suwet'en efforts to have their Aboriginal title recognized.

In 1984, the Gitxsan and Wet'suwet'en filed a lawsuit in the Supreme Court of British Columbia claiming ownership and jurisdiction of 58,000 square kilometers of land in northern British Columbia. The court proceedings started in 1987. Some publications related to *Delgamuukw* rely heavily on primary sources, but also include contextualized insight into the court case. One such example is *Colonialism on Trial,* a collaborative effort by the cartoonist Don Monet and Ardythe Wilson.[29] The book is based on the testimonies of several key witnesses, but also contains drawings from the court proceedings, in which we can see, among other things, the Chief Justice taking a nap during testimonies. At the same time as the trial was being held at the Supreme Court of British Columbia, Gitxsan and Wet'suwet'en hereditary territories were under serious threat from the forest industry. The short articles and photographs

[28] Sterritt, *Mapping My Way Home.*
[29] Don Monet and Ardythe Wilson, *Colonialism on Trial: Indigenous Land Rights and the Gitksan and Wet'suwet'en Sovereignty Case* (Philadelphia, PA/Gabriola Island, BC: New Society Publishers, 1992).

included in this publication, like the one that shows Chief *Wii Muugalsxw* (Art Wilson) watching his territory being destroyed by clearcutting, are well selected and often speak for themselves.

Another important publication, *The Spirit in the Land,* includes the trial's opening statements, namely those of the Gitxsan Chief *Delgamuukw* and the Wet'suwet'en Chief *Gisday Wa,* as well as the opening speeches of their lawyers.[30] *Delgamuukw* and *Gisday Wa* described the relationship between the Gitxsan and Wet'suwet'en chiefs and their land, and demonstrated that the plaintiffs and the justice system referred to the land, its ownership and stewardship, using two different theoretical frameworks. While for the chiefs "the ownership of the territory is a marriage of the Chief and the land,"[31] the provincial and federal lawyers and their subject matter experts referred to the land as a commodity that was owned either privately or by the Crown.

In the Indigenous worldview, "The land, the plants, the animals, and the people all have spirit, they all must be shown respect."[32] Yet, the opening statements by the Chiefs *Delgamuukw* and *Gisday Wa* went beyond explaining the nature of the Indigenous worldview; they also described how Gitxsan and Wet'suwet'en hereditary governments function, providing important background for understanding why, later in the negotiations, the Gitxsan and Wet'suwet'en abided by the co-management model for their entire hereditary territories.

The testimony of Chief Johnny David, a Wet'suwet'en Elder who was a hundred years old at the time of the trial, was published in the book *Hang on to These Words: Johnny David's Delgamuukw Evidence*, edited by Antonia Mills.[33] Chief Johnny David's evidence illuminates

---

[30] Gisday Wa and Delgam Uukw, *The Spirit in the Land. The Opening Statement of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia, May 11 1987* (Gabriola, B.C.: Reflections, 1990).
[31] *Delgamuukw* (Trial Transcript at 64, 12 May 1987), https//dx.doi.org/10.14288/1.0018360
[32] Ibid.
[33] *Hang on to These Words. Johnny David's Delgamuukw Evidence*, ed. Antonia Mills (Toronto-Buffalo-London: University of Toronto Press, 2005).

important principles of Wet'suwet'en land tenure and describes the confusion introduced by the *Indian Act*. The new rules were often the opposite of those established by the Wet'suwet'en hereditary system. Antonia Mills observed that one such example was the introduction of the traplines registry in the 1920s. The registry system was based on the Western patriarchal expectation that a man's children would be his heirs.[34] During the commission evidence given in 1985-1986, Chief Johnny David[35] recounted that one of the chiefs was allowed to use a certain territory for a limited period of time as a gesture of gratitude. Yet his daughter, instead of returning the territory to the legitimate owner, registered a trapline with the government agent. Even after the matter was brought before the hereditary chief, the daughter insisted on following the provincial laws and disregarded the hereditary chief's decision. Mills observed that in 1926, the government began to register traplines, but did so without understanding the matrilineal system.[36] As a result, for various reasons, some band members claimed the territories or traplines that belonged to their father's side. This testimony is particularly relevant, as it demonstrates that some current challenges and the dichotomy in complying with the regulations introduced either by hereditary or elected systems stem from colonial laws.

After four years of proceedings in the British Columbia Supreme Court, Chief Justice Alan McEachern issued a decision that was very unfavorable for the Gitxsan and Wet'suwet'en. The *Delgamuukw* case trial and in particular McEachern's verdict generated wide-spread debates among scholars. In 1991, the University of Victoria and the Office of the Hereditary Chiefs of the Gitxsan and Wet'suwet'en co-sponsored a conference related to the *Delgamuukw* case. The outcome of this conference was a collection of essays edited by Professor Frank Cassidy entitled

[34] *Hang on to These Words*, 29.
[35] Chief *Maxlaxlex* from the house of *Ginehklaiya* (House of Many Eyes), *Laksilyu* (Small Frog) clan.
[36] *Hang on to These Words*, 29.

Aboriginal Title in British Columbia: Delgamuukw v. The Queen, which discusses a broad spectrum of perspectives from legal aspects to Indigenous viewpoints.[37] While several articles from this collection are relevant to the present study, the speech by Herb George, Chief *Satsan*, entitled "The Fire Within Us," is of particular interest. Among other things, George spoke about the experience of interacting with colonial institutions and explained what it meant for Indigenous people. He stated that "entering in a game" with an institution by definition unfriendly to Indigenous people (the Supreme Court of British Columbia) required lots of courage and determination.[38] The same applied to the trilateral treaty negotiations under discussion. The B.C. treaty negotiations were inherently centered on the land selection model proposed by the government, and they left little room for a different approach that would accommodate a hereditary governance structure.

The legal dimension of the landmark *Delgamuukw* court case, which recognized that Aboriginal title is a constitutionally protected right that cannot be extinguished by the province and that any infringement must be justified and preceded by meaningful negotiations, is broadly discussed in the secondary literature. [39] I consulted the work of several authors to gain an overview of the legal debates around the *Delgamuukw* case, including Kent McNeil, John Borrows, Eric H. Reiter, Adele Perry, and Val Napoleon.[40] Scholars in general agree that the legal justification for Aboriginal dispossession in British Columbia is, at the very least,

---

[37] Frank Cassidy, ed., *Aboriginal Title in British Columbia: Delgamuukw v. The Queen* (Montreal & Lantzville: Oolichan Books & The Institute for Research on Public Policy, 1992).
[38] Herb George, "The Fire Within Us," in *Aboriginal Title in British Columbia: Delgamuukw v. The Queen* ed. Frank Cassidy (Montreal & Lantzville: Oolichan Books & The Institute for Research on Public Policy, 1992), 53-57.
[39] Stan Persky, "Commentary" in *Delgamuukw. The Supreme Court of Canada Decision on Aboriginal Title* (Vancouver/Toronto: David Suzuki Foundation, Greystone Books, Douglas & McIntyre, 1998), 2.
[40] For example: Adele Perry, "The Colonial Archives on Trial," in *Archives Stories. Facts, Fictions, and the Writing of History,* ed. Antoinette Burton (Durham & London: Duke University Press, 2005). Val Napoleon, "Delgamuukw: A Legal Straightjacket for Oral Histories?" *Canadian Journal of Law and Society,* vol. 20 no. 2 (2005):123-155. Eric H. Reiter, "Fact, Narrative, and Judicial Uses of History: Delgamuukw and Beyond," *Indigenous Law Journal*, no. 1 (2010): 59-65.

ambiguous, and that reconciling Aboriginal perspectives with common law is troubling for Indigenous peoples.[41] For the purpose of this thesis, I have chosen to draw on an essay entitled "The Meaning of Aboriginal Title" by Kent McNeil. McNeil analysed the outcome of the British Columbia Court of Appeal ruling, which did not provide a clear definition of Aboriginal title. Instead, the Court of Appeal recommended entering into the treaty process, which at that time was something new in B.C.[42]

The Gitxsan and Wet'suwet'en land tenure system and its underlying philosophy is complex. Nevertheless, the scholarship of Richard Daly and Antonia Mills covers much ground, and the Ph.D. dissertations of Patricia Dawn Mills and Val Napoleon further outline some of the more complex governance principles in Gitxsan law.[43] Moreover, Mills and Napoleon dedicated more attention to the Gitxsan treaty negotiations than did the academic literature related exclusively to the court proceedings.

In her Ph.D. dissertation completed in 2005, Patricia Dawn Mills took on the complex task of analysing the possibility of reconciling the Gitxsan property vision with Crown sovereignty. Although her work can be placed in the context of a larger debate on Indigenous sovereignty, it is focused specifically on the Gitxsan.[44] Mills observes that the Gitxsan treaty model is inseparable from their relationship to their *lax'wiiyip* (territory) and their identity, but

---

[41] John Borrows, "Sovereignty's Alchemy: An Analysis of Delgamuukw v. British Columbia," *Osgood Hall Law Journal* 37, no. 3 (Fall 1999): 566.
[42] Kent McNeil, "The Meaning of Aboriginal Title," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference,* ed. Michael Ash (Vancouver: UBC Press, 1997), 135-154.
[43] Val Napoleon, "Ayook: Gitksan Legal Order, Law and Legal History," (Ph.D. dissertation, University of Victoria, 2009) and Patricia Dawn Mills, "Reconciliation: Gitxsan Property and Crown Sovereignty," (Ph.D. dissertation, University of British Columbia, 2005).
[44] See: Yale Belanger and David Newhouse, "Emerging from the Shadow: The Pursuit of Aboriginal Self-Government to Promote Aboriginal Well-Being," *Canadian Journal of Native Studies* 24 (January 2004):129-222, also Jeremy H.A. Webber and Colin M. MacLead, *Between Consenting Peoples: Political Community and the Meaning of Consent* (Vancouver: UBC Press, 2010).

she also points out that it is applicable in contemporary reality.[45] Mills proposed a framework related to the Gitxsan treaty vision. Some important assumptions in this framework are: that the Gitxsan coexisted with wildlife for thousands of years and that they wished to maintain this established relationship; that in order to do this, they needed to be able to regulate the infringement on their hereditary territories; that they possessed the expertise to manage wildlife, forests, and control mineral extraction in a manner aligned with their cultural practices and carried out in the best interests of non-humans.[46] The present study follows the path of these assumptions, and demonstrates how they were translated into legal documents prepared before the negotiations.

While Val Napoleon's Ph.D. dissertation is centered on Gitxsan customary laws, and their conflict management, it is also indirectly linked to the Gitxsan treaty vision, which logically emerges from the legal tradition of decentralized societies and their approach to law and order. Napoleon conducted interviews with several Gitxsan chiefs and Elders, and some of them, expressed, among other things, their views on the treaty negotiations process. The interviews Napoleon conducted in 2004, as well as those Sharron McCrimmon carried out in 1995, are valuable additions to the present study and they will be discussed later in more detail.[47]

It is impossible to discuss all relevant Ph.D. and Master's theses as their number is high, yet each has contributed to building a comprehensive picture. Some of them, written by members of the Wet'suwet'en and Gitxsan First Nations, often tackle internal problems resulting from years of colonial policies. While some Indigenous academics seem reluctant to discuss internal

[45] Mills, "Reconciliation: Gitxsan Property," 210.
[46] Mills, "Reconciliation: Gitxsan Property," 190.
[47] Sharron McCrimmon, "Child Welfare in Gitanmaxx. A Case Study of the Practice of Self-Government," (Master's thesis, University of British Columbia, 1996).

issues, as they fear that their statements could be used against First Nations people,[48] existing contributions are extremely valuable. They illuminate why the governance model proposed by the Gitxsan and Wet'suwet'en negotiators was preferable while those proposed by the province were unacceptable.

The Wet'suwet'en Chief *Tsaskiy*, Ron George, is the author of a Master's Thesis completed in the Department of Educational Psychology and Leadership Studies at the University of Victoria and entitled "You Have to Paddle Your Own Canoe", which discusses the contemporary on-reserve/off-reserve dichotomy created by the *Indian Act*. Although his thesis is not directly related to the negotiations under discussion, it makes the important point that Gitxsan and Wet'suwet'en history is continuously unfolding in all their respective hereditary territories. George explains that the choice of moving to the reserve was often associated with leaving a home on the hereditary territory. Some Wet'suwet'en people, like Thomas George, who held the name of *Gisday Wa* before Alfred Joseph, decided to stay off-reserve and to protect their hereditary territory. The price for such choices was huge, as according to provincial and federal laws Indigenous people who refused to move to reserves lost their Indian status. Moreover, they were not allowed to stay on-reserve and consequently they were not permitted to participate in the feast system.[49] Ron George recalled: "We hunted and fished under cover of darkness to survive. My father was affectionately known as 'Midnight Jimmy.' We grew to know our *Yin Tah* [the territory] well, always having to clandestinely remain undetected in our own country."[50] In the long run, it was not uncommon for this division to negatively impact the

[48] Maisie Helen Wright, "A study of the Traditional Governance of the Gitxsan: Its Relevance Today." (Master's thesis, University of British Columbia, 1997).
[49] Ron George, "You've Got to Paddle Your Own Canoe: The effects of federal legislation on participation in, and exercising of, traditional governance while living off-reserve," (Master's thesis, University of Victoria, 2017), 86-87.
[50] George, "You've Got to Paddle Your Own Canoe," 86.

relationship between First Nations people living on and off reserve. Acceptance of the treaty model proposed by the province would have increased this division.

The Comprehensive Land Claims process and its implementation in British Columbia are not as broadly discussed in the secondary literature as the *Delgamuukw* court case. Nevertheless, Frank Cassidy and Norman Dale,[51] Christopher McKee,[52] and Tony Penikett have all made important contributions.[53] Moreover, a recently published collection of essays entitled *Aboriginal Peoples and Forest Lands in Canada* - and especially the contribution from the former negotiator for the province Mark Stevenson - sheds light on more up to date views on the effectiveness of the Comprehensive Land Claims Policy and particularly its implementation in British Columbia.[54]

After Native Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia is a contribution from Frank Cassidy and Norman Dale, which was written before B.C. joined the treaty process. Among other things, the authors explored obstacles and fears that prevented Indigenous people and settlers from reaching comprehensive claims. Most of these fears were related to resource management. While Indigenous people were shocked by resource extraction practices imposed by big industry, the non-Indigenous population was skeptical about the competence of Indigenous governments that would be formed after the comprehensive claims agreements.[55] As this thesis shows, these fears were very strong before

[51] Frank Cassidy and Norman Dale, *After Native Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia* (Victoria-Halifax: Oolichan Books and The Institute for Research on Public Policy, 1988).
[52] Christopher McKee, *Treaty Talks in British Columbia. Negotiating Mutually Beneficial Future* (Vancouver: UBC Press, 2000).
[53] Tony Penikett, *Reconciliation. First Nations Treaty Making in British Columbia* (Vancouver-Toronto-Berkley: Douglas and McIntyre, 2006).
[54] D.B. Tindall, Ronald L. Trosper and Pamela Perreault, *Aboriginal Peoples and Forest Lands in Canada* (Vancouver-Toronto: UBC Press, 2013).
[55] Cassidy and Dale, *After Native Claims?* 24.

and after British Columbia joined the treaty negotiations process. Cassidy and Dale put forward three possible scenarios for a future approach to Indigenous land claims. They called them: "Partners in Development," "Allies and Adversaries," and "Homeland and Hinterland." The first scenario, "Partners in Development," assumes that First Nations and the province would concentrate on economic development and work towards common goals. In the "Allies and Adversaries" scenario, reconciliation of objectives is impossible and therefore constant mediation is required. This requires the implementation of an efficient mediation mechanism. The "Homeland and Hinterland" scenario seems akin to the treaty settlement signed by the Yukon First Nations, where land had been classified in three categories with various sets of rights offered to First Nations people. This early contribution by two prominent scholars is still frequently cited in various publications. The fact that Aboriginal activists like Cassidy and Dale did not consider a nation-to-nation co-management approach tells us that in the 1980s the political landscape was not favorable to the settlement of Indigenous land claims.

As political scientist Christopher McKee explains, his book was intended to respond to the polarized views surrounding the treaty making process in the 1990s. While some characterised the ongoing treaty negotiations as "exclusive of non-Aboriginal interests," and bringing the province to "the verge of a massive giveaway of British Columbia's lands and natural resources to Aboriginal groups," others considered them a long overdue effort to settle the question of Aboriginal title. In the late 1960s and in the 1970s, the political landscape changed with the rise of Aboriginal activism. This included the resurgence of Indigenous internationalism, with leaders such as George Manuel of the Secwepemc First Nation. [56]

[56] Emma Feltes and Glen Coulthard, "Introduction. The Constitution Express Revisited" *BC Studies* no. 212 (Winter 2021/22), 19.

Moreover, Indigenous peoples on the North American West Coast organized to defend their rights to co-manage the salmon harvest. Indigenous people in Canada responded in several important ways to the Pierre Trudeau government's "White Paper," including with their own policy proposal known as the "Red Paper," and with the so-called Native People's Caravan, which saw protestors travel from Vancouver to Ottawa to present a manifesto on the conditions of the lives of Indigenous people.[57] Furthermore, several successful Aboriginal litigations set the stage for a process that had never been attempted before in any province.[58] In the late 1990s, when McKee wrote his book, the treaty negotiations process was still new, yet its shortcomings, such as the land selection model offered by the government, were already apparent.[59] McKee dedicated only a small sub-chapter to the 1994-1996 Gitxsan treaty negotiations. He briefly summarized the Gitxsan vision of self-government and identified issues that contributed to the failure of the negotiations.[60] Nevertheless, his study leaves much room for further examination and analysis of the Gitxsan treaty negotiations, which this thesis aims to address.

Another important contributor, Tony Penikett, is the former Yukon Premier and a treaty negotiator who, in 1993, signed the Umbrella Agreement with the Yukon First Nations. While Penikett considered the Yukon Agreement a major political achievement, he is critical about the Comprehensive Land Claims process. Penikett provides the invaluable insight of an insider to the treaty making process. He points out that frequently the negotiations did not progress as intended because the negotiators' mandates were not clearly formulated. Negotiators spent as much time debating with the parties at the table as with the government representatives who mandated them,

[57] Julia Skelly and Alison Baker, "Native People's Caravan," *The Canadian Encyclopedia*. Historica Canada. Article published February 20, 2020; Last edited February 20, 2002.
[58] McKee, *Treaty Talks in British Columbia,* Introduction.
[59] McKee*, Treaty Talks in British Columbia,* 113.
[60] McKee*, Treaty Talks in British Columbia,* 50.

but the bottom line was that they had limited authority. "No treaty has been concluded in Canada in the last thirty years until the 'closer' and senior politicians have come to the table," Penikett wrote.[61] There is no easy way to reproduce the dynamic between the negotiators and the politicians who mandated them. Yet, if we are to make sense of the points Penikett raised and examine his conclusions at the micro level, we should look into the negotiators' mandates in the trilateral treaty negotiations with the Gitxsan and Wet'suwet'en. Penikett's contribution to the treaty process was not limited to his work as a negotiator and scholar. He also co-chaired various events that brought negotiators together in order to discuss strategies for successful negotiations.[62]

Mark Stevenson, former chief treaty negotiator for the province in the 1994-1996 trilateral treaty negotiations with the Gitxsan and Wet'suwet'en, is also a lawyer who specialises in Aboriginal law and is author of several articles related to the B.C. treaty negotiations process. He brings the perspective of a lawyer, as well as that of one of the main actors in the treaty negotiations under discussion. His legal perspective can be appreciated in his explanation of land tenure terminology. The legal terminology of the treaty process derives from the Western laws and does not translate into an Aboriginal understanding of land ownership and land stewardship. According to the *Indian Act*, the reserve lands are under federal jurisdiction, but after a treaty is settled the legal description of these lands' changes. Stevenson explains that "under the current treaty model- the model agreed to by the Tsawwassen, the Maa-nulth, and others- treaty settlement lands would be owned as First Nation fee simple lands."[63] The settlement lands seem

[61] Penikett, *Reconciliation,* 166.
[62] For example: Morris J. Wosk Centre for Dialogue, Convener: Tony Penikett, "Treaty Negotiations: What Works, What Doesn't – A Negotiators' Dialogue," (November 25, 2002).
[63] Mark Stevenson, "Treaty Daze: Reflection on Negotiating Treaty. Relationship under the BC Treaty Process," in *Aboriginal Peoples and Forest Lands in Canada* ed. D.B. Tindall, Ronald L. Trosper and Pamela Perreault, (Vancouver-Toronto: UBC Press, 2013), 58.

to be "a legal nightmare," not only for provincial and federal lawyers, but obviously also for the local First Nations. As none of these terms fully reflects the way they relate to the land, some First Nations are more comfortable with one legal term than with another.

In 1999, the B.C. Treaty Commission hosted a forum in Vancouver, involving prominent scholars such as John Borrows and James Tully, as well as Mark Stevenson. Their presentations were incorporated in the document *Speaking Truth to Power*,[64] and they are relevant to this research. In particular, I apposed John Borrows' conclusion from his article "Questioning Canada's Title to Land: The Rule of Law, Aboriginal Peoples and Colonialism,"[65] to, among other things, recent developments in the conflict between members of the Wet'suwet'en *Gitdumden* clan and the Coastal GasLink company related to the construction of a pipeline on their hereditary territories. As Borrows pointed out, the unresolved grievances of the past are returning to our contemporary reality like a boomerang.

A particularly interesting Ph.D. dissertation related to the British Columbia treaty process was written by Andrew Woolford. Woolford not only provides a thorough overview of the process, but also ties it to larger debates, namely those related to a vision of justice and to a neo-liberal governance model called "governing at a distance."[66] On the other hand, Woolford's work contains certain oversimplifications. The chapter "The Process Outside of the Process" pictures blockades as strategies for attracting public attention.[67] As we shall see, the blockades organized by the Gitxsan and Wet'suwet'en at the time of the negotiations were not just a way to draw

[64] British Columbia Treaty Commission, *Speaking Truth to Power: A Treaty Forum* (Government Services Canada, 1999).
[65] John Borrows, "Questioning Canada's title to Land: The Rule of Law, Aboriginal Peoples and Colonialism," in *Speaking Truth to Power: A Treaty Forum* (Government Services Canada, 1999).
[66] Andrew Woolford, "Between Justice and Certainty: Treaty Making in Modern-Day British Columbia," (Ph.D. dissertation, University of British Columbia, 2002).
[67] Woolford, "Between Justice and Certainty," 140.

public attention. They were linked to the longstanding "injunction war" which will be discussed in this thesis.

As noted by Nicholas Blomley, a specialist in legal geography, the scholarly literature, at best, neglects blockades. In a 1996 article, Blomley outlines the underlying grievances behind the blockades carried out in British Columbia and argues that "Blockades and the forces that beget them are as complex and as varied as are the First Nations that occupied the land now called British Columbia."[68] In the 1980s and 1990s blockades in British Columbia were largely a response to irresponsible resource management carried out with the approval of the government. Many of them targeted the timber industry. Blomley's article is crucial to understanding the underlying causes of blockades. Blockades and encroachment from the timber industry on the Gitxsan and Wet'suwet'en hereditary territories have received more attention from journalists than from historians. The so-called Gitxsan and Wet'suwet'en "War on the Land" was covered by the journalist Terry Glavin in his book *A Death Feast in Dimlahamid.*[69] Glavin also provides valuable insight into the settlers' reactions to Indigenous blockades. Interestingly, as we shall see, these reactions, not always coherent, would reverberate from the Canadian Parliament to the B.C. Legislative Assembly. I do not attempt to write an academic version of Terry Glavin's book, but rather to place the blockades within the context of the Gitxsan and Wet'suwet'en treaty negotiations.

[68] Nicholas Blomley, "Shut the Province Down: First Nations Blockades in British Columbia, 1984-1995," *BC Studies* no. 111 (Autumn 1996):6.
[69] Terry Glavin, *A Death Feast in Dimlahamid* (Vancouver: New Star Books, 1998).

Primary Sources and Chapter Outline

This thesis aims to contribute to our knowledge of the 1994-1996 trilateral treaty negotiations with the Gitxsan and Wet'suwet'en by assembling various pieces of the puzzle at the macro and micro-levels, and by placing them in the larger political and economic context. For these reasons, a closer examination of documents that shed light on the political landscape in British Columbia in the years under discussion is important. Such documents include: reports of the B.C. Legislative Assembly, transcripts from the assembly of the House of Commons, and various journalistic accounts. Access to the material produced during the treaty negotiations is restricted. The B.C. Treaty Commission neither recorded nor videotaped the negotiations.[70] Requests directed to the Government of British Columbia are subject to approval by the corresponding ministry before documents are disclosed. Nevertheless, some available documents can shed a good deal of light on the dynamics of the Gitxsan and Wet'suwet'en treaty negotiations. I relied on several sources to reconstruct these dynamics. The government of British Columbia shared limited material via my Freedom of Information Requests. Selected documents were provided by the Gitxsan Huwilp Government and by Don Ryan/Chief Hanamuxw. Other primary sources include the Gitxsan Treaty Negotiations Newsletter, B.C. newspapers, and B.C. court cases. The Report on the Suspension of Gitxsan Treaty Negotiations was crucial in this research, but it should, nonetheless, be placed in the historical context of the injunction war between the Gitxsan and the timber industry that started in the 1980s. *Daxgyet: Gitxsan Treaty Negotiations Journal* played a major role in the assembly of all the elements, filling gaps left by other primary sources. This source of information has never been extensively used by another researcher. I was less fortunate in collecting information related to the Wet'suwet'en treaty negotiations, but the

[70] Stephanie Gustin (B.C. Treaty Commission Research Analyst) e-mail message to the author, Sept 3, 2021.

document compiled at the opening session held in Smithers in 1995, and re-printed in Dan George's research paper, is a very important primary source.[71] I have also examined *Delgamuukw* case transcripts, and they are used, although not extensively, in the present study.

The Gitxsan and Wet'suwet'en struggle to protect their cultural identity, which was closely tied to their hereditary territories, was multifaceted. This limits scholarly analyses, which cover one aspect but often neglect to stress the importance of another. For this reason, a study addressing the political struggle behind the *Delgamuukw* court case may provide additional insight into the situation of the Gitxsan and Wet'suwet'en in the 1980s and 1990s period. In filling this gap, this thesis seeks to provide a better understanding of this lesser-known chapter of the *Delgamuukw* case trial. Although research on the treaty negotiations process already exists, a case study dedicated to the Gitxsan and Wet'suwet'en experience can be valuable by unveiling at the micro-level what mechanisms were employed by the provincial government in the treaty negotiations and in their interactions with the First Nations.

