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## CHAPTER 15 FISCAL RELATIONS

### DEFINITIONS

1. In this Chapter and in the Taxation Chapter:

**“capital transfer”** means an amount paid by Canada or British Columbia under the Capital Transfer and Negotiation Loan Repayment Chapter;

**“Income Tax Act”** means the *Income Tax Act*, S.C. 1985 (5th Supp.) c.1;

**“Income Tax Act (British Columbia)”** means the *Income Tax Act*, RSBC 1996, c. 215;

**“Nisga’a capital”** means all land, cash, and other assets transferred to, or recognized as owned by, the Nisga’a Nation or a Nisga’a Village under this Agreement, except land added to Nisga’a Lands under paragraph 9 or 11 of the Lands Chapter;

**“Nisga’a capital finance authority”** means an authority for the benefit of the Nisga’a Nation and all Nisga’a Villages, established in accordance with a fiscal financing agreement, to enable the financing of capital projects of the Nisga’a Nation or a Nisga’a Village on Nisga’a Lands, and operated in accordance with the most recent fiscal financing agreement;

**“Nisga’a exempt corporation”** means a corporation, other than a Nisga’a government corporation, in which the Nisga’a Nation or a Nisga’a Village has a direct or indirect interest as a shareholder, that is exempt from tax on its taxable income under laws of Canada or British Columbia;

**“Nisga’a government corporation”** means any corporation, commission or association, all of the shares (except directors’ qualifying shares) or capital of which belong to the Nisga’a Nation, a Nisga’a Village, or a Nisga’a settlement trust, or any combination thereof, and for this purpose where, at any time, any shares or capital of a corporation, commission or association belong, or are deemed by this paragraph to belong, to another corporation, a partnership, or a trust that is not a Nisga’a settlement trust, (“intermediary”), those shares or that capital will be deemed to belong to each shareholder, partner or beneficiary, as the case may be, of the intermediary, proportionate to the relative fair market values of their respective interests in that intermediary;

**“Nisga’a settlement trust”** means any trust having the following characteristics:

- a. the trust is resident in Canada,
- b. the beneficiaries of the trust are limited to the Nisga’a Nation, any Nisga’a Village, another Nisga’a settlement trust, all Nisga’a citizens, all Nisga’a

citizens in any Nisga'a Village, or any registered charity or non-profit organization, within the meaning of the *Income Tax Act*, that in the reasonable opinion of the trustees directly or indirectly benefits one or more Nisga'a citizens, or any combination of those entities and persons,

- c. the investment of the funds of the trust is restricted to:
- i. investment instruments that are described as qualified investments for a trust governed by a registered retirement savings plan within the meaning of section 146 of the *Income Tax Act* or in any other investments that may be agreed upon from time to time by the Nisga'a Nation, Canada and British Columbia,
  - ii. loans to a Nisga'a citizen, the Nisga'a Nation, a Nisga'a Village, or a Nisga'a government corporation at a rate of interest equal to the rate prescribed under regulation 4301(c) of the *Income Tax Act* in effect at the time the loan was made or last renewed,
  - iii. investments in a share of a Nisga'a government corporation where the average annual rate of dividends on that share over any five year period cannot exceed the rate prescribed under regulation 4301(c) of the *Income Tax Act* at the beginning of that period, and if the amount receivable on redemption of the share or on liquidation of the corporation is limited to the amount of the consideration for which the share was originally issued, and
  - iv. low interest or interest free loans to a Nisga'a citizen, or a partnership or trust in which Nisga'a citizens hold all the interests as partners or beneficiaries, where the purpose of the loan is to assist the borrower to:
    - A. acquire, construct or renovate a residential property for their own habitation in British Columbia,
    - B. attend courses to further their own education, technical or vocational skills, or attend courses in native studies, culture or language programs, or
    - C. acquire funding for purposes of carrying on a business on Nisga'a Lands or Nisga'a Fee Simple Lands, where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates,

where, at the time the loan was made, *bona fide* arrangements were made for repayment of the loan within a reasonable period of time,

- d. the trust is not permitted to carry on a business as a proprietor or member of a partnership, or acquire any beneficial interest in a trust engaged in a business where one or more of the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a settlement trust or a Nisga'a citizen, either alone or in combination, holds more than 10% of all of the beneficial interests in the trust,
- e. the trust does not borrow money except as required to finance the acquisition of qualified investments or to carry out its operations,
- f. contributions to the trust are limited to contributions received from the Nisga'a Nation of capital transfer payments received by it under the Capital Transfer and Negotiation Loan Repayment Chapter or amounts received from another Nisga'a settlement trust where substantially all of the funds of that contributing trust reasonably can be considered to have been derived from a contribution to a Nisga'a settlement trust by the Nisga'a Nation of capital transfer payments received by it under the Financial Transfers Chapter and income and gains derived therefrom, and
- g. the trust is not permitted to make any distributions other than to one or more beneficiaries in accordance with the trust, or to another Nisga'a settlement trust; and

“person” includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives.

