

NISGA'A FINAL AGREEMENT ACT

ISSUE PAPERS

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OVERVIEW - TREATIES IN CANADA AND BRITISH COLUMBIA

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Canada has a long history of treaty-making. Unlike in the other provinces of Canada, few treaties were ever concluded in British Columbia. Like other First Nations in British Columbia, the Nisga'a have long sought to have their claims recognized and addressed.

The Nisga'a Final Agreement is a full and final settlement of Nisga'a claims regarding aboriginal rights and title, including self-government. The Nisga'a Final Agreement is also the product of years of legal and policy evolution. The Final Agreement has been negotiated in accordance with federal policies on comprehensive claims and aboriginal self-government.

HISTORICAL BACKGROUND

The first several treaties, concluded between 1725 and 1779 along the eastern seaboard, emphasized the maintenance of peace and friendship. Over time, the purpose for concluding treaties became to secure lands for settlement. A second group of historical

treaties, concluded between 1764 and 1862, known as the pre-Confederation land cession treaties, was concluded in accordance with the principles set out in the *Royal Proclamation of 1763*.

After Confederation, between 1867 and 1923, a third group of numbered land cession treaties was completed. These were more detailed and broader in scope than the treaties concluded earlier. By then, 60 treaties had been signed in Canada.

Few treaties were ever negotiated in British Columbia. On Vancouver Island, the British Crown gave trading rights to the Hudson's Bay Company. Its chief factor, James Douglas, who later became governor of the colony, was instructed to purchase First Nation lands. In all, 14 purchase agreements, called the Douglas Treaties, were made. Because of a shortage of funds, no further purchases were made. Until the modern era no further treaty arrangements were made in British Columbia except for Treaty 8, which was negotiated in 1899-1900 and includes northeastern British Columbia.

From the beginning of European settlement in British Columbia, the Nisga'a, and other First Nations in British Columbia, have asserted aboriginal rights and attempted to negotiate and conclude treaties with the Crown.

HISTORY OF NISGA'A CLAIMS

In 1887 Nisga'a Chiefs went to Victoria to seek recognition of aboriginal title and to negotiate treaties, including self-government. They were unsuccessful. In 1890, the Nisga'a established their first Land Committee and in 1913, after exhausting other avenues, the Committee sent a petition to the Privy Council in England seeking to resolve the land question. Again, they were unsuccessful.

From the 1920s through to the 1950s, the Nisga'a and other First Nations' efforts to have their rights recognized and to practice their customs were restricted by legislation which outlawed traditional practices and made it illegal for Indians to raise money to advance land claims.

Following repeal of this legislation in 1955, the Nisga'a Land Committee was re-established as the Nisga'a Tribal Council. In 1968, then-Chief Mr. Frank Calder and the Tribal Council took the land question to the courts.

In 1973, the Supreme Court of Canada issued the *Calder* decision. Although the court split evenly on the question of whether the Nisga'a continued to hold title, it recognized the possible continuing existence of aboriginal rights and title.

THE FEDERAL COMPREHENSIVE CLAIMS POLICY

The Calder decision prompted the federal government to issue a policy statement indicating its willingness to address unsettled aboriginal land claims across Canada. Canada began comprehensive claims negotiations with the Nisga'a in 1976.

government.

In 1981, the federal government issued a comprehensive claims policy entitled *In All Fairness*. The thrust of that policy was to exchange undefined aboriginal land rights for concrete rights and benefits.

When the Canadian Constitution was patriated in 1982, the importance of aboriginal rights was recognized. Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada. Section 35(3) of the *Constitution Act, 1982* provides for greater certainty that treaty rights include rights that now exist by way of land claims agreements or may be so acquired.

In 1985, the report of the Task Force to review comprehensive claims policy entitled *Living Treaties: Lasting Agreements* was released. That report proposed major changes to the federal comprehensive claims policy, and subsequently, in 1987, Canada released an amended policy which continues to be implemented through negotiations. Since 1973, 13 modern-day treaties have been concluded in Canada.

INHERENT RIGHT POLICY

First Nations have historically sought to have a right to self-government recognized.

When the Constitution of Canada was patriated in 1982, a series of First Ministers' conferences was launched with a view to reaching agreement with aboriginal people on a constitutional amendment to recognize an inherent right of aboriginal self-

In 1985, the federal government issued a statement on community-based self-

government and began negotiations with groups across Canada on a legislated form of self-government which would apply on reserves. Only one self-government agreement was concluded at the time of this policy, with the Sechelt Indian Band in 1986. First Nations generally were not satisfied that this policy provided the certainty that they sought regarding their self-government.

In 1995, the federal government issued the Inherent Right policy entitled *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*.

This policy allows for the negotiation of practical and workable self-government arrangements which may be protected under section 35 of the *Constitution Act, 1982*.

THE BRITISH COLUMBIA TREATY-MAKING PROCESS

In December 1990, a Task Force to review aboriginal claims in British Columbia was established by the Government of Canada, the Government of British Columbia and the First Nations Summit. Its report was released in July 1991 and contained 19 recommendations on how to negotiate the settlement of the land question in British Columbia.

A key recommendation was the establishment of the British Columbia Treaty Commission (BCTC) to facilitate and monitor treaty negotiations and to allocate negotiation funding to First Nations in

British Columbia. Canada and British Columbia accepted all 19 recommendations of the Task Force and the BCTC opened its doors in December 1993 and began to receive from aboriginal groups statements of intent to negotiate.

To date, approximately 50 aboriginal groups are in the treaty negotiation process in British Columbia. One group, the Sechelt, are in the final stages of Final Agreement negotiations and 37 groups have concluded Framework Agreements and are in various stages of Agreement-in-Principle negotiations.

NISGA'A TREATY NEGOTIATIONS

The Nisga'a Treaty negotiations pre-date the BCTC process. Accordingly, they were carried out separately from this process. As noted above, Canada began negotiating with the Nisga'a in 1976. These negotiations, however, were bilateral and progress on land-related issues could not be achieved until 1990, when the provincial government formally joined the two parties at the negotiation table.

From 1990 onward, there were extensive consultations with the public and third parties who might be affected by the treaty (see Issue Paper #4).

In 1991, a tripartite framework agreement was concluded. In March 1996, an Agreement-in-Principle was signed by Canada, British Columbia and the Nisga'a Tribal Council and was widely publicized and distributed. Negotiations continued and on August 4, 1998 a Final Agreement based

on the Agreement-in-Principle was initialled in New Aiyansh, British Columbia. The Final Agreement addresses land and resource issues as well as self-government and is consistent with the federal policies on comprehensive land claims and the inherent right of self-government.

On November 9, 1998, members of the Nisga'a Nation ratified the Final Agreement through a ratification vote, and on April 23, 1999, British Columbia passed the legislation to ratify the Agreement. The British Columbia legislation was given Royal Assent on April 26, 1999. The Final Agreement was signed by the Nisga'a and the British Columbia Government on April 27, 1999 and by the Minister of Indian Affairs and Northern Development on May 4, 1999. Approval by the Parliament of Canada is the last step in this ratification process.

ABORIGINAL AND TREATY RIGHTS IN CANADA

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Since 1982, aboriginal and treaty rights in Canada have been recognized and affirmed by section 35 of the *Constitution Act, 1982*. Section 35 refers to the existing aboriginal and treaty rights of the aboriginal peoples of Canada. It specifies that treaty rights include rights existing at that time under land claims agreements, and similar future rights that may be acquired. Beyond this, section 35 does not specify the nature or location of existing aboriginal and treaty rights, however a number of court cases have provided some guidance on these issues.

The Supreme Court of Canada in *Van der Peet* and *Gladstone* has said that aboriginal rights are group and site specific. This means that in each case, it will be necessary for a court to review the particular history and circumstances of an aboriginal group to determine the nature and scope of any aboriginal rights. Generally, a group must establish that, at the time of contact with Europeans, the particular activity claimed as an aboriginal right was a practice, tradition or custom that was integral to the society's distinctive culture.

SPARROW

In the *Sparrow* case, the Supreme Court of Canada clarified that aboriginal and treaty

rights are not absolute even though they are recognized and affirmed under section 35. The court found that the Crown could legitimately infringe on those rights if it could justify the infringement. It set out a scheme for subsequent courts to use in deciding whether or not government regulation would be justified, and emphasized the importance of context and a case-by-case approach. In *Badger*, the court confirmed that the same scheme for establishing justification that it had set out in *Sparrow* will apply where the right being infringed is a treaty right rather than an aboriginal right.

DELGAMUUKW

In 1997, in the *Delgamuukw* case, the court made general statements about the nature and scope of aboriginal title, which is one specific type of aboriginal right. The court ruled that if an aboriginal group could establish that, at the time of sovereignty, it exclusively occupied an area of land, and has continued to maintain a substantial connection to that area, then it would have the communal right to exclusive use and occupation of that land. The decision further states that aboriginal group would be able to use the land for far ranging purposes, including economic exploitation. The only limitations would be that the land could not be disposed of without first being surrendered to the Crown, nor could it be used in a way that would destroy the aboriginal group's special connection with the land. In *Delgamuukw*, the court also clarified that both the federal and provincial Crown can, if justified, infringe on a group's

aboriginal rights and title, but that, since Confederation, only the federal Crown has had the power to extinguish those rights.

Although the exact nature and scope of aboriginal rights (including aboriginal title) for a particular aboriginal group are uncertain in the absence of a court decision, the negotiation of treaties provides an opportunity to achieve greater certainty about these rights. This can be done by setting out in a treaty, for a particular group, the nature and scope of the rights that are that group's section 35 rights.⁶ The degree of certainty achieved will vary depending on the precision in each treaty. Modern land claims agreements are very precise and detailed in order to maximize the level of certainty for all of the parties to the agreements and for third parties who might be affected by the exercise of aboriginal rights.

THE NISGA'A PEOPLE OF THE NASS RIVER VALLEY

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Other than the Nisga'a, there are about 100 other permanent residents in the 24,000 square kilometres of the Nass Valley, most of whom live near the Nisga'a communities. Forestry is the dominant economic activity, although fishing, eco-tourism, pine mushroom harvesting and basic service industries also contribute to employment.

The Nisga'a have pursued a settlement of what they describe as their *ALand Question* since 1887, when Nisga'a chiefs travelled to the Legislature in British Columbia to seek recognition of aboriginal title, a treaty and a measure of self-government. Issue Paper #1 describes the history of their efforts to resolve their aboriginal claims.

These include gas stations, a store and *Abed and breakfasts*. Most retail and other services are provided out of Terrace. There are no mines or mineral claims in the proposed Nisga'a Lands.

THE NASS RIVER VALLEY

The Nass River Valley is a relatively remote area of British Columbia reached by a gravel highway, approximately 120 kilometres north of Terrace. The community of Gingolx on Observatory Inlet, just across from the Alaska panhandle, is only accessible by boat or plane. A road is currently being constructed to connect it to the other three Nisga'a communities and the road construction is being jointly funded by Canada, British Columbia and the Nisga'a.

The Nass Valley spans a number of climatic zones, from cool maritime to northern continental. A large proportion of the area is alpine. Fisheries and wildlife populations are healthy, as described in Issue Papers #16 and #17.

THE NISGA'A PEOPLE AND THEIR COMMUNITIES

The Nisga'a are part of the Northern Northwest Coast cultural grouping, whose aboriginal people share a complex culture based on the rich resources of the area.

Social organization

As in the cultures of other aboriginal peoples of North America, kinship was the basis of Nisga'a social organization, and it remains important today. The Nisga'a trace their descent matrilineally. They are organized in four clans: the Killer Whale, Wolf, Raven and Eagle. These clan crests are featured on many Nisga'a totem poles. Within each clan there are a number of lineages (large

extended families), headed by hereditary chiefs and matriarchs (*Simgigat* and *Sigidimhaanak*). In the past, these families lived together in longhouses and constructed fish weirs, canoes and other major articles of their civilization. Such accumulations constituted the wealth which affirmed the status of the lineage.

Nisga'a social organization and ownership of lineage territories (*Ango=oskw*) was passed on through their oral histories (*Adaawak*), and affirmed by the ceremonial regalia, dances and the other elaborate elements associated with Northwest Coast aboriginal culture. Particularly significant among these traditions was the potlatch, a large feast where the distribution of wealth among guests validated the status of the host and the lineage. Potlatches created obligations among families, and were often held for the commemoration of, or to celebrate inheritance of, titles and wealth.

The Nisga'a language

The Nisga'a language is related to Tsimshian and Gitksan. Many Nisga'a people regularly use their language, although English is now universally spoken. Nisga'a schools currently teach Nisga'a as a compulsory course in Grades K to 7, and offer it as an elective at secondary school. Nisga'a is also taught to adults through Wilp Wilxo=oskwhl Nisga'a (WWN), their post-secondary educational institution.

Nisga'a culture

Salmon, other marine resources, and the forests provided both sustenance and the raw materials for Nisga'a architectural, artistic, and social achievements. The Nisga'a lived in large and skillfully constructed cedar post and beam houses, located in permanent villages. They carved ocean-going canoes, Currently, unemployment in Nisga'a communities is high. The Nisga'a band governments and the Nisga'a Tribal Council have given education and post-secondary education a high priority so that their people may best take advantage of employment opportunities. Through associations with

totem poles, house posts, masks, horn spoons and many of the implements of everyday life. The Nisga'a were also accomplished weavers of blankets and baskets. The Canadian Museum of Civilization displays Nisga'a totems, longhouses and Nisga'a artifacts in the

Grand Hall and in the recently mounted ACommon Bowl@ exhibit.

As with other aboriginal peoples of the Northwest Coast, the Nisga'a traded extensively. In addition to ocean trading, the AGrease Trail@ to the interior provided a route for the trade of oolichan oil and other goods. After contact, the Nisga'a began trading with early European arrivals, and then with the Hudson's Bay Company.

The Nisga'a today

The Nisga'a live in four villages, Gingolx (Kincolith), Laxgalt-sap (Greenville), Gitwinksihlkw (Canyon City), and Gitlakdamix (New Aiyansh). Approximately 2,500 of the 5,500 Nisga'a live in these communities. Most of the rest live in Terrace, Prince Rupert and Vancouver, although some Nisga'a have settled in other parts of Canada, in the United States and in other parts of the world. Nisga'a communities have modern housing, water and sewage treatment systems, band offices, schools and a number of community buildings used to host the Nisga'a's social, traditional and cultural activities.

the University of Northern British Columbia and various community colleges, they have created Wilp Wilxo=oskwhl Nisga'a (WWN), which provides degree programs, life skills training, and cultural and language programs in the Nass Valley communities.

Although some Nisga'a share the difficulties common to aboriginal communities, such as unemployment, substance abuse and family dysfunction, Nisga'a institutions have worked diligently to improve these circumstances.

The ACommon Bowl®

In the process of negotiating the Land Question, the Nisga'a developed their Acommon bowl® philosophy. The common bowl is a commitment that all four Nisga'a communities will act in concert in pursuing their land claim and will share benefits arising from the treaty settlement.

Existing Programs and Services

The Nisga'a have taken up available opportunities under federal and provincial programs to deliver education, health, social development, child and family services, infrastructure and local government (see Issue Paper #25).

CONCLUSION

In summary, the Nisga'a deeply value their traditions, their language and their culture. However, they have also embraced modern technology and institutions in their efforts to make advances in education and employment, and in many other initiatives that strengthen their families and communities.

CONSULTATION PROCESS

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Negotiations of the Nisga'a Final Agreement have included one of the most extensive consultation and public information exercises ever conducted in the context of treaty negotiations in Canada.

Approximately five hundred meetings were held in relation to the negotiation of the Agreement-in-Principle (AIP) and the Final Agreement.

Through this process federal and provincial negotiators heard a wide range of views, and often needed to balance the range of sometimes competing interests expressed by people and organizations who were consulted.

OVERVIEW OF ADVICE

Much of the advice from these consultations is reflected in the Final Agreement. For example, those consulted indicated they wanted the Treaty to represent a final settlement with the Nisga'a people. The Final Agreement is a full and final settlement of Nisga'a aboriginal and treaty rights.

CONSULTATION STRUCTURE

Indian and Northern Affairs Canada

Third parties wanted conservation to be a priority in the areas of fisheries and wildlife.

The Nisga'a Final Agreement contains provisions to ensure that federal and provincial ministers retain their overall authority to manage fish and wildlife, with conservation, public health and public safety identified in the Final Agreement as top priorities. The Final Agreement also provides harvesting entitlements that ensure non-Nisga'a individuals a share of the resources.

Third parties advised that they did not want treaty lands to have a different land title system from the rest of Canada. The Nisga'a Final Agreement contains provisions to allow Nisga'a Lands to be registered in the British Columbia Land Title system. It also contains provisions regarding the Canadian Charter of Rights and Freedoms and the application of federal laws, such as the Criminal Code, to protect all Canadians.

Third parties also indicated that they wanted all citizens to be subject to the same taxation regimes. Through the Final Agreement, the Nisga'a will pay taxes in the same way that other British Columbians do, after a transition period of eight years for sales taxes and 12 years for income taxes.

The chart on page 5 provides other examples of how third party advice was used in the negotiations.

Seven Advisory Committees remained in place or were established during the Final Agreement negotiations.

Kitimat Skeena Regional Advisory Committee (KS RAC): made up of a broad range of community, local government, wildlife, fisheries, business, resource sectors and labour interests. Although most meetings were held in Terrace, some meetings took place in Prince Rupert.