The first two chapters set the context for the 1994-1996 trilateral treaty negotiations with the Gitxsan and Wet'suwet'en. The first chapter is a snapshot of the history of Indigenous-settler relations in British Columbia, starting from early contact to the rise of Aboriginal activism in the early 1970s. This part also briefly presents landmark court cases that preceded *Delgamuukw*, and discusses the implementation of the Comprehensive Land Claims Policy. The second chapter explores the encroachment of big industry into Gitxsan and Wet'suwet'en hereditary territories in the 1980s and assesses the options available to them to protect their land and settle the

[71] "The Wet'suwet'en Vision of a Treaty with the Crown," reprinted in Dan George, "The Elders are Watching: Wet'suwet'en Perspectives on Leadership's Role in the Management of Conflict," (Major Research Project, Royal Roads University, 2010).

question of their Aboriginal title. An increasingly aggressive forest industry posed a tremendously destructive threat to their hereditary territories. This triggered their decision to confront the Crown. This chapter also explains why they made the decision at this time to litigate rather than to negotiate, and briefly touches on the first two stages of the *Delgamuukw* court case held in the Supreme Court of British Columbia and in the Court of Appeal. The Court of Appeal did not reach a conclusive decision related to Aboriginal title, which triggered an attempt to define it via negotiations with the provincial and federal governments. The third chapter introduces the B.C. treaty process and explores the 1994-1996 trilateral treaty negotiations. The fourth and final chapter circles back to the situation in British Columbia to contextualize the Gitxsan and Wet'suwet'en experience of treaty negotiations in the larger political landscape. This thesis does not attempt to focus in detail on the larger discussion about neo-liberalism and its implication for Canada's First Nations. It nevertheless examines one corner of this discussion, namely its impact on the situation in British Columbia, by putting the Gitxsan and Wet'suwet'en treaty negotiations experience in a larger political and economic context.

1. Settler-Indigenous Relations in British Columbia

Historical Background

Aboriginal/non-Aboriginal relations in British Columbia, where the history of treaty signing, or lack thereof, created an ambiguous legal situation, were different from those in other parts of the country. While Canada and First Nations signed eleven treaties in the late 19th and early 20th centuries, only a small part of Vancouver Island was covered by the so-called Douglas treaties. The first Governor of the Colony of British Columbia, James Douglas, who held the office from 1851 to 1864, anticipated the assimilation of Indigenous people, and, except for signing some treaties with the First Nations of Vancouver Island, he pursued no further treaty-making.[1] Although according to historian Paul Tennant Douglas respected the rights of Indigenous peoples, he created a situation where neither Indigenous people nor settlers were happy. [2]

Douglas's successor, Joseph Trutch, favoured a more aggressive approach to Indigenous land tenure. He abolished Indigenous land "pre-emption" rights, which had been accepted under Douglas, and sought to limit the size of existing reserves. After British Columbia joined the Canadian Confederation in 1871, jurisdiction over reserves was transferred to the federal government. Yet, changes to policies in British Columbia were not significant. While the treaties that the Dominion of Canada signed with various First Nations did extinguish Aboriginal title in exchange for various compensations, such as reserve lands, annuities, and the right to hunt and fish on unoccupied Crown lands, similar arrangements did not exist in British Columbia.

[1] Tennant, *Aboriginal Peoples and Politics,* 36.
[2] Paul Tennant in *Reaching Just Settlement. Land Claims in British Columbia,* ed. Frank Cassidy (Lantzville-Halifax: Oolichan Books and The Institute for Research and Public Policy, 1991), 27-33.

In 1876, the federal government consolidated all previous laws related to First Nations peoples into a single act called the *Indian Act*. This act introduced institutions and definitions, such as reserves, bands, and enfranchised Indians, that would haunt the colonial reality in the centuries to come. Paul Tennant has observed that "It [had been] assumed that able and competent Indians would desire to leave their reserves, to live and work among non-Indians, to have federal franchise."[3] The separation between "status Indians" and "non-status Indians" meant that only "status Indians" could live and be buried on the reserves. Furthermore, the Department of Indian Affairs, which began operating as a separate department in the federal administration in the 1880s, introduced a new structure of elected chiefs and councils on the reserves.

On the other hand, federal laws were not always compatible with the unique circumstances of British Columbia. For example, in 1877, Canada extended its *Fisheries Act*, which was based on the reality of East Coast fisheries, to the province of British Columbia. Realizing this awkward situation, the provincial Fisheries Inspector A.C. Anderson chose to not enforce the Act for several years.[4] Nevertheless, conflicts related to Indigenous fisheries arose as the canneries began operating. In the 1880s, fishing licences were increasingly introduced, and fishing guardians tried to extend this requirement to Indigenous fisheries. Many First Nations people, including the Gitxsan, refused to acquire them.[5] However, when the guardians found out that Indigenous people were fishing for the canneries without purchasing a fishing licence, they would seize their boats.[6] Provincial fisheries inspectors acted on the assumption that subsistence

[3] Tennant, *Aboriginal Peoples and Politics*, 45.
[4] Harris, *Fish, Law and Colonialism,* 39-40.
[5] Harris, *Fish, Law, and Colonialism*, 62.
[6] Harris, *Fish, Law, and Colonialism*, 67.

fishing was permitted as an Aboriginal "privilege," but that any commercial fishing should be regulated.

The conflict around fisheries escalated between 1904 and 1907. Indigenous people fishing in Babine Lake were accused by the Department of Fisheries and by the owners of the canneries of obstructing the lake with their fishing weirs and preventing salmon from reaching their spawning areas. They were asked to deconstruct their fishing weirs, often referred to as barricades. Some Indigenous people were tried and sentenced to jail.[7] In reality, Indigenous fisheries were in competition with the canneries on the Skeena River. Because of the Indigenous fisheries, not enough salmon were reaching the areas where the canneries operated. Removing the barricades secured not only a supply of fish, but also provided labour for canneries, as Indigenous people were losing their independence as fishers while also becoming increasingly dependent on wage labour.[8]

Settlers increasingly demanded access to resources, but also to the land. The construction of the Grand Trunk Pacific Railway in the early 1900s had a significant impact on the demand for land in the province. Railways were often constructed at the expense of reserved lands.[9] For example, between 1909 and 1911, the Department of Indian Affairs pressured the Lheidli T'enneh to surrender their reserve no.1 to allow for the construction of the Grand Trunk Pacific Railway. The surrender of Fort George reserve was not an isolated case, and the belief that reserves were oversized and idle was prevalent among the government officials and other

[7] Harris, *Fish, Law, and Colonialism*, 112.
[8] Harris, *Fish, Law, and Colonialism*, 117.
[9] For example: Vogt, David and Alexander Gamble, "You don't Suppose the Dominion Government Wants to Cheat the Indians: The Grand Trunk Pacific Railway and Fort George Reserve, 1908-12," *BC Studies,* no. 166 (Summer 2010):55-72.

involved third parties.[10] Moreover, upon completion of the project, settlers could easily arrive in the area and their numbers were growing.

Differences in federal and provincial policies, rapid industrialization in the province and the demand for more land all laid the foundation for the McKenna-McBride Commission, named after federal commissioner J. A. J McKenna and B.C. Premier Richard McBride who signed the agreement. From 1913 to 1916, provincial and federal commissioners travelled across the province and held hearings to decide how to proceed with the "adjustments" related to "Indian land". The initial agreement between McKenna and McBride specified that no change would take place without mutual consent. Yet, in March 1920 the province passed the British Columbia Indian Affairs Settlement Act, in which a section entitled "Power to Order Reductions or Cutoffs from Reserves without Surrender by Indians" stated the following: "The Governor in Council may order such reductions or cutoffs to be effected without surrenders of the same by the Indians."[11]

Although, some groups were successful in regaining small territories as a result of the Commission's hearings, the overall outcome of the "adjustments" to the reserved lands was not favorable for First Nations people. Not only were the recommendations of the McKenna-McBride Commission forced upon many of British Columbia's Indigenous groups, but the federal government also further restricted Indigenous political rights. An amendment to the *Indian Act* in 1927 made it illegal for bands to form political organizations, or to bring their land claims to court. This legislation has interrupted many important efforts undertaken by various

[10] Vogt and Gamble, "You don't Suppose the Dominion Government Wants to Cheat the Indians."
[11] Government of Canada Justice Law Website, The British Columbia Indian Lands Settlement Act S.C. 1920 c. 51 https://laws-lois.justice.gc.ca/eng/acts/T-10.2/page-1.html

B.C. First Nations groups, such as the Allied Tribes of British Columbia, and activists like Chief Joe Capilano.

Land claims, along with the possibility of obtaining justice through litigation, remained illegal until 1951. While the legal situation of Canada's Indigenous peoples seemed to improve in the 1960s with the arrival of the Liberal government led by Lester B. Pearson, the Liberals also tried to accelerate the assimilation policy.

The 1969 White Paper and Its Aftermath

In 1969, the Trudeau government released its so-called "White Paper," which was intended to initiate a discussion on "Indian policy." This document proposed to abolish the *Indian Act*, and consequently, the special status of Canadian First Nations. Its "hidden agenda" was to integrate Indigenous people into the Canadian state and end their demands for "special status" in Canada. Sally M. Weaver observed that "The White Paper argued that 'equality,' or 'non-discrimination' as it was often phrased, was the key ingredient in a solution to the problems of Indians, and that special rights had been the major cause of their problems."[12] This assumption would become a recurring theme in debates on Indigenous-settler relationships held in the Canadian House of Commons, and in the media. The "White Paper," which promised equal rights to Aboriginal peoples, would also cancel out any possibility of land claims. Nevertheless, the discussion around the "White Paper" had an important outcome. Indigenous people established several organizations which aimed to oppose the termination of their "special rights," including the Union of British Columbia Indian Chiefs.[13] The question of land claims on the territories not

[12] Sally M. Weaver, *Making Canadian Indian Policy. The Hidden Agenda 1968-1970* (Toronto-Buffalo-London: University of Toronto Press, 1981), 4.
[13] Cassidy and Dale, *After Native Claims?* 7.

covered by treaties resurfaced by the end of the 1960s and at the beginning of the 1970s. The Nisga'a, who already in 1955 formed their Tribal Council, decided to formulate their land claim and to pursue it via the Canadian Justice System.[14]

The Calder Case and Other Aboriginal Litigations

Although academics agree that Aboriginal title essentially means that First Nations peoples should have special rights based on their pre-colonial land occupancy, opinions on the nature of such rights differ. The history of recognition of Aboriginal title is linked to another colonial term, namely *terra nullius*. The first European settlers considered the land they arrived on as *terra nullius,* land which belongs to no-one that could therefore be claimed by the European powers through the doctrine of discovery. While at the beginning of colonization *terra nullius* meant literally "unoccupied land," as colonization progressed it also came to mean "land occupied by Native peoples." For instance, in Australia the doctrine of *terra nullius* was reversed only in 1992 in the landmark court case *Eddie Mabo and Others v. The State of Queensland.*[15] In Canada, Indigenous-settler relations were based on the Royal Proclamation of 1763 and subsequent treaties. Yet, in some parts of the country there were no signed treaties. The Nisga'a inhabiting the area of the Nass Valley in British Columbia decided to challenge this unclear legal situation in 1967.

Although the Nisga'a lost their case because of technicalities, *Calder v. British Columbia* was the first instance in Canadian law in which Aboriginal title was ruled to exist prior to

[14] Cassidy and Dale, *After Native Claims?* 9.
[15] Gary D. Meyer and John Mugambwa, "The Mabo Decision: Australian Aboriginal Land Rights in Transition," *Environmental Law,* 23, no. 4 (1993):1205. See also: Michael Asch, "From *Terra Nullius* to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution," *Canadian Journal of Law and Society* 17, no. 2 (2002): 23-39

colonization. At the Supreme Court of Canada, Justice Judson stated the following: "the fact is that when the [European] settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what aboriginal title means."[16] This verdict supported the doctrine of continuity, which acknowledged that Indigenous people were and continued to make up organized societies. The doctrine of continuity was recognized as early as 1941 by the US Supreme Court in *United States v. Santa Fe Pacific Railroad Co.* The court established that the Aboriginal title of the Hualapai from Arizona was based on their occupancy from time immemorial. This decision concluded a long legal struggle.[17]

The term "organized society" was used in another landmark court case known as *Baker Lake v. Minister of Indian Affairs*. In 1979, the Baker Lake Hunters and Trappers Association and a non-profit organization representing Inuit people in the Northwest Territories, *Inuit Tapiriit Kanatami,* took the federal government to court on the grounds of giving out exploration licenses to their ancestral territories. The court decided that the plaintiffs had to provide proof of Aboriginal title to the claimed area. "The presiding judge laid out the following criteria they had to meet:

- That the plaintiffs and their ancestors were members of an organized society.
- That the organized society occupied the specific territory over which they assert Aboriginal title.
- That the occupation was to the exclusion of another organized society.

[16] Justice Judson quoted in Kent McNeil, "The Meaning of Aboriginal Title", 136.
[17] Christian W. McMillen, *Making Indian Law: The Hualapai Land Case and the Birth of Ethnohistory* (New Haven: Yale University Press, 2007), 164.

- That the occupation was an established fact at the time sovereignty was asserted."[18]

The test for an "organized society" in the *Baker Lake* case would later be employed in the *Delgamuukw* case.

In 1984, in the case known as *Guerin v. the Queen*, the Musqueam Indian Band sued the government for forcing on them the unfavorable conditions of a lease accorded to the Shaughnessy Heights Golf Club of Vancouver. The court recognized that the government has fiduciary duties towards the First Nations of Canada, and it established, as in *Calder*, that Aboriginal title was *sui generis.*[19] It was an independent legal right existing prior to the Royal Proclamation of 1763. Although the courts established that Aboriginal people had an interest in the land, another important aspect to clarify was what these interests were. In *Baker Lake*, interest in the land was limited to hunting and fishing, on the ground that this was what the plaintiffs' ancestors had done on the land.[20] The question of what Aboriginal interest in the land meant would be raised in many future litigations and would also be discussed at the treaty table.

The last case discussed in this chapter has received less attention in scholarly literature, yet it had important consequences. In 1984, members of Clayoquot and Ahousath First Nations, which formed the Nuu-Chah-Nulth Tribal Council, and other protesters, blocked access to Meares Island for the logging company MacMillan Bloedel. The Indigenous protesters claimed that logging on the island interfered with their Aboriginal title, and they applied for an injunction to stop the logging. At the same time MacMillan Bloedel requested an injunction against the

[18] David W. Elliot, "Baker Lake and the Concept of Aboriginal Title," *Osgood Hall Law Journal* vol. 18 no. 4 (December 1979): 657-658.
[19] Maureen Ann Simpkins, "After Delgamuukw. Aboriginal Oral Tradition as Evidence in Aboriginal in Aboriginal Rights and Title Litigation," (Master's thesis, University of Toronto, 2000).
[20] McNeil, "The Meaning of Aboriginal Title," 144.

protesters who were obstructing access to Meares Island.[21] Even though the planned logging was relatively small compared to other areas, Meares Island became a symbol for those involved. The argument that MacMillan Bloedel's lawyers and the province used in court was that suspending logging at Meares Island would lead to other anti-logging protests across the province.[22] On the other hand, for Clayoquot and Ahousath First Nations, the Island was a symbol of their cultural continuity.

While the B.C. Supreme Court dismissed the request to stop logging, the Court of Appeal ruled against it. An interlocutory injunction against logging on the Island granted in *Martin et al v. the Queen* is viewed as one of the direct triggers for British Columbia's decision to participate in treaty negotiations with First Nations.[23] The courts increasingly ruled in favor of First Nations, either by acknowledging that Aboriginal title had its place in Canadian common law, or by granting temporary injunctions that interfered with the functioning of big industry. For the provincial and federal governments, maintaining the existing *status quo* was no longer possible. On the other hand, the question of "who owns the land" had to be clarified and well defined to attract economic investment. It became obvious that the politics of their interaction with Aboriginal people had to change.

---

[21] *MacMillan Bloedel Ltd. v. Mullin*, 1985 CanLII 154 (BC CA), <https://canlii.ca/t/1p6pb>, retrieved on 2022-05-25.
[22] Ibid.
[23] "Meares Island Case 1985," *Working Effectively with Indigenous Peoples* (blog). https://www.ictinc.ca/blog/meares-island-case-ongoing.

The Comprehensive Land Claims Policy

Pierre Trudeau's "White Paper," which promised equal rights to Aboriginal peoples, would have also prohibited any possibility of land claims. Because of the strong opposition from Indigenous people, the federal government was forced to revise its approach and to establish a new policy for Indigenous land claims. As Cassidy and Dale explain, according to the new approach, claims would fall into two categories, comprehensive and specific: "comprehensive claims were identified as claims based upon the traditional native occupancy of lands not previously dealt with by treaty or other means. Specific claims were defined as those which occurred where an existing act (such as the *Indian Act*), agreement, or treaty was allegedly violated."[24]

In the first decade of its existence, between 1973 and 1985, the treaty negotiations process was costly and slow. About $26 million was spent on the institutions governing the process, including operating and managing costs, but according to the federal policy only six claims could be negotiated at a time.[25] This new land claims policy was clarified in the documents issued by the federal government entitled: *In All Fairness* and *Outstanding Business*.[26] In 1982, the Canadian Constitution recognized, under section 35(1), that the existing aboriginal and treaty rights of the Aboriginal people of Canada were to be recognized and affirmed. The Task Force to Review Comprehensive Claims Policy chaired by Murray Coolican released a report including the following recommendations:

1. Agreements should recognize and affirm aboriginal rights.
2. The policy should allow for the negotiation of aboriginal self-government.
3. Agreements should enable aboriginal peoples and the government to share both the responsibility for management of land and resources and the benefits from their use.

[24] Cassidy and Dale, *After Native Claims?* 9.
[25] Cassidy and Dale, *After Native Claims?* 9.
[26] Cassidy and Dale, *After Native Claims?* 9-10.

4. The interests of third parties to the dispute (e.g., industry, the general public etc.) should be treated fairly.[27]

A new Comprehensive Land Claims Policy was announced by the Minister of Indian and Northern Affairs, Bill McKnight, in 1986, and it established that the parties could enter into negotiations without the pre-condition of "extinguishment of Aboriginal title."[28]
It included, nevertheless, an important limitation. It was not possible for First Nations to maintain Aboriginal title across their entire hereditary territory. [29] Moreover, the government declared that "in attempting to define the rights of aboriginal people, the Government of Canada does not intend to prejudice the existing rights of others,"[30] which was in line with Conservative policies and the neo-liberal approach to resource extraction.

At the beginning, the province of British Columbia considered treaty negotiations as federal business and until the 1990s refused to participate.[31] Yet, several British Columbia First Nations demonstrated their interest in the federal Comprehensive Land Claims process. As early as 1977, the Gitksan-Carrier (Wet'suwet'en) tribal Council in Kispiox issued their declaration of sovereignty and rights and demanded the beginning of land claims negotiations. They wrote: "We have waited one hundred years. We have been patient. Through serious negotiation, the basis for a meaningful and dignified relationship between the Gitksan and Carrier People and the Governments of Canada and of British Columbia will be determined."[32]

---

[27] Task Force to Review Comprehensive Claims Policy, *Living Treaties: Lasting Agreements, Report of the Task Force to Review Comprehensive Claims Policy* (Ottawa: Department of Indian Affairs and Northern Development, 1985), reprinted in Cassidy and Dale, *After Native Claims*, 10.
[28] Cassidy and Dale, *After Native Claims?* 11.
[29] *Comprehensive Land Claims Policy*, Published under the authority of the Hon. Bill McKnight, P.C., M.P. Minister of Indian Affairs and Northern Development (Ottawa 1986), 12. https://www.afn.ca/uploads/files/sc/comp_-_1987_comprehensive_land_claims_policy.pdf
[30] *Comprehensive Land Claims Policy*, 21.
[31] Cassidy and Dale, *After Native Claims?* 12-13.
[32] Reprinted in Don Monet and Ardythe Wilson, *Colonialism on Trial* (New Society Publishers: Philadelphia, PA, Gabriola Island, B.C., 1992), 15.

The process that was in place was not exactly what First Nations expected and it was very slow. Moreover, as early as the 1970s, many Indigenous people had legitimate concerns that while they were waiting for their turn in the negotiations, industrial development in their ancestral lands would cause irreversible damage. Waiting for a process to move at a snail's pace was not an option for many First Nations groups. Some decided to take the matter to the court.[33]

Despite its major shortcomings, the Comprehensive Land Claims policy marked a turning point. Going forward, the courts cited the publication *In All Fairness* to justify why they would grant interlocutory injunctions in favor of Indigenous people. For instance, in *MacMillan Bloedel v. Mullin*, and *Martin et al v. The Queen,* judges in the B.C. Court of Appeal referred to this document.[34]

The ambiguous legal situation in British Columbia, where Aboriginal land was for the most part never formally surrendered to the Crown, re-emerged in the 1960s and 1970s with the rise of Aboriginal activism. Furthermore, many significant Aboriginal litigations followed the *Calder* case, and the courts increasingly ruled in favor of Indigenous people. However, the struggle for Aboriginal rights and title took place not only in the courtrooms, but, in fact, occurred mostly on the land, where encroachment from big industry became apparent in the 1980s. The following chapter will discuss this point in detail.

[33] Cassidy and Dale, *After Native Claims?* 13.
[34] *MacMillan Bloedel Ltd. v. Mullin*, 1985 CanLII 154 (BC CA), <https://canlii.ca/t/1p6pb>, retrieved on 2022-05-25

2. Encroachment and Resistance in Gitxsan and Wet'suwet'en Territories

Tensions over Land, Resources and Authority

Some scholars consider competition for Canada's resources as a driving force for First Nations self-determination, which they often place in the context of neo-liberalism. This is an oversimplification.[1] Neo-liberalism, which identifies economic growth as a way to achieve human progress, gained ground in the days of Ronald Reagan and Margaret Thatcher, as well as Brian Mulroney in Canada,[2] while the affirmation of Indigenous sovereignty was already evident in early encounters with settlers. When the first surveyors entered the Nass River Valley, they were met by armed Nisga'a warriors, who ordered them to leave their land.[3] Despite the advance of colonialism and dispossession, Indigenous peoples in British Columbia have never been passive. On the one hand they joined the new economy and seized new opportunities,[4] but on the other hand, they kept asserting their authority over their lands and resources. It is worth recalling that Aboriginal peoples interpreted authority and jurisdiction differently than the colonial governments. While many First Nations, including the Gitxsan and Wet'suwet'en, publicly validated the authority of their chiefs in the Feast Hall, the authority of the provincial or federal governments was handed down by orders from afar (Victoria or Ottawa, or even from London), and enforced by "instruments of state." In 1884, the institution that was at the center of this

[1] Gabrielle A. Slowey, *Navigating Neoliberalism: Self-determination and the Mikisew Cree First Nation* (Vancouver: UBC Press, 2008), 17.
[2] Smith, N.. "neoliberalism." Encyclopedia Britannica, June 18, 2019, https://www.britannica.com/topic/neoliberalism, George Monbiot, "Neoliberalism- the ideology at the root of all our problems, *The Guardian*, 15 April 2016. https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot.
[3] Frank Calder in *Reaching Just Settlement. Land Claims in British Columbia,* ed. Frank Cassidy (Lantzville/Halifax: Oolichan Books and The Institute for research and Public Policy, 1991), 42.
[4] John Lutz, *Makuk: A New History of Aboriginal-White Relations* (Vancouver: UBC, 2008).

validation of authority, the potlatch, was banned.[5] This did not stop Indigenous people from standing up for their values. For example, in 1884, a conflict unfolded over increased encroachment from miners into Gitxsan territory at Lorne Creek in the Omineca district. The Gitxsan chiefs saw the increase in mining activity in Lorne Creek as a threat to their cultural survival. Newcomers were ignorant of traditional Gitxsan laws, which created a great deal of stress. That same year, the Gitxsan issued a petition to the government, which clearly expressed their point of view:

> Lorne Creek, which may be likened to one of the animals[sic] feet, we feel that the white men, by occupying this creek, are, as it were, cutting off a foot. We know that an animal may live without one foot, or even both feet; but we also know that every such loss renders him more helpless, and we have no wish to remain inactive until we are almost or quite helpless. We have carefully abstained from molesting the white men during the past summer. We felt that though we were being wronged and robbed, but as we had not given you the time or opportunity to help us, it would not be right for us to take the matter into our own hands. Now we bring the matter before you, and respectfully call upon you to prevent the inroads of any white men upon the land within the fore-mentioned district. In making this claim we would appeal to your sense of justice and right.[6]

Unfortunately, such petitions rarely brought about positive changes and the Gitxsan and Wet'suwet'en were often forced to "take the matter into their own hands." Most of the conflicts erupted around the fisheries, but also around the timber industry. This chapter mentions only a few examples of Indigenous resistance.

In particular, there has been a long-standing conflict with the Department of Fisheries and Oceans (DFO). The Wet'suwet'en Chief Johnny David (*Maxlaxlex*) recounted the so-called Babine Barricade War in his commission evidence, which was recorded for the purpose of the *Delgamuukw* court case. In 1906, when Fisheries officers tried to take down the fences used for

[5] Ken Coates and Keith Thor Carlson, "Different People, Shared Lands. Historical Perspectives on Native-Newcomers Relations Surrounding Resource Use in British Columbia," in *Aboriginal Peoples and Forest Lands in Canada,* ed. D.B. Tindall, Ronald Trosper and Pamela Perreault (Vancouver-Toronto: UBC Press, 2013), 22.
[6] Mills, "Reconciliation: Gitxsan Property," 41.

salmon fishing near Fort Babine, Indigenous women seized the officers and dumped them in the water. Their husbands were subsequently arrested.[7]

In 1959, the Department of Fisheries blew up a huge rock that had fallen into Hagwilget Canyon in 1820. Alfred Joseph, the Wet'suwet'en Chief *Gisday Wa,* recalled that when he was a young boy, it was customary for Wet'suwet'en youth to do their first fish catch in the Hagwilget Canyon. "I wasn't permitted to go in the canyon until I was a teenager," Joseph recalled, adding that "when you caught a fish, you were taught how to clean it … you are taught how to prepare it."[8] Fishing was an important activity for the Wet'suwet'en people, and the Hagwilget Canyon was a special place, associated with young people's first fishing experience. Alfred Joseph remembered that fish were plentiful in the Hagwilget Canyon until the 1950s. In addition to the Wet'suwet'en people who caught fish in the canyon, residents of the area and tourists did as well. In the 1950s "the Department of Fisheries said that the fishing – the spawning was in decline in the Bulkley [river] and that the Hagwilget Canyon was the cause of it, and that they were going to remove the obstruction in the Canyon."[9] The experts from the Department of Fisheries decided that the rock in the middle of the canyon prevented the fish from moving to other areas. The Wet'suwet'en people, however, remained sceptical. They were convinced that the fish were able to move upstream. Reportedly, the fish used certain locations in the canyon to jump up the water, as if they were training to go up the falls. In some of these "training" places the Wet'suwet'en people had built platforms where they could easily gaff the fish using a pole with a sharp hook on the end.[10] The people of Hagwilget signed a petition requesting the Hagwilget Canyon to be left as it was. Nevertheless, the rock was blasted in 1959. As a result,

[7] *Hang on to These Word*, 44.
[8] *Delgamuukw* (Trial Transcripts at 2114, January 4 1988) https://dx.doi.org/10.14288/1.0019301.
[9] *Delgamuukw* (Trial Transcripts at 1636, June 22 1987) https://dx.doi.org/10.14288/1.0019279.
[10] *Delgamuukw* (Trial Transcripts at 1635, June 22 1987) https://dx.doi.org/10.14288/1.0019279.

not only did fishing become impossible, as the water was too fast for gaffing, but an important cultural activity was also disrupted.