## INTERPRETATION

2. If a principle in paragraph 16, or in an own source revenue agreement, applies in respect of a Nisga'a exempt corporation, the own source revenue capacity that results:
  - a. will be reduced proportionately to fully account for the direct or indirect ownership interests in the corporation of persons other than the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations, and Nisga'a settlement trusts; and
  - b. if the Nisga'a Nation or a Nisga'a Village, or any combination of them, cannot cause a distribution by the corporation, will be taken into account only at the time, and to the extent, that a distribution is made to the Nisga'a Nation, a Nisga'a Village, or a Nisga'a government corporation.

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**FISCAL FINANCING AGREEMENTS**

3. Every five years, or at other intervals if the Parties agree, the Parties will negotiate and attempt to reach agreement on a fiscal financing agreement by which funding will be provided to the Nisga'a Nation to enable the provision of agreed-upon public programs and services to Nisga'a citizens and, where applicable, non-Nisga'a occupants of Nisga'a Lands, at levels reasonably comparable to those generally prevailing in northwest British Columbia.
  4. A fiscal financing agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
  5. The recognition of the legislative authority of Nisga'a Lisims Government and Nisga'a Village Governments does not create or imply any funding or financial obligation for Canada, British Columbia, the Nisga'a Nation, or a Nisga'a Village.
  6. Nisga'a citizens are eligible to participate in programs established by Canada or British Columbia and to receive public services from Canada or British Columbia, in accordance with general criteria established for those programs or services from time to time, to the extent that the Nisga'a Nation has not assumed responsibility for those programs or public services under a fiscal financing agreement.
  7. The Parties will negotiate and attempt to reach agreements in respect of grants, between them, *in lieu* of property taxes.
  8. The funding for the Nisga'a Nation and Nisga'a Villages is a shared responsibility of the Parties and it is the shared objective of the Parties that, where feasible, the reliance of the Nisga'a Nation and Nisga'a Villages on transfers will be reduced over time.
  9. In negotiating fiscal financing agreements, the Parties will take into account, among other things:
    - a. costs necessary to establish and operate Nisga'a Lisims Government and Nisga'a Village Governments, and agreed-upon Nisga'a Public Institutions and the Nisga'a Court;
    - b. efficiency and effectiveness in the provision of public programs and services;
    - c. location and accessibility of Nisga'a Lands;
    - d. population and demographic characteristics of persons receiving agreed-upon public programs and services;
    - e. other funding or support in respect of agreed-upon public programs or services provided to the Nisga'a Nation or a Nisga'a Village by Canada or British Columbia;
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- f. the level, type and condition of agreed-upon public works and utilities within Nisga'a Lands;
  - g. major maintenance and replacement of assets identified in and funded according to Schedule C to the first fiscal financing agreement, or other agreed-upon community or health capital assets;
  - h. necessary training requirements for agreed-upon public programs and services;
  - i. the desirability of reasonably stable, predictable and flexible funding arrangements;
  - j. the jurisdictions, authorities and obligations of Nisga'a Lisims Government and the Nisga'a Village Governments;
  - k. the authorities and obligations of, and the public programs and services for which responsibility is assumed or is to be assumed by, the Nisga'a Nation or a Nisga'a Village;
  - l. prevailing fiscal policies of Canada and British Columbia;
  - m. Nisga'a cultural values; and
  - n. Nisga'a Nation own source revenue capacity as determined under an own source revenue agreement or, in the absence of an own source revenue agreement, under this Chapter.
10. The Parties will address the following, among other things, in fiscal financing agreements:
- a. procedures for negotiating the next fiscal financing agreement;
  - b. procedures for assuming or transferring responsibility for the provision of agreed - upon programs and services;
  - c. procedures for funding, and assuming or transferring responsibility for, the provision of additional programs and services during the term of the fiscal financing agreement;
  - d. costs of emergencies and of fire suppression;
  - e. payment procedures;
  - f. dispute resolution; and
  - g. information exchange.
11. Unless the Parties otherwise agree, the first fiscal financing agreement will come into effect
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on the effective date.