Nisga'a Fisheries Committee: made up of province-wide and local commercial fishing interests (Prince Rupert trollers, gillnetters and seiners) processors, unions and Terrace sport fishing interests.

Nisga'a Forestry Advisory Committee: made up of the area forestry companies, the Council of Forest Industries, licencees, truck loggers and union representatives. Most meetings were held in Terrace.

Nass Valley Residents Association: made up of the existing private property owners and residents of the Nass Valley. Meetings took place in Nass Camp or at private residences.

Skeena Treaty Advisory Committee (TAC): made up of local government representatives from municipal governments, and the two regional districts: Skeena - Queen Charlotte, and Kitimat Stikine. The TAC appointed a member to serve on the province's negotiating team. Most consultations with this committee were conducted by the provincial team.

Treaty Negotiation Advisory Committee (TNAC) and its sectoral committees:

established in 1993 as a federal-provincial Ministerially-appointed committee of 31 organizations. It also has four sectoral committees for Governance, Fisheries, Lands/Forests/Wildlife and Compensation and usually meets in Vancouver, or occasionally in Victoria.

Certainty Working Group: established at TNAC's request to bring some TNAC members, supported by their legal counsel, to review and discuss approaches to certainty. Members reported back to TNAC, and its meetings were in held in Vancouver.

LOCAL AND REGIONAL CONSULTATIONS

Five of the seven committees were based in northwest British Columbia. With a few exceptions all the members resided in the region.

Of particular importance to negotiators was the development of treaty provisions that addressed the unique circumstances of the region. This included economic and recreational interests using the Nass Valley.

In that context, the negotiation of forestry transition provisions and related issues required numerous discussions with the forestry sector B union and business B to ensure that the forestry chapter and related chapters such as Access, resolved those issues and built a better Final Agreement.

For the broader local interests, extensive research and mapping was done to identify all private lands within what would become Nisga'a Lands, to ensure that they were

excluded from Nisga'a Lands. Meetings were held with local residents to ensure that the maps were correct. All secondary and access roads granted by the Crown were also identified and specifically retained by the provincial Crown.

Third parties had expressed concern with the AIP's approach for the Nisga'a Highway to be held as Nisga'a Land, with a perpetual right of way granted to the provincial government. In the Nisga'a Final Agreement, this advice was followed and the provincial government will retain full ownership of the Nisga'a Highway corridor. This will provide the assurance for access to private lands asked for by area residents.

TREATY NEGOTIATION ADVISORY COMMITTEE (TNAC)

As the first modern treaty negotiation in British Columbia, the Nisga'a negotiations raised many issues that needed consideration from a province-wide perspective. TNAC supplemented the local and regional consultations. More important was the valuable perspective they provided on a range of topics that would arise at most other treaty negotiations.

Some of the key areas of interest were:

- \$ the funding of Nisga'a Government being a shared responsibility;
- \$ the consideration of Nisga'a own source revenue capacity;
- \$ the Minister of Fisheries and Oceans retaining final authority for fisheries;
- \$ the fostering of economic development opportunities; and
- \$ that the settlement lands would be held by the Nisga'a in fee-simple.

The agreement's certainty provisions were given extensive deliberation by TNAC. In addition to the broader consultation for principles and objectives, a working group involving legal counsel from several TNAC organizations met with federal and provincial negotiators to assess options. They advised on what would meet the test of providing an alternative to extinguishment. The approach taken to certainty in the Nisga'a Final Agreement (General Provisions, clauses 21-27) received broad support from TNAC members.

FEDERAL LEGISLATION

Drafting of the *Nisga'a Final Agreement Act* (the Act) began in November 1998. Representatives of the Nisga'a Tribal Council (NTC) and British Columbia were invited to participate in consultations throughout the drafting process. These consultations began on November 27, 1998, and ended on April 9, 1999.

During these consultations more than 25 meetings were conducted with the other parties, including formal discussions of the federal drafts, issue-specific meetings and meetings involving federal officials representing other departments.

OTHER GOVERNMENT DEPARTMENTS

Although Indian and Northern Affairs Canada is responsible for the conduct of negotiations on behalf of Canada, many other federal departments and agencies were involved directly at the negotiation table through direct consultation with negotiators

and through interdepartmental committees. The Departments of Fisheries and Oceans and the Department of Justice had extensive involvement, including attending negotiation sessions and many consultation sessions.

Some of the other departments and agencies who were consulted extensively include the departments of Finance, Environment, Treasury Board, and agencies such as the Canadian Environmental Assessment Agency and the Canadian Museum of Civilization.

**SUMMARY OF ADVICE
INCORPORATED INTO FINAL
AGREEMENT**

The following chart includes examples of the areas where third party advice is reflected in the Final Agreement. Some represent changes from the AIP made during Final Agreement negotiations. Consultation continues to be one of the key innovations of the treaty negotiation process in British Columbia.

<p>The agreement is a full and final settlement that achieves certainty.</p> <p>Obligations to consult are defined and limited.</p> <p>Federal and provincial ministers retain authority over management of resources.</p>	<p>Nisga'a fish and wildlife harvesting rights are subject to conservation and public health and safety.</p> <p>Total allowable wildlife and fish harvests are shared with other users.</p>
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<p>Treaty lands can be registered in the B.C. land title system.</p> <p>Nisga'a citizens will no longer have tax exemptions.</p> <p>No tax haven has been created.</p> <p>Replacement tenures were negotiated for affected parties with their input.</p> <p>The location of secondary provincial roads reflects third party advice.</p> <p>Access to private properties of third parties was provided for.</p> <p>Nisga'a highway will remain owned by B.C.</p> <p>Wildlife harvesting rights will not prevent the Crown from authorizing uses or dispositions of Crown lands.</p>	<p>The <i>Canadian Charter of Rights and Freedoms</i> and <i>Criminal Code</i> continue to apply.</p> <p>Nisga'a Lands are held in fee simple.</p> <p>Forest transition provisions were negotiated and include: access to the Ishkinnish watershed during transition period; efficient and effective approval processes; and provision of Nisga'a timber harvest during transition period to local mills on reasonable terms.</p> <p>No exclusive Nisga'a shellfish harvesting areas.</p> <p>Design of licence retirement program to mitigate impacts on other fishers.</p>
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THE NISGA'A FINAL AGREEMENT ACT

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Historical treaties in Canada became effective upon approval by the Crown without the need for federal legislation.¹ The modern practice for land claims agreements is to require passage of federal settlement legislation to give legal effect to a treaty.² Consistent with modern federal practice, the Nisga'a Final Agreement will only come into force upon the enactment of the federal *Nisga'a Final Agreement Act*.

The federal *Nisga'a Final Agreement Act* is intentionally drafted to be similar to British Columbia's *Nisga'a Final Agreement Act* in order to achieve the same legal result for key issues. For instance, in both Acts the Final Agreement is approved, given effect, declared valid and given the force of law.

FORCE OF LAW APPROACH

Using language similar to that adopted when

¹ See for example the Douglas Treaties concluded on Vancouver Island and Treaty 8 of 1899, which applies in part to northeastern British Columbia

² The modern practice began with the James Bay Northern Quebec Agreement of 1975, which was brought into force by the *James Bay and Northern Quebec Native Claims Settlement Act*. S.C. 1976-77 c. 32, subsection 3(1) of the Act provides that "The Agreement is hereby approved, given effect and declared valid"

approving previous land claim agreements, the *Nisga'a Final Agreement Act* provides expressly for legislative approval of the Nisga'a Final Agreement.³ In addition, the *Nisga'a Final Agreement Act* provides that the Final Agreement is given the force of law,⁴ a formulation that gives effect to the provisions of the Final Agreement as if they had been enacted in a federal statute. The provincial settlement legislation uses the same language.⁵ The force of law provision makes it clear that the self-government authority of the Nisga'a Government applies to everyone, not just the Nisga'a people who approved the Final Agreement through the ratification process. The force of law language is also used to give full legal effect to the modification of rights approach to certainty provisions in the Final Agreement.

³ See s. 4 of *Nisga'a Final Agreement Act* in part the text provides that the Nisga'a Final Agreement is "hereby approved, given effect and declared valid"

⁴ *Nisga'a Final Agreement Act*, s.4

⁵ Province of British Columbia *Nisga'a Final Agreement Act*, s. 4

Under the certainty provisions of the Final Agreement, any aboriginal rights of the Nisga'a are modified and continue as the rights set out in the Final Agreement. In part this takes place through the agreement of the Nisga'a to modify their rights, but the modification also depends on legislative action, particularly the legislative action by the federal Crown, which has legislative authority over aboriginal rights.⁶ The modification of rights is to take place notwithstanding the common law⁷ respecting the nature and exercise of aboriginal rights and title. Once again, the force of law language gives a clear indication of the intention to legislate a modification of the rights.

THE NISGA'A NATION TAXATION AGREEMENT

The Nisga'a Final Agreement deals with the taxation of individual Nisga'a persons, Nisga'a Lands and Nisga'a capital. The tax treatment of Nisga'a Government is provided for in a separate taxation agreement which does not form part of the Final Agreement. Under this agreement, Nisga'a Government can in some circumstances benefit from tax exemptions similar to those which apply to municipal governments in Canada. The tax exemptions can also extend to certain Nisga'a corporations owned by Nisga'a Government under tests similar to those which apply to municipal governments. For instance, a corporation owned by the Nisga'a Government and one owned by a Canadian municipality could carry out snow plowing operations for a fee and their tax treatment

⁶ see *Delgamuukw v the Queen* (1997) [1997] 3 SCR 1010, 153 DLR (4d) 193 (SCC)

⁷ NFA, General Provisions 24, p.20

will be similar.⁸ The Nisga'a Final Agreement specifies that the provisions of the taxation agreement are to be given effect

through settlement legislation.⁹ The *Nisga'a Final Agreement Act* provides for legislated approval of the Nisga'a Nation Taxation Agreement.¹⁰ Those portions of the Taxation Agreement which set out exemptions from federal taxes are also given the force of law.¹¹

CONSEQUENTIAL AMENDMENTS

The *Nisga'a Final Agreement Act* provides for a change to the *Access to Information Act* to comply with the provisions of the Final Agreement dealing with access to information. The provision in the *Nisga'a Final Agreement Act* allows Nisga'a Government to be treated in a manner similar to municipal governments with respect to the confidentiality of information it provides to the federal government.

The *Nisga'a Final Agreement Act* includes changes to the *Fisheries Act* which reflect the continued role of the Minister in management of the fisheries and fish habitat as provided for in the Nisga'a Final Agreement.¹²

Although the *Fisheries Act* will apply to

⁸ See 149(1)(d) of *Income Tax Act* referred to in the Taxation Agreement

⁹ NFA, Taxation 23, p.221

¹⁰ *Nisga'a Final Agreement Act*, s. 14(1)

¹¹ *Nisga'a Final Agreement Act*, s. 14(2)

¹² *Nisga'a Final Agreement Act*, s. 23

Nisga'a fisheries, the Nisga'a have some authority to make laws to control the harvest by Nisga'a citizens and other persons authorized by the Nisga'a to fish. To federal laws, the Nisga'a Final Agreement Act includes an amendment to the *Fisheries Act* to provide fisheries officers and fisheries guardians the same enforcement powers under Nisga'a laws as they have in respect of federal laws. For instance, fishery officers will have the authority to inspect boats and seize nets.

The Nisga'a Final Agreement provides for the cooperative development of Nisga'a annual fishing plans by the Department of Fisheries and Oceans and the Nisga'a, subject to approval by the Minister of Fisheries and Oceans.¹³ These annual plans will deal with the harvest and, if applicable, the sale of fish and aquatic plants under the Nisga'a Final Agreement and the associated Nisga'a Harvest Agreement. The plans can deal with such matters as methods, timing and location of harvest, enforcement, monitoring of harvest and so on.¹⁴ Although the Final Agreement imposes an obligation on the Nisga'a to make laws to require compliance with the Nisga'a annual fishing plans,¹⁵ this amendment to the *Fisheries Act* also makes it a requirement of the *Fisheries Act* to comply with the plans. Failure to comply with the *Fisheries Act* can lead to much higher penalties than can apply for violations of Nisga'a law.¹⁶ The *Fisheries Act* offence will only be used in accordance with an enforcement protocol agreed to with the

¹³ See fisheries management provisions of the NFA - paragraphs 58 to 95 of Fisheries chapter

¹⁴ NFA, Fisheries 84, p.116

¹⁵ NFA, Fisheries 74 (b), p.113

¹⁶ NFA, Government 128, p.180

promote efficient and effective enforcement of the Nisga'a laws at the same time as

Nisga'a or where the Minister determines that it is necessary to use the

Fisheries Act, instead of Nisga'a laws, to ensure compliance.

The *Nisga'a Final Agreement Act* provides for a change to the *Lobbyists Registration Act* to exempt members, staff and employees of Nisga'a Government from registration as lobbyists. This is similar to the current exemption from registration for municipalities.¹⁷ The *Lobbyists Registration Act* is designed to provide the public with notice of the individuals and groups who lobby the federal government in respect of legislative changes, changes to federal programs and policies, the awarding of monetary grants and contributions or other financial benefits and the awarding of contracts.¹⁸

The federal *Municipal Grants Act* allows Canada to provide grants in lieu of taxes to municipal authorities that cannot impose taxes in recognition of the fact that federal operations sometimes draw on municipal services. This consequential amendment to the *Municipal Grants Act* would create the same discretion to pay grants in lieu of taxes to Nisga'a Government as would apply for municipalities. The Nisga'a will only have taxation authority over Nisga'a citizens on Nisga'a Lands and, like municipal governments, will not be able to impose taxes on the federal Crown or on land owned

¹⁷ *Lobbyists Registration Act*, s. 4(1)(c)

¹⁸ *Lobbyists Registration Act*, s.5

by the federal Crown. Despite this consequential amendment there will be no obligation to pay monies to Nisga'a Government even if Canada should occupy The last consequential amendment is a modification of the *Privacy Act* to allow personal information to be disclosed to the Nisga'a under the same circumstances as when information can be provided to *Indian Act* bands.

any portion of Nisga'a Lands and be provided with Nisga'a Government services.

THE NISGA’A FINAL AGREEMENT WITHIN THE CANADIAN LEGAL CONTEXT

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The Nisga’a Final Agreement addresses the rights of the Nisga’a people and does so within the Canadian legal context. It was negotiated with the rights and interests of all Canadians in mind. The Nisga’a Final Agreement is intended to reconcile the rights of the Nisga’a people with the title and sovereignty of the Crown, as recommended by the courts in recent cases like *Delgamuukw*.

Nisga’a leaders, including most recently president Joseph Gosnell Sr. of the Nisga’a Tribal Council have said “We are negotiating our way into Canada, not out of it.”

In reconciling the prior occupation of the Nass Valley by the Nisga’a with the assertion of sovereignty by the Crown, the rights and interests of other Canadians were carefully considered. The rights of other aboriginal groups were also taken into account throughout the negotiation of the Final Agreement.

Although Canada’s full legal framework is

reflected throughout the Nisga’a Final Agreement, the relationship of the Final Agreement to Canada’s Constitution, Canada’s laws and the Charter of Rights and Freedoms is fundamental.

RELATIONSHIP TO THE CONSTITUTION OF CANADA

The Constitution is the supreme law of Canada.¹⁹ The *Constitution Act, 1982* recognizes and affirms existing aboriginal and treaty rights and the rights negotiated in treaties after 1982.

The Nisga’a Final Agreement is an example of a comprehensive land claims agreement dealing with: culture and heritage; lands; financial arrangements; fisheries and other resources; and governance. No constitutional amendment is required to give effect to the Nisga’a Final Agreement nor does the Nisga’a Final Agreement alter the Constitution of Canada.

Although the Nisga’a Final Agreement includes self government provisions, Nisga’a law-making authorities will operate concurrently with existing authorities.

¹⁹ Section 52 (1) of the *Constitution Act, 1982*: “The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.”

According to Peter Hogg, Dean of Osgoode Hall Law School: *Alt is true that once the Nisga'a Treaty has come into effect it will be constitutionally protected by s.35 of the Constitution Act, 1982, which recognizes and affirms aboriginal and treaty rights. But this occurs automatically by virtue of the language of s. 35. Section 35 is not amended when a treaty is entered into. Nor does the treaty become part of the Constitution of Canada.*²⁰

Some specific examples of how the Nisga'a Final Agreement has been negotiated within the constitutional framework of Canada are:

- \$ The terms of the Nisga'a Final Agreement expressly state that it does not alter the Constitution (*NFA, General Provisions 8, page 17*). This reflects the intention of the Parties that the Final Agreement should be interpreted in a manner consistent with the Constitution.
- \$ The Preamble of the *Nisga'a Final Agreement Act* states that the Constitution is the supreme law of Canada and also restates that the Nisga'a Final Agreement does not alter the Constitution. This language in the preamble can be used by the courts when interpreting the *Nisga'a Final Agreement Act*.²¹
- \$ Consistent with the Nisga'a Final Agreement, the Nisga'a have adopted an internal constitution which states that their constitution is subject to the

Constitution of Canada.²²

²⁰ In a letter dated July 29, 1998 to the Ministry of the Attorney General, Government of British Columbia

²¹ Section 13 of the *Interpretation Act*:
The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

²² Nisga'a Constitution 6, p.7

THE CHARTER OF RIGHTS AND FREEDOMS

Paragraph 9 of the General Provisions of the Nisga'a Final Agreement provides that *The Canadian Charter of Rights and Freedoms* applies to Nisga'a Government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a Government as set out in this Agreement.²³

This makes it clear that the Charter will apply to all activities of Nisga'a Government. Therefore, the Charter will apply not only to laws passed by Nisga'a Government but also to other activities such as government decisions to hire individuals or to issue permits. The protections of the Charter will be available to all persons affected by Nisga'a Government decisions, not just the Nisga'a.