In the 1970s, the Department of Fisheries tried to enforce the law that prohibited Indigenous people from selling fish, and officials undertook a complex undercover operation. The federal agents and their collaborators passed themselves off as tourists and asked Indigenous people to sell them fish. Those who responded to such requests were later charged with the illegal sale of fish. They were usually fined or even jailed, until the Gitxsan people received legal advice from a young lawyer, Stuart Rush. Rush advised them to plead not guilty, based on the fact that no money was exchanged in the fish transactions. Surprisingly to the Gitxsan themselves, most of the charges were dropped.[11] It provided the Gitxsan with the confidence to stand up to the court.

In 1986, another incident involving the Department of Fisheries took place at Antkii's on the south bank of the Skeena River opposite Gitwangak. Young Gitxsan and Wet'suwet'en activists led by Glen Williams and Don Ryan blocked access to the fishing camp, in response to the allegation that they - the First Nations people - were fishing without permits. The Fisheries officers and RCMP gathered around the camp and demanded access to the fishing site. The protesters responded by firing weapons loaded with marshmallows.[12]

Starting in 1947, the Government of British Columbia began issuing Forest Management Licences, which were later renamed as Tree Farm Licences (TFL), to large timber companies often operating internationally.[13] These large companies became more and more aggressive in their clearcutting practices, which caused widespread resistance from several First Nations and

[11] Neil J. Sterritt, "Unflinching Resistance to an Implacable Invader," in *Drum Beat: Anger and Renewal in Indian Country*, ed. Boyce Richardson (Toronto: Summerhill Press, The Assembly of First Nations, 1990), 270-271.
[12] Sterritt, "Unflinching Resistance," 268-269.
[13] Richard A. Rajala, *Clearcutting the Pacific Rain Forest: Production, Science and Regulation* (Vancouver: UBC Press, 1998), 198-199.

environmental activists in British Columbia. This resistance culminated in 1993 in the so-called "War in the Woods." The members of Clayoquot and Ahousaht First Nations and environmental activists blocked access to Meares Island in Clayoquot Sound. Moreover, a mass protest related to clearcutting was organized in Vancouver. As a result, more than 800 people were arrested.[14]

Globalization and economic development expanded in the 1980s, and economists increasingly stressed the need for new policies to respond to these changes. Marshal A. Cohen, president of Olympia and York Enterprises in the 1980s, was among those who acknowledged that the economic conditions had changed. He wrote:

> The mobility of capital then and the fallout from that mobility is the first factor that makes the globalization of the 1980s different from the globalization of the past. A second factor is competition. Where once we could plan competitive strategies in terms of a few industrialized countries, competition now comes out of nowhere and at increasing speed.[15]

This new economic reality affected the *modus operandi* of logging companies. Clearcutting practices were common, and the demand for timber was growing, as many of the logging companies operated internationally. Consequently, the situation on the Gitxsan hereditary territories deteriorated. Each Gitxsan house (*wilp*) has a responsibility to protect and care for their traditional territory. Some of these territories were unaffected by human activities, while others were taken by settlers many years ago. Nevertheless, the responsibility associated with the wealth of the land, animals, minerals and spirits remained with the respective *wilp*. For example, the Smithers courthouse was located on land that belonged to the house of *Woos.*[16]

[14] Rachel McRory, "Recording the War in the Woods," Royal BC Museum, 21-07-2021. http://staff.royalbcmuseum.bc.ca/2021/07/21/recording-the-war-in-the-woods/
[15] Marshal A. Cohen, "The New Globalization: What does today's increased globalization mean for Canadian business?" *Canadian Business Review* (Autumn 1988).
[16] *Delgamuukw* (Trail Transcripts at 65, 12 May 1987) https://dx.doi.org/10.14288/1.0018360.

Obviously, the government and its officials had a different view on land ownership. In their opinion, land in British Columbia was either unused Crown land or private property.

In the 1980s and 1990s, the Gitxsan and Wet'suwet'en were fighting their own "War in the Woods," which resulted in a series of blockades and several lawsuits that sought to obtain injunctions to protect specific parts of their hereditary territories. Journalist Terry Glavin covered their "War on the Land" in his articles in the *Vancouver Sun* and in a book, *A Death Feast in Dimlahamid*.[17]

At the beginning of the 1980s, Westar Timber Ltd., a giant timber company, started an aggressive logging campaign in the Kispiox Valley on the territory under the stewardship of Chief *Wii Muugalsxw*, known also as Art Wilson. Massive clearcutting was increasingly destroying huge areas of an old growth forest. In March 1988, the Gitxsan, led by Art Wilson, mounted a blockade to prevent the truckers from entering the logging area in the Kispiox Valley. In response the truckers blocked the road in the opposite direction to prevent the Gitxsan residents from leaving the village.[18] Elder Mary Johnson (*Antgulilibix*) joined the blockade early in the morning. She sang traditional songs and spoke to a *Vancouver Sun* reporter about her support for the cause. According to Johnson, it was important to protect the territory for future Gitxsan generations, since the land and culture were intricately connected.[19] The following day, about 30 RCMP officers arrived to dismount the blockade. They brought an additional bus for those they would arrest, but the blockade was already gone.[20] The blockades put Indigenous communities under great pressure. "The roadblock is a test," said Don Ryan, president of the

[17] Terry Glavin, *A Death Feast in Dimlahamid* (Vancouver: New Star Books, 1998).
[18] Terry Glavin, "Indians block log trucks. Tempers flare at barricade," *The Vancouver Sun*, February 29, 1988.
[19] Terry Glavin, "Elder inspires Indian protest; Matriarch inspires Kispiox protest behind roadblock," *The Vancouver Sun,* March 1, 1988.
[20] Terry Glavin, "Show of force by RCMP angers Kispiox area Chiefs," *The Vancouver Sun*, March 2, 1988. Terry Glavin, "Native say wilderness now a rotting heritage: Roadblock sets region on edge Series: Forestry A Growing Concern," *The Vancouver Sun*, June 14, 1988.

Gitxsan-Wet'suwet'en tribal council, in his statement for the *Vancouver Sun*. "You have husband against wife, brother against brother and father against son."[21] Indeed about 40% of Westar Timber employees consisted of Indigenous people, and the roadblocks were directly affecting those who carried them out.

Although Westar was conducting logging south of the Babine River in the area called "Shegisic," it also planned to build a bridge at the confluence of the Babine River and Sam Green Creek. This would open access to the area north of Babine River called "Shedin," which was at that time unaffected by logging.[22] The Gitxsan did not oppose responsible logging, but the timber companies, both small and larger ones, were destroying old growth forest. To stop Westar from crossing the river, they decided to take the matter to the court, and the first proceeding took place in October 1988. At that time, the Gitxsan were already engaged in the *Delgamuukw* case, which they hoped would clarify the question of their Aboriginal title and jurisdiction in this territory. Nevertheless, they were concerned that by the time they got the verdict, much of their hereditary territories would have been destroyed, as substantial damage had already been done. On June 14, 1988, the *Vancouver Sun* reported the following:

> KISPIOX- From the valley floor to the far snowcapped mountains, the rolling hills are barren and scarred. Trees are felled and left to rot and they litter the terrain in every direction like toothpicks scattered over a child's sandbox. Down through the centuries, Gitksan law has stipulated that these hills are the clan territory of the wolf and the house territory of Wii Muuan, and ancient name means a heaving of water from some strong force beneath the surface. The territory lies in the far reaches of the upper Kispiox Valley, and it lies in ruin.[23]

[21] Terry Glavin, "Native say wilderness now a rotting heritage: Roadblock sets region on edge Series: Forestry a Growing Concern," *The Vancouver Sun*, June 14, 1988.
[22] *Westar Timber Ltd. v. Gitksan Wet'suwet'en Tribal Council*, 1989 CanLII 2764 (BC CA), <https://canlii.ca/t/216qr>, retrieved on 2022-05-18, para 4-6.
[23] Terry Glavin, "Native say wilderness now a rotting heritage: Roadblock sets region on edge Series: Forestry a Growing Concern," *The Vancouver Sun*, June 14, 1988.

The court eventually granted an injunction opposing the construction of the bridge because Westar did not need to harvest timber in the "Shedin" area immediately. The company wanted rather to build the bridge in order to prepare for the future harvest. Moreover, the *Delgamuukw* case was supposed to end in two or three years. The court recognized that the "Shedin" area was a pristine wilderness, and that encroachment of the timber industry would cause irreversible damage.[24] Although the court failed to reach this decision immediately, an important victory was achieved when Justice MacDonald finally ruled in favour of the Gitxsan.[25] This ruling was appealed by Westar, but the B.C. Court of Appeal maintained the verdict.[26] Soon after, Westar encountered difficulty and withdrew from the logging business, but the license was granted to another timber giant, Skeena Cellulose. The conflict over the bridge at Sam Green Creek would resurface in a less favorable moment, when the Gitxsan were engaged in trilateral treaty negotiations.

In September and October 1989, blockades were mounted in the Suskwa Valley, about 70 kilometres northwest of Smithers.[27] In October 1989, the general manager for Westar Timber told the *Vancouver Sun* that the government should meet with the Indigenous protesters and find a workable solution.[28] The blockades affected many forest ministry contractors who were forced to lay off their employees. On October 10, 1989, the *Vancouver Sun* reported:

> Kitwancool hereditary chief Glen Williams said the blockades are part of an effort to assert control over about 10, 000 square kilometres of land which the federal government had accepted for future land claims negotiations. Williams said the Kitwancool tribal council, which represents about 700 natives, is not seeking a complete ban on logging. He said the 13 chiefs are concerned about the under-

[24] *Westar Timber Ltd. v. Gitksan Wet'suwet'en Tribal Council*, 1989 CanLII 2764 (BC CA), <https://canlii.ca/t/216qr>, retrieved on 2022-05-18, para 4-6.
[25] Glavin, *A Death Feast*, 44-45.
[26] *Westar Timber Ltd. v. Gitksan Wet'suwet'en Tribal Council…*
[27] Terry Glavin, "Indians set up road blockade near Hazelton," *The Vancouver Sun*, September 29, 1989.
[28] Terry Glavin, "Begin land claim talks, logger says: Province must alter policy, Westar head tells meeting," *The Vancouver Sun*, October 27, 1989.

> utilization of timber taken from their hereditary lands and the ministry of forests is party to over-cutting in the region.
> 'People should obtain consent from us (to use the land) and we should be involved in conservation and management,' he said.[29]

At the same time as the Gitxsan were fighting against giant timber companies, they also had to deal with what they considered the irresponsible harvesting practices of other small companies. The documentary *Blockade* shows the blockade of the Hobenshields family mill in December 1991 organized by members of *Lax Skiik* (Eagle) clan.[30] The Hobenshields, a local family that ran a logging business for about 60 years, when pressed by the protestors, decided to consider the Gitxsan recommendation on logging practices, which restored peace in the area. The Gitxsan stopped the blockade and began negotiating a common logging plan with the Hobenshields. Members of *Lax Skiik* not only conducted the protests, but they also got involved in research on sustainable forest management policies. They hired a holistic forester, Herb Hammond, and worked together on the proposal that they intended to present to the ministry. Their intention was to integrate a holistic approach to forestry with their own local knowledge. The Hobenshields foresters also participated in this program.[31]

Usually, litigation and negotiations moved at a very slow pace while the provincial government and the industry continued their "business as usual." Some blockades, like the one involving the Hobenshields, would bring a desirable result, but usually they led to major frustrations.

---

[29] Justine Hunter, "Terrace blockades up to A-G, forestry official says," *The Vancouver Sun*, October 10, 1989.
[30] Nettie Wild, *The Blockade* (Vancouver: National Film Board of Canada, 1993), Film.
[31] Evelyn Pinkerton, "Integrated Management of a Temperate Montane Forest Ecosystem Through Holistic Forestry: A British Columbia Example," in *Linking Social and Ecological Systems* ed. Fikret Berkes and Carl Folke (Cambridge University Press, 1998), 381.

Cultural geographer Nicholas Blomley sees blockades as "a statement concerning sovereignty and place,"[32] an assertion of ownership. In the Gitxsan and Wet'suwet'en case, the blockades had to do with their idea of land stewardship. The land had not been treated with respect, and blockades were a way to express that they did not agree with the harm the timber industry had done to their hereditary territories. The sad reality was that the blockades were seen by some groups, like B.C. Fisheries Survival Coalition and the B.C. Reform Party, as an expression of illegitimate dissent. Blomley emphasized that in the liberal tradition any action restricting freedom of movement is stigmatized by the representatives of the State. [33] The same applied to measures that impeded economic development.

To Negotiate or to Litigate?

In 2010 at the Wet'suwet'en all Clan Feast, Alfred Joseph (Chief *Gisday Wa*), one of two main plaintiffs in the *Delgamuukw* case, shared with participants the following thoughts about how the idea of the litigation originated:

> In the beginning people always talked about the land. We brought people in and treated them with respect. In 1960 they had a meeting at the church. Everyone has gotten together from the different villages and have been talking about our land. In 1977 we met with the minister. When they started the court case, they had various meetings. It was directed by the people. They have paved the way…How we came upon land claims. People were involved. It was a long road in history. Land claims started a long time ago. We asked the elders how we lost our land, Ootsa, Burns Lake. 1960 first attempt to open the court case. [sic][34]

Various events that happened in Canada and in the province of British Columbia paved the way to the *Delgamuukw* court case; yet, it is essential to recognize that Gitxsan and

[32] Blomley, "Shut the Province," 25.
[33] Blomley, "Shut the Province," 29.
[34] "Delgamuukw/Gisday'wa court case," in *All Clans Feast*, April 24, 2010, 2-3.

Wet'suwet'en communities had been getting ready to confront the government, and to clarify the question of their Aboriginal rights, a long time before they filed the lawsuit. They started preparing by consulting their Elders. Their Elders' knowledge played a big part in the decision to litigate rather than negotiate. Neil J. Sterritt has explained the Gitxsan and Wet'suwet'en motivations:

> The option of treaty negotiations did not, in fact, exist because it was federal policy to negotiate with only one First Nation at a time and the Nisga'a were first up. Although we had spent six years preparing, we were not going to get to the negotiation table in the foreseeable future and certainly not while many of our elders were still alive.
>
> There was no political will on the part of the provincial government to negotiate land issues. BC refused to participate in treaty negotiations with the Nisga'a and, during the 1983 First Ministers Constitutional Conference, took a narrow approach claiming that aboriginal title in BC had been extinguished: in short, a denial of our aboriginal title.
>
> We needed to educate Canadians about Gitxsan and Wet'suwet'en issues. People born and raised on the land testifying in court would speak openly and directly to the "Queen" and to Canadians. There was urgency to this as some potential witnesses were in their eighties and frail. Thirty-four of the plaintiffs were born between 1890 and 1920. They had grown up on the land and knew their histories, territories and laws. Their memories reached back and beyond the time the first European started to settle on our land. We recognized that within a few short years the legacy of those witnesses could be lost.[35]

After several internal consultations at the potlatch, both First Nations decided to bring the issue of their Aboriginal title before the court. The plaintiffs filed a claim for "the ownership and jurisdiction" of over 58,000 square kilometres of British Columbia territory. The principal complainant for the Gitxsan was Chief *Delgamuukw*, then Albert Tait. The Wet'suwet'en decided that *Gisday Wa*, Alfred Joseph, was to represent them. The chiefs were aware that the trial would put them under tremendous pressure, and that the court would strive to undermine

[35] Sterritt, *Mapping My Way Home,* 307.

their evidence and credibility.[36] They decided to base their evidence on the testimonies of their Elders, which was a completely different strategy than the one employed in *Calder*. The goal of this strategy was to show the court the depth of knowledge possessed by their Elders.[37]

Legal historian Bryan Schwartz observed that this claim had far-reaching political and legal consequences, and it was not likely that the court would rule in favour of the Gitxsan and Wet'suwet'en. The way the claim was formulated raised an important question: "who has priority in case of conflict, provincial or aboriginal governments?"[38]

Why did the plaintiffs take such a high risk in claiming "the ownership and jurisdiction" of a large portion of British Columbia land? We can best reply with the words of Chief *Satsan*, Herb George, who was the spokesperson for the Wet'suwet'en:

> We entered a game that most people believed we could not win. And it's true. We put the institution of justice in this country in a dilemma. Although we knew what the game was, and what the rules were, we had to take into account that the greatest thing that we were in danger of losing was our very beings as Gitksan and Wet'suwet'en people. If we were to accept what has now to be known as the conventional view, if we were to approach this whole issue of our rights in a step-by-step manner, then at the end of the day it may well be that we can gain something small and certain. No. We are Gitksan and Wet'suwet'en people. We like to be that. We want to continue to be that.[39]

The Gitxsan and Wet'suwet'en simply refused to "play a colonial game" and decided to play according to their own rules. The same attitude would be expressed later at the negotiation table, as well as during discussions with the various forestry officials. Moreover, as Neil J. Sterritt stated, this was their only chance to employ such strategies, because the Gitxsan and Wet'suwet'en Elders were in their eighties and were frail. The Gitxsan and Wet'suwet'en could

---

[36] Sterritt, *Mapping My Way Home*, 308.
[37] Sterritt, *Mapping My Way Home,* 310.
[38] Bryan Schwartz, "The General Sense of Things: Delgamuukw and the Courts," in *Aboriginal Title in British Columbia,* 172.
[39] Herb George, "The Fire Within Us", in *Aboriginal Title in British Columbia,* 54.

have "played that card" right then, or risk never having the chance again. Since they were aware that the court would require proof of historical facts, they decided to employ supporting experts to translate their traditional knowledge into the language of Western science.

The 1980s saw some progress in the field of anthropology that contributed to the Gitxsan and Wet'suwet'en's cause. Anthropologists Hugh Brody and Robin Ridington had conducted field work among B.C. First Nations, including the Dane-Zaa, and other scholars were becoming increasingly interested in First Nations' culture. Historian Arthur Ray pointed out that a few years before the trial started new documentary sources of critical importance in *Delgamuukw* became available to researchers. For instance, the Hudson's Bay Company archives, previously housed in London, had been moved to Winnipeg.[40]

Despite the tremendous work that the communities had to accomplish to prepare for the trial, spirits were high. The Gitxsan and Wet'suwet'en hoped that they would face the Canadian justice system on an equal footing and aspired to "build an equal relationship with the rest of Canada."[41] Sadly, they underestimated the rigidity of the Canadian justice system in its approach to "non-traditional" evidence.

The *Delgamuukw* Court Case

On October 24, 1984, Albert Tait, the Gitxsan Chief *Delgamuukw* and Alfred Joseph, the Wet'suwet'en Chief *Gisday Wa,* filed a law suit against the Attorney-General of British Columbia. While they claimed that their Aboriginal title enabled them to occupy and own their individual house territory, they also recognized that these territories could only be alienated to

[40] Arthur J. Ray, *Aboriginal Rights, Claims, and the Making and Remaking of History* (Montreal & Kingston-London-Chicago: McGill and Queen's University Press, 2016), 84.
[41] Interview with Ardythe Wilson in Napoleon, "Ayook: Gitksan Legal Order, Law and Legal History,"190.

the Crown. These were rules grounded in the Royal Proclamation of 1763.[42] The trial started in May 1987 in the courthouse in Smithers, but later was moved to Vancouver.

The presiding Judge Alan McEachern conducted the same test that was used in the *Baker Lake* case. At the *Delgamuukw* case trial, it became clear from the beginning that the plaintiffs and the Canadian justice system differed in their interpretations of the evidence and of the cultural and historical realities related to Indigenous peoples. The Gitxsan and Wet'suwet'en chiefs were aware that their evidence might not be understandable in the Canadian justice system. In addition to anthropologists and historians, lawyers were also involved in explaining the particular nature of the presented evidence. In their opening statement we can read the following:

> This Court, in hearing the evidence which will be presented in this case, will be faced with a series of legal and intellectual challenges and opportunities of a nature not normally found in matters that come before the bench. There are challenges and opportunities which we as counsel have had to face and with which we continue to grapple.[43]

The lawyers for the plaintiffs went on to explain, based on the recent *Calder* case, that lawyers and judges tended to see Aboriginal societies as inferior; because of such biases and faulty assumptions, they could lose sight of the meaning of their evidence:

> The challenge for this Court, in listening to the Indian evidence, is to understand the framework within which it is given and the nature of the worldview from which it emanates… The nature of the continuum between humans, animals, and the spirit world, within cycles of existence, underpins much of the evidence you will hear.[44]

[42] Mills, "Reconciliation: Gitxsan Property,"134.
[43] Gisday Wa and Delgam Uukw, *The Spirit in the Land. The Opening Statement of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia, May 11 1987* (Gabriola, B.C.: Reflections, 1990), 21.
[44] Gisday Wa and Delgam Uukw, *The Spirit in the Land*, 23.

The evidence was indeed overwhelming. Hereditary Chiefs, Elders, and anthropologists, including Antonia Mills, Richard Daly, Hugh Brody, and other subject matter experts gave their evidence over 318 days. Overall, the court trial produced 25,000 pages of transcript. Oral traditions presented by the Elders, called *adaawk* by the Gitxsan and *kungax* by the Wet'suwet'en, were supported by the latest archeological, linguistic and historical research. The plaintiffs and their lawyers believed that the evidence strongly supported their case. However, the judgment rendered on March 8, 1991 was more than disappointing. Chief Justice McEachern released his judgment in a 394-page long statement. He ruled that the Gitxsan and Wet'suwet'en had no rights to their ancestral territory; their rights had been extinguished, he claimed, after British Columbia became a part of Canada in 1871. A part of his justification reads as follows:

> The plaintiffs' ancestors had no written language, no horses or wheeled vehicles, slavery and starvation was [sic] not uncommon, and there is no doubt, to quote Hobbs [sic] that aboriginal life in the territory was, at best "nasty, brutish, and short." [45]

McEachern ruled that Aboriginal title no longer existed, and that the Royal Proclamation of 1763, which stipulated that Indigenous lands could not be surrendered except by treaty, did not apply to British Columbia, which at the time was not a British colony. He decided that his authority did not allow him to take a stand on ownership and jurisdiction and that fishing was the only Aboriginal practice that might require special consideration.[46]

Anthropologist Robin Ridington wrote the following about his court experience:

> Following the release of Mr. Justice McEachern's opinion, I experienced a deep sense of shame at the judge's failure to understand the teaching that the chiefs and elders had so generously given him. I knew they would feel deeply wounded by the

[45] Chief Justice McEachern "Judgment," cited in: Antonia Mills, *Eagle Down is Our Law*, 15.
[46] Mills, "Reconciliation: Gitxsan Property,"137.

> callous and disrespectful language of his decision, above and beyond their distress at the decision itself.[47]

This judgment was especially hard for the plaintiffs to accept, because it had eliminated any potential basis for future land claims negotiations.[48] Although some changes had taken place since the trial started and British Columbia decided to join the negotiation process, up to this point the province's position was that treaty negotiations were federal business. McEachern's judgment eliminated the possibility of addressing the land question at the negotiation table. Moreover, the imminent threat from big industry resurfaced. Other courts had issued temporary injunctions preventing clearcutting in some areas. After the decision was rendered, it was to be expected that the timber companies would challenge those injunctions.

The Gitxsan and Wet'suwet'en filed an appeal, and the Court of Appeal reached its decision in 1993. By that time, the province had already taken a different position and recognized that there was no blanket extinguishment of Aboriginal rights. However, it maintained that "some Aboriginal rights may have been extinguished or impaired as a result of the province exercising its right to land and resources."[49] The Court of Appeal ruled that the plaintiffs had "unextinguished non-exclusive aboriginal rights which received the protection of the common law, and which now receive protection as existing aboriginal rights under s.35(1) of Constitution Act, 1982."[50] Nonetheless, it did not make a declaration with respect to jurisdiction over land and resources or people within the territory.[51]

---

[47] Robin Ridington, "A Witness to Delgamuukw. Fieldwork in Courtroom 53," *BC Studies* no. 95 (Autumn 1992):13.
[48] Mills, "Reconciliation: Gitxsan Property,"145.
[49] Delgamuukw v. British Columbia, 1993 CanLII 4516 (BC CA), <https://canlii.ca/t/1q09f>, retrieved on 2022-05-18, para 33.
[50] Ibid, para 263.
[51] Ibid, para 264.

Kent McNeil, a professor at Osgood Hall Law School, sees the judgement rendered at the British Columbia Court of Appeal as a missed opportunity to clearly define where Aboriginal title originated. A clear definition of the source of Aboriginal title would also help define its nature and content. Consequently, the trial judges offered various views on Aboriginal title and rights. While Justice Wallace stated that aboriginal rights derive their force from common law, Justice Lambert supported the doctrine of continuity. According to Lambert, "Aboriginal title existed prior to colonization as an entitlement arising from Aboriginal practices, customs, and traditions."[52] Justice Lambert, unlike other judges who believed that Aboriginal title was tied to traditional practices, saw Aboriginal rights as evolving rights.[53] Because of these differences, once again, the debate over Aboriginal rights and title was inconclusive and further clarifications were expected during the negotiation process. The Court of Appeal stated that:

> The Court will be asked to declare that the precise location, scope, content and consequences of these aboriginal rights including whether there has been any extinguishment or diminution of aboriginal rights throughout the territory of the claim, be referred to the parties to form the basis of a negotiated solution. The Court should retain jurisdiction over those issues so that any party may bring the matter to the Court in the event that negotiations should fail.[54]

Even though the B. C. Court of Appeal ruling could be seen as a big step forward, the court once again failed to adequately support the Gitxsan and Wet'suwet'en in their attempt to clarify their rights and title. The Court of Appeal recommended the following:

> The parties have expressed willingness to negotiate their differences. I would encourage such consultation and reconciliation, a process which may provide the only real hope of an early and satisfactory agreement which not only gives effect to the aspirations of the aboriginal people but recognizes there are many diverse cultures, communities and interests which must co-exist in Canada.[55]

---

[52] McNeil, *The meaning of Aboriginal Title*, 139.
[53] McNeil, *The meaning of Aboriginal Title,* 146.
[54] Delgamuukw v. British Columbia, 1993 CanLII 4516 (BC CA), <https://canlii.ca/t/1q09f>, retrieved on 2022-05-18, para 892.
[55] Ibid, part 14, para 290.