12. If the Parties do not reach a further fiscal financing agreement by the expiry date of a fiscal financing agreement, the fiscal financing agreement will continue in effect for two years from its original expiry date, or for any other period that the Parties may agree while they attempt to reach a further fiscal financing agreement.
13. Any amounts required for the purposes of a fiscal financing agreement will be paid out of appropriations as may be made by the Parliament of Canada or the Legislature of British Columbia for those purposes.

#### OWN SOURCE REVENUE AGREEMENTS

14. Every 10 years, or at other intervals if the Parties agree, the Parties will negotiate and attempt to reach agreement on an own source revenue agreement under which Nisga'a Nation own source revenue capacity, and the manner and extent to which that capacity will be taken into account under fiscal financing agreements, will be determined.
15. An own source revenue agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
16. In determining Nisga'a Nation own source revenue capacity, the Parties will apply the following principles:
  - a. the own source revenue capacity in respect of any source will not be taken into account so as to unreasonably reduce the incentive for the Nisga'a Nation or a Nisga'a Village to raise revenues from that source or to occupy any tax room that other Canadian governments may have made available by agreement with the Nisga'a Nation;
  - b. there should be a fair basis of comparison between the own source revenue capacity in respect of a Nisga'a settlement trust and the additional tax revenue that Canadian governments would have received if the income and capital gains, net of losses, of the trust were earned or realized in equal shares by all Nisga'a citizens, instead of by the trust, and if all Nisga'a citizens were resident in British Columbia;
  - c. the own source revenue capacity in respect of each tax will not exceed the sum of:
    - i. the value of any tax room made available in respect of the tax by Canada or British Columbia under an agreement referred to in subparagraph 3(b) of the Taxation Chapter, or other agreement with the Nisga'a Nation, and
    - ii. where the tax is similar to a tax generally imposed by local authorities in

## British Columbia:

- A. if the Nisga'a Nation or a Nisga'a Village is taxing only Nisga'a citizens, the amount by which the revenues derived by the Nisga'a Nation or the Nisga'a Village from the tax exceed the amount, if any, included in subparagraph 16(c)(i), or
  - B. if there is a delegated taxation authority in respect of the tax, under an agreement referred to in subparagraph 3(a) of the Taxation Chapter, the amount by which the tax capacity in respect of all persons over which Nisga'a Government has taxation power or authority exceeds the amount included in subparagraph 16(c)(i), and for this purpose, tax capacity will be determined on a fair and reasonable basis, taking into account the circumstances in Nisga'a communities and in similar communities in northwest British Columbia;
- d. the own source revenue capacity in respect of commercial and investment activities, including exploitation of a natural resource, of the Nisga'a Nation, the Nisga'a Villages, Nisga'a government corporations, Nisga'a exempt corporations, and corporations without share capital established and operated for the benefit of the Nisga'a Nation or a Nisga'a Village, or any combination of them, will be reasonably comparable to, and not exceed, the additional revenues that other Canadian governments would have from taxation of those entities if:
- i. they were Canadian private enterprises subject to taxation under federal and provincial laws of general application,
  - ii. the commercial and investment activities were their only activities,
  - iii. their only properties were properties related to the activities, and
  - iv. those properties were owned by them as private persons and not as governments; and
- e. to the extent that a base is used in the calculation of a tax paid or payable by the Nisga'a Nation, a Nisga'a Village, a Nisga'a government corporation, a Nisga'a settlement trust, or a Nisga'a exempt corporation, it will not be used as a base in the calculation of Nisga'a Nation own source revenue capacity in place of that tax.
17. Nisga'a Nation own source revenue capacity in respect of any source not referred to in paragraph 16 will be taken into account in a manner that does not unreasonably reduce the incentive for the Nisga'a Nation or a Nisga'a Village to raise revenues from that source.
18. There is no Nisga'a Nation own source revenue capacity in respect of:
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- a. proceeds from the sale of Nisga'a Lands or Nisga'a Fee Simple Lands;
  - b. a capital transfer;
  - c. the capital of a Nisga'a settlement trust, except to the extent that a capital gain results in own source revenue capacity in accordance with the principle in subparagraph 16(b);
  - d. a distribution of capital from a Nisga'a settlement trust, except to the extent that a distribution to a Nisga'a citizen results in a tax that is included in the determination of own source revenue capacity in accordance with the principle in subparagraph 16(c);
  - e. the Nisga'a capital finance authority, including any income, gains or property of the authority, and any distribution by the authority, except to the extent that a distribution is included as own source revenue capacity in respect of a commercial activity of the recipient of the distribution; and
  - f. a transfer by a corporation to the Nisga'a Nation or a Nisga'a Village, to the extent that the transfer represents a distribution out of income that has already been taken into account in determining Nisga'a Nation own source revenue capacity.
19. Nisga'a Nation own source revenue capacity will be phased in over a 12 year period as provided in the own source revenue agreement.
  20. Unless the Parties otherwise agree, the first own source revenue agreement will come into effect on the effective date.