The last phrase of this provision, *bearing in mind the free and democratic nature of Nisga'a Government...* is similar to the language of section 1 of the Charter which makes it clear that Charter rights are not absolute. Governments, including Nisga'a Government, must demonstrate the justification for any limitations on Charter freedoms. This phrase therefore reflects that the Nisga'a Final Agreement provisions establish a free and democratic government structure (see Issue Paper #19) and when

²³ NFA, General Provisions 9, p.18

Nisga'a Government is established on those terms it will be able to rely on section 1 of the Charter, like other governments in Canada.

Section 25 of the Charter will apply to Nisga'a Government and therefore the protection of individual rights under the Charter must be construed in light of the existence of treaty rights. This is one of a series of provisions in the Charter which protect collective rights or clarify that individual rights under the Charter should be interpreted to accommodate other rights in Canada. For example:

- \$ s. 15 protects disadvantaged groups;
- \$ s. 27 provides for preservation and enhancement of multicultural heritage;
- \$ s. 16 to 23 protect francophone and anglophone rights; and
- \$ s. 29 protects rights to educate children in religious schools.

Section 28 of the Charter is worded so as to guarantee Charter rights equally to men and women notwithstanding anything in this Charter. Section 25 of the Charter does not contain this same description of an intention to prevail over other Charter rights.

In addition to these provisions of the Charter, section 35(4) of the *Constitution Act, 1982* provides that *Notwithstanding any other provision of this Act [which includes the Charter], the aboriginal treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.*

Nisga'a Government will not be able to use s. 33 of the Charter (the *Notwithstanding* clause).²⁴ This section only applies to the

²⁴ Section 33 of the *Charter of Rights and Freedoms*: A(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a

Parliament of Canada and provincial legislatures.

RELATIONSHIP TO FEDERAL AND PROVINCIAL LAWS

Federal and provincial laws apply to the Nisga'a people, their lands and their government. However, to be meaningful a treaty must endure and that is why the Nisga'a Final Agreement also says that where there is an inconsistency or conflict between the terms of the Final Agreement and other legislation, the Final Agreement prevails.²⁵ This reflects the constitutional protection of treaty rights. This is also why the *Nisga'a Final Agreement Act* prevails over federal laws to the extent of an inconsistency or conflict.

provision included in section 2 or sections 7 to 15 of this Charter.

²⁵ NFA, General Provisions 13(a), p.18

Constitutionally protected rights are not exempt from infringement, if the infringement is justified. The Supreme Court of Canada has said in the *Sparrow* decision, ASection 35(1) does not promise immunity from government regulation in contemporary society but it does hold the Crown to a substantive promise.@ and ARights that are recognized and affirmed are not absolute. Federal legislative powers continue, including, of course, the right to legislate with respect to Indians pursuant to s. 91(24) of the *Constitution Act, 1867*.@ In its subsequent *Badger* decision, the Supreme Court of Canada clarified that the test for justifying an infringement of treaty rights is the same as the test for infringement of aboriginal rights.

Although the Nisga'a Final Agreement will prevail over federal and provincial laws to the extent of an inconsistency or conflict, this does not mean that Nisga'a laws necessarily prevail over federal and provincial laws. The laws that the Nisga'a may pass in the future are not part of the Final Agreement itself, and therefore some Nisga'a laws will prevail over federal and provincial laws, to the extent of an inconsistency or conflict, only where the Final Agreement specifically says that they prevail. This is further described in Issue Paper #20.

ABORIGINAL RIGHTS OF OTHER FIRST NATIONS

The Nisga'a Final Agreement is an agreement between the Nisga'a people, Canada and British Columbia. It is not intended to affect the rights of other aboriginal people. Paragraph 33 of the General Provisions in the Final Agreement states that ANothing in this Agreement affects, recognizes, or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than

the Nisga'a Nation.@²⁶

Federal policy is that First Nations should resolve overlap disputes among themselves. Where that is not possible and one of the First Nations is in a position to proceed with a treaty, Canada's policy is to only conclude the treaty where the agreement expressly

provides that the other First Nation's rights are not affected. Paragraph 33 reflects this policy.

In addition, the Final Agreement goes on to require a court to Aread down@ any Final Agreement provision which is found to adversely affect an aboriginal right of another First Nation.²⁷ It also commits the Parties to making best efforts to amend the Final Agreement to remedy or replace the provision.

The Nisga'a Final Agreement also contemplates that Nisga'a treaty rights could be adversely affected by another treaty settlement.²⁸ If this happens the Nisga'a Final Agreement preserves the integrity of the Final Agreement by providing for replacement rights or other appropriate remedies through negotiation or arbitration.

THE RIGHTS OF OTHER CANADIANS

Any agreement which includes a significant

²⁶ NFA, General Provisions 33, p.22

²⁷ NFA, General Provisions 34, p.22

²⁸ NFA, General Provisions 35, p.23

area of land, access to resources, and self-government authorities has the potential to touch upon the rights and interests of Canadians. A key objective of the Government of Canada was to avoid or minimize the extent to which other Canadians would be adversely affected by the Nisga'a Final Agreement, and to provide appropriate protection. Although the rights and interests of other Canadians were accounted for throughout the Final Agreement, it is useful to identify some of these key protections here.

Some of the key protections are:

- \$ the *Charter of Rights and Freedoms* will apply to all the activities of Nisga'a Government and its protections are available to Nisga'a citizens and all others on Nisga'a Lands (see above);
- \$ the provisions of the Nisga'a Final Agreement can be relied on by all persons, not only the Parties to the Agreement;²⁹
- \$ under the Nisga'a Final Agreement, the *Indian Act* will cease to apply and therefore the limitation on the application of the *Canadian Human Rights Act* will no longer apply (see Issue Paper #20);
- \$ privately-owned lands were excluded from Nisga'a Lands, and access to the lands was protected (see Issue Paper #11);
- \$ access required to construct and operate licensed water supplies was protected, and the volume of the Nisga'a water reservation (1% of the Nass River flow) leaves ample volume for other water licenses which might be required (see Issue Paper #18);
- \$ existing water licences have priority over the Nisga'a water reservation (see Issue Paper #18).
- \$ existing land use tenures will be replaced on similar or better terms, and protected from expropriation by Nisga'a

compensation where interests were adversely affected.

- \$ Government (Issue Paper #12);
- \$ a five year transition period will be provided for those major forest tenures

- which will not be replaced, and appropriate compensation for reduced annual allowable cut after the transition period is planned (Issue Paper #15);
- \$ the Canadian public will have reasonable public access to Nisga'a Lands for recreation and other non-commercial purposes, and to hunt and fish (see Issue Paper #13);
- \$ salmon allocations will allow for continued harvesting by other users, and Nisga'a annual fishing plans will be integrated with the harvesting plans for other fisheries (see Issue Paper #16);
- \$ a license retirement program for commercial fishing vessels is planned to offset the salmon re-allocations set out in the Final Agreement (see Issue Paper #15);
- \$ the Nisga'a will not be able to sell Nass salmon if there is no commercial or recreational fishery for that salmon in a particular year;³⁰
- \$ wildlife allocations will allow for continued harvest by other Canadians, and wildlife annual management plans must also be integrated with other harvesting plans (see Issue Paper #17);

²⁹ NFA, General Provisions 2-4, p.17

³⁰ NFA, Fisheries 33, p.107

- \$ rights of consultation, participation and appeal are included for residents of Nisga'a Lands who are not Nisga'a citizens but may be affected by the decisions of Nisga'a Government (see Issue Paper #19); and
- \$ any proposed Nisga'a police service or court would require the approval of

British Columbia's Lieutenant Governor in Council (see Issue Paper #21)

THE RIGHTS OF WOMEN

The rights of women are fully protected under Canada's legal framework and through this treaty. For instance:

- \$ Section 35(4) of the *Constitution Act, 1982* guarantees treaty rights equally to men and women;
- \$ the Charter applies to all the decisions of Nisga'a Government (see this issue paper);
- \$ political rights are provided equally to women and men under the Nisga'a Final Agreement and the Nisga'a Constitution (see Issue Paper #19);
- \$ federal and provincial human rights legislation will apply to Nisga'a government and to Nisga'a people (see Issue Paper #20); and
- \$ in regards to marital breakdown, British Columbia's *Family Relations Act* will determine the division of all matrimonial property, not Nisga'a law (see Issue Paper #20).

CONCLUSION

The legal structure of the Nisga'a Final Agreement, and its detail, operate within Canada's legal framework. In defining the Nisga'a rights, the Final Agreement also reconciles those rights with the rights and interests of others.

CERTAINTY

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Under section 35 of the *Constitution Act 1982*, the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. Section 35 does not define the scope, content or location of any existing aboriginal rights. Therefore, uncertainty remains in relation to any particular First Nation's existing aboriginal rights.

Costly and time consuming court cases might address this uncertainty. However, the Supreme Court of Canada has commented on the disadvantages of litigation and has encouraged negotiation as the best way to resolve these issues and reconcile continuing aboriginal rights and title with the Crown's sovereignty.³¹ Rather than litigate each right, through negotiation it is possible to conclude practical and workable arrangements that provide certainty as to ownership and use of lands and resources within the Canadian legal framework.

Such negotiations do not attempt to define aboriginal rights but instead address uncertainty by exhaustively setting out and

defining, with as much clarity and precision as

possible, all the section 35 rights which a First Nation can exercise after its treaty is concluded.

EVOLUTION OF CERTAINTY TECHNIQUE

In the past, Canada has achieved certainty through an exchange of undefined aboriginal rights for defined treaty rights, using the language of cede, release and surrender. Objections by First Nations to the surrender technique have been a fundamental obstacle to completing modern treaties.

The Nisga'a Final Agreement provides for a modification of rights approach.

MODIFICATION OF RIGHTS APPROACH IN THE NISGA'A FINAL AGREEMENT

Using the modified aboriginal rights approach the Nisga'a aboriginal rights, including title, continue to exist although only as modified to have the attributes and geographic extent set out in the Nisga'a Final Agreement. This is accomplished through the agreement of all three Parties and by the exercise of the legislative jurisdiction of the federal and provincial governments. As a result, whatever aboriginal rights the Nisga'a may have had at common law will be modified to become the rights set out in the Nisga'a Final Agreement. In this way, the certainty technique is based upon agreeing to rights rather than extinguishing them.

³¹ see *Delgamuukw v the Queen* (1997) [1997] 3 SCR 1010, 153 DLR (4d) 193 (SCC)

If, despite the Final Agreement and the *Nisga'a Final Agreement Act*, there is an aboriginal right other than, or different in attributes from, the Nisga'a Nation's section 35 rights as set out in the Nisga'a Final Agreement that right would be released as of the effective date.

Through the modified aboriginal rights approach the only section 35 rights that the Nisga'a Nation would have are those set out in the Agreement.

The approach to certainty is primarily set out in the General Provisions chapter, which contains its basic elements. However, certainty is also achieved by the precise description of rights throughout the text of the treaty.

SUMMARY OF CERTAINTY PROVISIONS IN THE NISGA'A FINAL AGREEMENT

Full and Final Settlement³² - The Final Agreement is a full and final settlement of Nisga'a aboriginal rights, including aboriginal title.³³

Exhaustively setting out Nisga'a section 35 rights³⁴ - The Final Agreement exhaustively sets out Nisga'a section 35 rights, which are defined to include both aboriginal and treaty rights. This expresses the Parties' agreement that there would be no treaty rights that can be exercised beyond those set out in the Final

Agreement.³⁵

Modification³⁶ - Any aboriginal rights, including aboriginal title, of the Nisga'a Nation would be modified by the Final Agreement and the *Nisga'a Final Agreement Act*, and would continue as modified, as set out in the Final Agreement. The modification includes modification of the attributes and geographic extent of those rights.

Releases³⁷ - if, despite the Final Agreement and the *Nisga'a Final Agreement Act*, there is an aboriginal right other than or different in attributes from the Nisga'a Nation's section 35 rights set out in the Final Agreement those rights would be released. There is also a release in favour of Canada, British Columbia and all other persons from any liability for the infringement of any aboriginal rights of the Nisga'a prior to the effective date of the Final Agreement.

Indemnities³⁸ - Both releases are supported by a full indemnity for the benefit of Canada and British Columbia.

³² NFA, General Provisions 22, p.20

³³ Consistent with Agreement-in-Principle

³⁴ NFA, General Provisions 23, p.20

³⁵ Consistent with Agreement-in-Principle

³⁶ NFA, General Provisions 24 & 25, p.20

³⁷ NFA, General Provisions 26 & 27, p. 21

³⁸ NFA, General Provisions 30 & 31, pp.21-

The Agreement is Binding and can be Relied upon³⁹ - The Final Agreement will be binding on, and can be relied upon by, the Parties and all other persons, including Nisga'a citizens.

Representation and Warranty⁴⁰ - The Nisga'a Nation has represented and warranted that in entering the Final Agreement they represent the collectivity which holds any Aboriginal rights including aboriginal title, in Canada, or any claims to those rights based on their identity as Nisga'a@.

No Lands reserved for the Indians⁴¹ - As a result of the modification of rights, there will be no Lands reserved for the Indians,@ within the meaning of the *Constitution Act, 1867*, for the Nisga'a and no Reserves@ as defined in the *Indian Act*.

Incorporation by reference⁴² - The provision incorporates as federal law, any provincial laws which are otherwise valid but for constitutional reasons would not otherwise apply to the Nisga'a.

Additional Provisions - There are a number of additional provisions which support the certainty approach in the Final Agreement:

- \$ The Parties have committed not to challenge the validity of the Final Agreement. This would include all the certainty provisions.
- \$ A breach of the Final Agreement will not relieve the Parties from their obligations

under it.⁴³

- \$ There is no presumption in favour of any one Party when interpreting the Final Agreement.⁴⁴
- \$ The Parties agree that the nature and extent of the obligation to consult the Nisga'a Nation has been fully set out in the Final Agreement.^{45 46}

³⁹ NFA, General Provisions 2-4, p.17

⁴⁰ NFA, General Provisions 5, p.32

⁴¹ NFA, General Provisions 10, p.18

⁴² NFA, General Provisions 29, p.21

⁴³ NFA, General Provisions 21, p.20

⁴⁴ NFA, General Provisions 57, p.26

⁴⁵ NFA, General Provisions 28, p.21

⁴⁶ other than a justified infringement

LANGUAGE AND CULTURE

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An important objective of the Nisga'a is the protection of their language and culture. The Nisga'a Final Agreement provides many opportunities for the Nisga'a to promote and protect their culture.

As discussed in Issue Paper #3 and acknowledged in the Preamble to the Nisga'a Final Agreement, Nisga'a culture will continue through the hereditary chiefs and matriarchs telling their oral histories in accordance with Nisga'a traditional laws and practices.⁴⁷

The Final Agreement also sets out the right to practice Nisga'a culture and language. Paragraph 7 of General Provisions states:

*Nisga'a citizens have the right to practice the Nisga'a culture, and to use the Nisga'a language, in a manner consistent with this Agreement.*⁴⁸

It is the Nisga'a Final Agreement which

provides the detailed context through which

⁴⁷ NFA, Preamble, p.1

⁴⁸ NFA, General Provisions, p.17

this right is exercised.

RELATIONSHIP TO NISGA'A GOVERNMENT AUTHORITIES

Nisga'a Government will have the authority to make laws to preserve, promote and develop Nisga'a language and culture. However, this authority will not include authority to make laws in respect of intellectual property, Canada's official languages, or the prohibition of activities off Nisga'a Lands.⁴⁹

A number of other Nisga'a Government authorities are related to the promotion of culture, language and heritage. These include authorities such as those regarding children and families, education, aboriginal healing, inheritance of cultural property, and processes to protect heritage sites. These authorities often include important qualifications to ensure that the public interest is also accommodated (see Issue Paper #20). Examples include:

\$ The Final Agreement provides opportunities to assume responsibilities for the protection and well-being of children and families. Nisga'a Government will have authority to make laws regarding child and family services on Nisga'a Lands but those laws must provide standards to ensure the safety and well-being of children and families which are comparable to provincial standards. British Columbia may act to

⁴⁹ NFA, Nisga'a Government 41-42, p.167

- \$ protect a child in an emergency, and federal and provincial laws regarding reporting of child abuse will continue to apply.⁵⁰
- \$ Adoption of Nisga'a children is another area important to Nisga'a culture, however any Nisga'a law regarding adoption must provide that the best interests of the child are paramount.⁵¹
- \$ Nisga'a Government laws in respect of education of Nisga'a citizens on Nisga'a Lands could include the teaching of Nisga'a language and culture. Provincial curriculum and teacher certification standards would have to be met. Nisga'a Government could also accredit instructors or researchers of Nisga'a language and culture.⁵²
- \$ Nisga'a Government could also make laws regarding the inheritance of cultural property, such as ceremonial regalia, of those Nisga'a citizens who die without a will.⁵³
- \$ Nisga'a Government could licence persons who practice as aboriginal healers on Nisga'a Lands, but they could not regulate substances that are federally or provincially regulated, and Nisga'a laws must include measures reasonably required to protect the public.⁵⁴
- \$ Where employers have a duty to accommodate employees in respect of

their Nisga'a culture under federal or

⁵⁰ NFA, Nisga'a Government 89-93, pp.174-175

⁵¹ NFA, Nisga'a Government 96-98, p.175

⁵² NFA, Nisga'a Government 100 & 103(c), pp.176,177

⁵³ NFA, Nisga'a Government 116, p.179

⁵⁴ NFA, Nisga'a Government 86-88, p.174

provincial law, Nisga'a Government could prescribe the aspects of Nisga'a culture to be accommodated under those laws.⁵⁵

- \$ Nisga'a Government will develop processes to protect heritage sites on Nisga'a Lands.⁵⁶

REPATRIATION OF NISGA'A CULTURAL ARTIFACTS

Nisga'a artifacts are an important expression of Nisga'a culture.