The courts have a huge influence on the bargaining position of the negotiating powers, yet the Court of Appeal did not endorse the Gitxsan and Wet'suwet'en.[56] Asked by a reporter from *The Province* if he considered this decision as a victory, Herb George answered the following:

> There are two ways to look at it. On the one hand it's a major victory in terms of getting rid of this racist doctrine of extinguishment, which is the way we've always been treated… To get the appeal court to kick that out 5-0, is a major accomplishment. But as far as the scope of the rights goes, the (appeal court) is still hanging on to McEachern … Three of the five (appeal) justices adopted McEachern's finding of fact in regard to our society and what we did on our lands.[57]

While the Court of Appeal overturned Justice McEachern's conclusion that Gitxsan and Wet'suwet'en Aboriginal title had been extinguished, the situation on Gitxsan and Wet'suwet'en territories remained tense. The newly established British Columbia Treaty Process seemed to offer a chance for an agreement. The next chapter will examine the Gitxsan and Wet'suwet'en experience in detail.

[56] McNeil, *The meaning of Aboriginal Title,* 152.
[57] "Q&A: Native Rights," *The Province*, July 4, 1993.

3. The 1994-1996 Trilateral Treaty Negotiations

The British Columbia Treaty Commission

In 1990, British Columbia Premier Bill Vander Zalm decided that the province would participate in treaty negotiations with First Nations.[1] This decision was followed by a meeting with Prime Minister Brian Mulroney and representatives of the First Nations Congress (which later would become the First Nations Summit). The First Nations Congress proposed the creation of a task force to develop a suitable process for future treaty negotiations. This idea was backed by the federal and provincial governments, and in December 1990 the British Columbia Claims Task Force was formed.[2] The Task Force consisted of seven members, two of whom were appointed by the federal and provincial governments and three by the First Nations Summit.[3] Among other things, the members of the Task Force received assistance from historian Paul Tennant.[4] In June 1991, the British Columbia Claims Task Force issued a report, which stated the following:

> Important to the relationship between the Crown and aboriginal peoples is the concept of the fiduciary duty owned by the Crown. This duty is rooted in history and reflects the unique and special place of aboriginal peoples in Canada. The treaty-making process will define and clarify the terms of the new relationship between the Crown and aboriginal peoples but it cannot end the Crown's fiduciary duty…
> The task force believes that the process of negotiation to establish a new relationship will be positive for the First Nations and for the citizens of British Columbia and Canada. The status quo has been costly. Energies and resources have been spent in legal battles and other strategies. It is time to put these resources and energies into the negotiation of a constructive relationship.[5]

[1] Woolford, "Between Justice and Certainty,"101.
[2] McKee, *Treaty Talks in British Columbia,* 32.
[3] McKee, *Treaty Talks in British Columbia,* 33.
[4] *The Report of the British Columbia Claims Task Force*, June 28, 1991, Acknowledgement.
[5] *The Report of the British Columbia Claims Task Force*, June 28, 1991, 18-19.

According to the recommendations of the Task Force, the Crown's fiduciary responsibility was to remain unchanged, while the new relationship was to be established through constructive dialogue. The report continued:

> The development of the new relationship through negotiation is vital to all peoples in the province. These negotiations must deal with the issues of fundamental importance to the relationship. No party can dictate to the other what these fundamental issues are. Consequently, the parties must be free to raise any issue which they view as significant to this relationship. There should be no unilateral restriction by any party on the scope of negotiations.[6]

As the final two chapters of this thesis will show the last recommendation was not adequately supported by the provincial government in the Gitxsan and Wet'suwet'en trilateral treaty negotiations. In September 1992, the representatives of the provincial and federal governments and of the First Nations Summit signed a formal agreement, which endorsed all of the 19 recommendations of the Task Force. In April 1993, the British Columbia Treaty Commission (BCTC) was appointed as the "keeper of the process."[7] The Commission was mandated to facilitate negotiations, and, among other things, to allocate funding for negotiations to First Nations. Its most important shortcoming was that the 19 recommendations that the Task Force provided left much room for conflicting interpretation by the involved parties. Furthermore, the question of how the funds would be distributed had not been clarified.[8] The way the process was designed did not provide any political power to the BCTC, other than moral authority, which was not sufficient to address the power imbalance at the negotiation tables.

Already at the outset, the federal and provincial governments had difficulty with the question of cost sharing. The Social Credit Party government of Vander Zalm had taken the stand that the federal government should provide funding for the negotiations, but the newly

---

[6] *The Report of the British Columbia Claims Task Force*, June 28, 1991, 21.
[7] McKee, *Treaty Talks in British Columbia,* 33.
[8] Woolford, "Between Justice and Certainty," 110.

elected NDP government signed the Memorandum of Understanding on Cost Sharing. [9] The arrangement on the percentage of cost sharing varied from step to step in the treaty negotiations process. For example, pre-treaty costs were shared 60/40 by the federal and provincial governments respectively. However, the federal government was solely responsible for loans to First Nations involved in the treaty negotiations process.[10]

The B.C. treaty process, which still exists today, was organized into six stages. In the first stage, called *Statement of Intent*, the relevant First Nation expresses its intention to participate in the treaty process. At this point, the concerned First Nation identifies the area covered by the claim. Stage two is called *Preparations for Negotiations*. The B.C. Treaty Commission has forty-five days to schedule an initial meeting in which parties are to start exchanging information. At this stage each party appoints negotiators. Moreover, the negotiating First Nation must report if there are any overlapping claims issues with neighbouring First Nations, and the interests of third parties should also be raised. During the third stage, called *Negotiation of a Framework Agreement*, the agenda for the negotiations is established. In stage four, *Negotiation of an Agreement in Principle*, actual negotiations begin and the terms of the treaty are agreed upon. In stage five, the treaty is finalized, and in stage six the implementation plan is developed.[11] In stages four and five the negotiating First Nation has the option of requesting the implementation of so-called Interim Measure Agreements. These measures aim at regulating land management and preventing the resource under negotiation from being depleted before the negotiations conclude.[12]

[9] Woolford, "Between Justice and Certainty,"126.
[10] McKee, *Treaty Talks in British Columbia,* 36.
[11] Ibid, 35.
[12] Ibid, 41.

Notwithstanding this new approach to negotiations, some First Nations and Indigenous organizations remained sceptical. The Union of British Columbia Indian Chiefs, for instance, was convinced that the negotiations should be carried out on a nation-to-nation basis, and that the province of British Columbia was not a nation.[13] Aboriginal law expert and author of the book *Gustafsen Lake Under Siege*, Janice Switlo, expressed her concerns about the way the process was designed and carried out. "Is the BC Process a 'trick or treaty?' " Switlo asked. "Most definitely a trick,"[14] she wrote, as Aboriginal people are misled by technical language and legal jargon, which hides serious and irreversible consequences for them. In the B.C. treaty process, the interest groups that are allowed to come forward with their *Statement of Intent* are not always synonymous with the actual First Nation. Moreover, Switlo argued that the B.C. treaty process was conducted as business internal to the province, while it should be conducted based on a nation-to-nation approach.[15] Former Yukon premier and treaty negotiator, Tony Penikett, on the other hand, recognized that some successful treaties had been signed in Canada, and that "when the parties show the will to settle, negotiation works."[16] Nevertheless, Penikett was also critical about British Columbia's implementation of the treaty process. He devoted significant efforts to address its shortcomings, from writing a book on comprehensive land claims to holding forums with treaty negotiators.

In fact, First Nations people had innumerable reasons to be suspicious of any institution under post-colonial oversight. In addition, there were some early signs that confirmed these fears. Herb George, who subsequently represented the Wet'suwet'en as the chief treaty negotiator, stated the following in an interview for *The Province:*

[13] McKee, *Treaty Talks in British Columbia,* 39.
[14] Switlo, *Gustafsen Lake Under Siege*, 153.
[15] Ibid, 145-157.
[16] Penikett, *Reconciliation*, 4.

> If you remember (Indian Affair Minister Andrew) Petter's statement immediately after a memorandum of understanding (MOU) was signed between the feds and the province…One of the comments he made was that they will not make any agreement that are going to cost too much. That tells me that their attitudes really haven't changed.[17]

Despite this factual assessment of the situation, the Wet'suwet'en joined the negotiation table. I argue that the Gitxsan and Wet'suwet'en were not simply "tricked" into the treaty process. They once again made a conscious decision and they entered "the colonial game" with full knowledge of the shortcoming of the process and of the possible lack of "political will" to conclude the treaty. Nonetheless, they were prepared for this confrontation, and if the "political will" had been present at the treaty table, the treaty model they presented could have become an important political success.

The Gitxsan and Wet'suwet'en Treaty Negotiations

In June 1994, the Gitxsan and Wet'suwet'en Hereditary Chiefs signed an accord of recognition and respect with "Her Majesty the Queen in Right of British Columbia." This set the stage for treaty negotiations. The B.C. Treaty Commission, an independent body overseeing the negotiations, formed two separate negotiation tables, as the Gitxsan and Wet'suwet'en had decided to negotiate separately. The negotiation process involved six steps leading up to the signing of an Agreement-in-Principle.

The accord that the Gitxsan and Wet'suwet'en signed in June 1994 included a clause that both parties would "see an adjournment, for a period of one year from the Supreme Court of Canada, of the appeal in *Delgamuukw v. the Queen*." As mentioned earlier, the Court of Appeal decided that if the negotiations were unsuccessful, the SCC would have the final say.

[17] "Q & A: Native Rights," *The Province*, July 4, 1993.

Moreover, clause four of the agreement specified that the treaty discussions would address the following points:

> a) the co-existence of Gitksan and Wet'suwet'en and Crown rights over and within the Territories;
> b) economic initiatives, including financial and other specific initiatives, to provide for greater participation of and benefits for the Gitksan and Wet'suwet'en peoples in relation to all sectors of the local and regional economy;
> c) jurisdictional arrangements;
> d) cooperative efforts by and arrangements and agreements between the Gitksan and Wet'suwet'en governments and the Crown regarding the development, protection and rehabilitation of environment, waters, lands, and renewable and non-renewable resources; and
> e) cooperative efforts by and arrangements between Gitksan and Wet'suwet'en governments and the Crown regarding social, health, education, justice and community services. [18]

Two significant developments in the treaty negotiations took place at the beginning of 1995. In February, the Gitxsan and the province signed the "Significant Progress Agreement," and in March, the Wet'suwet'en held their Opening Session in Smithers. Yet, even before these events, the Gitxsan and Wet'suwet'en prepared a draft of the future Agreement-in-Principle – the "Gitxsan, Wet'suwet'en and Gitanyow Community-Based Governance Agreement-in-Principle" - dated January 24, 1995.[19] This document was divided into the following sub-sections: legal status and capacity, citizenship, land title and land management, renewable resources, non-renewable resources, structures and procedures of government, financial arrangements, taxation, application of federal and provincial laws, and environmental assessment. The last subsection included guidelines on community ratification of the agreement. There is no doubt that the Gitxsan and Wet'suwet'en were well prepared for the treaty negotiations and that they had a

[18] "An Accord of Recognition and Respect between Her Majesty the Queen in Right of British Columbia and the Hereditary Chiefs of the Gitksan and Wet'suwet'en People," section 4.5 page 3-4. Freedom of Information Request IRR-2021-13832, (B.C. Government).
[19] "Gitxsan, Wet'suwet'en and Gitanyow Community-Based Governance Agreement-in-Principle" January 24, 1995. Copy available at Gitxsan Huwilp Government Office (Hazelton).

clear vision of their objectives. The opening speech by Chief *Satsan*, Herb George, at the session held in Smithers in March 1995 demonstrates this.

> When the Wet'suwet'en use the term "Treaty", what we mean by that term is an agreement, willingly entered into and formally adopted by two or more governments. In a treaty, the governments define how they will relate to one another. Treaties also define each government's specific rights and obligations in that relationship.
>
> From the time of our first dealings with the colony and later the province of British Columbia and the government of Canada, the Wet'suwet'en have always maintained that a treaty was needed to acknowledge Wet'suwet'en territory and Wet'suwet'en jurisdiction over our land and people.
>
> Now, in 1995, we have an historic opportunity through the Wet'suwet'en-Canada-British Columbia treaty-making process, to address these issues which have been outstanding for more than a century.
>
> Our vision for the Treaty incorporates beliefs and values which Wet'suwet'en have always held. This does not mean that our vision is static. We incorporate our goals and aspirations for the future into our vision, recognising that in many ways our situation at the present is not what we would like it to be. [20]

Satsan went on to say that the Wet'suwet'en had a long and rich history, which should be recognized by all parties involved in negotiating the treaty. He talked about the power imbalance and about taking responsibility for the harmful policies of the past. He also stressed that there existed a dichotomy in the interpretation of legal documents issued by the federal government, the Canadian Constitution being the best example. What the Wet'suwet'en saw and interpreted as guidelines for the nation-to-nation relationship, the court and governments saw as their sole authority. *Satsan* explained:

> The challenge of recognising and addressing this imbalance is enormous. In other processes and at other times, we have felt very frustrated because of our perceived lack of power at the table. Our vision is that all parties to this treaty-making process will examine and challenge their perceptions, building on the principles, recognition, respect and reconciliation. [21]

[20] "The Wet'suwet'en Vision of a Treaty with the Crown," 99.
[21] Ibid, 103.

Would these perceptions change at the treaty negotiation table? The remainder of this chapter will try to answer that question. Access to the material produced during treaty negotiations is restricted. The B.C. Treaty Commission neither recorded, nor videotaped the negotiations.[22] Nevertheless, some available documents can shed a good deal of light on the dynamics of the Gitxsan and Wet'suwet'en treaty negotiations.

The Significant Progress Agreement signed in February 1995 by Don Ryan (*Mas Gak*) representing the Gitxsan Treaty Office, and Mark Stevenson representing the Province of British Columbia, recognized the priority of bilateral negotiations related to forest resources. The forest industry had been a nightmare for the Gitxsan since it began a phase of aggressive clear cutting. As mentioned earlier, starting in 1947, the Government of British Columbia began issuing Forest Management Licences, which were later renamed as Tree Farm Licences (TFL), to large lumber companies.[23] Clearcutting destroyed not only the forests, but fish and wildlife as well. The existence and well-being of forests, fish and wildlife were vital to the cultural survival of First Nations. As mentioned earlier, clearcutting practices have caused a lot of frustration and triggered some resistance from the various *wilps*. Although the Court of Appeal ruled in 1993 in the *Delgamuukw* case that the Aboriginal rights of the Gitxsan and Wet'suwet'en had not been extinguished, and that First Nations must be consulted before any development affecting these rights occurred, the controversies between the forest industry and some Gitxsan *wilps* were far from settled.[24] For example, Takla Track & Timber, which received a cutting permit in the Minaret Creek area, located west of Bear Lake, harvested timber infested with pine bark beetle. The Gitxsan considered that this timber could spread infestation to other areas. Initially the

[22] Stephanie Gustin (B.C. Treaty Commission Research Analyst) e-mail message to the author, Sept 3, 2021.
[23] Rajala, *Clearcutting the Pacific Rain Forest,* 198-199.
[24] "Twenty-four months since appeal decision," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol.2 issue 7, July 1995.

Gitxsan mounted a blockade of B.C. Rail's line near Bear Lake, but after the negotiations both sides compromised. The Gitxsan removed the blockade and Takla Track & Timber agreed to stop logging until the court issued a decision.[25]

The lawsuit, which took place in January 1994, was very disappointing for the Gitxsan. Firstly, the Gitxsan's claim to the territory was rejected on technicalities related to the map representing the territorial boundaries that was used in the *Delgamuukw* case. Secondly, the presiding judge ruled that there was an attempt to consult the Gitxsan, which they had rejected. Apparently, the ruling and findings of the British Columbia Court of Appeal in the *Delgamuukw* case regarding Aboriginal title and the duty to consult had not been taken into consideration.[26] The Fort St. James Forest District Manager, Ray Schultz, justified the cutting operations by referring to concern over the pine bark beetle infestation. He wrote the following in December 1994 to Chief Thomas Patrick:

> The delays incurred by the blockade activities last winter, and resulting in delays in harvesting infested timber, have aided the spread of the beetle. To ensure the beetles do not spread once again to new timber, it is critical that infested timber be removed this winter. A decision about the CP [Cutting Permit] 702 amendment cannot be delayed any longer.[27]

The Gitxsan requested help from an independent forester to better understand the beetle problem.[28] Yet in December 1994, the Fort St. James Forest District approved the modification to the controversial logging permit issued for the area by Minaret Creek. This permit doubled the

[25] "Sustut Rail Blockade Lifted: Gitksan, timber company wrangle over injunction," *The Interior News* (Smithers, B.C.) Wed, January 19, 1994, 10.
[26] *Ryan v. Schultz*, 1994 CanLII 2101 (BC SC), <https://canlii.ca/t/1dlx4>, retrieved on 2022-05-24.
[27] Letter from Ray L. Schultz to Thomas Patrick, File 320/30/Patrick, December 15, 1994, Freedom of Information Request 2021-15456.
[28] "Constructive Arrangement for Gitxsan Rights in the Xsu Wii Aks: A Response to the CP 702 Amendment," Freedom of Information Request 2021-15456.

area destined for clearcutting. The Gitxsan leader Gordon Sebastian wrote the following in his letter to the Fort St. James Forestry Manager:

> The Gitxsan Chiefs object to your unilateral action which approved FL A27823 CP 702. This action clearly indicates a less than cavalier attitude towards the talks on the Xsu Wii Ax table, the Forest Resource Management Agreement table and indicates a failure of the intent of the Accord of Recognition and Respect signed by your Premier last summer. Further, this unilateral action prejudices the Treaty Talks by mocking all suggestions of the interim measures and other processes set up to resolve present disputes.[29]

In the Kalum Forest District, the forest department considered building a logging road that would provide access to the *Lax Skiik's* (Eagle clan) territory that was not affected by clearcutting. This area included, among other things, excellent pine mushroom terrains.[30] But probably the most frustrating situation arose in the Kispiox Forests District, where the Ministry of Forests authorized Repap Carnaby to engage in industrial cutting and construct a logging road. The Ministry of Forests made a prior commitment that there would be no road in the Upper Kispiox.[31]

The old disputes resurfaced as well, and the question of building a bridge at Sam Green Creek came up again. In January 1995, the Gitxsan negotiating team received a fax from Jim Snetsinger, Regional Forestry Manager from Prince Rupert Forest Region, informing them about the Gitxsan's inflexible attitude regarding the question of building the bridge. "Repap/SCI has made a commitment that 25% of the timber harvested would be _by[sic] natives…This does not appear to be enough as things now focus on jurisdiction, ownership and control."[32] In fact, the Gitxsan provided a response to industry development plans in the Xsi Tin (also called Shedin),

---

[29] Letter from Gordon Sebastian (Gitxsan Treaty Office) to Ray Schultz (Fort St. James Forest District Manager), January 3, 1995. Freedom of Information Request 2021-15456.
[30] "Forestry Talks Bog Down," *Daxgyet. Gitxsan Treaty Negotiations Journal,* vol. 2 issue 1, January 1995.
[31] "Gitxsan Chiefs and non-Gitxsan unite to safe Upper Kispiox from logging," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 2, February 1995.
[32] Fax from Jim Snetsinger, Regional Manager Ministry of Forests (Prince Rupert Forest Region) to Gitksan Negotiating Team, January 11, 1995. Freedom of Information Request 2021-15456.

"Wilp-Based Forest use Planning Constructive Arrangements for Gitxsan Rights In Xsi Tin," which the forestry officials seemed to not comprehend.[33] This report anticipated that their intentions might not be understood and included a section entitled "What do you native people really want?" The first part reads as follows:

> How many times have Gitxsan people heard this question? No program is ever without culture. With reference to the forest industry, the question is, whose culture frames the program, and what are the consequences? Merely to insert a few protected cabins or mapping area (defining site specific 'aboriginal rights' is a favourite provincial tactic) into culturally homogenized forest use plans, or to subject a few native liaison officials to packaged cross-cultural sensitivity training is proven ineffective.[34]

In March 1995, the giant logging company Skeena Cellulose filed for the lifting of the injunction that prevented the construction of the bridge at Sam Green Creek, which would open the area north of the Babine River to the timber industry.[35] The court lifted the injunction, and the Gitxsan filed an appeal.[36] While the Gitxsan felt pressed to address all the controversies related to aggressive logging policies, the BCTC announced that the main negotiation table was ready. The Gitxsan welcomed this decision, hoping that it would result in an agreement to stop clear cutting and the construction of the logging road, at least during the negotiations. In April 1995, three NDP ministers, including the Minister of Aboriginal Affairs, John Cashore, visited the negotiations. During their visit, Gordon Sebastian (*Anuthlem buhn*), the speaker for the Gitxsan, expressed his disappointment at the lack of progress and the lack of interim arrangements, which had become pressing, for instance, in the negotiations on forest resource

[33] "Wilp-Based Forest Use Planning Constructive Arrangements for Gitxsan Rights in Xsi Tin. A Response to Industry Development Plans in the Xsi Tin," Freedom of Information Request 2021-15456.
[34] Ibid, section 3.1.
[35] Carol Eichstaedt, "Injunction not dead," *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 4, April 1995.
[36] "News Briefs," *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 5, June 1995.

management. He also raised an important issue with respect to provincial negotiators' mandates. He pointed out that the provincial negotiators quickly reached the limit of their decision-making authority.[37] As a lawyer, Sebastian certainly was aware that any decisions would have to be approved and signed by the cabinet, but the fact that the provincial negotiators' mandates were limited frustrated him. As former Yukon Premier Tony Penikett pointed out, for negotiations like these to succeed, senior politicians need to be involved.[38]

Frustration also arose at the Wet'suwet'en negotiating table. In April 1995, *The Interior News* reported:

> Chief negotiator for the Wet'suwet'en, Herb George, said he and the chiefs shared frustration over the amount of time it was taking to negotiate, given the looming deadline of the court case adjournment. But unlike the Gitxsan, the Wet'suwet'en have opted for a more compromising approach. Rather than trying to negotiate an overall complicated forest management agreement, they've presented a "comprehensive proposal on forestry" to deal with practical considerations such as consultation, planning and training for Wet'suwet'en technicians.[39]

On the other hand, the province blamed the delays in the negotiations on the ongoing blockades. In fact, the provincial negotiators did not join the table because of the blockades that occurred in the Summer of 1995 after a dispute with the Ministry of Forests over lack of consultation.[40]

For the purpose of the negotiations, the Gitxsan had to restructure their decision-making process. Both First Nations were represented at the negotiation table by a small group of negotiators; the Gitxsan opened the Gitxsan Treaty Office in September 1994.[41] Under normal circumstances, the decisions were consensus-based and accepted in the Feast Hall, but this decision-making process could not be transferred easily to the treaty table. Nevertheless, the

[37] "Significant progress reviewed," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 4 April 1995.
[38] Penikett, *Reconciliation,*166.
[39] "Wet'suwet'en take different approach," *The Interior News* (Smithers, B.C.), Wed, 19 April, 1995.
[40] Briefing note from Sandy Fraser to John Cashore, October 1995, Freedom of Information Request IRR-2021-15534.
[41] "Gitksan open new treaty office," *The Interior News* (Smithers, B.C.), Wed, Sep 7, 1994.

Gitxsan formed several groups that co-operated with the negotiators. For instance, the Chief's Advisory Team (CAT), which consisted of 12 members, 3 from each clan, met with the negotiators twice a month. The purpose of these meetings was on the one hand to communicate directions to the negotiators, and on the other hand to get updates on the negotiation process.[42] The CAT was later restructured and renamed as *Gimlitxwhit*.[43] Another team called SWAT, which stood for Strategic Watershed Analysis Team, was tasked with resource mapping in the Gitxsan territory. The information gathered was used, for example, in negotiations with the Ministry of Forests and logging companies. The monthly newsletter, *Daxgyet: Gitxsan Treaty Negotiations Journal*, kept communities informed about all the newly formed groups and progress in negotiations. Despite all these efforts, the first public session was only held in April 1995 at the high school in Gitanmaxx.[44]

These undertakings were put in place not only because of the negotiations, but also because the ultimate objective was to build self-government capacity. "We must build on our internal capacity to govern our people and land. This is where we will win - not around the negotiation table," stated the Gitxsan chief negotiator, *Mas Gak*/Don Ryan.[45] The communities were kept informed as much as possible, but clearly the way the decisions were reached in the negotiations could not reproduce the decision-making process in the Feast Hall.

Without interviews with community members, it is difficult to recreate all the local dynamics and to assess how various Gitxsan community members reacted to the negotiations. The complex *Delgamuukw* court proceedings in the Supreme Court of British Columbia ended in

[42] "Chief's Advisory Team. They are your clan representatives," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol .1 issue 4, December 1994.
[43] Carol Eichstaedt, "Gitxsan restructure for decision-making, implementation," *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 4, April 1995.
[44] "Public negotiation sessions held," *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 4, April 1995.
[45] "House groups crucial," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol.1 issue 4, December 1994.

1991 with a very disappointing verdict and it was understandable that people did not trust the new process. After all, the Gitxsan and Wet'suwet'en felt that the province had not acted respectfully at the trial. The challenges related to big industry encroachment, litigation and negotiations put a lot of pressure on Gitxsan and Wet'suwet'en communities. Some Elders criticized the changes that took place in Indigenous communities. Darlene McKenzie wrote in a letter to *Daxgyet*: "Too many chiefs not enough Indians. That's what it seems like nowadays."[46]

Sharron McCrimmon, who conducted interviews in the community of Gitanmaxx in the 1990s for her Master's thesis, stated the following about the acceptance of the "Gitxsan, Wet'suwet'en and Gitanyow Community-Based Governance AIP" prepared by the negotiators:

> The AIP, [Agreement-in-Principle] however, was not ratified by the communities. The fear of self-government at the grass root level and at the council level in some villages, would confound the vision of the Gitxsan "high politics." Some chiefs complained that others were unfairly claiming territory that wasn't theirs… At a grass root level, there was concern that some of the chiefs who would have decision-making power were abusers. The Gitxsan and Wet'suwet'en later split to pursue their own treaty negotiations. The AIP contained the Gitxsan assumptions which they would take to the treaty talks.[47]

The "Gitxsan, Wet'suwet'en and Gitanyow Community-Based Governance Agreement-in-Principle," prepared jointly by the Gitxsan and Wet'suwet'en was not accepted unanimously. However, it became the main indicator of what to ask for at the negotiations. The Community-Based Governance Agreement-in-Principle stated that the house remained the highest authority with jurisdiction over the land, and that it was a legal entity. Yet it introduced a new office operating under the authority of the house, namely the Finance and Resource Information Office, or FRIO. On the other hand, the AIP emphasised that the fiduciary relationship between the

[46] "Darlene McKenzie's letter to the editor," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 5, June 1995.
[47] McCrimmon, "Child Welfare in Gitanmaxx," 48.