#### OWN SOURCE REVENUE ADMINISTRATION

21. Nisga'a Lisims Government may make laws that impose an obligation on the Nisga'a Nation, Nisga'a Villages, Nisga'a settlement trusts, or Nisga'a government corporations, in respect of the determination, adjustment, payment, or collection of amounts, to enable the Nisga'a Nation to recover from those entities amounts in respect of Nisga'a Nation own source revenue capacity.
22. In the event of a conflict between a Nisga'a law under paragraph 21 and a federal or provincial law of general application, the federal or provincial law will prevail to the extent of the conflict.



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## CHAPTER 16 TAXATION

### DIRECT TAXATION

1. Nisga'a Lisims Government may make laws in respect of direct taxation of Nisga'a citizens on Nisga'a Lands in order to raise revenue for Nisga'a Nation or Nisga'a Village purposes.
2. Nisga'a Lisims Government powers provided for in paragraph 1 will not limit the powers of Canada or British Columbia to impose or levy tax or make laws in respect of taxation.

### OTHER TAXATION AND TAX ADMINISTRATION AGREEMENTS

3. From time to time Canada and British Columbia, together or separately, may negotiate with the Nisga'a Nation, and attempt to reach agreement on:
  - a. the extent, if any, to which Canada or British Columbia will provide to Nisga'a Lisims Government or a Nisga'a Village Government direct taxation authority over persons other than Nisga'a citizens, on Nisga'a Lands; and
  - b. the coordination of Nisga'a Lisims Government or Nisga'a Village Government taxation, of any person, with existing federal or provincial tax systems.
4. Nisga'a Lisims Government and Nisga'a Village Governments may make laws in respect of the implementation of any taxation agreement entered into with Canada or British Columbia.

### SECTION 87 EXEMPTION

5. Subject to paragraph 6, section 87 of the *Indian Act* applies to Nisga'a citizens only to the extent that an Indian other than a Nisga'a citizen, or the property of that Indian, would be exempt from taxation in similar circumstances by reason of the applicability of section 87 of the *Indian Act*.
  6. Section 87 of the *Indian Act* will have no application to Nisga'a citizens:
    - a. in respect of transaction taxes, only as of the first day of the first month that starts after the eighth anniversary of the effective date; and
    - b. in respect of all other taxes, only as of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.
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**REMISSION ORDERS**

7. Subject to paragraphs 8 and 9, as of the effective date, Canada and British Columbia will each grant a remission of, respectively, federal and provincial tax imposed or levied in respect of:
  - a. the estate or interest of an Indian in lands described in subparagraph 2(b) of the Lands Chapter that are within Nisga'a Lands;
  - b. the personal property of an Indian situated on lands described in subparagraph 2(b) of the Lands Chapter that are within Nisga'a Lands; and
  - c. an Indian's ownership, occupation, possession or use of any property referred to in subparagraph (a) or (b).
8. A remission of tax under paragraph 7 will be granted only where the property referred to in subparagraph 7(a) or (b), or the Indian in respect of the ownership, occupation, possession or use of the property referred to in subparagraph 7(a) or (b) would, but for this Agreement, be exempt from taxation by reason of the applicability of section 87 of the *Indian Act*.
9. The orders authorizing the remissions of tax referred to in paragraph 7 will cease to be effective:
  - a. in respect of transaction taxes, as of the first day of the first month that starts after the eighth anniversary of the effective date; and
  - b. in respect of all other taxes, as of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.