During the 19th and early 20th centuries Nisga'a artifacts were collected by a number of individuals. Some of these collections were eventually transferred to the Royal British Columbia Museum and the Canadian Museum of Civilization. Portions of both collections are being repatriated to the Nisga'a through the provisions of the Final Agreement.

The Nisga'a Tribal Council and the Canadian Museum of Civilization have developed a positive relationship which is reflected in the provisions of the Final Agreement. Recently, they have cooperated to develop the ANisga'a Common Bowl® exhibit now staged in the Grand Hall of the Museum of Civilization.

In the case of the collection held by the Canadian Museum of Civilization, the Final Agreement provides for the repatriation to

⁵⁵ NFA, Nisga'a Government 63, p.171

⁵⁶ NFA, Cultural Artifacts and Heritage 36 and 38, pp.228-229

the Nisga'a of approximately 100 artifacts of spiritual and religious significance.⁵⁷ The artifacts will be repatriated on request of the Nisga'a Nation, or within five years, unless otherwise agreed by the Museum and Nisga'a Government. This time frame will provide an opportunity for the Nisga'a to develop an appropriate storage and display facility.

The Nisga'a Final Agreement also recognizes that disputes between First Nations are possible regarding the determination of whether or not an artifact is a Nisga'a artifact. A Nisga'a artifact is precisely defined to assist in making this determination.⁵⁸ The Parties can engage the dispute resolution provisions in the event of a disagreement regarding whether an artifact is Nisga'a or not.⁵⁹

CONTINUING COOPERATION WITH THE CANADIAN MUSEUM OF CIVILIZATION

The Nisga'a Nation and Canadian Museum of Civilization expect to continue their relationship through custodial agreements they may negotiate from time to time. These agreements would allow for the loan of a portion of the artifacts held at the Museum to the Nisga'a where they would make the artifacts available for display, education and research. Over time, it is anticipated that most of the remaining artifacts listed in

Appendix L-2 (pp. 417-420) would be circulated to northwest British Columbia.

⁵⁷ NFA, Appendix L-1, Appendices, pp. 415-416

⁵⁸ NFA, Definitions p.10

⁵⁹ NFA, Cultural Artifacts and Cultural Heritage 5, p.223

Prior to any such transfer, the Nisga'a must provide an appropriate facility which meets generally accepted museological standards.

Included in the one-time implementation budget is funding to replicate the three large totem poles which are not included in these custodial arrangements. It is intended that the replication will take place on the grounds of the Canadian Museum of Civilization.

HERITAGE

As described in Issue Paper #11, the *Anhluut-ukwsim Laxmihl Angwinga-asanskwhl Nisga'a*, or Nisga'a Memorial Lava Bed Park, will continue to be owned by the Province of British Columbia, and the promotion of Nisga'a history and culture will be an important objective of the Park. The Nisga'a will have the right to use the Park for traditional purposes, as they do now.

The Final Agreement also provides for the naming of specified geographic locations with their Nisga'a names.⁶⁰

A number of heritage sites of cultural and historic significance to the Nisga'a will also be designated by British Columbia under provincial legislation.⁶¹

⁶⁰ NFA, Appendix F-3, pp.360-361

⁶¹ NFA, Appendix F-1, p.357

FINAL AGREEMENT PARTICIPATION AND RATIFICATION

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As outlined in Issue Paper #7, the Nisga'a Final Agreement will provide certainty concerning the aboriginal rights and title of the Nisga'a in Canada. So it is important to have clear rules setting out who is eligible to participate in the rights and benefits of the Final Agreement, and also to have clear and effective ways for all the Parties to ratify the Final Agreement. This paper describes how the participants under the Final Agreement are identified and the measures used to ensure that the Final Agreement is legally ratified and given effect.

WHO IS ELIGIBLE TO PARTICIPATE?

The Final Agreement sets out four criteria for determining who is eligible to be enrolled in the Final Agreement. In simple terms this includes people of Nisga'a descent, any adopted children of such people, and aboriginal spouses who have been adopted by a traditional ceremony. Stated in the more precise terms of the Final Agreement, an individual is eligible to be enrolled if that individual is:

- \$ of Nisga'a ancestry and their mother was born into one of the Nisga'a tribes;
- \$ a descendant of an individual described

in subparagraphs 1(a) or 1(c);

- \$ an adopted child of an individual

described in subparagraphs 1(a) or 1(b);
or

- \$ an aboriginal individual who is married to someone described in subparagraphs 1(a), (b), or (c) and has been adopted by one of the four Nisga'a tribes in accordance with *Ayuukhl Nisga'a*, that is, the individual has been accepted by a Nisga'a tribe, as a member of that tribe, in the presence of witnesses from the other Nisga'a tribes at a settlement or stone moving feast.⁶²

The Nisga'a people gave careful consideration to which rules would be appropriate for determining eligibility. The rules in the Final Agreement, as agreed to by the three Parties, will clearly ensure that all Nisga'a people who might have aboriginal rights or title prior to the agreement will be eligible to vote to ratify the Final Agreement and to participate in it.

Individuals become enrolled by applying to the Enrollment Committee. During an initial enrollment period prior to Nisga'a ratification of the Final Agreement an Enrollment Committee reviewed applications according to the above criteria and enrolled those who applied and met the criteria. The process was widely advertised so that potentially eligible individuals were aware of their rights. All those people who successfully enrolled also became eligible to vote in the Nisga'a ratification process (see

⁶² NFA, Eligibility 1, p.260

below). The enrollment process will continue after the Final Agreement comes into effect, under the terms set out therein, and will eventually be fully managed by the Nisga'a. No individual may be enrolled under the Final Agreement and also enrolled under another land claims agreement in Canada.⁶³

The Final Agreement will establish an Enrollment Appeal Board so that potential participants who are rejected have a means to appeal any such decisions. The Final Agreement also confirms the right of an applicant, a Party to the Final Agreement, or a Nisga'a Village to further appeal Enrollment Appeal Board decisions to the Supreme Court of British Columbia.⁶⁴

WHAT IS A NISGA'A CITIZEN@?

Because the Nisga'a will no longer have *Indian Act* bands under the Final Agreement, the concept of Nisga'a band membership will no longer apply. The defined term ANisga'a citizen@ will be used instead to identify those who have the rights set out in the Final Agreement. All individuals who successfully enroll to participate in the Final Agreement and who are Canadian citizens or permanent residents of Canada are entitled to be Nisga'a citizens.⁶⁵

The Final Agreement also defines a specific law-making authority for the Nisga'a Lisims

Government to make laws that would allow others to become Nisga'a citizens. The Nisga'a right to determine Nisga'a citizenship would be similar to the authority of the many *Indian Act* bands who currently control their own membership.

The Nisga'a law-making authority would not prevent the Nisga'a from providing citizenship to non-aboriginals. They could do so and have in fact publicly discussed this possibility for some members of their communities who are strongly immersed in Nisga'a cultural life.

There are some strict limitations to the Nisga'a authority in respect of Nisga'a citizens. For example, a Nisga'a law would not be valid if it dealt with Canadian citizenship, immigration, or *Indian Act* status or rights. Neither could such a Nisga'a law impose on Canada or British Columbia an obligation to provide rights or benefits other than as set out in the Final Agreement.⁶⁶

RATIFICATION OF THE FINAL AGREEMENT

The Final Agreement is not valid unless ratified as set out in the Final Agreement itself.⁶⁷ To this end the Final Agreement requires a specific set of ratification procedures for each of the three Parties to the agreement.

The requirements for Nisga'a ratification are

⁶³ NFA, Eligibility 3-5, p.241

⁶⁴ NFA, Enrollment 26, 27, p.245

⁶⁵ NFA Nisga'a Government 9(p), p.161;
Nisga'a Constitution 8, p.8

⁶⁶ NFA, Nisga'a Government 39, p.167

⁶⁷ NFA, Ratification 1, p.249

set out in the Final Agreement.⁶⁸ Following the initialling of the Final Agreement on August 4, 1998, the Nisga'a undertook the ratification process by following those Final Agreement requirements. During this process one representative from Canada and one from British Columbia became members of the Ratification Committee and also monitored the voting process.

On November 6th and 7th, 1998, the Nisga'a held the vote to determine whether eligible Nisga'a voters approved the Final Agreement. At the same time a vote was taken on whether to approve the Nisga'a Constitution. The Final Agreement was approved by 61% of eligible voters (72% of those who cast a ballot voted in favour of ratification). The Nisga'a Constitution was approved by 73% of those who voted.

The minimum requirements of 50% plus one of eligible voters (for the Final Agreement) and 70% of actual voters (for the constitution) were therefore met to complete a successful Nisga'a ratification.

The requirements for British Columbia ratification are twofold: that an authorized Minister sign the agreement; and, enactment of settlement legislation by the provincial Legislative Assembly. The provincial lieutenant governor gave royal assent to the *Nisga'a Final Agreement Act* on April 26, 1999, and the Premier of British Columbia signed the Final Agreement on April 27, 1999.

The federal requirements for ratification are similar. On May 4, 1999 Minister Stewart signed the Final Agreement. Passage of the

federal *Nisga'a Final Agreement Act* would conclude the ratification steps outlined in the Final Agreement.

EFFECTIVE DATE

Once Canada's ratification is completed, a proclamation date would be chosen and that proclamation date would become the effective date of the Final Agreement. The effective date, much as it sounds, is the date on which the terms of the Final Agreement come into effect. On the effective date the capital transfer payments begin, the Nisga'a Lands are confirmed and Nisga'a Government replaces its *Indian Act* precedents.

The Nisga'a Final Agreement would become the 14th modern-day treaty to be concluded in Canada and the first modern-day treaty to be concluded in British Columbia.

⁶⁸ NFA, Ratification 4-8 p. 249-251

ONGOING RELATIONSHIPS

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The Nisga'a Final Agreement is a full and final settlement of Nisga'a aboriginal rights and title.

The Final Agreement also recognizes that Canada, British Columbia and the Nisga'a will have a continuing relationship much like the continuing relationship between British Columbia and municipal governments, and sets out the rules that guide that relationship. By clearly identifying where further negotiation may be undertaken and by providing for processes to reach decisions, the Treaty encourages certainty.

SIDE AGREEMENTS AND FUTURE NEGOTIATIONS

The side agreements to the Final Agreement are examples of how the relationships between the Parties will continue into the future. The Fiscal Financing Agreement is to be renegotiated every five years based on principles set out in the Final Agreement. The Own Source Revenue Agreement and the Nisga'a Nation Taxation Agreement

reflect the ongoing relationship between the Parties but may be adjusted in the future by agreement of the Parties. Other agreements dealing with cultural and land issues may also be reached to help the Parties address mutual interests. As with other agreements between governments these arrangements will evolve over time.

Negotiate and attempt to reach agreements

The Final Agreement also identifies a number of circumstances where the Parties have agreed in advance to negotiate and attempt to reach agreements on particular issues. There are two general categories for these agreements.

Where the phrase *will negotiate and attempt to reach agreement* is used it indicates a mandatory requirement for the Parties identified to negotiate, but not to conclude, an agreement. An example is the negotiation of Fiscal Financing Agreements, where the Parties have agreed that the arrangements are of critical importance and therefore will be negotiated periodically.

Where the phrase *may negotiate and attempt to reach agreement* is used it indicates a permissive opportunity, but not a requirement, for negotiations to take place. An example is tax delegation or coordination agreements, which the Parties may or may not choose to negotiate.⁶⁹

Except in a few instances these future

⁶⁹ NFA, Taxation 3, p.217

negotiations are about side agreements that will not form part of the Final Agreement and will not be Section 35 rights. In some cases the Final Agreement provides for the orderly quantification of these rights, if this should become necessary in the future.

Examples of future arrangements which will form part of the Final Agreement include allocations of non-salmon fish species at the request of a Party, or of wildlife species for which British Columbia has set a total allowable harvest. Examples of future side agreements outside the Final Agreement include a custodial arrangements agreement with the Canadian Museum of Civilization, or harmonization agreements for environmental assessment processes.

LOCAL AND REGIONAL GOVERNMENT RELATIONSHIPS

The area intended to become Nisga'a Lands is situated within the Kitimat-Stikine Regional District. After the Final Agreement is in effect those lands will continue to be part of the Regional District. Residents of Nisga'a Lands will continue to have the right to vote in Regional District elections and referenda.⁷⁰

Representatives of the Regional District participated in the negotiation of the Local and Regional Government Relationships chapter, which is intended to guide the future relationship between the Nisga'a and the Regional District government. These parties may enter into agreements for the delivery of services and can also make

⁷⁰ NFA, Local and Regional Government 1-2, p.231

agreements to coordinate activities such as planning, health services and infrastructure development.⁷¹ Either the Regional District or the Nisga'a Lisims Government may also initiate meetings to discuss matters of mutual interest.⁷²

DISPUTE RESOLUTION

In any relationship, disputes may arise. The Dispute Resolution chapter and Appendix M set out a series of steps designed to assist the Parties to the Final Agreement in resolving any disputes that do arise. To minimize disruptions from disputes the Parties have agreed on several objectives:

- \$ cooperation towards harmonious working relationships;
- \$ prevention or minimization of disputes;
- \$ quick dispute identification and expeditious, cost-effective resolutions of disputes; and
- \$ a non-adversarial, collaborative and informal working atmosphere.⁷³

All disputes between the Parties involving the interpretation, application or implementation of the Final Agreement, or a breach of the Final Agreement, must use the formal dispute resolution processes. While the actual processes and rules are set out in detail in the chapter and appendix, they can be summarized as follows.

⁷¹ NFA, Local and Regional Government 5-6, p.231

⁷² NFA, Local and Regional Government 7, p.231

⁷³ NFA, Dispute Resolution 3,p.233

The Parties agree to first try to resolve most differences by informal discussions. If not successful, the disputing Parties will use collaborative negotiations (Stage One)⁷⁴ to resolve the dispute more formally, but without the assistance of an independent third party. If this is not successful then Stage Two⁷⁵ is a facilitated process where one of four specified processes is chosen to assist the Parties to reach agreement. The four choices are mediation, technical advisory panel, neutral evaluation, or Elders Advisory Council. If necessary, Stage Three⁷⁶ specifies that the dispute may be referred either to a judge or to an arbitrator for a final and binding decision. Except for certain situations where the Parties have agreed in advance in the Final Agreement to binding arbitration, this option may only be used with the consent of all the Parties to a dispute.

Unless the Parties have agreed to binding arbitration, or are required by the Final Agreement to resolve the issue through binding arbitration, upon unsuccessful completion of the first two phases of the dispute resolution process any Party may go to court to resolve the dispute.

CONSULTATION

In order to minimize the possibility of disputes, the Parties have agreed to consult with each other prior to taking certain

actions which may affect interests set out in the Final Agreement. A Consultation⁷⁷ is a defined term with clearly specified requirements as set out in the Treaty. Once they have been met, no further consultation is necessary in order to proceed.⁷⁷

AMENDMENT OF THE FINAL AGREEMENT

The Final Agreement has been carefully negotiated in detail so that it will be a workable set of arrangements that will endure. However the Parties have agreed that amendments will be possible with the consent of all three Parties, and the General Provisions chapter sets out the formal steps for this to occur.⁷⁸ Canada can consent to an amendment by direction of the Governor in Council. British Columbia can only consent to an amendment with the consent of the Provincial Legislature. The Nisga'a Nation can consent to an amendment by a resolution adopted by at least two thirds of the elected members of Nisga'a Lisims Government.

IMPLEMENTATION

Consistent with the recommendations of the September 1998 Auditor General's Report on the Settlement of Land Claims the Parties completed an Implementation Plan, which has an agreed term of ten years.⁷⁹ The plan identifies obligations stemming from the Final Agreement and activities required to

⁷⁴ NFA, Dispute Resolution 15-19, p.235

⁷⁵ NFA, Dispute Resolution 20-25, p.236

⁷⁶ NFA, Dispute Resolution 28-34, p.237-238

⁷⁷ NFA, General Provisions 28, p.21

⁷⁸ NFA, General Provisions 36-43, p.23-24

⁷⁹ NFA, Implementation 1 & 2, p.247

meet those obligations. The Implementation Plan is not binding and does not form part of the Final Agreement.

In addition, the Parties will establish a tripartite Implementation Committee which will coordinate implementation of the Final Agreement. The Committee will facilitate communication and information sharing between the Parties, attempt to resolve any implementation issues that may arise, and prepare annual reports on the implementation of the Final Agreement.⁸⁰

⁸⁰ NFA, Implementation 5, p.248 and Implementation Plan Annex C Guidelines for the Operation of the Implementation Committee

LANDS

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The Final Agreement defines three land categories, the different attributes of each category, and the rights of third parties to use Nisga'a Lands. Provisions for federal and provincial expropriation, administration of land titles, Parks and commercial recreation are also set out.