Crown and the Gitxsan, Wet'suwet'en and Gitanyow should be maintained. It suggested creating a Land Coordination Office which would consist of the house representatives and of a representative of the Government of Canada.[48] Its subsection 4.2, which relates to renewable resources, stipulated that the house has the authority to make laws in relation to the protection, preservation, and conservation of all renewable resources located on the house's territory.[49] Provincial and federal laws were recognized, but if they were not in accordance with the laws of the house, then the laws of the house would prevail. The *Indian Act* would continue to apply to the Gitxsan, Wet'suwet'en and Gitanyow, unless inconsistent with the laws of the house.[50]

Clearly, Gitxsan and Wet'suwet'en negotiators had similar objectives, although they negotiated separately and they had clear ideas about what they wanted to achieve. On the other hand, the federal and provincial governments based their policies on the Department of Indian Affairs and Northern Development's December 1986 Comprehensive Land Claims Policy. This policy emphasised the importance of "certainty" related to land ownership. The document stated that "When the agreement comes into effect, certainty will be established as to ownership rights and the application of laws."[51] Moreover, this remodeled version of the land claims policy from 1981 included the statement that "alternatives to extinguishment of Aboriginal title might be considered"; the former policy demanded the relinquishment of all rights to the land. However, these alternatives were limited. It also required access to aboriginal lands for various third parties, including transportation routes and the general public, as well as access to minerals exploration for companies and industry.[52] In addition, in British Columbia, the lands would

[48] "Gitxsan, Wet'suwet'en and Gitanyow Community-Based Governance," 10-15.
[49] Ibid, Sub-Agreement #4. Renewable Resources, 21.
[50] Ibid, Sub-Agreement #9. Application of Federal and Provincial Laws, 43.
[51] "Comprehensive Land Claims Policy," 9.
[52] Ibid, 22.

become fee simple lands, and would no longer be under federal jurisdiction.[53] What the Gitxsan intended to propose was an alternative to this approach. The land would not be converted to fee simple; it would be managed collectively under joint jurisdiction.[54] Moreover, the Gitxsan had an understanding with the B.C. Treaty Commission that there would be no preconditions to treaty negotiations.[55]

In June 1995, the Gitxsan chiefs decided to extend the temporary suspension of the *Delgamuukw* court case. The Gitxsan and Wet'suwet'en met to discuss common strategies to advance the negotiations.[56] The Gitxsan also took steps to resolve their overlapping land claims with the Nisga'a. The two First Nations met in June 1995 and decided to begin a conversation that would lead to the resolution of the conflict.[57] Another important step was the signing of the health transfer agreement, which took place on May 31, 1995 in Gitwangak. Gitxsan chiefs Myrtle Goertzen, Henry Tait, Calvin Hyzims and Alvin Weget signed the document along with Paul Cochrane, Assistant Deputy Minister with Health Canada.[58]

Although important changes took place, significant discrepancies persisted. In July 1995, *Daxgyet: Gitxsan Treaty Negotiations Journal* reported on the "havoc" in the negotiations due to conflicting visions of land management:

> Land selection and the representative land model are formulas used by the federal government in recent treaty settlements. They involve selection by negotiating parties of land to be placed in three categories. One category of land-- category A -- is where aboriginal rights will be the primary concern, another category (B) is

[53] Mark L. Stevenson and Albert Peeling, *Executive Summary of Memorandum Re Canada's Comprehensive Claims Policy*, 10, https://www.ourcommons.ca/Content/Committee/421/INAN/Brief/BR9225222/br-external/StevensonLMark-e.pdf
[54] "Gitxsan ready to explore model that could save taxpayers millions if province returns to table," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol.3 issue 2, February-March, 1996.
[55] "Land selection model rejected," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 7, July 1995.
[56] "Chiefs grant extension," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 5, June, 1995.
[57] Carol Eichstaedt, "Overlap protocol signed with Nisga'a," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 5, June 1995.
[58] Carol Eichstaedt, "Health transfer now official," *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 5, June 1995.

> where shared jurisdiction occurs, and a third category (C) is where Canada or the province will be the primary authority. In the land selection model Gitxsan members would be asked to select certain areas in their territories and give up other land… The consequences of the land/representative model would create more havoc for the Gitxsan people. Mas Gak said the immediate impact of the land model would fragment House territories, watersheds, ecosystems and jurisdiction.[59]

Furthermore, in the Kispiox Forest District the situation went from bad to worse. In the Suskwa and Xsi Madsi Ho'ot watersheds the Ministry authorized Skeena Cellulose to proceed with clearcutting upon completion of what they considered to be adequate tests for determining if there was an infringement on Aboriginal rights. They refused, however, to make the criteria of the tests public. This triggered the blockade organized by the Suskwa chiefs on the forest service road.[60] The Minister of Aboriginal Affairs, John Cashore, sent a letter to the Gitxsan negotiators stating that the treaty negotiations would be delayed if the blockades did not stop.[61] The *Monday Magazine* from Victoria published an article which asked the question:

> How can we have such different views of the blockades? Non-native B.C. sees a crime; the Gitxsan see carefully steps to use "One Law" legal system which shut them out for much of this century. If we can't understand the loud message of blockades, and standoffs, then we won't understand the dozens of political alternatives available to make treaty talks work.[62]

The *Vancouver Sun* reported about the inflexible attitude of attorney-general of British Columbia Ujjal Dosanjh, who stated that he would not tolerate blockades while the negotiations were on-going. In response, the Gitxsan treaty negotiator Don Ryan pointed out that the blockades were the consequence of the government ignoring Aboriginal rights.[63] In October the blockades were removed, and treaty negotiations resumed. The trilateral session held in October

[59] "Land selection rejected," *Daxgyet. Gitxsan Treaty Negotiations Journal,* vol. 2 issue 7, July 1995.
[60] "Province creates friction," *Daxgyet. Gitxsan Treaty Negotiations Journal,* vol. 2 issue 8, August 1995.
[61] James MacKinnon, "Blockades 101. How can we hope to draw up complex treaties when we can't understand the blunt message of a blockade?" Reprinted from *Monday Magazine* Sept 21-27 issue *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 9, September 1995.
[62] James MacKinnon, "Blockades 101."
[63] Mike Crawley, "Roadblock Indians claim province broke promises," *The Vancouver Sun*, August 21, 1995.

in Victoria gave positive signs of reaching consensus.[64] There was also some hope that the Forest Resources Management Agreement would be finalized at the December session.[65]

Moreover, a research team led by Neil J. Sterritt (*Madeegam Gyamk*) released a report on the overlapping claims between the Gitxsan and the Nisga'a. This report reached the following conclusion: "The research evidence supports the conclusion that the upper third of the Nass River is territory belonging to people from Kuldo, Kisgaga'as and Kispiox, the middle third is Gitanyow territory and the lower third is Nisga'a."[66]

Yet, at the end of January 1996, the province announced its withdrawal from negotiations with the Gitxsan. The province was, however, willing to continue negotiations with the Wet'suwet'en. Since the Gitxsan and Wet'suwet'en had similar treaty negotiation objectives, it was a surprise. John Cashore, the minister of Aboriginal Affairs, identified the lack of progress and road blockades as the main causes of the suspension of negotiations; he denied that it had anything to do with the upcoming election.[67] According to Cashore, the province could only devote limited resources to negotiations, and these resources were required elsewhere, where the goal was more likely to be achieved. Frank Cassidy, a professor at the University of Victoria who acted as a consultant for the Wet'suwet'en, did not share this point of view. According to Cassidy, this decision jeopardized the entire comprehensive claims process. Writing in the *Vancouver Sun*, Cassidy explained why he supported Indigenous land claims:

> Some people have questioned the need for our province's treaty process, arguing that the outstanding issues can be resolved in other ways. The focus, they contend, should be on the integration of aboriginals, their communities and governments

[64] "October-December trilaterals could be start of something serious," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 10, October 1995.
[65] "Deadline looms for consultation facilitators," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 12 December 1995.
[66] "Nisga'a boundary," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 11, November 1995.
[67] Tom Barrett, "Cashore says Gitxsan treaty talks not broken off because of election," *The Vancouver Sun*, February 3, 1996.

> within the fabric of B.C., rather than on treaty negotiations tied to the recognition of special aboriginal rights.
>
> This is an understandable, but mistaken, viewpoint. The reasons for the treaty process in B.C. are compelling - legally, economically, politically and morally. The courts have established that aboriginal rights have a firm legal basis. There is considerable uncertainty about the status of the land and resource rights of non-aboriginal Canadians. The aboriginal land question has become a dominant political issue, and the matter of justice for aboriginal peoples is still outstanding.
>
> If the last 150 years taught us anything, it has been that the aboriginal land question will not go away- that it must be addressed in a manner which will lead to a new and full accommodation of aboriginals and other British Columbians. The treaty process is under threat, but it is worth keeping and protecting. Now it is a good time to recognize how far we have come and how far we still have to go.[68]

Cassidy noted that the B.C. Government's withdrawal from the negotiations left the Gitxsan and Wet'suwet'en no other option than to pursue a costly appeal to the Supreme Court of Canada. Negotiations with First Nations were not very popular among non-Aboriginal Canadians. Many residents of British Columbia feared potential problems related to their own legitimacy as property owners, and Cassidy's polite remark voiced it. According to Cassidy, these fears had no foundations, and Indigenous land claims needed to be settled for the benefit of all. Yet, for many B.C. property owners these fears were real. Moreover, the press often added fuel to the fire by publishing numbers related to the costs of Aboriginal lawsuits and clearly accused Indigenous people of being a burden on the Canadian taxpayer.[69]

To picture the broader political context, it is important to mention a debate in the House of Commons that took place in December 1995. John Duncan, who represented the Reform Party, then in opposition, made the following request:

> That the House urge the government to not enter into any binding trilateral aboriginal treaty or land claim agreements in B.C. in the last year of the current

[68] Frank Cassidy, "The reasons for settling land claims are compelling," *The Vancouver Sun*, February 14, 1996.
[69] For example: "Taxpayers help Indian bands sue government," *Canadian Press Newswire*, (Toronto), June 20, 1996.

> provincial government mandate in order to respect the views of British Columbians on this issue as expressed by both major provincial opposition parties.[70]

The Reform Party of Canada was a right-wing populist group led by Preston Manning. It was linked to the oil industry in Alberta. The party advocated policies which supported free enterprise, and low taxes. Moreover, it opposed immigration and the existence of so-called "special interests" groups.[71] Duncan, who represented this party, questioned the treaty negotiation process and complained that third parties and municipalities had been excluded from the negotiations and consequently that they were not in a position to defend their own interests. He concluded his speech as follows:

> The B.C. Reform Party is saying many things about this whole process. It does say we must offer to negotiate treaties because it is the right thing to do. The goal of treaties should be to lift the yoke of the Indian Act off the backs of native people. Further, they must own their own reserve lands and govern their own affairs within the context of the Constitution and B.C. laws. Treaties negotiated should not aspire to the false promise of native sovereignty. The principle of equality is central to our support for treaty talks.[72]

The NDP, which negotiated with many B.C. First Nations, including the Nisga'a who were close to reaching an agreement, was under attack from the opposition. Many MPs shared Duncan's opinion and believed that freezing the ongoing negotiations before the election would be the best solution.[73] Others expressed their concerns about how Indigenous sovereignty would affect the lives of those most in need of assistance. "We are also concerned about where the money goes. The minister knows that aboriginal leadership in many cases have been known to pocket vast

---

[70] House of Commons Official Report December 7, 1995, vol. 133 no. 273, 1st session, 35th Parliament, 17348 https://www.ourcommons.ca/DocumentViewer/en/35-1/house/sitting-273/hansard, John Duncan became Minister of Aboriginal Affairs in the Stephen Harper government.
[71] Trevor Harrison in Encyclopedia of the Great Plains, "Reform Party," http://plainshumanities.unl.edu/encyclopedia/doc/egp.pg.068
[72] House of Commons Official Report December 7, 1995, 17350/1025, https://www.ourcommons.ca/DocumentViewer/en/35-1/house/sitting-273/hansard
[73] For example: Chuck Strahl (Fraser Valley East) in House of Commons Official Report December 7, 1995, 17351 and Mike Scott (Skeena) ibid, 17364.

sums of money that were supposed to be going to those people who are the poorest of the poor. Those are our concerns," stated the MP Keith Martin, then a member of the Reform Party.[74] The Minister of Aboriginal Affairs, Ron Irwin, responded to these concerns:

> This member is a doctor and we would think he would bring his skills to the House. If he brought those skills as a doctor to the House, he would see the suicide problems we have in First Nations. He would realize that a lot of these suicides are a result of no self-sufficiency because there is nothing left. We took all the lands. We took it all.[75]

Irwin also opposed the idea of freezing the negotiations.[76] It might sound reassuring that the Minister of Aboriginal Affairs uttered such words, but the federal government's position did not meet Gitxsan expectations, as the Comprehensive Claims Policy in place still contained a hidden clause on extinguishment of Aboriginal rights.

Furthermore, the Skeena Reform MP, Michael Scott, classified any possible future Aboriginal self-governments as undemocratic. *The Interior News* wrote the following in February 1995:

> Scott says his main concern is that an undemocratic system of government will be created…He said Canada pushes for democratic reforms in totalitarian regimes elsewhere in the world, yet seems to be letting native self-government evolve in the opposite direction. "At home we're going to embrace and endorse governments that are not democratic," he said. "I find that offensive in the extreme."[77]

Right-wing populists classified anything that interfered with unrestricted private property rights as undemocratic, and Scott's statement expressed these beliefs. These varying opinions on how to address Aboriginal land claims must have influenced the political directions that the NDP decided to take. There was tension in the province. The opposition accused the NDP of causing

[74] House of Commons Official Report December 7, 1995, 17356/1105.
[75] Ibid, 17356/1110.
[76] Ibid, 17352/17355.
[77] "Pending self-government deal called 'undemocratic' by Skeena Reform MP," *The Interior News* (Smithers, B.C.), Wed, February 15, 1995.

unrest by accepting the treaty negotiations. Indigenous peoples were not satisfied with negotiations and often used blockades to put pressure on the government and third parties. John Cashore, already criticized by those lobbying for big industry when he was Minister of Environment, Lands and Parks, now was criticized even more.[78] The situation and public opinion seemed to turn against the NDP, and the breakup of the negotiations with the Gitxsan was collateral damage.

The Gitxsan Treaty Office requested (in a letter dated February 5, 1996) that the B.C. Treaty Commission mediate over the differences between the Gitxsan and British Columbia.[79] In response the deputy minister Philip G. Halkett confirmed the province's "support for the appointment, by the Commission, of a fact finder to determine the background which led to this situation and to recommend next steps,"[80] while Don Ryan, the Gitxsan chief negotiator, wrote to the acting Chief Commissioner, Barbara Fisher, to remind her that the current adjournment of the appeal to the Supreme Court of Canada ended on March 15. He feared that the B.C. Treaty Commission's examination of the facts would take a long time. "Each day of delay is only jeopardizing the B.C. treaty negotiations process further," Ryan stated.[81] Yet, as B.C. Treaty Commission members later wrote in their report, "The Province was not prepared to participate in a mediation process at this stage. It supported the appointment of a fact finder to determine the background which led to this situation and to recommend next steps, if appropriate."[82]

---

[78] For example: Don Hauka and Barbara McLintock, "Timing of new rules stinks, says industry: Pulp mills argue they're already logging," *The Province*, Jan 17, 1992,
Brian Kieran, "Minister's cave-in betrays non-natives," *The Province*, August 21, 1994.
Stephen Hume, "John Cashore is no wimp-consider his minefields," *The Vancouver Sun*, October 13, 1995.
[79] Letter from Chief Commissioner Alec Robertson to Don Ryan, Angus Robertson and Tom Molloy, February 9, 1996, copy in possession of Don Ryan.
[80] Letter from Deputy Minister Philip G. Halkett to Chief Commissioner Alec Robertson, February 9, 1996, File No 63300-20/GitX1/Cor, 63300-20/WETS1/COR, copy in possession of Don Ryan.
[81] Letter from Don Ryan to Barbara Fisher, February 12, 1996, copy in possession of Don Ryan.
[82] British Columbia Treaty Commission, *Report on the Suspension of Gitxsan Treaty Negotiation*s, March 14, 1996.

The Commission was able to release the report within weeks, but this did not bring the parties back to the negotiation table. The Commission identified that the main cause for the breakup of the treaty negotiations were, among other things, the series of road blockades.[83] The blockade in Suskwa in August 1995 resulted in the cancellation of treaty negotiations scheduled for September. However, after the court issued an injunction, the blockades stopped, and negotiations resumed in October 1995.

Furthermore, the conflict with the Ministry of Forests over clearcutting practices remained controversial. According to Gordon Sebastian this conflict could have been resolved before the blockades took place. *Anuthlem buhn* stated: "All initiatives (related to forests management) ended in failure because the Province did not make any effort to develop policies pursuant to the B.C. Court of Appeal ruling," which required a proper consultation before proceeding with the development and clearcutting.[84] Sebastian explained that:

> In the fall of 1994, the Gitxsan attempted to establish consultation processes in six watersheds involving separate Simgiigyet (hereditary chiefs). Documents such as Constructive Arrangements in the Xsi T'in, Co-management Agreement in the Xsu Wii Ax, The Sleeping Grizzly Project were presented to the Ministry of Forests. The bureaucrats were ruthless in rejecting anything that was put forward by the Gitxsan and they continued to issue permits.[85]

The Gitxsan explained that there was no progress at the treaty table because the province insisted on a land selection solution, which would usually limit Indigenous jurisdiction to the reserve land only, while the Gitxsan and Wet'suwet'en sought control over the entirety of their hereditary territories. The issue of conflicting views on the land selection model was raised by

[83] British Columbia Treaty Commission, *Report on the Suspension of Gitxsan Treaty Negotiation*s, 4.
[84] Gordon Sebastian, "Consultation process meaningless," *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 3 issue 2, February-March 1996.
[85] Ibid.

both parties. In November 1995, *The Interior News* interviewed the provincial chief negotiator, Mark Stevenson:

> The task ahead will be to decide on what model will be used for the treaty- a "land selection" model, supported by both federal and provincial government, or what the Wet'suwet'en call a "co-jurisdiction" approach. "I think we need to have that discussion dead up front," says Stevenson, "Otherwise we can move on saying nice things to each other for a couple of years without dealing with it. Let's do it now."[86]

Stevenson acknowledged that the question of the treaty model should be addressed immediately to ensure progress in the negotiations. Indeed, the question of the treaty model could not have been postponed any longer. The minutes of the working group at Aboriginal Affairs from December 5, 1995, show that the conflicting views about the treaty model were discussed internally:

> The Working Group was informed that preliminary Agreement in Principle discussions have been initiated with both First Nations, however, fundamental differences remain between the province and the parties on their respective visions and that the approach of both First Nations on several fundamental issues was incompatible with the provincial perspective.[87]

"Speaking Notes" from the "Provincial Comments" on the "Gitxsan, Wet'suwet'en and Gitanyow Community-Based Governance Agreement-in-Principle," dated January 15, 1996, prove that the province did not support the governance structure proposed by the concerned First Nations.

These notes read:

> Proposed system as outlined in the AIP does not appear consistent with the interests for efficient government structures. It is unclear how efficiencies or economies of scale will be envisioned under this system. While FRIO will be established to

[86] Jennifer McLarty, "Resource and Wet'suwet'en Treaty. Co-management or land selection: hat's the issue," *The Interior News* (Smithers, B.C.), Wed, November 15, 1995.
[87] "Aboriginal Affairs Work Group Meeting, December 5, 1995," GR-3676 box 910449-0276, BC Archives.

> provide administrative efficiencies, the constituent Houses have the authority to disband FRIO at any time.[88]

Delegating too much power to a self-governing First Nation was not an option. The province also expressed its concerns over democratic representation.

> There is potential for a small number of citizens attending a House meeting to have the authority to pass a House law, with a great number of citizens not being represented. The province will seek to ensure non-aboriginal participation, in this case, Community Members, in decision-making structures.[89]

While those concerns seemed valid to many British Columbians at the time, the logic presented was highly inconsistent. It seems that the province was primarily seeking non-Aboriginal representation in Aboriginal self-government. Although the province recognized the efforts, time and resources dedicated to AIP, the proposed structure was "too Aboriginal" to be accepted.

Before further talks resumed in December 1995, the Gitxsan Treaty Office issued a press release stating that the Gitxsan disagreed with the land selection model. This press release was quite direct in its wording, bluntly stating that "it is all a scam."[90] The province found the Gitxsan press release offensive and cited it as another cause for withdrawing from negotiations. The Gitxsan were put in a difficult position. On the one hand, the province delayed acceptance of the mediation meeting. On the other hand, action was needed in order to proceed with an appeal to the Supreme Court of Canada. On April 17, 1996, the Deputy Minister, Philip G. Helkett, sent a letter to the Chief Commissioner, Alec Robertson. An excerpt from this letter reads as follows:

> The Fact Finder Report is an accurate description of the events leading up to the suspension. It also accurately reflects the extensive effort that has gone into negotiations with the Gitxsan with little end product and little prospect for success in the immediate future. As you know, the Province has limited resources to engage

[88] "Speaking Notes: Provincial Comments on the GWG CBG AIP, dated Jan.24 1995." Freedom of Information Request IRR-2021-15534
[89] Ibid.
[90] British Columbia Treaty Commission, *Report on the Suspension of Gitxsan Treaty Negotiation*s, 6.

> in negotiations. I am disappointed that the Fact Finder recommendation ignores the preference of the Province to use these limited resources to maximum effect by engaging in negotiations with a greater chance of success. In this sense, I believe that the recommendation also ignores the needs of the many other First Nations presently in treaty negotiation in the Province.[91]

The Deputy Minister was clearly disappointed that the B.C. Treaty Commission did not acknowledge the efforts the province had put into the treaty negotiations process. In the reality of the 1990s, the NDP proved to be more progressive than the opposition. It was willing to conduct treaty negotiations, while for several political parties these were out of the question. However, from a 30-year perspective this statement could well be interpreted as saying "you should be happy that we are talking to you." In order to continue treaty negotiations, the province insisted on some preconditions. These preconditions included, among other things, confidentiality, and clear guidelines on who represented the Gitxsan at the treaty table. The deputy minister doubted if the Gitxsan wished to continue the negotiations. He also questioned the need to have the Wet'suwet'en present as observers should further negotiations with the Gitxsan take place. [92]

A question arises from all this: why did the province suspend negotiations in January 1996? The letter from Deputy Minister Philip G. Halkett to Alec Robertson cited the province's limited resources, the limited progress of the negotiations and a low probability of finding common ground. What did this mean? At the same time, the province was negotiating with the Nisga'a, who accepted the land selection model, while the Gitxsan insisted on addressing their entire hereditary territory. Surely, the Nisga'a agreement was, from the province's perspective, "easier to swallow". Moreover, the Nisga'a and the Gitxsan had overlapping claims. In an article

[91] Letter from Philip G. Halkett (Deputy Minister) to Alec Robertson (Chief Commissioner), April 17, 1996, copy in possession of Don Ryan.
[92] Ibid.

published in January 1996, before the Gitxsan were informed that the province decided to pull out of the negotiations, Neil J. Sterritt, one of the Gitxsan negotiators, expressed his disappointment in what looked to him like a first come first served policy.[93] He found that the Nisga'a got a better deal at the expense of the Gitxsan. Chief Saul Terry from the First Nations Summit shared Sterritt's point of view. He wrote:

> There seems to be a deliberate policy of hear no evil, speak no evil, see no evil, therefore report no evil. The Gitanyow people have experienced firsthand the dishonour of the Crown as demonstrated in the land claim overlap issue. This has exposed the Canadian treaty policy of first come first served.[94]

Obviously, the province did not appreciate that the Gitxsan carried out several blockades at the time of the negotiations, but in October 1995 the blockades stopped and the negotiations resumed. Although the province denied any impact of the upcoming election on its decision to withdraw from the negotiations, the question remains whether this was true. Even the Nisga'a agreement was not implemented easily and it eventually took a referendum to approve it. In fact, the NDP government needed both Indigenous and non-Indigenous votes in the upcoming election to stay in power. Was the province's decision to pull out of negotiations with the Gitxsan another colonial game designed to win the election, to get rid of the "difficult" negotiation party and preserve a good image? Or did the Gitxsan act "disrespectfully?" In 1988, Herb George made the following statement in regards to blockades in his speech at the Robson Square Media Centre in Vancouver:

> We are frustrated and we are angry. We are not lawless and we are not irresponsible. In fact, we are very responsible. We are prepared to take these actions and accept the consequences of these action."[95]

---

[93] "Gitxsan try to derail talks," *Times-Colonist* (Victoria B.C.), Jan 21 1996.
[94] "Making History. The Nisga'a Treaty," *Online Archives "Voices"* vol.1 no.3, Winter 1998. http://www.darrenduncan.net/archived_web_work/voices/voices_v1_n3/making_history.html
[95] Terry Glavin, "Blockades last resort, forum told," *The Vancouver Sun,* October 18, 1988.