**VALUATION TIME**

10. In paragraphs 11 and 12:
  - a. "eligible individual" means an Indian who, at the valuation time, holds an eligible interest;
  - b. "eligible interest" means any estate or interest in specified lands or in personal property situated on specified lands;
  - c. "specified lands" in respect of an Indian means:
    - i. lands described in subparagraph 2(b) of the Lands Chapter that are within Nisga'a Lands, and

- ii. if the Indian is a Nisga'a citizen, a reserve as defined in the *Indian Act*; and
  - d. "valuation time" means the beginning of the first day of the first calendar year that starts on or after the twelfth anniversary of the effective date.
11. For the purposes of the *Income Tax Act* and the *Income Tax Act* (British Columbia), if an eligible individual elects as described in paragraph 12 to have this paragraph apply:
- a. the individual is deemed to have disposed of each of the individual's eligible interests, at the time that is immediately before the time that is immediately before the valuation time, for an amount equal to its fair market value at that time, and to have reacquired the eligible interest at the valuation time at a cost equal to that fair market value;
  - b. for greater certainty, it is understood that the deemed disposition and reacquisition described in subparagraph (a) apply to all eligible interests owned by the eligible individual at the valuation time; and
  - c. for the purposes of applying sections 37, 65 to 66.4, 111, subsections 127(5) to 127(26) and section 127.3 of the *Income Tax Act*, the individual will be deemed not to have owned an eligible interest referred to in subparagraph (a) at any time before the time it was deemed to have been reacquired by the individual under that subparagraph.
12. Paragraphs 10 and 11 apply to any eligible individual who so elects in writing in the individual's return of income under Part I of the *Income Tax Act* for the year that starts at the valuation time.

## NISGA'A LANDS

13. Neither the Nisga'a Nation nor any Nisga'a Village is subject to capital taxation, including real property taxes and taxes on capital or wealth, in respect of the estate or interest of either the Nisga'a Nation or any Nisga'a Village in Nisga'a Lands on which there are no improvements or on which there is a designated improvement.
14. In paragraph 13, "designated improvement" means:
- a. a residence of a Nisga'a citizen;
  - b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
    - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home,

- public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Nisga'a cultural or spiritual purposes,
- ii. works of public convenience constructed or operated for the benefit of Nisga'a citizens, occupiers of Nisga'a Lands or persons visiting or in transit through Nisga'a Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks, and public parking lots, or
  - iii. similar improvements;
- c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a forestry, fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and
  - d. forest resources and forest roads.
15. In paragraph 14(b), "public purpose" does not include the provision of property or services primarily for the purpose of profit.
16. Paragraph 13 does not affect the taxation of a person, other than the Nisga'a Nation or a Nisga'a Village, in respect of an estate or interest in Nisga'a Lands, or exempt from taxation a disposition of capital by the Nisga'a Nation or any Nisga'a Village.
17. If, within 20 years after the effective date, Canada or British Columbia enacts legislation giving effect to another land claims agreement applicable in northwest British Columbia that:
- a. provides that all of the lands that were set apart as reserves of an Indian band whose members were represented by a party to the agreement cease to be reserves; and
  - b. provides a tax exemption, not provided in paragraph 13, in respect of an estate or interest in settlement lands

Canada and British Columbia, upon request of Nisga'a Nation, will negotiate and attempt to reach agreement on the provision of a similar tax exemption for the Nisga'a Nation and Nisga'a Villages.

#### **NISGA'A CAPITAL**

18. A transfer, or recognition of ownership, under this Agreement, of Nisga'a capital is not

taxable.

19. For the purposes of paragraph 18, an amount paid to a Nisga'a participant will be deemed to be a transfer of Nisga'a capital under this Agreement if the payment:
  - a. reasonably can be considered to be a distribution of a capital transfer received by the Nisga'a Nation; and
  - b. becomes payable to the Nisga'a participant within 90 days, and is paid to the Nisga'a participant within 270 days, after the Nisga'a Nation receives the capital transfer.
20. For the purposes of the *Income Tax Act* and the *Income Tax Act (British Columbia)*, Nisga'a capital transferred to, or recognized as owned by, the Nisga'a Nation or any Nisga'a Village under this Agreement will be deemed to have been acquired by the Nisga'a Nation or the Nisga'a Village, as the case may be, on the latest of the effective date, the date of transfer or the date of recognition, at a cost equal to its fair market value on that date.

#### TAXATION AGREEMENT

21. On the effective date, the Parties will enter into a Taxation Agreement. The Taxation Agreement does not form part of this Agreement.
22. The Taxation Agreement is not intended to be a treaty or land claims agreement, and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
23. Canada and British Columbia will recommend to Parliament and the Legislature, respectively, that the provisions of the Taxation Agreement be given effect under federal and provincial law.