Like other provincial lands, all Nisga'a-owned lands will be owned in fee simple, and will not be federal lands reserved for the Indians under section 91(24) of the *Constitution Act, 1867*.

Existing privately owned lands within the proposed Nisga'a Lands area are excepted from Nisga'a Lands and will remain private land. The Nisga'a will not own or have jurisdiction over these lands under the Final Agreement.⁸¹

⁸¹ NFA, Lands 1, p.3

Other private property interests (e.g. utility lines and communications towers) on Nisga'a Lands are protected under rights-of-way or other land use tenures granted by Nisga'a Government (see Issue Paper #12).

Access to private land and other existing interests is provided for under the Access Chapter (see Issue Paper #13) and Roads and Rights-of-Way Chapter (see Issue Paper #14). Existing guide outfitter licences, traplines, and angling guide licences on, or partly within, Nisga'a Lands will continue under provincial law.⁸²

The Final Agreement Appendices also form part of the Agreement. The appendices include legal descriptions of land boundaries, lands excepted from Nisga'a Lands, access routes, and land use tenures that Nisga'a government will grant to property owners on the date the Agreement takes effect.

CATEGORIES OF NISGA'A-OWNED LAND

The Agreement provides that the Nisga'a Nation will own three categories of land which are defined as Nisga'a Lands, Category A lands, and Category B lands.⁸³ Nisga'a ownership rights and Nisga'a Government authorities are different for each category. Maps and legal boundary descriptions for all lands are contained in the Final Agreement Appendices.

A Nisga'a Land is a single area of

⁸² NFA, Lands 41, p.38

⁸³ NFA, Lands 2 p.31, and 45 p.39

approximately 1,992 square kilometres, of which 1,930 square kilometres are now provincial Crown land. Nisga'a Lands will include the approximately 62 square kilometres of former Indian reserves, including the four Nisga'a communities of Gingolx, Gitwinksihlkw, Laxgalt-sap and New Aiyansh.

The total area of Category A lands is 25 square kilometres, and will include the 16 uninhabited *Indian Act* reserves outside Nisga'a Lands.

The total area of Category B lands is 2.5 square kilometres, and will include 15 economic development sites on Crown land outside of Nisga'a Lands.

THE OWNERSHIP OF NISGA'A LANDS

These lands will be owned by the Nisga'a Nation.⁸⁴ Like other lands in the province, all Nisga'a-owned lands are owned in fee simple and are not federal lands reserved for the Indians under section 91(24) of the *Constitution Act, 1867*.⁸⁵

Parcels of Nisga'a Land can be disposed of by the Nisga'a without the consent of Canada or British Columbia.⁸⁶

The Nisga'a will own the land, minerals and forest resources on Nisga'a Lands. Ownership and regulation of water remains

with the Crown (see Issue Papers #13 and #18).

⁸⁴ NFA, Lands 3, p.31

⁸⁵ NFA General Provisions 10, p.18

⁸⁶ NFA, Lands 4, pp.31-32

In accordance with the specific terms of the Final Agreement, Nisga'a Government laws apply on Nisga'a Lands. Nisga'a Government will designate Nisga'a Lands as Nisga'a Village Lands, Nisga'a Private Lands, or Nisga'a Public Land. The general public will have access to Nisga'a Public Lands for noncommercial recreation in addition to general access through the Nisga'a Highway and Crown roads (see Issue Papers #13 and #14).

If the Nisga'a buy private lands that are contained within Nisga'a Lands, those lands can be added to Nisga'a Lands. However, Canada and British Columbia would have to agree before any lands bought by the Nisga'a adjacent to Nisga'a Lands could be added to Nisga'a Lands.

The Nisga'a will own Category A and Category B lands but do not have governmental jurisdiction over them.⁸⁷ The

⁸⁷ Mineral rights are included with the title to Nisga'a Indian reserves

Nisga'a will own the minerals under Category A lands⁸⁸ but will not own the minerals under Category B lands.

SUBMERGED LANDS

Within Nisga'a Lands, British Columbia owns the lands submerged under water.

Before granting rights in respect of submerged lands, which would adversely affect Nisga'a Lands or Nisga'a interests, the Province will consult with and seek consent from the Nisga'a Nation. The Nisga'a Nation will not unreasonably withhold its consent.

Applications by Nisga'a organizations or citizens for rights to submerged lands will not be unreasonably refused by British Columbia if the Nisga'a Nation consents and the application conforms to relevant provincial laws. Property rights of adjacent upland owners will not be affected by these provisions.⁸⁹

LAND ACQUISITION BY THE PROVINCE OF BRITISH COLUMBIA

For Nisga'a Lands, the Province may acquire rights-of-way for public purposes up to a total of 28 square kilometres. This area is three-and-a-half times larger than the total area of all existing provincial rights of way on the proposed area of Nisga'a Lands.⁹⁰

The Province has authority to expropriate

⁸⁸ Nisga'a Government jurisdiction is confined to Nisga'a Lands. See NFA, Nisga'a Government 44-52, pp.167-170

⁸⁹ NFA, Lands 27, p.35

⁹⁰ NFA, Lands 2, p.85

within Category A and B lands in accordance with the rules set out in the Nisga'a Final Agreement.⁹¹

FEDERAL EXPROPRIATION OF NISGA'A LANDS OR FEE SIMPLE LANDS

Canada has acknowledged that as a general

principle it will not expropriate or authorize expropriation of Nisga'a-owned lands. However, the Governor General in Council may consent to an expropriation under federal law of a parcel of Nisga'a Lands or Category A or B lands, in accordance with the rules set out in the Nisga'a Final Agreement.⁹²

Nisga'a laws will continue to apply to expropriated parcels of Nisga'a Lands only to the extent they are not inconsistent with the purpose of expropriation.

BRITISH COLUMBIA'S LAND TITLE SYSTEM AND NISGA'A LANDS

The Final Agreement creates an opportunity for the Nisga'a to register parcels of Nisga'a Lands in the provincial land registry system, in accordance with the rules set out in the Nisga'a Final Agreement.⁹³

This would allow the Nisga'a and owners of these parcels of Nisga'a Lands to take advantage of additional economic opportunities by being able to rely on a system well known to developers and the

⁹¹ NFA, Lands 55-67, p.41-42

⁹² NFA, Lands 73-86, p.44-46

⁹³ NFA, Land Title 3-17, p.59-64

legal community.

PARKS, THE ECOLOGICAL RESERVE AND HERITAGE SITES

primary cultural features of the Park, and Nisga'a citizens will have the right to use Park lands for traditional uses.⁹⁴

British Columbia will consult with the Nisga'a on planning and management of other provincial parks within the Nass Area. An additional provincial Park will be established on the effective date of the Final Agreement outside of Nisga'a lands in a defined location of historical significance to the Nisga'a. The Nisga'a, the province, or Canada can request negotiations to establish a marine Park in the Nass area, but Canada will not be obligated in these negotiations to establish a national park.⁹⁵

The province will designate five sites identified in the Final Agreement Appendices as provincial heritage sites. Several dozen designated locations will also be given Nisga'a names.⁹⁶

THE COMMERCIAL RECREATION TENURE

The province will issue a Commercial Recreation Tenure to the Nisga'a, for a term of 27 years, in areas outside Nisga'a Lands as identified in the Appendices. This kind of tenure is a recent innovation in commercial recreation within British Columbia. It is effectively a non-exclusive licence to use

British Columbia will continue to own and manage the ecological reserve and the provincial Park located within Nisga'a lands. Promotion of Nisga'a history and culture are

designated areas for backcountry recreation activities such as hiking, heli-skiing, and

wildlife viewing.⁹⁷ The management plan for this tenure was reviewed in a public review process according to British Columbia's normal process for such proposals.

⁹⁴ NFA, Lands 100, p.48

⁹⁵ NFA, Lands 121, p.50

⁹⁶ NFA, Roads 95-97, p.47

⁹⁷ NFA, Roads 90-94, p.46

EXISTING INTERESTS

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Existing interests on Nisga'a Lands include resource use tenures and land use tenures.⁹⁸ Existing interests on Nisga'a Lands are identified in the Final Agreement.

Existing resource use tenures are for the harvesting of wildlife and timber. Existing wildlife interests (eg. traplines) will continue under provincial laws. Commercial forestry interest tenure holders will receive new tenures for a transition period and, when the Final Agreement results in a reduction in their annual allowable cut, appropriate compensation is planned (see Issue Paper #15).

All other existing interests are for land uses. None of these land use interests will be adversely affected by land ownership changes resulting from treaty settlement.

Existing land interests include property improvements on provincial Crown land and on federal *Indian Act* reserve lands, particularly in the four communities.⁹⁹ One or more of four approaches was used to ensure existing land interests will not be adversely affected by the proposed Nisga'a land ownership:

⁹⁸ ATenure@ is used broadly to mean any authorization to use land and resources, from short term permits and licences through to continuing Right-of-Ways for roads and utilities.

⁹⁹ Appendix C lists existing interests and the terms for new or replacement interests.

- \$ **Excluding land parcels** - existing privately-owned lands, and specific provincial Crown lands are Aexcepted@ from Nisga'a ownership and will not be part of Nisga'a Lands;
- \$ **Replacing tenures** - Nisga'a Government will replace various existing federal and provincial tenures on similar terms;
- \$ **Granting transitional special use permits** - for log storage areas or logging camps;
- \$ **Granting new tenures** - Nisga'a Government will grant new tenures for specified existing properties which are at present not formally authorized under federal and provincial laws;

EXISTING PRIVATELY OWNED LANDS

Existing privately-owned lands within Nisga'a Lands will not be part of Nisga'a Lands and will not be subject to Nisga'a laws.¹⁰⁰ The Agreement also provides for existing and future access to these private lands.¹⁰¹

¹⁰⁰ NFA, Lands 1, p.31

¹⁰¹ NFA, Access 25-27, p.82; Appendix B-2.

Three parcels of provincial Crown land (two agricultural leases and a wood lot) will also be excepted from Nisga'a Lands. Other provisions for public and private road access also include access to these three sites (see Issue Papers #13 and #14).

REPLACEMENT TENURES

Under the Final Agreement, Nisga'a Government will grant tenures for facilities such as communications towers, buildings and community housing.¹⁰² Replacement tenures will have similar terms as exist now. The replacement tenures are legally enforceable arrangements.

Existing Special Use Permits for log storage will be replaced with transitional permits. Transitional permits upgrade existing one-year terms to five-year terms. This five-year term corresponds to the transitional arrangement developed for forestry within Nisga'a Lands.

In addition to granting tenures for particular sites, rights-of-way will be granted for provincial roads and for utility properties (refer to Issue Paper #14). Rights-of-way granted by Nisga'a government will replace a variety of different tenures for roads and utilities. This will result in clearly defined property and access rights for private owners, which are simpler to administer for both the property owner and for the Nisga'a .

NEW TENURES

New tenures will also be granted for specified facilities that have not already been formally tenured. New tenures for a total of

five federal facilities will be issued. New residential tenures will be granted in the former Indian reserves. These tenures will replace *Indian Act* rights to use land (Certificates of Possession) and a much larger number of parcels authorized by band councils.¹⁰³

¹⁰² NFA, Lands 30-40, p.36-38

¹⁰³ NFA, Appendices C5-C6, p.263-285

ACCESS AND NISGA'A LANDS

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Access to Private Lands and Property Interests	13.2

The Nisga'a Final Agreement provides for access on and through Nisga'a Lands for public, private, and federal and provincial government land and resource use. The Final Agreement balances these access interests with land ownership interests. Primary access for all interests within and adjacent to Nisga'a Lands is from the Nisga'a Highway and secondary roads.

OVERVIEW

The access provisions will enable the public to enjoy a continued recreational use of Nisga'a Lands.¹⁰⁴ Nisga'a government will designate Nisga'a Lands as Nisga'a Village Lands, Private Lands, or Nisga'a Public Land. All Nisga'a Lands not designated as Village Lands or Private Lands are Nisga'a Public Lands, to which the general public has access for noncommercial recreation, including hunting and fishing.

Specific provisions are included for access by government employees delivering services, conducting inspections, enforcing laws, responding to emergencies, and carrying out the terms of the Final

¹⁰⁴ NFA, Access 2 and 4, pp.79-80

Agreement.¹⁰⁵ Reciprocal terms are set out for authorized Nisga'a government employees.¹⁰⁶

The Final Agreement also provides for access to private land and property interests within Nisga'a Lands. Private lands excepted from Nisga'a ownership and jurisdiction retain their existing roads¹⁰⁷ and specified properties will be accessible on reasonable terms.¹⁰⁸ Terms and conditions for private road easements, utility access road and other access are set out in the Final Agreement Appendices.

PUBLIC ACCESS TO NISGA'A LANDS

Primary access for public recreation within Nisga'a Lands is from the provincial roads, as well from Nisga'a owned roads.¹⁰⁹ Public rights of access on navigable waters within Nisga'a Lands are not affected by the Final Agreement.¹¹⁰

¹⁰⁵ NFA, Access 15-19, pp.81-82

¹⁰⁶ NFA, Access 20 - 24, p.82

¹⁰⁷ NFA, Lands 1(d), p.31

¹⁰⁸ NFA, Access 25-27, p.82-83

¹⁰⁹ NFA, Access 25-27, pp.82-83

¹¹⁰ NFA, Access 14, p.81

In addition to temporary non-commercial public recreational access, Nisga'a Government will provide reasonable public access for hunting and fishing on Nisga'a Public Land.¹¹¹ Nisga'a Government and British Columbia will take reasonable measures to notify the public of terms and conditions regarding public access onto Nisga'a Public Lands.

Nisga'a Government will consult with Canada and British Columbia regarding any proposed Nisga'a laws that would significantly affect regulation of public access onto Nisga'a Public Lands.¹¹² Changes in Nisga'a Lands designated as Village or Private lands would require public notice and consultation, and reasonable alternative means of public access to publicly regulated roads and waterways if affected by changes.¹¹³

Reciprocal provisions are set out for Nisga'a access over Crown lands outside Nisga'a Lands for normal use and enjoyment as set out in the Final Agreement. Nisga'a access over Crown lands cannot interfere with Crown authority over use or sale of Crown land.¹¹⁴ The Crown will provide the Nisga'a with alternative access where a use or disposition of Crown land denies Nisga'a citizens reasonable access or use of resources.¹¹⁵

¹¹¹ NFA, Access 4-7, p.80

¹¹² NFA, Access 8-10, p.80

¹¹³ NFA, Access 11-13, p.80

¹¹⁴ NFA, Access 23, p.82

¹¹⁵ NFA, Access 24, p.82

CROWN ACCESS TO NISGA'A LANDS

Specific provisions are included for access by government employees delivering services, conducting inspections, enforcing laws, responding to emergencies, and

carrying out the terms of the Final Agreement. These include reasonable notice, where practicable in advance, for entry by the Canadian Armed Forces onto Nisga'a Lands.¹¹⁶ The use of Nisga'a Lands by Crown employees would be without fee except as required by federal or provincial laws in respect of access on land owned in fee simple.¹¹⁷

Reciprocal provisions are included¹¹⁸ for authorized Nisga'a representatives. They will have access where required, to deliver government services, conduct inspections, enforce applicable laws, respond to emergencies, or to otherwise carry out the terms of the Final Agreement.

ACCESS TO PRIVATE LAND AND PROPERTY INTERESTS

The Final Agreement also provides for access to both private land and private property interests within Nisga'a Lands.

Where access to private lands cannot now be entirely accommodated within provincial road rights-of-way, terms are set out in the Final Agreement Appendices for private road easements granted by Nisga'a government on

¹¹⁶ NFA, Access 16-18, p.81

¹¹⁷ NFA, Access 19, p.82

¹¹⁸ NFA, Access 20-22, p.82

the effective date of the Final Agreement.¹¹⁹
There are also provisions for future access to private lands located within Nisga'a Lands, as identified in the Final Agreement.

If additional access across Nisga'a Lands is reasonably required in future, it will not unreasonably be withheld provided fair compensation is offered and terms of access are agreed upon. British Columbia or Nisga'a Government can refer disputes concerning terms or compensation to binding arbitration under Dispute Resolution provisions of the Final Agreement.¹²⁰
Reciprocal terms are set out for future access to Nisga'a fee simple lands located within Provincial Crown lands.¹²¹

Terms for access to existing private property located on Nisga'a Lands are set out in the Final Agreement.

¹¹⁹ NFA, Lands 30-31, p.36; Appendix C-1 and C-4

¹²⁰ NFA, Access 25-27, p.82-83

¹²¹ NFA, Access 26-27p.83

ROADS AND RIGHTS-OF-WAY

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Nisga'a Roads.....	

The Final Agreement includes special provisions for roads and utilities. Provisions are included for continuing provincial ownership and public use of the highway and road networks within Nisga'a Lands. Additional provisions ensure that power and phone utilities have secure tenures for their property, and are able to deliver services. As well as protecting existing property and access routes these provisions allow simpler administration under updated standard tenure documents.

Future Nisga'a laws would apply only to the extent that they did not impair road use or specify more stringent standards for existing roads and utility works.¹²² Rights-of-way could not be expropriated by Nisga'a Government.¹²³ Roads and utilities would not be subject to Nisga'a Government taxation or other fees (see Issue Paper #24). These provisions address concerns raised during third-party consultations over possible road closures or tolls, and the potential setting of

¹²² NFA, Roads 6, p.86-87

¹²³ NFA, Nisga'a Government 50(c)(iv), p.