To what extent was this situation different in the 1990s? Val Napoleon emphasised that the 1990s were very demanding for the Gitxsan:

> Gitksan people had to make a living, and there were many other legal, political, and social issues that demanded attention and resources at the local level. For example, during this same time period, there were a number of logging blockades, an aboriginal fishing rights case, treaty negotiations, self-government talks, child welfare agreements, and many other activities taking place on the territories.[96]

Napoleon saw the beginning of the 1990s as a period of great efforts not only those linked to "high politics" but also those undertaken at the community level, and she does not mention any "irresponsible" behaviour. Napoleon also emphasised the many Elders, including Joan Ryan (Chief *Hanamuxw)*, who were distrustful of the treaty process. Although her interview with Joan Ryan took place in 2004, this distrust likely existed at the outset of the negotiations.[97] The provincial government failed to secure the appropriate Intermediate Agreements to protect the Gitxsan hereditary territories from destruction, but at the same time decided not to tolerate blockades. In fact, the situation surrounding the blockades should be contextualized. Blomley observed that "the Summer of 1990 saw the most extensive round of blockades ever. Nearly thirty blockades occurred, involving some twenty different groups."[98] Blomley went on to explain that after B.C. joined the treaty negotiations, blockade activity decreased. This occurred not only because the First Nations decided to join the treaty table, but also because the government pressured them by making the continuation of treaty negotiations dependent on stopping blockade activities.[99] The NDP government justified this approach on the basis of their

[96] Napoleon, "Ayook: Gitksan Legal Order, Law and Legal History,"193.
[97] Ibid, 202.
[98] Blomley, "Shut the Province," 9.
[99] Ibid, 10-11.

concerns that an Indigenous group could use blockades as a means of putting pressure on the government in order to "jump the negotiations queue."[100]

Some scholars are critical about the treaty model that existed in the early 1990s. Patricia Dawn Mills wrote the following: "between the First Nation Summit, and Provincial and Federal representatives, the model for Treaty in late 1991 is the proposed 1978 solution, with a small textual modification in 1993 which did not require the community to 'cede and surrender' its territory as a prerequisite to negotiations."[101] Moreover, Mills stated that the "Comprehensive Claims process, which the Gitxsan have willingly participated in, is only a more contemporary version of the "Reserve Only" option forwarded by the Colonial authorities as a solution to the Land Question in British Columbia."[102] Under this approach, it would be logical to view the treaty negotiations with the Gitxsan and Wet'suwet'en in 1994-96 as a "colonial game." This is a position that is increasingly supported by academics. However, some voices recorded in the 1990s testify to how unpopular the treaty negotiations policy was. The debate in the House of Commons mentioned earlier demonstrates that some MPs were critical of the treaty negotiations process. Others suggested solving Aboriginal communities' problems either by the assimilation of Indigenous people or through the introduction of social services supervised by the province. The NDP was criticized by the opposition for engaging in treaty negotiations. With regards to the point of mutual respect raised by Herb George at the Wet'suwet'en opening session in Smithers, the sad reality was that neither side felt respected. The First Nations felt frustrated with how little the province was willing to offer. Linda Caldwell reported the following in *Wind Speaker* in June 1995:

[100] Blomley, "Shut the Province," 15.
[101] Mills, "Reconciliation: Gitxsan Property," Preface Viii.
[102] Ibid, 7.

> The British Columbia government is willing to yield less than five per cent of the province – 47,000 square kilometres- to Indian bands to resolve land claims. The government is not willing to negotiate on any privately owned land and will keep as much land currently leased to non-Natives as possible from becoming part of settlements. All lands transferred to bands would remain wide open to travel and recreational use by non-Natives, according to the government's master plan for treaty negotiations, obtained by the *Globe and Mail*.[103]

It is worth recalling that the Gitxsan and Wet'suwet'en claim filed in the *Delgamuukw* court case related to 58,000 square kilometers of land. It should not come as a surprise that the First Nations leaders once again felt frustrated.

The Comprehensive Land Claims Policy was criticized equally by those who felt that the governments should abandon all attempts to settle land claims because they contradicted common sense, and by those who saw the shortcomings of these policies but who believed that Indigenous land claims should be settled as quickly as possible. Melvin S. Smith, who voiced the opinion of the former group, wrote the following:

> The process does not provide for the interests of "third parties" -landowners, resource companies, ranchers, farmers and all others holding some form of tenure from government likely to be affected by land claim settlements- to be represented at the negotiating table. These stakeholders are expected to rely on senior governments to represent their interests.[104]

Others recognized that while some progress had been made, the land claims policy had not kept pace with court decisions in several Aboriginal cases. Years later, Mark Stevenson, former negotiator for the province wrote the following:

> Canada's Comprehensive Land Claims Policy (CCP) announced in December of 1986 cries out for revision. The CCP was outdated at its inception because it continued the "cede release and surrender" policy of the historic treaties and placed the policy in 20th century context. The legal landscape has shifted, and the claims

[103] Linda Caldwell, "B.C. Limiting land yield to five per cent," *Wind Speaker*, vol. 13 no. 2 (June 1995).
[104] Melvin H. Smith, *Our Home or Native Land. What government's Aboriginal Policy is Doing to Canada* (Altona, Manitoba: Friesen Printers, 1995), 90.

> policy has not kept abreast. It is now the 21st century and the need for change is self-evident. The federal response for the need for change is extraordinary in its silence.[105]

This discrepancy was also apparent in the way big industry acted in British Columbia. Although the Court of Appeal ruled in 1993 in the *Delgamuukw* case that consultation with Aboriginal people was required before reaching decisions about resource extraction, big industries maintained their business as usual. The treaty negotiations with the Gitxsan broke down and the next site for the confrontation would be the Supreme Court of Canada.

To better understand the diverging views on the objectives of treaty negotiations, we need to look at the wider political and economic context of neo-liberalism. The following chapter offers a broader discussion of neo-liberalism that focuses primarily on its expression in British Columbia.

[105] Mark L. Stevenson and Albert Peeling, *Executive Summary of Memorandum Re Canada's Comprehensive Claims Policy*, 9 (https://www.ourcommons.ca/Content/Committee/421/INAN/Brief/BR9225222/br-external/StevensonLMark-e.pdf).

4. A Broader Political Landscape in British Columbia

The 1994-1996 trilateral negotiations with the Gitxsan and Wet'suwet'en were deeply rooted in the province's economic situation and in the broader political landscape of Indigenous-settler relations. Globalization created a need for large-scale economic initiatives, but also for an environment favorable for securing investments. Many small and medium-sized companies teamed up to form powerful conglomerates. For example, logging businesses operated by the Bloedel and MacMillan families on Vancouver Island since the early 1900s merged in the 1950s, and further expanded into a multinational corporation in the 1980s. However, there was also a political dimension to globalization. As a political force, globalization is linked to neo-liberalism. While in the years following the Second World War governments supported more equitable redistribution of wealth, neo-liberalism focuses on creating an economic climate that encourages investments. This means eliminating economic borders, using external forces to stimulate internal development, and moving away from social welfare. In this political context, corporate interests are often synonymous with Canadian interests. On the other hand, neo-liberalism shifted from paternalism to promoting partnership with First Nations.[1] As this chapter will demonstrate, this new governance strategy was an important part of the Canadian political landscape in the 1990s.

The 1980s also saw an increase in Aboriginal efforts to regain control over resources in various sectors of the economy. Many of these, like the Nuu-chah-nulth Tribal Council Forestry

[1] Gabrielle A. Slowey, "The State, The Marketplace, and First Nations. Theorizing First Nation Self-Determination in an Era of Globalisation," in Martin Thibault and Steven M. Hoffman, *Power Struggles: Hydro Development and First Nations in Manitoba and Quebec* (Winnipeg: University of Manitoba Press, 2008), 44.

Program, were related to forestry management. The Nuu-chah-nulth Tribal Council represented 15 bands that occupied a large part of western Vancouver Island. They held a total of 168 reserves covering 4,900 hectares.[2] In the 1980s the council initiated a study to address the problem of increased deforestation. As Cassidy and Dale reported: "the study was especially critical of INAC's [Indigenous and Northern Affairs Canada] trust role in reserve timber management. It concluded that a strong case existed for INAC being 'obligated to fund the rehabilitation of the west coast reserve lands.'"[3] Following up on its recommendations, the Tribal Council hired a forestry manager and established four silviculture companies. Over a short period of time the NTC was able to achieve significant progress and had obtained a Woodlot License, which granted them access to 400 hectares of Crown land.[4] However, competition from the large-scale forest industry followed shortly thereafter. The province found large enterprises such as MacMillan Bloedel more attractive than Indigenous efforts to restore already damaged forest resources. Based on this approach, the province intended to open up a significant percentage of Meares Island, which was a part of the Nuu-chah-nulth hereditary territory, to logging. A series of consultations with various stakeholders, such as the provincial government, the forest industry, First Nations and environmental organizations, were held between 1985 and 1993. The New Democratic Party Government, which promised to end the conflict over logging if elected, established the British Columbia Commission on Resources and the Environment (CORE), and sought to assure the public about their commitment to protecting the environment.[5]

---

[2] Cassidy and Dale, *After Native Claims?* 111.
[3] Ibid.
[4] Ibid, 113.
[5] Brian J. Parai and Thomas C. Esakin, "Beyond Conflict in Clayoquot Sound: The Future of Sustainable Forestry," 172, https://www.fao.org/3/y4503e/y4503e08.pdf
see also Dan Levis, "CORE, SHARE, Clayoquot Summer: The Fighting for the B.C. Forests in 90s," *Watershed Sentinel,* November 30, 2020, https://watershedsentinel.ca/articles/core-share-clayoquot-summer-the-fight-for-bc-forests-in-the-90s/, and The Fifth Estate, "Clayoquot Sound: The Last Battlefield," 1993, Video. https://www.youtube.com/watch?v=pVp5qrImzKk

Nevertheless, the government's decision announced in 1993 aimed to protect one-third of the area of Meares Island and to open two-thirds for logging.

In response, First Nations and environmental activists organized a series of blockades and sought international attention. A blockade in which 12,000 people participated was held on Clayoquot Sound. Moreover, the protest organized in Vancouver escalated when the protesters entered the building which houses the B.C. legislature. Overall, around 900 people were arrested in the Summer of 1993 as a result of demonstrations and blockades.

On the other hand, the strong environmental movement triggered a reaction from other groups that believed logging meant jobs and livelihood. Some of these citizens groups, like Forest Alliance of British Columbia, presented themselves as seeking middle ground, but they were in reality funded by big industry. As the *Fifth Estate* reported, there was lots of misinformation in the media, and the general public was confused by all the different groups that claimed to be working towards the protection of the environment.[6]

Aboriginal initiatives regarding resource management, such as those proposed by the Nuu-chah-nulth Tribal Council, were not uncommon. Many large, middle and small size projects were proposed by several First Nations. In 1994, the Gitxsan submitted a pilot project, called the Sleeping Grizzly Project, to the province. The goal was to map grizzly bear habitats and activities within four watersheds. The project would combine traditional knowledge with modern technology. They also designed the Territory Management Training Program, which was

[6] See Peter Grant, "Clayoquot Sound," *The Canadian Encyclopedia* Historica Canada. Article published August 12, 2020; last edited December 16 2013. Sean Boynton, "The Last Time Protests Interrupted B.C.'s Throne Speech, Things Got Even Uglier," *Global News*, February 13, 2020, https://globalnews.ca/news/6544566/bc-throne-speech-protests-1993/

delivered for the first time in 1991. Another objective of the Sleeping Grizzly Project was to establish a procedure to resolve the disputes related to Aboriginal rights.[7]

The 1990s saw increasing professional debates about the future of the forests. The *Interior News* wrote in 1995: "Future generations will look back on this decade as the time British Columbia saved its forests or destroyed them."[8] Many professional foresters increasingly criticized "the big industry approach" to forest management. Some forestry professionals argued that people should be encouraged to develop a different approach to forestry management that would take into account their sense of place. Herb Hammond advocated the so-called "eco system-based management," which meant that the forest should be able to continue functioning as an eco-system.[9] The Sleeping Grizzly Project built on these recommendations. However, such a holistic approach to forestry did not align with the neo-liberal approach to resource management. The Gitxsan, who did not receive a timely response from the province, managed to organize their forestry training with the help of the University of British Columbia and Northwest Community College.[10]

While the public was disoriented by the controversy over logging on Meares Island because of various groups presenting conflicting interpretations, as will be shown below, the media coverage related to the Gustafsen Lake standoff was an example of pure manipulation of the public opinion. In 1995, a conflict developed between the cattle rancher Lyle James and members of the Shuswap First Nation, who, with the landowner's permission, used his grounds for spiritual purposes. James had withdrawn his permission and started harassing the Shuswap

[7] Gitksan Treaty Office, "Gitksan: Sleeping Grizzly. A Four -Month Training Plan, December 1 1994 to March 31, 1995," Freedom of Information Request 2021-15456.
[8] "Forest Future Debated by Professionals," *The Interior News* (Smithers, B.C.), Wed, February 22, 1995.
[9] Ibid.
[10] Email from Don Ryan/Chief Hanamuwx to the author, February 20, 2022.

and others who joined the group for their Sun Dance. The Shuswap hired a lawyer, Bruce Clark, who advised them to resist and to justify their presence in the *Ts' Peten* camp by reference to their historical rights and Aboriginal title. Moreover, Clark argued that the Aboriginal title question must be settled by an international tribunal.[11] In fact, even other Indigenous groups considered Clark's ideas controversial.[12] The conflict between the Shuswap and James escalated and the RCMP was called to restore order. On August 20, 1995, the Canadian press reported about alleged shooting at the RCMP officers. As it was revealed during the trial, the RCMP had fabricated this accusation. Nevertheless, it paved the way for further accusations that the *Ts' Peten* Camp Defenders were terrorists, and thus warranted the RCMP armed intervention.[13]

While the Gitxsan and Wet'suwet'en were involved in the trilateral treaty negotiations, 400 RCMP members and the military raided the 18 protestors at Gustafsen Lake. After receiving this disturbing news, the Gitxsan leaders Don Ryan and Gordon Sebastian arrived to assist in bringing about a peaceful settlement at Gustafsen Lake.[14] They were shocked by the way the RCMP had handled the crisis. "When you deal with aboriginal people you don't criminalize them," said Gordon Sebastian to the *Ottawa Citizen* reporter. "You find out what the problem is and deal with it."[15]

In the Summer of 1995, conflicts involving various B.C. First Nations multiplied and smaller and bigger blockades were carried out throughout the province. Nicholas Blomley

---

[11] Ben David Mahony, "'Disinformation and Smear': The Use of State propaganda and Military Force to Suppress Aboriginal Title at the 1995 Gustafsen Lake Standoff," (Master's thesis, University of Lethbridge, Alberta, 2001), 31.
[12] Suzanne Fournier, Jason Proctor, "Bloodshed can be avoided: Gitxsan Natives hold key to settle conflict at 'divided' camp," *The Province,* September 17, 1995.
[13] Mahony, "'Disinformation and Smear'," 58.
[14] "Gitxsan assist with peaceful settlement at Gustafsen Lake," *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 9, September 1995.
[15] Steve Mertl, "Gustafsen Lake, B.C.: Rebel standoff ends peacefully; Medicine man coaxes group to leave ranch," *The Ottawa Citizen,* September 18, 1995.

observed that "even when relative peace reigns on the logging and access routes of the province, the threat of blockades is ever-present."[16] This situation often generated frustration among non-Indigenous residents and friction between the provincial and federal governments.[17] Some blockades, like those at the Douglas Lake Ranch, Adams Lake, and near Parkville were organized by bands that were not participating in the treaty negotiations process. Some of these groups affirmed that the province had no jurisdiction on their land. The NDP government was not able to address the existing tensions effectively and came under attack from the opposition.[18]

Furthermore, treaty talks were not progressing as expected, and many bands blamed the lack of progress on the upcoming election. For example, frustration arose among the members of the McLeod Lake Band, which was involved in the negotiations that could have led to their adherence to Treaty 8. The *Vancouver Sun* reported: "Talks about the proposed 19,000-hectare McLeod Lake treaty have broken off because of a series of disputes between the band and the province. In the latest problem, the province was accused of laying new conditions on the table after agreeing to an earlier proposal."[19] Although the province did not, as in the case of negotiations with the Gitxsan, walk away from the table, it created an ambiguous situation. Since those attitudes became a habit rather than an exception, even the members of the B.C. Treaty Commission felt frustrated with the government. As the *Vancouver Sun* reported in June 1996, "The B.C. Treaty Commission has bluntly warned Aboriginal Affairs Minister John Cashore that the provincial government is seriously undermining treaty talks and the whole process is at

[16] Blomley, "Shut the Province," 5.
[17] For example: Chris Wood "Protest Politics," *Maclean's*, August 7, 1995, 10+. *Gale OneFile: CPI.Q* (accessed December 13, 2021), https://link.gale.com/apps/doc/A17109029/CPI?u=concordi_main&sid=bookmark-CPI&xid=8a277159.
[18] Blomley, "Shut the Province," 10-11.
[19] "Election stalling talks, chief says," *The Vancouver Sun*, October 6, 1995.

risk."[20] In most negotiations, the province would refuse to enter into so-called Interim Measures Agreements in the early stages of treaty negotiations to ensure that the resource in question would still be available when the negotiations concluded. This option was considered only in stage four and five of the treaty process. Opening new areas to logging in the Gitxsan and Wet'suwet'en hereditary territories is one such example. In 1996, the province allowed logging in a 5,000-hectare watershed near Cache Creek despite objections from the local band.[21] The Chief Commissioner, Alec Robertson, stated that the province was unable to "reconcile the 'inherent contradictions' in the province's present policies with 'moral commitments' the government undertook regarding the treaty-making process."[22]

On the other hand, the Minister of Aboriginal Affairs described the ongoing treaty negotiations as a tremendous success. John Cashore uttered the following words in the B.C. Legislative Assembly on April 28, 1995:

> I am pleased to present the 1995-1996 estimates for the Ministry of Aboriginal Affairs, a ministry that's part of the first B.C. government working to bring about certainty for all British Columbians—first nations and non-first nations—through, among other things, fair, affordable and lasting treaties with first nations. I'm proud to be part of a ministry that is dedicated to an open treaty process that ensures that the interests and concerns of all British Columbians are considered throughout negotiations, including discussions of pre-treaty agreements. I am pleased to be able to tell you today that this process is working. The process is being managed, and the interests of British Columbians are being represented. It is working because of our commitment to an open process whereby the general public, third parties and local governments have meaningful input into treaty negotiations between first nations and provincial and federal governments.[23]

[20] Stephen Hume, "B.C.'s honor in treaty talks under fire: Allowing resources to be taken from lands that are under negotiation seriously impairs the process, Victoria is told.: Chief commissioner disagrees with minister," *The Vancouver Sun*, June 21, 1996, 1996.
[21] Ibid.
[22] Ibid.
[23] Legislative Assemble of British Columbia, vol.19, no.10, Friday, April 28, 1995. https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/4th-session/19950428am-Hansard-v19n10

Given the frustrations at the negotiation tables, the blockades, and a letter from the Chief Commissioner Alec Robertson, these words seem, at best, exaggerated. Moreover, many felt that negotiations were held from a position of power, and that the process was conducted nowhere near a nation-to-nation approach. The province held assumptions that were interpreted differently by First Nations people. Land title remained an irreconcilable issue. John Cashore's words demonstrate this:

> The courts have held that underlying title to all land in B.C. rests with the Crown. The existence of aboriginal rights does not call into question the Crown's title; let us be very clear about that. The province goes into these negotiations with it very firmly recognized that the province holds underlying title to Crown land.[24]

In his Ph.D. dissertation, Andrew Woolford observes that "as Aboriginal groups began to make headway in pursuit of their Aboriginal right and title the security of Crown ownership of and jurisdiction over land came to be more and more fragile."[25] The B.C. government was increasingly challenged by Indigenous litigation, the environmental movement, and the emergence of strong Indigenous activism. The politicians in power felt that they had to restore clear and certain political, legal and economic positions. This included coming to terms with Aboriginal land claims, yet the government was not prepared to address the issue at the grassroot level. Woolford linked the B.C. government's *modus operandi*, and specifically the forms of certainty proposed by the B.C. treaty process, to a neo-liberal technique of governance called "governing at a distance."[26] This technique strives to develop responsibility at the local level and motivate entrepreneurial initiatives, while at the same time preserving control for the state. As Woolford observed, neo-liberal governments strove to remove the *Indian Act* not because of

[24] Ibid.
[25] Woolford, "Between Justice and Certainty," 219.
[26] Ibid, 232-233.

moral obligations, but simply because governing based on the *Indian Act* became cumbersome.[27] The "governing at a distance" model addresses the economic aspect, but it ignores a key point of importance for First Nations people, namely cultural identity. Its shortcoming is that it is detached from the context of ethical obligations.[28]

The NDP government, which unlike its predecessors engaged in the negotiations with the First Nations people, was unable to "stand to their expectations." Their goal was to prove to other political parties that the "conflicts" had been resolved. The provincial government followed the policy of delaying, or refusing implementation of the Interim Measure Agreements, which led to great frustration and often culminated in blockades. The Interim Measures can be negotiated in stage four and five of the process.[29] However, most negotiations never got past stage four. When the Interim Measure Agreements were signed, as it was with the Nuu-chah-nulth, the negotiations were much more effective. The province's approach to land ownership and the amount of land available to negotiate over was unacceptable for those First Nations who aimed to protect their entire hereditary territories.[30] The NDP did not attempt to solve the problem to the satisfaction and benefit of all involved parties; instead, it tried to please so-called public opinion, which was a short-sighted policy. The "governing at a distance" model emphasises the importance of creating a new leadership, but applying this approach to the modern treaties could easily backfire. Many First Nations people saw such attempts as the new face of old colonialism, and they often distrusted this new Aboriginal leadership.

---

[27] Woolford, "Between Justice and Certainty,"233.
[28] Ibid, 237.
[29] Email from Stephanie Gustin (B.C. Treaty Commission analyst) to the author, January 6, 2022.
[30] Ministry of Aboriginal Affairs, *Province of British Columbia, British Columbia's Approach to Treaty Settlements Lands and Resources*, June 12, 1996, http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/272760/context.htm

The Union of British Columbia Indian Chiefs saw the treaty process as designed to treat away aboriginal title. In the document prepared in 1998 entitled "Certainty: Canada's Struggle to Extinguish Aboriginal Title," the UBCIC explained that "Aboriginal title is a collective interest, which is held in trust by all members of an Indigenous Nation."[31] They feared a scenario where the new leadership would come to terms with the provincial and federal governments without much involvement from the community. The document reads: "Canada cannot understand our Sacred connection to the Land, our Aboriginal Title. It is 'uncertain,' [to them] because it prevents Indigenous Peoples from viewing the Land as a commodity to be bought, sold or traded."[32]

The question of conflicting interpretations of "certainty" raised by the UBCIC has also been explored by many scholars.[33] Michael Asch and Norman Zlotkin explain that for the provincial and federal governments, the best way of achieving "certainty" was to use language that would confirm that Aboriginal rights had been extinguished as a result of the treaty agreement. Asch and Zlotkin argue that this approach does not bring any "certainty" to Indigenous people. On the contrary, it creates frustration, and adds to the ongoing sense of injustice.[34] Extinguishment policy should be rejected because it is inconsistent with the constitutional recognition of existing Aboriginal rights, and among other things, it is based on ethnocentric bias. Its stubborn implementation adds to the harm already inflicted on Indigenous people.[35] The authors observed that "the relationship between First Nations and the Crown has

[31] "Certainty: Canada's Struggle to Extinguish Aboriginal Title," UBCIC, 1998. https://www.ubcic.bc.ca/certainty_canada_s_struggle_to_extinguish_aboriginal_title
[32] Ibid.
[33] See also Mark Stevenson, "Visions of Certainty: Challenging Assumptions," in *Speaking Truth to Power: A Treaty Forum* (Government Services Canada, 1999).
[34] Michael Asch and Norman Zlotkin, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations," in *Aboriginal and Treaty Rights in Canada,* ed. Michael Asch (Vancouver: UBC Press, 1997), 219.
[35] Asch and Zlotkin, "Affirming Aboriginal Title," 220-222.

been a troubled one. This relationship must be cast aside. In its place, a new relationship which recognizes the unique place of Aboriginal people and First Nations in Canada must be developed."[36]

The fact that British Columbia joined the treaty process in 1991 was seen as an opportunity to address long-standing differences between the province and First Nations. In particular, the 1994-1996 trilateral treaty negotiations with the Gitxsan and Wet'suwet'en offered a chance to develop a new relationship that Asch and Zlotkin considered the appropriate direction to take. The Gitxsan and Wet'suwet'en had developed co-management plans, and from the outset of the negotiations they proposed a governing structure adapted to their hereditary system as well as to contemporary requirements. They worked on addressing their overlapping land claims with the Nisga'a, and they established a strong mechanism to communicate and transmit decisions related to the negotiations between the chiefs, Elders, communities and their negotiators – the *Gimlitxwhit*. This does not mean that the Gitxsan and Wet'suwet'en did not ask themselves the question of how to adapt an ancient system to modern times. The Gitxsan academic Maisie Helen Wright observed that the main problem with returning to the hereditary system of governance is its current lack of a spiritual foundation. Wright considered that the hereditary governance scenario would be beneficial for the Gitxsan, but other important aspects should be taken into consideration. The 150-years of governance under the *Indian Act* left communities divided and confused in their thinking about self-government and self-determination.[37] Reconciling the hereditary and elected systems would be a significant challenge. Nevertheless, the co-management model proposed by the Gitxsan and Wet'suwet'en, which included all of their hereditary territories, would have been more likely to address this division,

[36] Ash and Zlotkin, "Affirming Aboriginal Title," 225.
[37] Wright, "A study of the Traditional Governance of the Gitxsan,"

as well as the on-reserve off-reserve divide, created by the colonial system.[38] In the hereditary governance system, how the land is managed, and not just by whom it is managed, is of crucial importance. The co-management scenario was the most likely to resolve logging controversies and other long-standing problems.

The provincial government invoked the "lack of progress" with the Gitxsan as a reason for withdrawing from the negotiations. In fact, the Gitxsan made enormous progress in creating a structure that supported their co-management project, yet they took a direction that the provincial government did not want them to take. The provincial government was not ready to take such a consequential step and accept the co-management scenario. The Gitxsan and Wet'suwet'en project was not given a chance to be implemented. In his paper presented at a Treaty Forum held in Vancouver in 1999, John Borrows wrote:

> Some may argue that past wrongs cannot be fully addressed because too much in the present relies upon these prior violations and indiscretions…A house built upon a foundation of sand is unstable, no matter how beautiful it may look and how many people may rely upon it. It would be better to lift the house and place it on a firmer foundation, even if this would create real challenge for people in the house. Ultimately, this would benefit all within the house.[39]

Many recent events in British Columbia have confirmed Borrows' theory to be accurate. In November 2021, a tactical police team used an axe to smash the door to a cabin where the members of the Wet'suwet'en *Gitdumden* clan stayed when they blocked the road to the Coastal GasLink workers' camp. The RCMP arrested 15 protesters, as well as journalists Amber Bracken and Michael Toledano.[40] Furthermore, the controversy surrounding logging practices continues.

---

[38] For example: Ron George, "You've Got to Paddle Your Own Canoe."
[39] John Borrows, "Questioning Canada's title to Land: The Rule of Law, Aboriginal Peoples and Colonialism," in *Speaking Truth to Power: A Treaty Forum* (Government Services Canada, 1999), 38-39.
[40] Amber Bracken, "In photos: a view of RCMP arrests of media, Indigenous land defenders on Wet'suwet'en territory," *The Narwal*, November 25, 2021.