## CHAPTER 17 CULTURAL ARTIFACTS AND HERITAGE

### GENERAL

1. The Parties recognize the integral role of Nisga'a artifacts in the continuation of Nisga'a culture, values, and traditions.
  2. The Parties recognize the Nisga'a Nation's traditional and sacred connection with Nisga'a artifacts, regardless of whether those artifacts are held by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, a Nisga'a citizen, the Canadian Museum of Civilization, or the Royal British Columbia Museum.
  3. If the Nisga'a Nation or Canada considers that there may be an error in the determination of whether an artifact:
    - a. set out in Appendix L-1; or
    - b. in the permanent collection of the Canadian Museum of Civilization, including an artifact set out in Appendix L-2is a Nisga'a artifact, they will endeavour to determine whether the artifact is a Nisga'a artifact.
  4. If the Nisga'a Nation or British Columbia considers that there may be an error in the determination of whether an artifact:
    - a. set out in Appendix L-3; or
    - b. in the permanent collection of the Royal British Columbia Museum, including an artifact set out in Appendix L-4is a Nisga'a artifact, they will endeavour to determine whether the artifact is a Nisga'a artifact.
  5. A disagreement in respect of a determination under paragraph 3 or 4 of whether an artifact is a Nisga'a artifact is a disagreement within the meaning of the Dispute Resolution Chapter.
  6. An artifact originally obtained from a Nisga'a person, a Nisga'a community, or a Nisga'a heritage site is presumed, in the absence of proof to the contrary, to be a Nisga'a artifact.
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**RETURN OF NISGA'A ARTIFACTS****Canadian Museum of Civilization**

7. Appendix L-1 and Appendix L-2 set out all artifacts in the permanent collection of the Canadian Museum of Civilization on the effective date that have been identified as Nisga'a artifacts.
  8. The Canadian Museum of Civilization will transfer to the Nisga'a Nation without condition all its legal interests in, and possession of, the Nisga'a artifacts set out in Appendix L-1:
    - a. as soon as practicable following a request by the Nisga'a Nation;
    - b. if there is no request by the Nisga'a Nation, five years after the effective date or the date that the artifact was included in Appendix L-1, whichever date is later; or
    - c. by any other date agreed to by the Canadian Museum of Civilization and the Nisga'a Nation.
  9. The transfer of the legal interests in, and possession of, the Nisga'a artifacts under paragraph 8 is deemed to occur when those artifacts arrive at a location for delivery designated in writing by the Nisga'a Nation.
  10. If the Nisga'a Nation does not designate a location for delivery, the Canadian Museum of Civilization will deliver those artifacts to the address for the Nisga'a Nation set out in the General Provisions Chapter.
  11. The Canadian Museum of Civilization:
    - a. will continue to hold the Nisga'a artifacts set out in Appendix L-1 under the same terms and conditions as they are held on the effective date, until they are transported to the Nisga'a Nation;
    - b. will not be liable for any loss or damage to those Nisga'a artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
    - c. will determine the transportation arrangements for, and will transport, those Nisga'a artifacts in accordance with the prevailing practices of the Canadian Museum of Civilization for transportation of artifacts to museums.
  12. If, after the effective date:
    - a. a Nisga'a artifact is permanently acquired by the Canadian Museum of Civilization;  
or
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- b. it is determined under paragraph 3 or 5 that another artifact in the collection of the Canadian Museum of Civilization is a Nisga'a artifact
- the artifact will be added to Appendix L-2 or, if the Canadian Museum of Civilization and the Nisga'a Nation agree, to Appendix L-1.
13. If it is determined under paragraph 3 or 5 that an artifact set out in Appendix L-1 is not a Nisga'a artifact:
- a. the artifact will be removed from Appendix L-1; and
- b. unless the Nisga'a Nation and Canada otherwise agree, the Nisga'a Nation will transfer its legal interests in, and possession of, the artifact to the Canadian Museum of Civilization.
14. If it is determined under paragraph 3 or 5 that an artifact set out in Appendix L-2 is not a Nisga'a artifact, the artifact will be removed from Appendix L-2.
15. The Nisga'a Nation and the Canadian Museum of Civilization will share possession of the Nisga'a artifacts set out in Appendix L-2 in accordance with any custodial agreements negotiated under paragraph 17.
16. The Canadian Museum of Civilization is responsible for the care, maintenance, and preservation of the Nisga'a artifacts listed in Appendix L-2, in accordance with resources available to the Canadian Museum of Civilization for those activities and any custodial agreements negotiated under paragraph 17.
17. From time to time, at the request of the Nisga'a Nation or the Canadian Museum of Civilization, the Nisga'a Nation and the Canadian Museum of Civilization will negotiate and attempt to reach custodial agreements in respect of Nisga'a artifacts listed in Appendix L-2.
18. Custodial agreements under paragraph 17 will:
- a. respect Nisga'a laws and practices relating to Nisga'a artifacts; and
- b. comply with federal and provincial laws of general application and the statutory mandate of the Canadian Museum of Civilization.
19. Custodial agreements under paragraph 17 may set out:
- a. the Nisga'a artifacts to be in the possession of the Nisga'a Nation and those to be in the possession of the Canadian Museum of Civilization;
- b. conditions of maintenance, storage, and handling of the Nisga'a artifacts;
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- c. conditions of access to and use, including study, display, and reproduction, of the Nisga'a artifacts and associated records by the public, researchers, and scholars;
  - d. provisions for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and
  - e. provisions for enhancing public knowledge about the Nisga'a Nation through the participation of Nisga'a citizens in public programs and activities at the Canadian Museum of Civilization.
20. The Nisga'a Nation and the Canadian Museum of Civilization:
- a. will consult each other if either of them proposes to transfer its legal interest in a Nisga'a artifact set out in Appendix L-1 or L-2 respectively; and
  - b. may exercise a right of first refusal to acquire the Nisga'a artifact on the proposed terms of the transfer.