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unreasonable conditions for use of provincial roads.

THE NISGA'A HIGHWAY

The provincial ANisga'a Highway corridor@ is excepted from Nisga'a Lands. It is owned, controlled and administered by British Columbia for use as a public highway.¹²⁴ The provincial Highway provides the main access through Nisga'a Lands, and connects three of the four Nisga'a communities to the provincial highway network.

The ANisga'a Highway corridor@ is defined in the treaty. It includes corridors for a planned extension to the fourth Nisga'a community, and a potential future highway extension and interconnection.¹²⁵

Utility works co-located on the Nisga'a Highway corridor are also excepted from Nisga'a Lands. Tenures for utilities within the Nisga'a Highway corridor will continue to be provided by the province.¹²⁶

Terms are set out for access across Nisga'a Lands to maintain and protect the provincial highway and associated utility property.¹²⁷

¹²⁴ NFA, Roads 8, p.87

¹²⁵ NFA, Roads Schedule A, p.101

¹²⁶ NFA, Roads 32, p.92

¹²⁷ NFA, Roads 34, p.93

Provisions are also included for provincial use of identified gravel resources within Nisga'a Lands for road maintenance.¹²⁸

CROWN AND PRIVATE ROADS

Existing provincial Crown roads on Nisga'a Lands outside of the Nisga'a Highway corridor are granted rights-of-way and easements by Nisga'a Government.¹²⁹

All secondary provincial roads and rights-of-way will be based on a standard form in the Final Agreement.¹³⁰ Easements will be granted by Nisga'a Government for private roads on Nisga'a Lands based on the standard form in the Final Agreement.¹³¹ Utility access roads located off the Crown right-of-way will be granted separate rights-of-way.¹³²

PROVINCIAL ACQUISITION OF FUTURE RIGHTS-OF-WAY

British Columbia is entitled to receive additional rights-of-way on Nisga'a Lands for future Crown road and public utility development.¹³³ British Columbia can acquire rights-of-way to a maximum area of

2.8 square kilometres (approximately 3.5 times larger than the area occupied by existing roads and utilities).

Nisga'a Government will grant and approve reasonable requests for rights-of-way by British Columbia. Future rights-of-way will use the terms set out in the Final Agreement Appendices, unless otherwise agreed by the parties to the right-of-way. The land area of any abandoned or decommissioned highway or utility routes will be credited to the total area British Columbia will be entitled to for future rights-of way.

UTILITY RIGHTS-OF-WAY

The Nisga'a will grant rights-of-way to BC Hydro and BC TEL for power and phone lines outside the provincial highway network.¹³⁴

These new utility rights-of-way replace a variety of informal tenures. Utility owners were consulted throughout negotiations to consolidate these rights-of-way, participated in negotiations at various times, and provided supporting technical information. Resulting rights-of-way will be more complete, and simpler to administer.

Standard terms set out in the appendices will allow future use of Nisga'a Village Lands for expanded services.

NISGA'A ROADS

Other roads on Nisga'a Lands are owned and

¹²⁸ NFA, Roads 52, p.96

¹²⁹ NFA, Roads 17, p.89

¹³⁰ NFA, Appendix C-4, p.241, Document 1

¹³¹ Terms are detailed in Appendix C-4, p. 245, Document 2

¹³² NFA, Nisga'a Government 50(c)(iv), p.169

¹³³ NFA, Roads 2-7. Pp. 85-87

¹³⁴ NFA, Roads 68, p. 99; Appendix C

managed by the Nisga'a Government.

Nisga'a government will be responsible for their care and use.

Nisga'a roads in the four communities are open to public use on the same basis as comparable communities located elsewhere in British Columbia. Access to gravel resources on Crown Lands will be available for Nisga'a road maintenance.

FORESTRY

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Participation in the forest economy of Northwest British Columbia is one of the significant economic benefits of the Nisga'a Final Agreement. In addition to providing economic opportunities, Nisga'a revenues from forestry operations will contribute to the shared funding of Nisga'a programs and services through the Own Source Revenue Agreement (See Issue Paper #25).

BACKGROUND

Forestry is the principal economic activity on what would become Nisga'a Lands. Other than the current Nisga'a Indian reserves, Nisga'a Lands are now provincial Crown Lands. Tree Farm Licence (TFL) #1 is held by Skeena Cellulose, Inc., which holds rights to approximately 46% of the forest land base on Nisga'a Lands. In addition to this TFL, Nisga'a Lands are comprised of small portions of three Timber Supply Areas (TSA). Forest licencees operating on these lands include West Fraser Forest Products and Sim Gan Forest Products, which is a joint venture between the Nisga'a Tribal Council and Interpac

Forest Products Ltd.. Short-term licences issued through a competitive bidding process under British Columbia's Small Business Forest Enterprise Program also harvest modest volumes of timber.

Average annual harvests from 1992-1997 have been approximately 160,000-170,000 cubic metres per year. This timber has primarily been processed in sawmills in Terrace and Skeena Cellulose's pulp mill in Prince Rupert. A high percentage of the timber produced has been lower value pulpwood.

Due to high levels of harvesting in the most productive areas of the Nass Valley, a significant proportion of the readily accessible forest is immature second growth. A number of constraints limit the useable timber harvesting land base to just 20% of Nisga'a Lands.

Forest harvests have also occurred on Nisga'a Indian reserves, authorized under the Indian Timber Permit Regulations. In addition to Sim Gan Forest Products, a number of Nisga'a contractors are involved in timber harvesting and silviculture.

OWNERSHIP OF FOREST RESOURCES

After the effective date, the Nisga'a Nation will own Nisga'a Lands, including its forest resources.¹³⁵

¹³⁵ NFA, Forest Resources 3, p.66

The Nisga'a Final Agreement provides for a transition period during which time the Nisga'a will not fully exercise its authority to manage the forest resource. Forest companies who currently harvest on what would become Nisga'a Lands will continue to do so for the five-year transition period. The transition period will provide for an orderly transition to the new arrangements set out in the Final Agreement. After the five-year period, Nisga'a Government will be able to exercise all of their ownership rights, in accordance with the Final Agreement.

Where this Final Agreement results in reduced annual allowable cut to the affected forest companies, appropriate compensation is planned, with costs to be shared according to a Memorandum of Understanding between Canada and British Columbia.¹³⁶

THE FORESTRY TRANSITION PERIOD

The provisions of the Final Agreement and Appendix H regarding the forestry transition period were developed in close consultation with the Nisga'a Regional Forest Advisory Committee (See Issue Paper #4). The committee included all affected forest licensees, contract loggers, labour representatives and the Council of Forest Industries.

The forest transition period allows forest licensees to continue to harvest on Nisga'a Lands for five years after the effective date and sets allowable harvests for nine years after the effective date. This transition

¹³⁶ Memorandum of Understanding Between Canada and British Columbia, June 21, 1993

period was designed to provide for an orderly transition to Nisga'a ownership of forest resources for forest licensees and for the Nisga'a.

Cut Levels

The transition provisions set annual allowable harvests through year nine after the effective date. Prior to negotiation of the Final Agreement, no annual allowable cut had been set for Nisga'a Lands. The Parties agreed to undertake a timber supply review in order to provide information necessary to set the harvest levels in effect during the transition period. This work was contracted to Cortex Consultants, Inc., who used the FSSIM computer model generally used for timber supply reviews in British Columbia.

Establishing a cut volume for existing licensees from the Ishkeenickh watershed was one of British Columbia's objectives resulting from consultation with third-party forestry interests.¹³⁷ This divided the cut more evenly amongst watersheds on Nisga'a Lands.

Nisga'a harvests during the transition

The Nisga'a Nation may continue to harvest timber from former Indian reserves during the transition period. It is also allocated a portion of the timber harvest on Nisga'a Lands during the five-year transition period.¹³⁸ Nisga'a logging contractors, who currently harvest under contract to local forest companies, are provided assurances of

¹³⁷ NFA, Forest Resources 19, p.69

¹³⁸ NFA, Forest Resources 20, p.69

harvesting opportunities.

The transition period is designed in part to allow the Nisga'a to increase their capacity to participate in the forest sector.

To ensure continued fibre supply to local timber processing facilities, Nisga'a timber harvests during the transition period will be made reasonably available to local mills.¹³⁹

Authorizing harvests during the transition period

In order to ensure no interruption in timber harvesting on the effective date, cutting permits approved by the Nisga'a Tribal Council and the Province prior to the effective date will be grandparented.¹⁴⁰

A Forest Transition Committee comprised of one member from each of British Columbia and the Nisga'a Nation will approve forest development plans from the effective date forward. Joint approval of silviculture prescriptions and cutting permits will be phased in.¹⁴¹

Appendix H sets out strict time lines for approvals of cutting authorities and provides for commercial arbitration if necessary.¹⁴²

During the transition period, British Columbia's Forest Practices Board will provide an annual audit of forest practices of licencees on Nisga'a Lands.¹⁴³

¹³⁹ NFA, Forest Resources 24, p.70

¹⁴⁰ Appendix H 10-13, p.382

¹⁴¹ NFA, Forest Resources 32 and 33, p.71

¹⁴² NFA, Appendix H 65, p.391

¹⁴³ NFA, Forest Resources 55, p.74

The arrangements for a transition period result in the Nisga'a not obtaining the entire economic benefit of forestry harvesting on the effective date. The Final Agreement provides that British Columbia will make payments to put the Nisga'a in the same economic position as if there were no transition period.¹⁴⁴ British Columbia estimates its payments under this provision will total \$4.5 million (\$1999) (see Issue Paper #23).

NISGA'A REGULATION OF FOREST PRACTICES ON NISGA'A LANDS

Nisga'a Government must make laws to regulate forest practices on Nisga'a Lands, and must meet or exceed standards established under provincial forest practices legislation which applies on Crown Lands.¹⁴⁵ Nisga'a forest standards must be no more intrusive to the environment than those that apply on Crown land.

During the transition period, Nisga'a laws will apply to timber harvests by the Nisga'a. However, Nisga'a laws will not apply to non-Nisga'a forest licensees who operate on Nisga'a Lands during the transition period.¹⁴⁶ Nisga'a laws will apply to all harvesting of non-timber forest resources.

¹⁴⁴ NFA Forest Resources 72, p.77

¹⁴⁵ NFA, Forest Resources 8, p.67

¹⁴⁶ NFA, Forest Resources 7, p.66

The Parties to the Final Agreement may also negotiate cooperative arrangements to coordinate their activities and achieve administrative efficiencies in respect of fire suppression, protection of fisheries habitat, and other similar matters.

The *Fisheries Act*, including its protection of fisheries habitat and fish, will continue to apply on Nisga'a Lands and to Nisga'a forest operations.

PROTECTION OF THE FOREST

The Final Agreement establishes rules for control and suppression of forest fires both during the transition period and thereafter, including responsibility for costs.¹⁴⁷ During the transition period, Canada is responsible for costs incurred by British Columbia to suppress forest fires that originate on former Indian reserves, in accordance with an agreement currently in effect. During the last five-year period, there have been no fires on Nisga'a Indian reserves which resulted in payments under this agreement.

The Final Agreement also makes provisions to ensure forest health on Nisga'a Lands and adjacent Crown lands.¹⁴⁸

TIMBER PROCESSING

Provincial laws requiring that whole logs be manufactured in British Columbia before export apply to timber harvested from

Nisga'a Lands.¹⁴⁹ However, the Final Agreement provides a five-year phase out of whole log export from former Indian reserves.¹⁵⁰

The Nisga'a Nation cannot construct a primary processing plant for 10 years after the effective date. However, they are not restricted from processing timber for their own purposes, or conducting value added processing, or entering into joint ventures.¹⁵¹

NISGA'A ACQUISITION OF ADDITIONAL FOREST TENURES

British Columbia has agreed in principle to the acquisition of a Nisga'a forest tenure of up to 150,000 cubic metres, if certain conditions are met. The Nisga'a would have to acquire such a tenure, and British Columbia's Minister of Forests would only approve the acquisition following a public review process and only if the Minister was satisfied that the acquisition addressed local employment and fibre supply needs.¹⁵²

¹⁴⁷ NFA, Forest Resources 57-61, p.74-75

¹⁴⁸ NFA, Forest Resources 62-64, p.75-76

¹⁴⁹ NFA, Forest Resources 65, p.76

¹⁵⁰ NFA, Forest Resources 69, p.76

¹⁵¹ NFA, Forest Resources 70 and 71, p.76

¹⁵² NFA, Forest Resources 76-78, p.77-78

FISHERIES

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The Nisga'a Final Agreement provides for Nisga'a fisheries entitlements which are subject to conservation and laws for public health and public safety. For salmon, allocations are precisely defined in the Final Agreement and allow for the continued harvest by other fishers.

The Final Agreement sets out a role for the Nisga'a in the cooperative planning and conduct of their fishery, including an advisory role regarding Nass River fish stocks, however the Minister retains overall authority to regulate Nass River fisheries.

BACKGROUND

The Nass River supports significant runs of the five salmon species: sockeye, chinook, coho, chum and pink salmon. Although returns of these species vary greatly from year to year, the stocks are healthy and optimize the harvest of sockeye in

support both commercial and recreational harvests. Annex 1 provides a summary of the salmon returns to Canada from 1977 to 1992, the period of record used for the analysis of Nisga'a treaty allocations. Annex 2 provides the total catches in commercial, recreational and aboriginal fisheries of these species over the same time period.

There are also Nass Area populations of non-salmon species such as halibut, steelhead, herring, crab and shellfish, some of which are commercially and recreationally harvested.

The Nisga'a currently harvest significant numbers of salmon, particularly sockeye, chinook and coho. Column 2 of the table in Annex 3 provides their average catch from 1992 to 1996. They also currently harvest significant numbers of non-salmon species, including oolichan, halibut, groundfish, shellfish, steelhead and trout.

Through the Nisga'a Fisheries Program, the Nisga'a contribute to salmon management activities for Nass River stocks. This program was awarded the Department of Fisheries and Oceans Management Prize in 1995.

The Nisga'a Fisheries Program was developed in consultation with Department of Fisheries and Oceans scientists, and is funded through the Aboriginal Fisheries Strategy. Its activities include the fishwheel program, which provides in-season estimates of sockeye escapements. Since 1994, these estimates have been used by Department of Fisheries and Oceans fisheries managers to

commercial fisheries harvesting Nass stocks.

For instance, from 1977 to 1992, DFO estimates that over 800,000 sockeye salmon that could have been harvested in commercial fisheries were not, in part due to lack of sufficient data.

A Technical Steering Committee comprised of DFO managers and Nisga'a representatives currently oversees the work of the Nisga'a Fisheries Program.

RIGHTS TO HARVEST AND HARVEST ALLOCATIONS

The Nisga'a Final Agreement contains entitlements to harvest salmon, steelhead, and non-salmon species, subject to conservation and public health and safety. A separate Harvest Agreement, which does not form part of the treaty, provides additional pink and sockeye salmon allocations.¹⁵³

The Nisga'a Final Agreement distinguishes between Nisga'a fish entitlements which are the general treaty rights to harvest fish and aquatic plants, and Nisga'a fish allocations which are defined rights to harvest, such as a percentage share of the allowable catch. There are Nisga'a fish allocations for salmon, oolichan and shellfish. The Nisga'a Final Agreement also provides a process to define allocations for other species.

Salmon allocations

The Nisga'a Final Agreement contains allocations for the five salmon species which are based on a percentage of the return to Canada, subject to a conservation limit set by the Minister of Fisheries and Oceans.

¹⁵³ NFA, Fisheries 22, p.106

These treaty allocations are also capped at higher run sizes.¹⁵⁴

As an example, the Nisga'a will receive 10.5% of the return to Canada of sockeye salmon. However, if run sizes fall below the minimum escapement level for a species (estimated to be a return of 120,000 sockeye), no harvesting directed at sockeye could occur. Above a return of 600,000 sockeye, the Nisga'a treaty allocation would be capped at 63,000 sockeye.

Under the Harvest Agreement, the Nisga'a share of the allowable catch (after the escapement goal and the treaty harvest are deducted from the total return) is 13% of the share of harvest of sockeye salmon (and 15% of the pink salmon). Fisheries under the Harvest Agreement have the same priority as commercial and recreational fisheries.¹⁵⁵

The Nisga'a Final Agreement provides an accounting system for ensuring that the Nisga'a catch is consistent with the Nisga'a allocations over time, and that the Nisga'a do not harvest from the share of other fishers.¹⁵⁶

Annex 3 summarizes the salmon allocations under the Nisga'a Final Agreement, and the Harvest Agreement allocations, and

¹⁵⁴ NFA, Fisheries Schedule A, p.123-124

¹⁵⁵ NFA, Fisheries 26, p.106

¹⁵⁶ NFA, Fisheries 15-18, p.105; Schedule B, pp. 125-127

compares them to the Canadian total allowable catch, based on the 1977-1992 data set used to negotiate the Agreement.

Nisga'a salmon allocations provide certainty for all users of the salmon resources, regardless of changes in population, or the abundance of salmon. If salmon abundances increase as a result of good management, habitat restoration or other factors, the Nisga'a benefit along with other Canadians. At lower run sizes, their share under the Nisga'a Final Agreement and the Harvest Agreement will be lower than their current food, social and ceremonial harvest.