Former chief treaty negotiator Don Ryan, now Chief *Hanamuxw*, recently expressed concern that these practices ignore the Gitxsan's Aboriginal title to their land in his letter to Premier John Horgan. His concerns, a *déjà vu* of the problems brought up by the Gitxsan to the provincial government in the 1980s and 1990s, are the following:

> British Columbia continues to authorize forestry activity on our Wilp's territory without our free, prior and informed consent. Further, you continue to do this without taking meaningful steps to actually ascertain where we have Aboriginal title in accordance with our laws or where our territory is located. British Columbia-despite having a mass of evidence from us and other Gitxsan Huwilp-turns a blind eye to the factual reality that the lands and resources it is giving to others belong to the Gitxsan and, in particular, our Wilp.[41]

The same problems are most likely to re-emerge until "the unstable construction of the house will be fixed." Translating between two different governance and legal systems and finding common ground is not easy. Therefore, a nation-to-nation approach is crucial to ensure a successful result. First Nations peoples need assurance that their distinct cultures will not disappear as a result of modern treaties. The models of self-government proposed by the provincial and federal governments under the modern treaty process remain colonial. On the other hand, Indigenous forms of self-governance that have existed for millennia cannot gain political recognition in this country. The path towards self-government and self-determination should start with a change in the relationship with the Crown. Dan George, in his research paper about leadership and conflict management observed: "In most situations power supersedes everything including culture. Such is the relationship that the Wet'suwet'en has with the Crown and industry… To address this power imbalance, the parties need to move away from competition and move towards collaboration where group-interest replaces self-interest."[42] Such

[41] Letter from Don Ryan to Premier John Horgan, September 30, 2021, copy in possession of the author, (see Appendix C).
[42] Dan George, "The Elders are Watching." 41.

collaboration is not completely impossible. In recent years the Wet'suwet'en and the province signed park co-management agreements, including the territory of the Burnie Lakes which became a part of the so-called Burnie-Shea Park and Burnie River Protected Area. This territory belongs to the house of *Kweese* of the *Tsayu* (Beaver) clan.[43] Florence Hall, the late Chief *Kweese,* recounted the significance of this territory to the house members in her testimony delivered during the *Delgamuukw* court case.[44]

> Chief *Satsan*, (Herb George) in an interview given in 1993 to *The Province,* said:
>
> We talk about governing ourselves according to our structures and institutions, and the people have great difficulty with that because they can't understand it… And we can't seem to get them to appreciate that it doesn't matter whether they understand how we're going to govern ourselves-all that matters is that we know how to do that.[45]

In fact, Patricia Dawn Mills proposed a theoretical framework related to the Gitxsan treaty vision. Some important assumptions in this framework are: that the Gitxsan have coexisted with wildlife for thousands of years and they wish to maintain this established relationship; that in order to maintain this relationship they need to be able to regulate infringement on their hereditary territories; and that they possess the expertise necessary to manage wildlife, forests, and mineral extraction in a manner that is aligned with their cultural practices and carried out in the best interests of non-humans.[46] Recent meteorological and climate-related disasters that occurred in British Columbia in 2021 were exactly what the Gitxsan and Wet'suwet'en leaders feared and what they had tried to warn the provincial and federal authorities about. The Gitxsan

[43] B.C. Parks, "Burnie-Shea Park and Burnie River Protected Area. Management Plan." https://bcparks.ca/planning/mgmtplns/morice_area/Burnie-Shea%20Draft%20MP.pdf
[44] *Delgamuukw* (Commission Evidence of Florence Hall, vol 1, 13 October 1987) https://dx.doi.org/10.14288/1.0018349
[45] "Q and A: Native Rights," *The Province*, July 4, 1993.
[46] Mills, "Reconciliation: Gitxsan Property,"190.

and Wet'suwet'en chiefs and negotiators were visionaries. This is a crucial point in support of the proposed framework.

In fact, unsuccessful negotiations with the Gitxsan and Wet'suwet'en, as well as with many other First Nations in British Columbia, had not only missed a chance to address the 150-year-old question of Aboriginal title to the land, but also an opportunity to introduce more sustainable resource management. The history of Indigenous-settler relations has proved that regulations related to wildlife, fish and non-renewable resource management introduced by the provincial and federal authorities were, in most cases, unsuccessful.

Moreover, according to several testimonies, such regulations caused long-lasting damage to Indigenous communities. For example, the Wet'suwet'en Chief *Maxlaxlex*, Johnny David, recounted in his commission evidence for the *Delgamuukw* case the consequences of the introduction of the trapline regulation in the 1920s. Some members of Wet'suwet'en communities claimed traplines that belonged to their father's family, which violated the matrilineal rules of inheritance, and caused internal conflicts. The Gitxsan Chief *Yagalahl*, Dora Wilson-Kenni, who served for several years on the Hagwilget band council, recalled that long-standing relationships with the land and animals have been frequently disturbed by a variety of regulations. The band council was forced to translate these regulations in a way that made sense to Indigenous people on the reserve. Sometimes they had to decide whether the regulations imposed by the officials from the Department of Indian Affairs or by the province were to be respected. Wilson-Kenni reported that particularly the by-laws related to sustenance and hunting permits raised various concerns. People were afraid that their hunting rifles would be confiscated if they did not obtain such permits. Ultimately, the band council decided to stop signing these permits because they felt that hunting and fishing were traditional Indigenous subsistence

practices for which permits should not be required.[47] First Nations people are the ones best placed to enact laws that respect their own cultural and spiritual heritage and which do not infringe on lands associated with such heritage. Ignorance about these sensitive points continually provokes great frustrations and conflicts.

[47] *Delgamuukw* (Transcripts at Trial at 4260, March 8, 1988) https://dx.doi.org/10.14288/1.0019327

Conclusion

The B.C. treaty process, which still exists, is increasingly criticized for its inefficiency. Over time, the gap between the decisions rendered in various Aboriginal court cases and the deals offered at the treaty negotiation tables increased. The *Delgamuukw* court case concluded in 1997 with the Supreme Court of Canada defining the meaning of Aboriginal title. Chief Justice Lamer declared that "Aboriginal title is a right in land and, as such, is more than the right to engage in specific activities which may themselves be aboriginal rights."[1] Moreover, the Supreme Court of Canada decided that in the future, evidence based on oral history should be "accommodated and placed on an equal footing with the types of historical evidence the courts are familiar with."[2] As Stan Persky observed, recognition of First Nations oral history had important consequences, since "such histories are the primary means by which Native nations can prove their claims to aboriginal title."[3] Chief Justice Lamer's definition of Aboriginal title was not limited to recognizing the right to continue Aboriginal practices; he made it clear that land could not be used in a way that would destroy the way of life of Aboriginal people.[4] Nevertheless, the fact that, in the course of the trial, the claim was changed from "ownership and jurisdiction" to "Aboriginal title" gave rise to conflicting interpretations.

In 2004, the Supreme Court of Canada rendered its decision in the *Haida Nation v. British Columbia (Minister of Forests)*. The province did not consult the Haida Gwaii in the

[1] Stan Persky, "Commentary" in *Delgamuukw. The Supreme Court of Canada Decision on Aboriginal Title* (Vancouver/Toronto: David Suzuki Foundation, Greystone Books, Douglas &McIntyre, 1998), 19.
[2] Ibid, 16.
[3] Ibid, 13.
[4] Ibid, 19.

matter of transferring the Tree Farm Licence to Weyerhaeuser Co., which the Haida challenged in court. The Supreme Court of Canada ruled that such a transfer could have a potentially serious impact on Aboriginal rights and title, and ordered the province to carry out a meaningful consultation.[5] In 2014, in the *Tsilhqot'in Nation v. British Columbia* case*,* the Supreme Court of Canada rejected the restricted test for Aboriginal title and declared that Aboriginal title was present on an extensive area of the claimed territory.[6] As a result of this decision, the province was not allowed to grant logging permits without consultation with the Tsilhqot'in on the territory covered by their Aboriginal title.

Despite significant progress in the legal recognition of Aboriginal rights achieved in courtrooms, the B.C. treaty process does not appear to have kept pace with these changes. The former treaty negotiator for the province, Mark Stevenson, observed that:

> In fact, over the years, the federal government has narrowed its mandates and treaty policies rather than broadened them. Canada's policies are outdated and inflexible. There is very little dialogue. Canada tables positions and leaves it to First Nations to either agree or disagree. For instance, a fisheries agreement package similar to that negotiated by the Nisga'a is no longer on the table.[7]

Stevenson identified several problems that impede successful negotiations, including poorly formulated mandates for the negotiators.[8] Tony Penikett, in the introduction to his book, *Reconciliation: First Nations Treaty Making in British Columbia,* wrote: "This book is a plea to both governments to look at what they have done, consider the human and financial costs, and change the direction."[9] Despite so many voices joining Stevenson and Penikett, their pleas

---

[5] Patricia Dawn Mills, First Right to Timber with Respect to the Management of Lands for Hunting, Fishing, and Livelihood, and Housing: Case Law Summary. For the National Aboriginal Forestry Association, 41. *Haida Nation v. British Columbia (Minister of Forests),* [2004] 3 S.C.R. 511, 2004 SCC 73
[6] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256.
[7] Stevenson, "Treaty Daze," 51-52.
[8] Ibid, 52.
[9] Penikett, *Reconciliation*, 3.

remain unanswered. This demonstrates that a process that was defective from the outset has been unable to reform with time.[10]

An analysis of the Gitxsan and Wet'suwet'en trilateral treaty negotiations provides a unique opportunity to look at the B.C. treaty process at both the micro and macro levels. The provincial government withdrew from the treaty negotiations with the Gitxsan, justifying its decision by the lack of progress and ongoing blockades. But the Gitxsan should not have been blamed for the lack of progress. In the pile of documents related to the 1994-1996 trilateral treaty negotiations with the Gitxsan and Wet'suwet'en that I was able to gather and assess, the key information is hidden in the April 1995 edition of the *Daxgyet*. It reads as follows: "*Anuthlem bunh* said the Gitxsan have been ready to sign a forest agreement for months. But at the negotiating table provincial representatives quickly reach the limit of their decision-making authority."[11] The process that aimed to achieve the claims settlements with local First Nations, lacked the proper mechanisms to succeed. The inflexible bureaucratic approach managed to mask the essence of the issue and led to failed negotiations with the Gitxsan. In these and other negotiations that took place in 1995-1996, the NDP government adopted a very narrow-minded approach, which concentrated on pleasing public opinion and failed to address the land claims at the grassroots level. If the government had paid greater attention to the recommendations made by the independent bodies tasked with designing the process, it might have been a success. Pursuing economic development at any cost and keeping pace with increasingly "globalized" industry had been detrimental to many local initiatives undertaken by various First Nations. The B.C. treaty process, like previous legal confrontations, did not put Indigenous interests at the forefront, but concentrated on achieving the "certainty" required to secure economic investment.

[10] From the Latin proverb: Quod ab initio vitiosum est, non potest tractu temporis convalescere.
[11] "Significant progress reviewed," *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 4 April 1995.

The province's neo-liberal approach to renewable and non-renewable resource development and exploitation remained unchanged. Logging licences were and still are granted to big companies without proper consultation with the local First Nations. In March 2022, the Sierra Club B.C. released a report related to old-growth forests at risk. This report reminded readers that although, in the Fall of 2020, B.C. Premier John Horgan pledged that his government would implement the Old-Growth Strategic Review panel's recommendations, two years later very little has been delivered. The newly created Ministry of Lands, Waters and Resource Stewardship could certainly provide better protection for old growth forests.[12] The policy that led to significant resource depletion, caused damage to Indigenous cultures, and was responsible for recent natural catastrophes that occurred in 2021 in British Columbia has to change. The huge forest fires and floods that recently devastated large areas of the province were exactly what the Gitxsan and Wet'suwet'en negotiators tried to prevent.

As past grievances resurface, they receive the same response from the government, which exploits internal divisions to advance economic goals. A good example is the Wet'suwet'en resistance of the Coastal Gaslink pipeline at the Gidimt'en Checkpoint. The elected Wet'suwet'en chiefs signed an agreement with Coastal Gaslink to approve the construction of the pipeline, but some hereditary chiefs opposed this project. Although there has been some dialogue to address this situation, the RCMP deployed armed forces several times to remove the protesters. In November 2021, the RCMP used overwhelming force to break the Wet'suwet'en standoff at Morice West Forest Service Road. Colonial violence against Indigenous people is not history; it is a contemporary issue. Despite the *Delgamuukw* and other subsequent court trials, it seems that the dialogue that had been abandoned in 1996 never reached a meaningful conclusion.

[12] Sierra Club BC, "Three_Quarters of At-Risk Old-Growth Forests in BC Still Without Logging Deferrals," https://sierraclub.bc.ca/three-quarters-of-at-risk-old-growth-forests-in-bc-still-without-logging-deferrals/

The Gitxsan and Wet'suwet'en continue to protect their hereditary territories. Sadly, the attitude of the provincial and federal governments has not changed significantly. Using John Borrows' analogy, the foundations of our shared home of Canada remain unstable.

Bibliography

Primary Sources

Court Cases

Delgamuukw v. The Queen (1991), 79 D.L.R. (4th) 185 (B.C.S.C), University of British Columbia, Open Library Collections. https://open.library.ubc.ca/collections/delgamuukw

Delgamuukw v. British Columbia, 1993 CanLII 4516 (BC CA), <https://canlii.ca/t/1q09f>, retrieved on 2022-05-18.

MacMillan Bloedel Ltd. v. Mullin, 1985 CanLII 154 (BC CA), <https://canlii.ca/t/1p6pb>, retrieved on 2022-05-25.

Ryan v. Schultz, 1994 CanLII 2101 (BC SC), <https://canlii.ca/t/1dlx4>, retrieved on 2022-05-24

Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, [2014] 2 S.C.R. 256.

Westar Timber Ltd. v. Gitksan Wet'suwet'en Tribal Council, 1989 CanLII 2764 (BC CA), <https://canlii.ca/t/216qr>, retrieved on 2022-05-18.

Printed Primary Sources

British Columbia Treaty Commission, *Report on the Suspension of Gitxsan Treaty Negotiation*s, March 14, 1996.

Gisday Wa and Delgam Uukw, *The Spirit in the Land. The Opening Statement of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia, May 11 1987* Gabriola, B.C.: Reflections, 1990.

Hang on to These Words. Johnny David's Delgamuukw Evidence, edited by Antonia Mills Toronto-Buffalo-London: University of Toronto Press, 2005.

Province of British Columbia, British Columbia's Approach to Treaty Settlements Lands and Resources, Ministry of Aboriginal Affairs, June 12, 1996.

"Treaty Negotiations: What Works, What Doesn't – A Negotiators' Dialogue." Morris J. Wosk Centre for Dialogue, Convener: Tony Penikett, November 25, 2002.

The Report of the British Columbia Claims Task Force. June 28, 1991.

Web Sources

"Burnie-Shea Park and Burnie River Protected Area. Management Plan." From B.C. Parks. https://bcparks.ca/planning/mgmtplns/morice_area/Burnie-Shea%20Draft%20MP.pdf (Accessed Feb 11, 2021)

Comprehensive Land Claims Policy, Published under the authority of the Hon. Bill McKnight, P.C., M.P. Minister of Indian Affairs and Northern Development, Ottawa 1986.
https://www.afn.ca/uploads/files/sc/comp__1987_comprehensive_land_claims_policy.pdf (Accessed Feb 11, 2021)

Government of Canada Justice Law Website, The British Columbia Indian Lands Settlement Act S.C. 1920 c. 5 (https://laws-lois.justice.gc.ca/eng/acts/T-10.2/page-1.html).

"House of Commons Official Report December 7, 1995, vol. 133 no. 273, 1st session, 35th Parliament." https://www.ourcommons.ca/DocumentViewer/en/35-1/house/sitting-273/hansard (Accessed Feb 11, 2021)

"Legislative Assemble of British Columbia, Vol. 19, no. 10, Friday, April 28, 1995." https://www.leg.bc.ca/documents-data/debate-transcripts/35th-parliament/4th-session/19950428am-Hansard-v19n10 (Accessed Feb 11, 2021)

Sierra Club BC. "Three Quarters of At-Risk Old-Growth Forests in BC Still Without Logging Deferrals." https://sierraclub.bc.ca/three-quarters-of-at-risk-old-growth-forests-in-bc-still-without-logging-deferrals/

"The Wet'suwet'en Vision of a Treaty with the Crown" reprinted in Dan George, "The Elders are Watching: Wet'suwet'en Perspectives on Leadership's Role in the Management of Conflict." Major Research Project, Royal Roads University, 2010.

Union of B.C. Chiefs "Certainty: Canada's Struggle to Extinguish Aboriginal Title," UBCIC, 1998. https://www.ubcic.bc.ca/certainty_canada_s_struggle_to_extinguish_aboriginal_title (Accessed February 27, 2022)

Unpublished documents

Aboriginal Affairs Work Group Meeting, December 5, 1995. GR-3676 box 910449-0276, BC Archives.

"An Accord of Recognition and Respect between Her Majesty the Queen in Right of British Columbia and the Hereditary Chiefs of the Gitksan and Wet'suwet'en People." Freedom of Information Request IRR-2021-13832.

Briefing note from Sandy Fraser to John Cashore, October 1995, Freedom of Information Request IRR-2021-15534.

"Constructive Arrangement for Gitxsan Rights in the Xsu Wii Aks: A Response to the CP 702 Amendment." Freedom of Information Request 2021-15456.

"Gitxsan, Wet'suwet'en and Gitanyow Community-Based Governance Agreement-in-Principle" January 24, 1995. Copy available at Gitxsan Huwilp Government Office.

Gitksan Treaty Office, "Gitksan: Sleeping Grizzly. A Four -Month Training Plan, December 1 1994 to March 31, 1995," Freedom of Information Request 2021-15456.

"Speaking Notes: Provincial Comments on the GWG CBG AIP, dated Jan.24 1995." Freedom of Information Request IRR-2021-15534.

"Wilp-Based Forest Use Planning Constructive Arrangements for Gitxsan Rights in Xsi Tin. A Response to Industry Development Plans in the Xi Tin," Freedom of Information Request 2021-15456.

Letters and e-mails

Fax from Jim Snetsinger (Regional Manager Ministry of Forests), Prince Rupert Forest Region, to Gitksan Negotiating Team, January 11, 1995. Freedom of Information Request 2021-15456.

Gustin, Stephanie. (B.C. Treaty Commission Research Analyst) e-mail message to author, Sept 3, 2021.

Gustin, Stephanie. (B.C. Treaty Commission Research Analyst) e-mail message to author, January 6, 2022.

Letter from Chief Commissioner Alec Robertson to Don Ryan, Angus Robertson and Tom Molloy, February 9, 1996, copy in possession of Don Ryan.

Letter from Deputy Minister Philip G. Halkett to Chief Commissioner Alec Robertson, February 9, 1996, File No 63300-20/GitX1/Cor, 63300-20/WETS1/COR, copy in possession of Don Ryan.

Letter from Don Ryan to Barbara Fisher, February 12, 1996, copy in possession of Don Ryan.

Letter from Don Ryan to B.C. Premier John Horgan, September 30, 2021, copy in possession of the author.

Letter from Ray L. Schultz to Thomas Patrick, File 320/30/Patrick, December 15, 1994, Freedom of Information Request 2021-15456.

Letter from Gordon Sebastian (Gitxsan Treaty Office) to Ray Schultz (Fort St James Forest District Manager), January 3, 1995. Freedom of Information Request 2021-15456.

Ryan, Don. email to the author, February 20, 2022.

Newspapers and Newsletters

Barrett, Tom. "Cashore says Gitxsan treaty talks not broken off because of election." *The Vancouver Sun*, February 3, 1996.

Boynton, Sean. "The last time protests interrupted B.C.'s throne speech, things got even uglier." *Global News*, February 13, 2020. https://globalnews.ca/news/6544566/bc-throne-speech-protests-1993/

Bracken, Amber. "In photos: a view of RCMP arrests of media, Indigenous land defenders on Wet'suwet'en territory." *The Narwal,* November 25, 2021.

Cassidy, Frank. "The reasons for settling land claims are compelling." *The Vancouver Sun*, February 14, 1996.

Caldwell, Linda. "B.C. Limiting land yield to five per cent." *Wind Speaker*, vol.13 no.2, June 1995.

"Chief's Advisory Team: They are your clan representatives." *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 1, issue 4, December 1994.

"Chiefs grant extension." *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 5, June, 1995.

Crawley, Mike. “Roadblock Indians claim province broke promises.” *The Vancouver Sun*, August 21, 1995.

Cohen, Marshal A. “The New Globalization: What does today’s increased globalization mean for Canadian business?” *Canadian Business Review*, Autumn 1988.

“Darlene McKenzie’s letter to the editor.” *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2, issue 5, June 1995.

“Deadline looms for consultation facilitators.” *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol.2 issue 12 December 1995.

“Delgamuukw/Gisday’wa court case.” In *All Clans Feast*, April 24, 2010.

Eichstaedt, Carol. “Injunction not dead.” *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 4, April 1995.

Eichstaedt, Carol. “Gitxsan restructure for decision-making, implementation.” *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 4, April 1995.

Eichstaedt, Carol. “Health transfer now official,” *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 5, June 1995.

Eichstaedt, Carol. “Overlap protocol signed with Nisga’a.” *Daxgyet: Gitxsan Treaty Negotiations Journal* vol. 2 issue 5, June 1995.

“Election stalling talks, chief says.” *The Vancouver Sun*, October 6, 1995.

*“*Forest Future Debated by Professionals.” *The Interior News* (Smithers, B.C.) Wed, February 22, 1995.

“Forestry Talks Bog Down.” *Daxgyet. Gitxsan Treaty Negotiations Journal,* vol. 2 issue 1, January 1995.

Fournier, Suzanne, Jason Proctor. “Bloodshed can be avoided: Gitxsan Natives hold key to settle conflict at ‘divided’ camp.” *The Province,* September 17, 1995.

“Gitxsan try to derail talks.” *Times-Colonist*, (Victoria BC), January 21 1996.

“Gitxsan Chiefs and non-Gitxsan unite to safe Upper Kispiox from logging.” *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 2, February 1995.

“Gitxsan ready to explore model that could save taxpayers millions if province returns to table.” *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 3 issue 2 February-March, 1996.

"Gitxsan assist with peaceful settlement at Gustafsen Lake." *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 9, September 1995.

"Gitksan open new treaty office." *The Interior News* (Smithers, B.C.) Wed, September 7, 1994.

Glavin, Terry. "Indians block log trucks: Tempers flare at barricade." *The Vancouver Sun*, February 29, 1988.

Glavin, Terry. "Elder inspires Indian protest; Matriarch inspires Kispiox protest behind roadblock." *The Vancouver Sun,* March 1, 1988.

Glavin, Terry. "Show of force by RCMP angers Kispiox area Chiefs." *The Vancouver Sun*, March 2, 1988.

Glavin, Terry. "Native say wilderness now a rotting heritage: Roadblock sets region on edge Series: Forestry A Growing Concern." *The Vancouver Sun*, June 14, 1988.

Glavin, Terry. "Indians set up road blockade near Hazelton." *The Vancouver Sun*, September 29, 1989.

Glavin, Terry. "Begin land claim talks, logger says: Province must alter policy, Westar head tells meeting." *The Vancouver Sun*, October 27, 1989.

Glavin, Terry. "Blockades last resort, forum told." *The Vancouver Sun,* October 18, 1988.

Hauka, Don. and Barbara McLintock. "Timing of new rules stinks, says industry: Pulp mills argue they're already logging." *The Province*, January 17, 1992.

"House groups crucial." *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 1 issue 4, December 1994.

Hume, Stephen. "John Cashore is no wimp-consider his minefields." *The Vancouver Sun*, October 13, 1995.

Hume, Stephen. "B.C.'s honor in treaty talks under fire: Allowing resources to be taken from lands that are under negotiation seriously impairs the process, Victoria is told.: Chief commissioner disagrees with minister." *The Vancouver Sun*, June 21, 1996.

Hunter, Justine. "Terrace blockades up to A-G, forestry official says." *The Vancouver Sun*, October 10, 1989.

Kieran, Brian. "Minister's cave-in betrays non-natives." *The Province*, August 21, 1994.

"Land selection model rejected." *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 7, July 1995.

Levis, Dan. "CORE, SHARE, Clayoquot Summer: the fighting for the B.C. forests in 90s." *Watershed Sentinel,* November 30, 2020. https://watershedsentinel.ca/articles/core-share-clayoquot-summer-the-fight-for-bc-forests-in-the-90s/

MacKinnon, James. "Blockades 101. How can we hope to draw up complex treaties when we can't understand the blunt message of a blockade?" Reprinted from *Monday Magazine* September 21-27 issue *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 9, September 1995.

McLarty, Jennifer. "Resource and Wet'suwet'en Treaty. Co-management or land selection: hat's the issue." *The Interior News* (Smithers, B.C.) Wed, November 15, 1995.

Mertl, Steve. "Gustafsen Lake, B.C.: Rebel standoff ends peacefully; Medicine man coaxes group to leave ranch." *The Ottawa Citizen,* September 18, 1995.

Monbiot, George. "Neoliberalism- the ideology at the root of all our problems." *The Guardian*, 15 April 2016. https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot.

"News Briefs." *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 5, June 1995.

"Nisga'a boundary." *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 11, November 1995.

"October-December trilaterals could be start of something serious." *Daxgyet. Gitxsan Treaty Negotiations Journal,* vol. 2 issue 10, October 1995.

"Pending self-government deal called 'undemocratic' by Skeena Reform MP." *The Interior News* (Smithers, B.C.) Wed, February 15, 1995.

"Province creates friction." *Daxgyet. Gitxsan Treaty Negotiations Journal,* vol. 2 issue 8, August 1995.

"Public negotiation sessions held." *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 2 issue 4, April 1995.

Sebastian, Gordon. "Consultation process meaningless." *Daxgyet: Gitxsan Treaty Negotiations Journal*, vol. 3 issue 2, February-March 1996.

"Significant progress reviewed." *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 4 April 1995.

Sustut Rail Blockade Lifted: Gitksan, timber company wrangle over injunction." *The Interior News* (Smithers, B.C.) Wed, January 19, 1994.

"Q&A: Native Rights." *The Province*, July 4, 1993.

"Taxpayers help Indian bands sue government." *Canadian Press Newswire* (Toronto) June 20, 1996.

"Twenty-four months since appeal decision." *Daxgyet: Gitxsan Treaty Negotiations Journal,* vol. 2 issue 7, July 1995.