#### **Royal British Columbia Museum**

21. Appendix L-3 and Appendix L-4 set out all artifacts in the permanent collection of the Royal British Columbia Museum on the effective date, that have been identified as Nisga'a artifacts.
22. British Columbia will transfer to the Nisga'a Nation without condition all its legal interests in, and possession of, the Nisga'a artifacts set out in Appendix L-3:
- a. as soon as practicable following a request by the Nisga'a Nation;
  - b. if there is no request by the Nisga'a Nation, five years after the effective date or the date that the artifact was included in Appendix L-3, whichever date is later; or
  - c. by any other date agreed to by British Columbia and the Nisga'a Nation.
23. The transfer of the legal interests in, and possession of, the Nisga'a artifacts under paragraph 22 is deemed to occur when those artifacts arrive at a location for delivery designated in writing by the Nisga'a Nation.
24. If the Nisga'a Nation does not designate a location for delivery, the Royal British Columbia Museum will deliver those artifacts to the address for the Nisga'a Nation set out in the General Provisions Chapter.
25. The Royal British Columbia Museum:
- a. will continue to hold the Nisga'a artifacts set out in Appendix L-3 under the same
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- terms and conditions as they are held on the effective date, until they are transported to the Nisga'a Nation;
- b. will not be liable for any loss or damage to those Nisga'a artifacts unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents; and
  - c. will determine the transportation arrangements for, and will transport, those Nisga'a artifacts in accordance with the prevailing practices of the Royal British Columbia Museum for transportation of artifacts to museums.
26. British Columbia will not be liable for any loss or damage to Nisga'a artifacts set out in Appendix L-3 unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents.
27. If, after the effective date, a Nisga'a artifact is permanently acquired by the Royal British Columbia Museum, the artifact will be included in Appendix L-4 or, where the Royal British Columbia Museum and Nisga'a Nation agree, will be transferred to Nisga'a Nation in accordance with this Chapter.
28. If it is determined under paragraph 4 or 5 of this Chapter that another artifact in the collection of the Royal British Columbia Museum on the effective date is a Nisga'a artifact, the artifact will be included in Appendix L-4, or transferred to Nisga'a Nation in accordance with this Chapter, in order to maintain the representative division of the Nisga'a artifacts in Appendix L-3 and Appendix L-4 .
29. If it is determined under paragraph 4 or 5 that an artifact listed in Appendix L-3 is not a Nisga'a artifact:
- a. the artifact will be removed from Appendix L-3; and
  - b. unless the Nisga'a Nation and British Columbia otherwise agree, the Nisga'a Nation will transfer its legal interests in, and possession of, the artifact to the Royal British Columbia Museum.
30. If it is determined under paragraph 4 or 5 that an artifact listed in Appendix L-4 is not a Nisga'a artifact, the artifact will be removed from Appendix L-4 .
31. From time to time, at the request of the Nisga'a Nation or British Columbia, the Nisga'a Nation and British Columbia will negotiate and attempt to reach custodial agreements in respect of the Nisga'a artifacts listed in Appendix L-4.
32. Custodial agreements under paragraph 31 will:
- a. respect Nisga'a laws and practices relating to Nisga'a artifacts; and
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- b. comply with federal and provincial laws of general application, and the statutory mandate of the Royal British Columbia Museum.
33. Custodial agreements under paragraph 31 may set out:
- a. conditions of maintenance, storage, and handling of the Nisga'a artifacts;
  - b. conditions of access to and use, including study, display, and reproduction, of the Nisga'a artifacts and associated records by the public, researchers, and scholars;
  - c. provisions for incorporating new information into catalogue records and displays of the Nisga'a artifacts; and
  - d. conditions under which Nisga'a artifacts may be permanently removed from the collection of the Royal British Columbia Museum.
34. The Nisga'a Nation and British Columbia may negotiate agreements that:
- a. establish processes for lending Nisga'a artifacts;
  - b. provide for replication of Nisga'a artifacts;
  - c. provide for professional and technical training for Nisga'a citizens in museum skills and conservation expertise;
  - d. provide for enhancing public knowledge about the Nisga'a Nation through the participation of Nisga'a citizens in public programs and activities at the Royal British Columbia Museum; and
  - e. provide for other matters.