The re-allocations of commercial harvests to the Nisga'a required to implement the treaty will be offset by a licence retirement program to retire an equivalent catching capacity from the fleet. This ensures that the fishers who remain will not have a reduced catch per unit effort. Extensive consultation has been undertaken in regard to this program, and a discussion paper has been widely circulated.¹⁵⁷

Canada will also make a \$3.2 million payment to British Columbia for adjustment assistance for training or other initiatives for people or communities affected by the Final Agreement, (for example in the fishery or in other areas such as forestry).

DISPOSITION OF SALMON AND

¹⁵⁷ Reference: Mitigating the Impact of the Nisga'a Treaty on North Coast Salmon Fisheries; June 24, 1998, FTNO Discussion Draft

OTHER SPECIES

The Nisga'a may sell salmon harvested under the Harvest Agreement¹⁵⁸. Nisga'a salmon allocations harvested under the Final Agreement may only be sold when there are directed harvests of those Nass species in commercial or recreational fisheries.¹⁵⁹

Sale of salmon represents a significant economic opportunity for the Nisga'a. They have indicated that proceeds from a portion of their commercial harvest will be allocated to support their fisheries stewardship activities.

The Nisga'a will not be entitled to sell non-salmon species or steelhead except in accordance with federal and provincial laws of general application.¹⁶⁰

Trade and barter is treated separately from sale under the Nisga'a Final Agreement. The Nisga'a can trade and barter only among themselves or with other aboriginal people,¹⁶¹ and they must identify any fish transported off Nisga'a Lands which are intended for trade or barter.¹⁶²

¹⁵⁸ NFA, Fisheries 27, p.106

¹⁵⁹ NFA, Fisheries 33, p.107

¹⁶⁰ NFA, Fisheries 43, p. 109; Fisheries 67, p.112

¹⁶¹ NFA, Fisheries 9, p.104

¹⁶² NFA, Fisheries 74, p.113

FUTURE ALLOCATIONS OF NON-SALMON SPECIES

Regarding non-salmon species, the Nisga'a Final Agreement only sets out allocations for oolichan and shellfish. The Nisga'a, along with others who have an aboriginal right to harvest oolichan, can harvest the total allowable catch of Nass River oolichan.¹⁶³ Appendix I sets out three areas where the Nisga'a are entitled to harvest shellfish.¹⁶⁴ Commercial harvest in these areas is precluded, but recreational harvest is not.¹⁶⁵

The Nisga'a Final Agreement provides a process for establishing allocations for non-salmon species after the effective date of the Final Agreement and provides criteria on which these allocations will be based.¹⁶⁶ In the event the Parties cannot agree, the allocation would be settled by binding arbitration, based on criteria set out in the Final Agreement.¹⁶⁷

Crab, halibut, prawns and shrimp, herring and kelp have all been identified as species for which allocations will be set, once the appropriate harvest and biological studies are completed.¹⁶⁸

FISHERIES MANAGEMENT

The Nisga'a Final Agreement confirms the

¹⁶³ NFA, Fisheries 62, p.111

¹⁶⁴ NFA, Fisheries 64, p.112

¹⁶⁵ NFA, Fisheries 66, p.112

¹⁶⁶ NFA, Fisheries 54-57, p.110-111

¹⁶⁷ NFA, Fisheries 59, p.111

¹⁶⁸ NFA, Fisheries 58, p.111

Minister's responsibility for the management of fisheries and fish habitat.¹⁶⁹

The Joint Fisheries Management Committee

A Joint Fisheries Management Committee (JFMC), modelled on the Joint Technical Committee now in operation, is the basis of the cooperative approach to fisheries management set out in the Nisga'a Final Agreement.¹⁷⁰ The JFMC will be comprised of two representatives of each of Canada, the Nisga'a and British Columbia.¹⁷¹ The appropriate JFMC members will provide recommendations to the federal or provincial Minister within their respective jurisdictions. Nothing in the provisions of the Final Agreement will prevent the Minister from considering the recommendations of other advisory bodies currently in place.

Regional management

The Parties acknowledge that fisheries management may require consideration of issues on a regional or watershed basis, and the Nisga'a Final Agreement makes provision for Nisga'a participation in such bodies if they are created in future.¹⁷²

¹⁶⁹ NFA, Fisheries 68, p.112

¹⁷⁰ NFA, Fisheries 77, p.114

¹⁷¹ NFA, Fisheries 79, p.115

¹⁷² NFA, Fisheries 83, p.116

The Nisga'a annual fishing plan

The *Fisheries Act* and regulations apply to harvests in Nisga'a Fisheries. A Nisga'a annual fishing plan will also regulate Nisga'a fisheries. In the event of an inconsistency between the Nisga'a annual fishing plan approved by the Minister and laws of general application, the plan prevails to the extent of inconsistency. Each year, Nisga'a Lisims Government will propose a fishing plan for that year, which will be reviewed by the JFMC. The JFMC must make any appropriate adjustments to integrate the Nisga'a annual fishing plan with other conservation and fishing plans. They then will make recommendations regarding the plan to the Minister. The Minister will consider the plan and the JFMC's recommendations, taking into account factors such as conservation requirements, the efficient management of all fisheries, accepted scientific procedures, and any other matters the Minister considers appropriate. The Minister will then approve, or vary and approve, the Nisga'a annual fishing plan.¹⁷³

Compliance with the Nisga'a annual fishing plan will be enforceable under the *Fisheries Act* and under Nisga'a law.¹⁷⁴ The Nisga'a annual fishing plan will specify its provisions which are intended to be enforceable under the *Fisheries Act*. Provisions regarding timing, method and location of harvest will be enforceable. Federal and provincial enforcement

personnel can enforce Nisga'a law.¹⁷⁵

¹⁷³ NFA, Fisheries 84-91, p.116-118

¹⁷⁴ NFA, Fisheries 74(b), p.113

¹⁷⁵ NFA, Fisheries 95, p.119

Nisga'a law-making authority

Nisga'a Lisims Government will have the right to make laws in respect of Nisga'a rights and obligations under the Agreement and Harvest Agreement, including laws regarding the internal allocation of their fisheries entitlements, authorization of Nisga'a harvesters and other similar matters. However, Nisga'a laws in respect of fishing will be consistent with the Nisga'a annual fishing plan approved by the Minister.¹⁷⁶ Given this constraint, Nisga'a laws in these areas can prevail to the extent of an inconsistency or conflict over federal and provincial laws. However, any Nisga'a laws regarding sale will not prevail.¹⁷⁷

The Nisga'a Fisheries Operational Guidelines

The Parties have recognized that to ensure the orderly implementation of the fisheries provisions, a guideline to operational procedures would be useful. The Nisga'a Fisheries Operational Guidelines sets out these procedures, such as the stock assessment methodology to use for each salmon species. The Guidelines are not part of the treaty.¹⁷⁸

¹⁷⁶ NFA, Fisheries 69 & 70, pp.112-113

¹⁷⁷ NFA, Fisheries 73, p.113

¹⁷⁸ NFA, Fisheries 75 & 76, p.114

THE LISIMS FISHERIES CONSERVATION TRUST

The Lisims Fisheries Conservation Trust will promote conservation and protection of Nass Area fish species, facilitate sustainable management, and support Nisga'a participation in fisheries stewardship activities for the benefit of all Canadians.¹⁷⁹

It is hoped that the Trust will facilitate continuation of the work of the Nisga'a Fisheries Program and its contribution to the Department of Fisheries and Oceans fisheries management.

Canada will provide \$10.3 million, and the Nisga'a Nation \$3.1 million, to fund the Trust. Annual revenues will be used to support the objectives of the Trust.

Canada's and the Nisga'a Nation's Joint Fisheries Management Committee members will provide technical recommendations to the Trustees on the program of activities to be funded by the Trust.¹⁸⁰

PARTICIPATION IN THE GENERAL COMMERCIAL FISHERY

Canada and British Columbia will each contribute \$5.9 million to enable the Nisga'a to increase their participation in the general commercial fishery. Any licences and vessels acquired under this provision will be subject to laws regulating commercial fisheries.¹⁸¹

INTERNATIONAL ARRANGEMENTS

Canada agrees to consult with the Nisga'a Nation regarding international discussions or negotiations that may significantly affect Nass Area fisheries resources.¹⁸²

PROCESSING

The Nisga'a have agreed not to construct a fish processing facility of 2,000 or more metric tons capacity for eight years.¹⁸³

¹⁷⁹ NFA, Fisheries 99, p.119

¹⁸⁰ NFA, Fisheries 106, p.121

¹⁸¹ NFA, Fisheries 111, p.121

¹⁸² NFA, Fisheries 115, p.122

¹⁸³ NFA, Fisheries 111, p.122

ANNEX A-- TOTAL RETURN TO CANADA OF NASS RIVER SALMON B 1977-92

Year	Sockeye	Pink	Chinook	Coho	Chum	Total	SE=s
1977	850,703	723,322	26,075	186,940	110,255	1,897,294	1,206,542
1978	362,531	958,347	26,075	130,440	122,692	1,600,085	725,085
1979	351,107	160,487	21,159	59,058	108,574	700,386	536,418
1980	284,640	266,343	28,838	121,815	105,064	806,701	542,057
1981	553,495	689,132	21,840	163,982	30,194	1,458,644	829,110
1982	625,468	1,065,835	13,571	101,317	36,357	1,842,548	896,558
1983	421,869	2,564,306	22,477	135,554	93,510	3,237,716	984,014
1984	334,994	1,821,861	35,199	150,040	109,378	2,451,471	847,858
1985	534,899	1,513,227	29,185	233,352	76,256	2,386,919	1,016,926
1986	315,711	736,143	61,917	264,714	82,496	1,460,979	804,590
1987	355,881	893,622	32,368	215,620	69,454	1,566,945	745,347
1988	240,299	381,250	34,709	80,389	55,767	792,414	475,057
1989	353,584	1,750,435	47,286	121,054	78,390	2,350,749	854,171
1990	285,280	252,003	40,606	142,647	80,108	800,650	571,139
1991	620,182	801,601	22,194	41,988	47,694	1,533,659	850,200
1992	981,319	485,521	35,455	235,212	59,824	1,797,330	1,328,201
Mean	466,998	941,465	31,185	149,008	79,126	1,667,781	825,830

ANNEX B-- CANADIAN TOTAL ALLOWABLE CATCH OF NASS RIVER SALMON B 1977-92

Year	Sockeye	Pink	Chinook	Coho	Chum	Total	SE=s
1977	650,703	348,322	6,075	106,940	60,255	1,172,294	818,242
1978	162,531	583,347	6,075	50,440	72,692	875,085	336,785
1979	151,107	0	1,159	0	58,574	0	148,118
1980	84,640	0	8,838	41,815	55,064	81,701	153,757
1981	353,495	314,132	1,840	83,982	0	733,644	440,810
1982	425,468	690,835	0	21,317	0	1,117,548	508,258
1983	221,869	2,189,306	2,477	55,554	43,510	2,512,716	595,714
1984	134,994	1,446,861	15,199	70,040	59,378	1,726,471	459,558
1985	334,899	1,138,227	9,185	153,352	26,256	1,661,919	628,626
1986	115,711	361,143	41,917	184,714	32,496	735,979	416,290
1987	155,881	518,622	12,368	135,620	19,454	841,945	357,047
1988	40,299	6,250	14,709	389	5,767	67,414	86,757
1989	153,584	1,375,435	27,286	41,054	28,390	1,625,749	465,871
1990	85,280	0	20,606	62,647	30,108	75,650	182,839
1991	420,182	426,601	2,194	0	0	808,659	461,900
1992	781,319	110,521	15,455	155,212	9,824	1,072,330	939,901
Mean	266,998	594,350	11,586	72,692	31,361	944,319	446,171

ANNEX C-- SUMMARY OF NISGA'A HARVEST ALLOCATIONS PROVIDED IN THE NISGA'A FINAL AGREEMENT

Species	Average food, social, ceremonial harvest 1992-96	FINAL AGREEMENT ALLOCATIONS		HARVEST AGREEMENT ALLOCATIONS		SUMMARY		
		Entitlement formula	Average entitlement 1977-92 ¹⁸⁴	Harvest agreement formula	Average allocation 1977-92	Average annual Nisga'a share, based on 1977-92 data set	Average CTAC (1977-92)	Percent Nisga'a share/CTAC
Sockeye	34,719	10.5% of TRTC ¹⁸⁵ up to 63,000	44,588	13.0% of adjusted TAC ¹⁸⁶	28,913	73,501	266,998	27.5%
Pink	2,190	0.6% of TRTC up to 6,600	4,430	15.0% of adjusted CTAC	88,526	92,956	594,350	15.6%
Chinook	6,655	21% of TRTC up to 12,600	6,524			6,524	11,586	56.3%
						11,797	72,692	16.2%

¹⁸⁴ This table is based on the data set used to negotiate the Nisga'a Final Agreement, covering the years 1977-92.

¹⁸⁵ Total Return to Canada (TRTC) includes all Canadian harvests plus escapement.

¹⁸⁶ Canadian Total Allowable Catch (CTAC) are the number of fish available for harvest in Canada (TRTC less escapement).

Chum	373	8.0% of TRTC up to 12,000	6,330			6,330	31,361	20.2%
Sockeye equivalents ¹⁸⁷			74,738		41,307	116,045	446,171	26.0%

¹⁸⁷ Sockeye equivalents are a common currency based on a species-average weight and market value.

WILDLIFE AND MIGRATORY BIRDS

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Background.....	17.1
Rights to Harvest and Harvest Allocations.....	17.1
Disposition of Wildlife and Migratory Birds.....	17.2
Wildlife and Migratory Bird Management.....	17.2
Trapping and Guiding.....	17.3

The Nisga'a Final Agreement provides for Nisga'a wildlife entitlements which are subject to conservation and public health and public safety. This entitlement will not interfere with other authorized uses of Crown land.

Allocations for moose, grizzly bear and mountain goats are defined as a share of the available harvest and therefore will allow for the continued harvest of these species by other hunters.

The Final Agreement sets out a role for the Nisga'a in the facilitation of wildlife management in the Nass Wildlife Area. However, the Minister retains overall authority to regulate wildlife.

BACKGROUND

Wildlife management comes under provincial jurisdiction, while migratory birds are within federal jurisdiction.

The Nass Valley contains significant populations of many wildlife species,

including grizzly and black bear, moose and deer, mountain goats and numerous fur-bearing animals. The harvest is managed through hunting seasons, bag limits, and sex and age limits. For species which are subject to considerable hunting pressure, total allowable harvest levels may be set, and permits issued to harvest only that number of animals.

The harvest of migratory birds is managed by Environment Canada through species, season and bag limit restrictions. The Nisga'a Final Agreement was negotiated to be consistent with the *Migratory Birds Convention Act, 1994*.

RIGHTS TO HARVEST AND HARVEST ALLOCATIONS

Nisga'a citizens will have the right to harvest wildlife and migratory birds for domestic purposes in the Nass Wildlife Area, subject to conservation, and public health and safety.¹⁸⁸ The exercise of this right will not interfere with other authorized uses of Crown land.¹⁸⁹ Provincial allocations of Crown land may affect the methods, times or locations of Nisga'a harvests, but will not deny the Nisga'a a reasonable opportunity to harvest wildlife in accordance with the Final Agreement.¹⁹⁰

¹⁸⁸ NFA, Wildlife and Migratory Birds 1, p.133

¹⁸⁹ NFA, Wildlife and Migratory Birds 2(b), p.133

¹⁹⁰ NFA, Wildlife and Migratory Birds 3, p.133

Wildlife allocations

The Nisga'a Final Agreement contains allocations for designated species, which are subject to total allowable harvest limits that apply to all hunters. Initially these species are moose, grizzly bear and mountain goat.¹⁹¹ It also establishes a process for determining allocations of other species if the Minister determines that conservation requires a total allowable harvest to be set for that species. These allocations will be for a share of the available harvest.¹⁹² If the allocation cannot be determined by agreement, it will be determined by arbitration.¹⁹³

DISPOSITION OF WILDLIFE AND MIGRATORY BIRDS

The Nisga'a can trade or barter among themselves and with other aboriginal people.¹⁹⁴ The Nisga'a will not be entitled to sell wildlife unless laws of general application are amended to allow such sales.¹⁹⁵

Nisga'a citizens have the right to sell the inedible by-products (such as down) of those migratory birds which have been harvested

¹⁹¹ NFA, Wildlife and Migratory Birds Schedule A, p.150

¹⁹² NFA, Wildlife and Migratory Birds 27-29, pp.136-137

¹⁹³ NFA, Wildlife and Migratory Birds 33, p.138

¹⁹⁴ NFA, Wildlife and Migratory Birds 68 p.145; 90, p.148

¹⁹⁵ NFA, Wildlife and Migratory Birds 70, p.146

for domestic purposes.¹⁹⁶

WILDLIFE AND MIGRATORY BIRD MANAGEMENT

The Wildlife Committee

The Nisga'a Final Agreement confirms the Minister's responsibility for wildlife.¹⁹⁷ The Wildlife Committee provides for a cooperative approach to wildlife management.¹⁹⁸ The Wildlife Committee is comprised of up to four representatives of the Nisga'a and British Columbia, and one representative of Canada.¹⁹⁹ Canada is present to provide recommendations regarding a limited number of fish species which fall under the definition of wildlife.