"Wet'suwet'en take different approach." *The Interior News* (Smithers, B.C.) Wed, April 19, 1995.

Wood, Chris. "Protest politics." *Maclean's*, August 7, 1995, 10+. *Gale OneFile: CPI.Q* https://link.gale.com/apps/doc/A17109029/CPI?u=concordi_main&sid=bookmark-CPI&xid=8a277159.

Secondary Sources

Asch, Michael, and Norman Zlotkin. "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations." In *Aboriginal and Treaty Rights in Canada,* ed. Michael Asch, 208-229, Vancouver: UBC Press, 1997.

Asch, Michael. "From *Terra Nullius* to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution," *Canadian Journal of Law and Society* 17, no. 2 (2002): 23-39.

Barbeau, Marius. "A Recent Native Art of the Northwest Coast of America." *Geographical Review*, 20 no. 2 (1930): 258-272.

Belanger, Yale, and David Newhouse. "Emerging from the Shadow: The Pursuit of Aboriginal Self-Government to Promote Aboriginal Well-Being." *Canadian Journal of Native Studies* 24 (2004):129-222.

Blomley, Nicholas. "Shut the Province Down: First Nations Blockades in British Columbia, 1984-1995." *BC Studies* 111 no. 3 (1996): 5-35.

Borrows, John. "Sovereignty's Alchemy: An Analysis of Delgamuukw v. British Columbia." *Osgood Hall Law Journal* 37, no. 3 (1999):537-596.

Borrows, John. "Questioning Canada's title to Land: The Rule of Law, Aboriginal Peoples and Colonialism." In *Speaking Truth to Power: A Treaty Forum*, 35-72, Government Services Canada, 1999.

Brody, Hugh. *Maps and Dreams: Indians and the British Columbia Frontier*. Vancouver: Douglas & McIntyre, 1981.

Calder, Frank. in *Reaching Just Settlement. Land Claims in British Columbia: Proceedings of a Conference held February 21-22, 1990,* edited by Frank Cassidy, 41-47. Lantzville B.C.: Oolichan Books, 1991.

Cassidy, Frank. ed. *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*. Montreal & Lantzville: Oolichan Books & The Institute for Research on Public Policy, 1992.

Cassidy, Frank and Norman Dale. *After Native Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia*. Victoria & Halifax: Oolichan Books and The Institute for Research on Public Policy, 1988.

Coates, Ken and Keith Thor Carlson. "Different People, Shared Lands. Historical Perspectives on Native-Newcomers Relations Surrounding Resource Use in British Columbia." In *Aboriginal Peoples and Forest Lands in Canada,* edited by D.B. Tindall, Ronald Trosper and Pamela Perreault, 15-29. Vancouver-Toronto: UBC Press, 2013.

Cruickshank, David A., "Calder Case." *The Canadian Encyclopedia*. Historica Canada. Article published August 24, 2006; Last edited September 2, 2020, https://www.thecanadianencyclopedia.ca/en/article/calder-case.

Daly, Richard. *Our Box Was Full: An Ethnography for the Delgamuukw Plaintiffs*. Vancouver: UBC Press, 2005.

Egan, Brian. "Towards Shared Ownership: Property, Geography, and Treaty Making in British Columbia." *Geografiska Annaler*: Series B, Swedish Society for Anthropology and Geography 95(1), (2013): 33-50.

Elliot, David W. "Baker Lake and the Concept of Aboriginal Title." *Osgood Hall Law Journal* 18 no. 4 (1979): 657-658.

Feltes, Emma and Glen Coulthard. "Introduction. The Constitution Express Revisited." *BC Studies* no. 212 (2021/22), 13-31.

Grant, Peter. "Clayoquot Sound." *The Canadian Encyclopedia* Historica Canada. Article published August 12, 2020; last edited December 16 2013.

George, Herb. "The Fire Within Us." In *Aboriginal Title in British Columbia: Delgamuukw v. The Queen,* edited by Frank Cassidy, 53-57, Montreal & Lantzville: Oolichan Books & The Institute for Research on Public Policy, 1992.

Glavin, Terry. *A Death Feast in Dimlahamid.* Vancouver: New Star Books, 1998.

Harris, Cole. *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia.* Vancouver: UBC Press, 2002.

Harris, Douglas C. *Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia.* Toronto, University of Toronto Press, 2001.

Harris, Douglas C. "Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia*."* Review of *Fish, Law and Colonialism,* by Daniel Marshall and Adrian Clark, *Pacific Northwest Quarterly,* vol. 96, no.1 Winter 2004/200, 48-49.

Harrison, Trevor. in Encyclopedia of the Great Plains. "Reform Party." http://plainshumanities.unl.edu/encyclopedia/doc/egp.pg.068

Jenness, Diamond. *Three Athapaskan Ethnographies.* Rock's Mills Press, 2015.

Lutz, John. *Makuk: A New History of Aboriginal-White Relations*. Vancouver: UBC Press, 2008.

"Making History. The Nisga'a Treaty: An Excerpt from an Open Letter Drafter by Saul Terry, President of the Union of BC Indian Chief. " *Voices* 1 no.3 (1998) http://www.darrenduncan.net/archived_web_work/voices/voices_v1_n3/making_history.html

"Meares Island Case 1985" *Working Effectively with Indigenous Peoples* (blog). https://www.ictinc.ca/blog/meares-island-case-ongoing

McKee, Christopher. *Treaty Talks in British Columbia. Negotiating Mutually Beneficial Future.* Vancouver: UBC Press, 2000.

McMillen, Christian W. *Making Indian Law: The Hualapai Land Case and the Birth of Ethnohistory*. New Haven: Yale University Press, 2007.

McNeil, Kent. "The Meaning of Aboriginal Title." In *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*, edited by Michael Ash, 135-154. Vancouver: UBC Press, 1997.

McRory, Rachel. "Recording the War in the Woods." Royal BC Museum, 21-07-2021 http://staff.royalbcmuseum.bc.ca/2021/07/21/recording-the-war-in-the-woods/

Meyer, Gary D. and John Mugambwa. "The Mabo Decision: Australian Aboriginal Land Rights in Transition." *Environmental Law,* 23, no 4 (1993):1203-1247.

Mills, Antonia. *Eagle Down Is Our Law: Witsuwit'en Law, Feasts, and Land Claims*. Vancouver: UBC Press, 1994.

Mills, Patricia Dawn. "First Right to Timber with Respect to the Management of Lands for Hunting, Fishing, and Livelihood, and Housing: Case Law Summary." For the National Aboriginal Forestry Association. http://nafaforestry.org/forest_home/documents/FNRighttoTimber-DawnMills.pdf

Monet, Don and Ardythe Wilson. *Colonialism on Trial: Indigenous Land Rights and the Gitksan and Wet'suwet'en Sovereignty Case*. Philadelphia, PA/Gabriola Island, B.C.: New Society Publishers, 1992.

Napoleon, Val. "Delgamuukw: A Legal Straightjacket for Oral Histories?" *Canadian Journal of Law and Society,* 20 no. 2 (2005):123-155.

Parai, Brian J. and Thomas C. Esakin. "Beyond Conflict in Clayoquot Sound: The Future of Sustainable Forestry."172. https://www.fao.org/3/y4503e/y4503e08.pdf

Penikett, Tony. *Reconciliation. First Nations Treaty Making in British Columbia*. Vancouver-Toronto-Berkley: Douglas and McIntyre, 2006.

Perry, Adele. "The Colonial Archives on Trial." In *Archives Stories. Facts, Fictions, and the Writing of History,* edited by Antoinette Burton, 325-350, Durham & London: Duke University Press, 2005.

Persky, Stan. "Commentary" in *Delgamuukw. The Supreme Court of Canada Decision on Aboriginal Title*, 1-24, Vancouver-Toronto: David Suzuki Foundation, Greystone Books, Douglas &McIntyre, 1998.

Pinkerton, Evelyn. "Integrated Management of a Temperate Montane Forest Ecosystem Through Holistic Forestry: a British Columbia Example." in *Linking Social and Ecological Systems* edited by Fikret Berkes and Carl Folke, 363-389, Cambridge University Press, 1998.

Rajala, Richard A. *Clearcutting the Pacific Rain Forest: Production, Science and Regulation.* Vancouver: UBC Press, 1998.

Ray, Arthur J. *Aboriginal Rights, Claims, and the Making and Remaking of History.* Montreal & Kingston-London-Chicago: McGill and Queen's University Press, 2016.

Reiter, Eric H. "Fact, Narrative, and Judicial Uses of History: Delgamuukw and Beyond." *Indigenous Law Journal*, no. 1 (2010): 59-65.

Ridington, Robin. "A Witness to Delgamuukw. Fieldwork in Courtroom 53." *BC Studies* no. 95 (1992):12-24.

Schwartz, Bryan. "The General Sense of Things: Delgamuukw and the Courts." In *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*, edited by Frank Cassidy, 161-178. Montreal & Lantzville: Oolichan Books & The Institute for Research on Public Policy, 1992.

Skelly Julia and Alison Baker. "Native People's Caravan." *The Canadian Encyclopedia*. Historica Canada. Article published February 20, 2020; Last edited February 20, 2002.

Slowey, Gabrielle A. *Navigating Neoliberalism: Self-determination and the Mikisew Cree First Nation*. Vancouver: UBC Press, 2008.

Slowey, Gabrielle A. "The State, The Marketplace, and First Nations. Theorizing First Nation Self-Determination in an Era of Globalisation." In Martin Thibault and Steven M. Hoffman *Power Struggles: Hydro Development and First Nations in Manitoba and Quebec,* 39-54. Winnipeg: University of Manitoba Press, 2008.

Smith, Melvin H. *Our Home or Native Land. What government's Aboriginal Policy is Doing to Canada*. Altona, Manitoba: Friesen Printers, 1995.

Smith, N. "Neoliberalism." Encyclopedia Britannica, June 18, 2019, https://www.britannica.com/topic/neoliberalism,

Sterritt, Neil J. *Mapping My Way Home: A Gitxsan History*. Smithers, BC: Creekstone Press, 2020.

Sterritt, Neil J. "Unflinching Resistance to an Implacable Invader." In *Drum Beat: Anger and Renewal in Indian Country*, edited by Boyce Richardson, 265-94. Toronto: Summerhill Press, The Assembly of First Nations, 1990.

Stevenson, Mark L. and Albert Peeling, *Executive Summary of Memorandum Re Canada's Comprehensive Claims Policy*.
https://www.ourcommons.ca/Content/Committee/421/INAN/Brief/BR9225222/br-external/StevensonLMark-e.pdf

Stevenson, Mark L. "Visions of Certainty: Challenging Assumptions." In *Speaking Truth to Power: A Treaty Forum*, 113-133, Government Services Canada, 1999.

Stevenson, Mark L. "Treaty Daze: Reflection on Negotiating Treaty. Relationship under the BC Treaty Process." In *Aboriginal Peoples and Forest Lands in Canada* ed. D.B. Tindall, Ronald L. Trosper and Pamela Perreault, 48-73. Vancouver-Toronto: UBC Press, 2013.

Swain, Harry and James Baillie. "Tsilhquot'in Nation v. British Columbia: Aboriginal Title and Section 35," *Canadian Business Law Journal* 56, no.2 (2015):265-280.

Switlo, Janice. *Gustafsen Lake Under Siege*: *Exposing the Truth Behind the Gustafsen Lake Stand-off*, TIAC Communications, 1997.

Tennant, Paul. *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia 1849-1989*, Vancouver: UBC Press, 1990.

Tennant, Paul. In *Reaching Just Settlement. Land Claims in British Columbia* edited by Frank Cassidy, Lantzville-Halifax: Oolichan Books and The Institute for Research and Public Policy, 1991.

Vogt, David and Alexander Gamble. “You don’t Suppose the Dominion Government Wants to Cheat the Indians: The Grand Trunk Pacific Railway and Fort George Reserve, 1908-12.” *BC Studies,* no. 166, (2010):55-72.

Weaver, Sally M. *Making Canadian Indian Policy. The Hidden Agenda 1968-1970*. Toronto-Buffalo-London: University of Toronto Press, 1981.

Webber, Jeremy H.A. and Colin M. MacLead. *Between Consenting Peoples: Political Community and the Meaning of Consent*. Vancouver: UBC Press, 2010.

Ph.D. and Master’s Theses

George, Ron. “You’ve Got to Paddle Your Own Canoe: The effects of federal legislation on participation in, and exercising of, traditional governance while living off-reserve.” Master’s thesis, University of Victoria, 2017.

Mahony, Ben David. “‘Disinformation and Smear’: The Use of State propaganda and Military Force to Suppress Aboriginal Title at the 1995 Gustafsen Lake Standoff.” Master’s thesis, University of Lethbridge, Alberta, 2001.

McCrimmon, Sharron. “Child Welfare in Gitanmaxx. A Case Study of the Practice of Self-Government.” Master’s thesis, University of British Columbia, 1996.

Mills, Patricia Dawn. “Reconciliation: Gitxsan Property and Crown Sovereignty.” Ph.D. diss., University of British Columbia, 2005.

Napoleon, Val. “Ayook: Gitksan Legal Order, Law and Legal History.” Ph.D. diss., University of Victoria, 2009.

Simpkins, Maureen Ann. “After Delgamuukw. Aboriginal Oral Tradition as Evidence in Aboriginal in Aboriginal Rights and Title Litigation.” Master’s thesis, University of Toronto, 2000.

Woolford, Andrew. “Between Justice and Certainty: Treaty Making in Modern-Day British Columbia.” Ph.D. diss., University of British Columbia, 2002.

Wright, Maisie Helen. “A Study of the Traditional Governance of the Gitxsan: Its Relevance Today.” Master’s thesis, University of British Columbia, 1997.

Documentaries

Wild, Nettie. *The Blockade*. Vancouver: National Film Board of Canada, 199, Film.

Clayoquot Sound: The Last Battlefield, *The Fifth Estate*, 1993, Video. https://www.youtube.com/watch?v=pVp5qrImzKk

APPENDICES

Appendix A: Map depicting the approximate Gitxsan traditional territory. Re-printed from Commons Wikimedia. https://commons.wikimedia.org/wiki/File:CAN_BC_Gitxsan_Hereditary_Chiefs_locator.svg

Appendix B: Important Dates.

Appendix C: Letter from Don Ryan/Chief Hanamuxw to B.C. Premier John Horgan, September 30, 2021. Re-printed with permission from Don Ryan

Appendix A: Map depicting the approximate Gitxsan traditional territory. Re-printed from Commons Wikimedia. https://commons.wikimedia.org/wiki/File:CAN_BC_Gitxsan_Hereditary_Chiefs_locator.svg

Appendix B:

Important Dates

1876 – Federal Parliament passes the *Indian Act*.

1927 – an amendment to the *Indian Act* prohibits land claims.

1951 – A revision of the Indian Act removes some discriminatory laws, making land claims possible

1967 – the Nisga'a start the *Calder* case.

1969 – Pierre Trudeau's government releases its *White Paper*.

1970s - the Department of Fisheries tries to enforce the law that prohibited Native people from selling fish (introduced formally in the late 1890s). The Gitxsan get legal advice from their lawyer Stuart Rush.

1973 (January) – the *Calder* case concludes in the Supreme Court of Canada.

1973 (August) – the federal government releases a policy on comprehensive land claims.

1975 – the Gitxsan start mapping their territorial boundaries. The project is led by Neil J. Sterritt.

1976 – the federal government starts treaty negotiations with the Nisga'a.

1977 – the Gitksan-Carrier (Wet'suwet'en) tribal Council in Kispiox issues a declaration of sovereignty and rights and demands the beginning of land claims negotiations.

1980s – Westar Timber Ltd., a giant timber company, starts an aggressive logging campaign in the Kispiox Valley on Gitxsan hereditary territories.

1982- the Canadian Constitution recognizes, under section 35(1), that the existing aboriginal and treaty rights of the Aboriginal people of Canada are to be recognized and affirmed.

1983 – the First Ministers Constitutional Conference takes place. The Gitxsan are disappointed that the province denies the existence of Aboriginal title.

1984 – members of Clayoquot and Ahousath First Nations, which formed the Nuu-Chah-Nulth Tribal Council, and other protesters block access to Meares Island for the logging company MacMillan Bloedel.

1984 (October) – the Gitxsan and Wet'suwet'en filed a lawsuit in the British Columbia Supreme Court. The main plaintiffs are: Chief Delgamuukw (the Gitxsan) and Chief Gisday Wa (Wet'suwet'en).

1985-1986 – the Gitxsan and Wet'suwet'en lawyers start to collect Commission Evidence with some Elders.

1986 - A new Comprehensive Land Claims Policy is announced by the Minister of Indian and Northern Affairs Bill McKnight (no pre-condition of "extinguishment of Aboriginal title").

1986 – the Gitxsan and Wet'suwet'en led by Don Ryan and Glen William block access to the fishing camp at Antkii's, which results in the so-called Marshmallows War.

1987 (May) – the *Delgamuukw* court case begins in Smithers.

1988 (March) – the blockade led by Art Wilson is mounted in Kispiox Valley.

1988 (September) – the Gitxsan request an injunction to prevent the logging from crossing the Babine River and oppose the construction of the bridge at Sam Green Creek.

1990 – British Columbia Premier Vander Zalm decides that the province will participate in treaty negotiations with First Nations.

1991 (March) – the *Delgamuukw* court case concludes in the Supreme Court of British Columbia. The verdict issued by Chief Justice Allan McEachern is very unfavorable for the Gitxsan and Wet'suwet'en.

1991 (June) – the British Columbia Claims Task Force issues a report and puts forward 19 recommendations.

1991 (December) – members of Eagle Clan blockade the Hobenshields family business, but an agreement is reached and the Hobenshields agree to change their logging practices.

1993 (June) – the *Delgamuukw* court case concludes in the Court of Appeal without a clear definition of the nature and origins of Aboriginal title. The court recommends a participation in the newly established treaty negotiations process.

1993(April) – the British Columbia Treaty Commission (BCTC) is appointed as the "keeper of the land claims process."

1994 (June) – the Gitxsan and Wet'suwet'en join the newly established British Columbia Treaty Process. They sign an accord of recognition and respect with "Her Majesty the Queen in Right of British Columbia."

1993 (Summer)– massive protests in Vancouver and on the Clayoquot Sound result in arrests of about 800 people.

1994 – the Gitxsan mount a blockade of B.C. Rail's line near Bear Lake in response to irresponsible logging practices. They carry out a lawsuit against Takla Track & Timber.

1994 – Fort St. James Forest District Manager Ray Schultz expands the controversial Cutting Permit 702 in the area by Minaret Creek.

1995 (February)– the Gitxsan and the province signed a "Significant Progress Agreement." The Wet'suwet'en hold the opening session in Smithers.

1995 (March) – the giant logging company Skeena Cellulose files for lifting of the injunction that prevents the construction of the bridge at Sam Green Creek.

1995 (August) – the Gitxsan carry out blockades in Suskwa, which results in the suspension of the negotiations.

1995 (September) – RCMP deploys overwhelming force at Gustafson Lake in response to the conflict between the cattle rancher Lyle James and members of the Shuswap First Nation. The Gitxsan leaders Don Ryan and Gordon Sebastian participate in the peaceful settlement of the conflict.

1995 (October) – the blockades stop and the negotiations resume.

1995 (December) – because of the upcoming election, the opposition in the House of Commons requests to freeze the negotiations with Indigenous peoples.

1996 (January) – the province announces its withdrawal from the negotiations with the Gitxsan.

1997– the *Delgamuukw* court case (appealed after the broken negotiations) concludes in the Supreme Court of Canada.

Appendix C: Letter from Don Ryan/Chief Hanamuxw to B.C. Premier John Horgan

Hanamuxw

Wilp Hanamuxw

September 30, 2021

VIA EMAIL: premier@gov.bc.ca

Honourable John Horgan, Premier

and Cabinet Members

Office of the Premier and Cabinet Office

Government of British Columbia

PO Box 9041 STN PROV GOVT

Victoria, British Columbia

V8W 9E1

Canada

Dear Premier Horgan and Cabinet Members:

This letter is written today as a memorial to the first National Day for Truth and Reconciliation in Canada. A day of reflection for the Government of British Columbia on the truth of pre-

1

existing title and rights.

My name is Hanamuxw and I write on behalf of my Wilp.

Our Wilp holds lands which is part of the area subject to the ***Delgamuuk*** decision. It is also part of the land that British Columbia claims as Crown land and has included in the Kispiox Timber Supply Area.

British Columbia is well aware of the evidentiary record underpinning our pre-existing title and rights dating back to the imperial time. British Columbia is well aware that our Wilp owns the lands and governs the lands. A responsibility for governance of these lands we take seriously. Before, during and after the ***Delgamuukw*** trial, our leaders in our Wilp and other Gitxsan Huwilp clearly told British Columbia about our ownership of our lands and about the damage that was being done to these lands by British Columbia's logging practices. We also underlined the degree to which British Columbia and the logging companies were only taking certain commercial species of our trees and destroying our land managment regimes that have been in place since the last glaciation period. Our ethics for caring for our forests have been ignored and dismissed by British Columbia and logging companies thus depriving each Wilp the benefits that our lands and resources have provided us since time out of memory.

In the past British Columbia declared our title and rights were extinguished by colonial ordinances and provincial legislation. In 1997, ***Delgamuukw*** made it clear that British Columbia did not have the jurisdiction to make such a declaration. Aboriginal Rights is a colonial construct. Even with that fact, British Columbia has used the excuse that it did not believe Aboriginal title was as extensive as we say it is, this excuse should have melted away in light of the ***Tsilhoqt'in*** decision. This decision made it clear that Aboriginal title is not limited to small parts or patches or our homelands but provide real legal recognition for our homelands, territories and resources. ***Delgamuukw*** set in motion the concept of Wilp as a decentralized governance unit and a regional jurisdiction that dispatched the small spots theory. ***Delgamuukw*** and ***Tsilhqot'in*** also made it clear that British Columbia can recognize our pre-existing title and rights and respect our laws without going to court. Despite all of this though British Columbia has done nothing to get on the with the real task of recognizing our title to the land and governance laws.

British Columbia has adopted a law recognizing and accepting the province's obligation to conform to the United Nations Declaration of the Rights of Indigenous People with the passage of the *Declaration of the Rights of Indgenous Peoples Act*, SBC 2019, c. 44. In this legislation British Columbia finally recognized what our people have been saying since 1793 - that you have to bring your laws into conformity with reality that so-called Crown land belongs to the Indigenous people who were here before the British Crown asserted sovereighty over our lands. At the heart of this legislation is the recognition that "the goverment must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration." At the

heart of the Declaration is the recognition of need to obtain our "free, prior and informed consent" before interfering with our lands and this is an essential part of eliminating discrimination against indenous people by the refusal of Canada to recognize and respect our laws and institutions.

Despite these obligations and statements of good intention, British Columbia continues to authorize forestry activity on our Wilp territory without our free, prior and informed consent. Further, you continue to do this without taking meaningful steps to actually protect our pre-existing title and rights in accordance with your laws. British Columbia - despite having a mass of evidence from our Wilp and other Huwilp - turns a blind eye to the factual reality that the lands and resources it is giving to others belong to the our Wilp and other Huwilp.

The practical reality is that despite the fact that we are coming up on the fortieth year of the ***Constitution Act, 1982*** being in effect and almost 24 years since the ruling of the Supreme Court of Canada in ***Delgamuukw***, British Columbia has done nothing to establish a system to recognize, demarcate, title and record the lands of indignous people in British Columbia a timely, effective and fair way. Instead it has continued to grant rights to others on the presumption that the lands are unencumbered by our ownership and governance laws. British Columbia has the put the burden of dealing with development on our shoulders through the *ad hoc* process of a flawed consultation which is a poor substutute for properly recognizing and respecting our laws.

What is particularly offensive about British Columbia's approach in this regard, is that international human rights bodies have highlighted the discriminatory nature of this approach to indigenous issues. In the 2001 ***Mayaagna (Sumo) Awas Tingni Community v. Nicaragua*** decision the Inter-American Court of Human Rights assessed the conduct of the Nicaraguan government in doing exactly what British Columbia does today - continue to grant resource and land rights to third parties without providing and effective means of recognizing demarcating and titling indigenous land ownership. The Inter-American Court of Human Rights held that this offended a number of provisions of the American Convention of Human Rights, becauseof the discriminatory treatment inherent in failure to provide such a system for protecting indigenous land laws.

It is shocking in British Columbia in this day and age that indigenous land ownership is treated in such a fashion. British Columbia has long recognized the importance of having a system to clearly and publicly record non-indigenous land rights and provides a publicly funded system for recording and recognizing such rights. The province also provides relatively easy and quick access to the courts to resolve disputes over land ownership and boundaries. Further, the provides legislative mechanisms to ensure that when non-indigenous lands rights are taken away for the benefit of the public, these is a transparent mechanism available to ensure fair market value is paid for that compensation.

None of that exists for indignous people. There is simply no administrative system for recognizing, demarcating, recording and titling the lands of our Wilp or any other indigenouse people British Columbia. However, our Wilp has a system to do this and has been in place for thousands of years. Our public system can be utilized to create a jointly run administrative system in British Columbia. While we can resort to the courts is theoretically possible, it is impractical given the prohibitive cost and delay that is involved. Finally, the province has no system in place for ensuring that fair compensation is paid for our lands being appropriated for public purposes.

This in our view offends Canada's Consitution in three ways. First, it is discriminatory (in a manner that is contrary to s. 15 of the ***Canadian Charter of Rights and Freedoms***) in that our land - which has been recognized as legal rights in Canadian law to lands - are denied the protections given to similar non-Indigenous land rights (such as fee simple title). Second, it is contrary to the Honour of the Crown to (1) continue to grant interests to others in respect to lands that are clearly subject to our Wilp pre-existing title and rights and subject to credible claims to Aboriginal title without establishing some fair and timely process to recognize, demarcate, title and record our Wilp title, and (2) to not provide a process that provides similar compensation for the taking of our land that is comparable to what would be given for the taking of similar non-Indigenous land rights (e.g., fee simple). Third, it offends s. 109 of the ***Constitution Act 1867*** for British Columbia to be granting interests in land and resources that are vested in Indigenous Nations (including the Gitxsan Huwilp and our Wilp) without providing some mechanism to ensure that rights not vested in the province are not interfered with unlawfully.

Our Wilp demands that British Columbia cease granting or authorizing land use or resource extraction on our Wilp territory until such time we grant our free, prior and informed consent. British Columbia needs to address immediately the failures identified above. If you are not willing to do this it is our intention to commence legal proceedings to address these issues. Finally, our Wilp will continue to protect our pre-existing title and rights as we have since 1793.

Sincerely,

Hanamuxw