#### **ACCESS TO OTHER COLLECTIONS**

35. From time to time, at the request of the Nisga'a Nation, Canada and British Columbia will use reasonable efforts to facilitate the Nisga'a Nation's access to Nisga'a artifacts and human remains of Nisga'a ancestry that are held in other public and private collections.

#### **PROTECTION OF HERITAGE SITES**

36. Nisga'a Government will develop processes to manage heritage sites on Nisga'a Lands in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites.

37. British Columbia will develop or continue processes to manage heritage sites in order to preserve the heritage values associated with those sites from proposed land and resource activities that may affect those sites.
38. The processes under paragraphs 36 and 37 will include measures designed to:
- a. identify heritage sites;
  - b. provide notice to each other of heritage sites;
  - c. assess the significance of heritage sites;
  - d. ensure appropriate protective or management measures are taken to protect, or, if necessary, to mitigate the effects of unavoidable impacts on, heritage sites and associated material; and
  - e. ensure that the appropriate person takes those measures and bears the associated costs.
39. Until Nisga'a Government establishes the processes referred to in paragraph 36, British Columbia's processes will apply on Nisga'a Lands.

#### **OTHER NISGA'A ARTIFACTS**

40. The Nisga'a Nation owns any Nisga'a artifact discovered within Nisga'a Lands or Category A Lands after the effective date, unless another person establishes their ownership of the artifact.
41. If any Nisga'a artifact discovered in British Columbia outside Nisga'a Lands and Category A lands comes into the permanent possession, or under the control, of British Columbia, British Columbia will lend the artifact to the Nisga'a Nation in accordance with any agreements negotiated under paragraph 31 or 34, and British Columbia may transfer the artifact to the Nisga'a Nation.
42. If any Nisga'a artifact discovered outside Nisga'a Lands and Category A lands comes into the permanent possession, or under the control, of Canada, Canada may lend the artifact to the Nisga'a Nation in accordance with any agreements negotiated with the Nisga'a Nation, and Canada may transfer the artifact to Nisga'a Nation.

#### **HUMAN REMAINS**

43. Subject to federal and provincial laws, any human remains of individuals of Nisga'a ancestry that are removed from a heritage site will be delivered to the Nisga'a Nation.
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## CHAPTER 18

### LOCAL AND REGIONAL GOVERNMENT RELATIONSHIPS

1. For purposes of representation of residents of Nisga'a Lands on the board of the Regional District of Kitimat-Stikine, from the effective date, Nisga'a Lands is part of Electoral Area "A" in the Regional District of Kitimat-Stikine.
2. Residents of Nisga'a Lands have the right to vote in elections and referenda of the Regional District of Kitimat-Stikine in accordance with provincial legislation.
3. British Columbia will consult with the Nisga'a Nation before altering the boundaries of Electoral Area "A" in the Regional District of Kitimat-Stikine.
4. British Columbia will not make any changes to electoral area boundaries which would result in Nisga'a Lands being in more than one electoral area, without the consent of the Nisga'a Nation.
5. The Nisga'a Nation and each Nisga'a Village, or any of them, may enter into agreements with the Regional District of Kitimat-Stikine respecting the cost of services and the payment for the delivery of:
  - a. Regional District of Kitimat-Stikine services on Nisga'a Lands; and
  - b. Nisga'a Lisims Government or Nisga'a Village Government services to the Regional District of Kitimat-Stikine.
6. The Nisga'a Nation and the Regional District of Kitimat-Stikine may enter into agreements to coordinate their activities with respect to common areas of responsibility such as planning, health services, and infrastructure development.
7. Nisga'a Lisims Government and the Regional District of Kitimat-Stikine will meet, at the request of either of them, to discuss matters of mutual interest.