Regional management

The Parties acknowledge that wildlife management may require consideration of issues on a regional or watershed basis, and makes provision for Nisga'a participation in such bodies if they are created in future.²⁰⁰

The annual management plan

¹⁹⁶ NFA, Wildlife and Migratory Birds 93, p.148

¹⁹⁷ NFA, Wildlife and Migratory Birds 35, p.138

¹⁹⁸ NFA, Wildlife and Migratory Birds 45, p.140-141

¹⁹⁹ NFA, Wildlife and Migratory Birds 46, p.141

²⁰⁰ NFA, Wildlife and Migratory Birds 52-54, p.142

Annual management plans would be developed and recommended through a process similar to that used for Nisga'a annual fishing plans.

In the event of an inconsistency or conflict between the annual management plan approved by the Minister and laws of general application, the plan prevails to the extent of an inconsistency.²⁰¹

The Nisga'a Final Agreement allows Parties to enter into agreements regarding enforcement of their wildlife and migratory birds laws.²⁰² Federal and provincial enforcement personnel may enforce Nisga'a law.²⁰³

Nisga'a law-making authority

Nisga'a Lisims Government will have the right to make laws in respect of Nisga'a rights and obligations under the Final Agreement and Harvest Agreement, including laws regarding the internal allocation of their wildlife entitlements, licensing of Nisga'a harvesters and other similar matters. However, Nisga'a laws in respect of wildlife harvesting will be consistent with the Nisga'a annual fishing plan approved by the Minister. Given this constraint, Nisga'a laws in these areas can prevail to the extent of an inconsistency or conflict over federal and provincial laws. However, any Nisga'a laws regarding sale will not prevail.²⁰⁴

The Nisga'a Final Agreement will allow Nisga'a Lisims Government to nominate a person to administer firearms licensing tests under Canada's firearms legislation if the responsible government approves that Nisga'a nominee's qualifications.²⁰⁵

Migratory birds

The Minister of Environment's authority to manage migratory birds will continue. Canada will consult with the Nisga'a regarding management of the aboriginal harvest of migratory birds in the Nass Area.²⁰⁶

TRAPPING AND GUIDING

The Nisga'a Final Agreement will transfer to the Nisga'a Nation traplines which are wholly or partially on Nisga'a Lands, but are not registered to any person.²⁰⁷ Trapping on Nisga'a Lands will continue to be regulated by British Columbia.²⁰⁸

²⁰¹ NFA, Wildlife and Migratory Birds 67, p.145

²⁰² NFA, Wildlife and Migratory Brds 98, p.149

²⁰³ NFA, Wildlife and Migratory Birds 99, p.149

²⁰⁴ NFA, Wildlife and Migratory Birds 37-

41, p.138-139

²⁰⁵ NFA, Wildlife and Migratory Birds 44, p.140

²⁰⁶ NFA, Wildlife and Migratory Birds 95, p.149

²⁰⁷ NFA, Wildlife and Migratory Birds 71, p.146

²⁰⁸ NFA, Wildlife and Migratory Birds 78, p.146

In the event a guide outfitter certificate which covers Nisga'a Lands ceases to apply through abandonment or by the operation of law, British Columbia will issue a guide outfitter certificate to the Nisga'a Nation for an area set out in the Final Agreement.²⁰⁹

British Columbia will also issue an angling guide licence to the Nisga'a Nation for a number of streams outside of Nisga'a Lands.²¹⁰ No existing angling guide licences will be altered by this provision.

²⁰⁹ NFA, Wildlife and Migratory Birds 81, p.147

²¹⁰ NFA, Wildlife and Migratory Birds 83, p.147; Schedule D, p.153

WATER RESOURCES

CONTENTS	
Background.....	18.1
The Nisga'a Water Reservation.....	18.1
The Hydro Reservation.....	18.2

The Nisga'a Final Agreement provides the Nisga'a Nation with a non-exclusive economic opportunity to use a portion of the extensive water supplies of the Nass River and its tributaries on Nisga'a Lands for industrial, domestic, agricultural and hydro purposes.

Any Nisga'a use of water must meet existing regulatory requirements.

BACKGROUND

The Nass River drains 18,500 square kilometres, and in its lower reaches has an average mean discharge of 770 cubic metres per second. Flows vary considerably throughout the year, with highwater flows occurring from May to August and low water flows from December to April.

The Nass River is classified as a provincial Heritage River and British Columbia's policy would not allow dams to be constructed on its main stem. As a result, any hydro development would be restricted to tributaries or to Arun of the river proposals.

THE NISGA'A WATER RESERVATION

The Nisga'a water reservation in the Final

Agreement would provide a volume of water from which future water licences may be allocated. It is one component of the economic opportunities provided through the Final Agreement.

The Government of British Columbia will establish a water reservation of 300,000 cubic decametres in favour of the Nisga'a Nation, which will cover the Nass River and those streams which are wholly or partially inside Nisga'a Lands.²¹¹ The Nisga'a Nation may apply for water licences for domestic, agricultural and industrial purposes which, if granted, will be deducted from this reservation.

The water reservation will have priority over other water licences except those issued or applied for prior to the signing of the Agreement-in-Principle. However, given the large volume of water available in the Nass River and its tributaries, the Nisga'a water reservation does not limit access to the volume requirements of other potential water users. Nisga'a Government is required to provide access across Nisga'a Lands where holders of water licences reasonably require such access.²¹² Disputes over access may be referred to arbitration if necessary.²¹³

²¹¹ NFA, Lands 122, p.50-51

²¹² NFA, Lands 131, p.52

²¹³ NFA, Lands 133, p.53

The Nisga'a water reservation represents just over 1% of the average annual flow of the Nass River. This amount of water would allow for Nisga'a needs, including potential industrial opportunities in the future, without compromising water supplies for all other users of this resource.

Prior to authorizing any specific water licence, the Minister must determine that there is sufficient available flow.²¹⁴ This would require in part a determination that there is enough water to protect fisheries values and navigation. Consideration of these issues would involve the federal Department of Fisheries and Oceans. Furthermore, any application for a water licence would be required to meet provincial regulatory requirements.²¹⁵ Federal and provincial laws regarding the export of water continue to apply.²¹⁶

THE HYDRO RESERVATION

The Nisga'a Final Agreement will also provide for a 20-year reservation which allows an assessment of the feasibility of hydro development on streams within Nisga'a Lands, other than the Nass River. This reservation does not preclude the issuance of water licences to others during this period.

For each stream, the Nisga'a Nation would be able to convert this water reservation to one which applies to a specific project, if British Columbia considers the stream is

suitable for hydro power purposes.

Thereafter, the water reservation to assess the feasibility of hydro development on that stream terminates.²¹⁷

Any water licence issued to the Nisga'a for a proposed hydro project must comply with federal and provincial regulatory requirements.²¹⁸

²¹⁴ NFA, Definitions, p.3

²¹⁵ NFA, Lands 126, p.51

²¹⁶ NFA, Lands 138, p.53

²¹⁷ NFA, Lands 140-142 p.53-54

²¹⁸ NFA, Lands 143 p.54

NISGA'A GOVERNMENT

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The Structure of Nisga'a Government	19.1
The Nisga'a Constitution.....	19.2
Relationships with Nearby Residents.....	19.3
Accountability	19.4

The Nisga'a Final Agreement provides for the establishment of an open, democratic and accountable Nisga'a government. It will include representation for Nisga'a citizens through the Nisga'a Lisims Government, four Nisga'a Village Governments, and three Urban Locals which will provide a voice for Nisga'a who do not reside in the Nass Valley.

The Final Agreement also sets out significant protections for non-Nisga'a residents of the proposed Nisga'a Lands. Those protections include rights of consultation, participation and appeal, where decisions of Nisga'a Government may directly and significantly affect them.

THE STRUCTURE OF NISGA'A GOVERNMENT

The Nisga'a Final Agreement and the Nisga'a Constitution establish the key elements and structure of Nisga'a Government.

A Democratic Government

Key features of this democratic structure of government include the following:

- \$ Nisga'a will have the right to run for office and vote for their government representatives;²¹⁹
- \$ the Nisga'a treaty requires that elections must be held at least every five years,²²⁰ and the Nisga'a Constitution meets this requirement by providing for elections every four years;²²¹ and
- \$ Nisga'a Government must have other attributes of democratic government such as conflict of interest guidelines,²²² and financial accountability mechanisms,²²³ including requirements to prepare budgets, to provide audited financial statements to Canada and British Columbia, and to conduct periodic program evaluations.²²⁴

In these respects the Nisga'a Final Agreement and the Nisga'a Constitution set standards for Nisga'a Government which are comparable to those that apply to other governments in Canada.

²¹⁹ NFA, Nisga'a Government 9(k), p.161; Nisga'a Constitution 12(1), p.9

²²⁰ NFA, Nisga'a Government 9(k)(i), p.161

²²¹ Nisga'a Constitution 28, p.15

²²² NFA, Nisga'a Government 9(m), p.161

²²³ NFA, Nisga'a Government 9(l), p.161

²²⁴ FFA 72 and 73, pp.18-19

Village and Central Governments

Nisga'a Lisims Government will be the central government, responsible for those things that affect all Nisga'a citizens, such as language and culture. It is Nisga'a Lisims Government which would be primarily responsible for relations with other levels of government.²²⁵

There are also to be four Nisga'a Village Governments responsible for matters local to the four Nisga'a communities of New Aiyansh, Gitwinksihlkw, Laxgaltzap, and Gingolx.

The Nisga'a treaty also establishes Urban Locals in Terrace, Prince Rupert and Greater Vancouver. These Urban Locals will not have law-making authority, but will provide for participation in Nisga'a Government by Nisga'a members of these communities by each electing a member to Nisga'a Lisims Government.

Representative Government

Like other governments in Canada, Nisga'a Government will be a representative government. The Councillors of Nisga'a Village Governments are to be elected by the Nisga'a citizens residing in that community. Nisga'a Lisims Government will be comprised of members elected at large by all Nisga'a citizens, the Councillors of the four Village Governments, and representatives elected by each of the Urban Locals.

The Nisga'a Constitution also provides for Special Assemblies which may be convened

in order to obtain recommendations from

²²⁵ NFA, Nisga'a Government 3, p.159

Nisga'a citizens. Every Nisga'a citizen over the age of 18 will have the right to attend, speak and vote at such an assembly.²²⁶

In addition, a Council of Elders will provide advice to Nisga'a Lisims Government on matters relating to the traditional values of the Nisga'a.²²⁷

THE NISGA'A CONSTITUTION

Like other constitutions, the Nisga'a Constitution provides rules for the establishment and operation of Nisga'a government.

The Nisga'a Constitution operates within, and is subject to, the Constitution of Canada.²²⁸

In addition, the Nisga'a Final Agreement sets out some fundamental requirements of the Nisga'a Constitution which must be met. These include:

- \$ recognition and protection of the rights and freedoms of Nisga'a citizens;²²⁹
- \$ a guarantee that all Nisga'a who are Canadian citizens or permanent residents of Canada are entitled to Nisga'a citizenship;²³⁰
- \$ requirements for conflict of interest and

²²⁶ Nisga'a Constitution 30, p.16

²²⁷ Nisga'a Constitution 27, p.15

²²⁸ Nisga'a Constitution 6(1), p.7

²²⁹ NFA, Nisga'a Government 9(o), p.161

²³⁰ NFA, Nisga'a Government 9(p), p.161

- accountability rules that are comparable to those for other governments in Canada;²³¹
- \$ provision for challenging the validity of Nisga'a laws;²³² and
- \$ other fundamental elements of Nisga'a Government.

The Nisga'a Constitution also contains additional key features, such as:

- \$ rights of appeal of administrative decisions;²³³
- \$ rights of access to information; and
- \$ a duty to publicly consult on land use planning, among others.²³⁴

Although the Nisga'a Constitution contains elements unique to Nisga'a culture and heritage, it describes a recognizable form of government similar to other local governments in Canada.

RELATIONSHIPS WITH NEARBY RESIDENTS

The pre-existing private landholdings in the Nass Valley were excluded from Nisga'a Lands and also excluded from the jurisdiction of Nisga'a Government. The Final Agreement establishes strong rights for those residents who live within the boundaries of Nisga'a Lands and who are

not Nisga'a citizens. These rights will apply

²³¹ NFA, Nisga'a Government 9(m) and 9(l), p.161

²³² NFA, Nisga'a Government 9(e), p.161

²³³ Nisga'a Constitution 13, p.10

²³⁴ Nisga'a Constitution 21, p.12

to people who live on private landholdings not part of, but within the boundaries of, Nisga'a Lands, as well as to people who reside directly on Nisga'a Lands.

Nisga'a Government will be established in significant measure to provide the Nisga'a with opportunities to protect Nisga'a culture and language, and Nisga'a property. In this respect it will be different from other local governments. If non-Nisga'a residents were allowed to vote for Nisga'a Government a problem might arise if at some future time residents who were not Nisga'a citizens formed a majority and in doing so effectively took control over decisions regarding the allocation or disposition of Final Agreement entitlements. This would not provide the Nisga'a with the certainty they need for the future.

Another advantage to the Nisga'a government arrangements is that they would not discourage the Nisga'a from creating private landholdings on Nisga'a Lands. With the assurance of long-term control by the Nisga'a over the allocation or disposition of their Final Agreement entitlements a private property land tenure system would not compromise those entitlements.

The Final Agreement will also provide special rights for the residents of Nisga'a Lands who are not Nisga'a citizens.²³⁵ Where Nisga'a Public Institutions such as school boards or health boards have elected members, and directly and significantly affect residents of Nisga'a Lands, all residents of Nisga'a Lands will be able to vote for and

²³⁵ NFA, Nisga'a Government 19-23, pp.163-164

become members of such institutions. Furthermore, the Final Agreement contains other protections such as rights of consultation for residents who are not Nisga'a citizens on decisions that directly and significantly affect them. This right includes a full and fair consideration of any views. This arguably will provide stronger representation for the small minority of Nass Valley residents who are not Nisga'a than would a single vote for each such person.

Like all other residents, the residents of Nisga'a lands who are not Nisga'a citizens will have access to appeal procedures, including judicial review of the administrative decisions of Nisga'a Public Institutions,²³⁶ and they will continue to have the right to vote in federal, provincial and Regional District elections, as will Nisga'a citizens.

Although non-Nisga'a may receive the benefit of services provided by Nisga'a Government, the Final Agreement provides Nisga'a Government with authority to tax only Nisga'a citizens on Nisga'a Lands²³⁷ (see Issue Paper #24).

These approaches to relationships with individuals who are not Nisga'a citizens differs from that of the *Indian Act*, which contains no such protections. These sections of the Final Agreement exemplify the reconciliation and balancing of section 35 rights with the rights of other Canadians.

The Final Agreement also contains provisions which protect the interests of

other Canadians in relation to access on Nisga'a Lands, roads and rights-of-way, utilities and water rights.

Finally, the Final Agreement sets out provisions which encourage positive relations between Nisga'a Government and the only other local government, the Kitimat Stikine Regional District (see Issue Paper #10).²³⁸

ACCOUNTABILITY

Nisga'a Government will be an open and accountable government. Political accountability is provided through its democratic nature, for example through the secret ballot in regular elections, the standards set in the Nisga'a Constitution, the capacity of all citizens to vote for Nisga'a Lisims Government, and the conflict of interest guidelines. It is also reflected in the oath of office contained in the Nisga'a Constitution that elected officials will provide good, effective and accountable government.²³⁹

Nisga'a Government will also be legally accountable.²⁴⁰ It will have the legal status and capacity of a natural person, including the capacity to sue and be sued. It could only act lawfully when acting in a manner consistent with the final Agreement and with the Nisga'a Constitution. The validity of its laws could be challenged. Its appeal mechanisms for Nisga'a Public Institutions will be available to all persons resident

²³⁸ NFA, Local and Regional Government Relationships, p.231

²³⁹ Nisga'a Constitution Schedule 1, p.41

²⁴⁰ NFA, Nisga'a Government 5, p.159

²³⁶ NFA, Nisga'a Government 16, p.162

²³⁷ NFA, Taxation 1, p.217

within Nisga'a Lands who are affected by its decisions, including rights of appeal to the courts.

Nisga'a Government will be financially accountable. It will be an open and public government which must meet similar standards of financial administration as other governments and must publish its laws in a public registry.²⁴¹ Where Canada or British Columbia provide funding for programs and services delivered by Nisga'a Government, audited financial statements must be provided. The Auditor General can review these statements. A Tripartite Finance Committee comprised of federal, provincial and Nisga'a representatives will also monitor financial arrangements between the Parties and assist in resolving any issues that emerge.²⁴²

In summary, Nisga'a Government will be a democratic government which, despite its character as an aboriginal government, will be quite recognizable as a local government compatible with other local governments in Canada.

²⁴¹ NFA, Nisga'a Government 18, p.163

²⁴² Fiscal Financing Agreement 65, pp.17-

LAW-MAKING AUTHORITIES AND RELATIONSHIPS

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The Concurrent Law Model and the Relationship of Law	20.1
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AND THE RELATIONSHIP OF LAWS

The Nisga'a Final Agreement would not provide any exclusive law-making authorities to the Nisga'a Government. All Nisga'a laws would operate concurrently with federal and provincial laws, like other jurisdictions in Canada where Canadians are subject to federal, provincial and municipal or regional laws simultaneously.

Where more than one valid law applies, it is necessary to have rules to set out what happens in the case of conflicts or inconsistencies between those laws. The relationship between Nisga'a laws and federal or provincial laws will be determined by specific rules of priority set out in the Final Agreement.

These rules are not the same thing as the rule in General Provision 13(a) concerning the relationship between the Final Agreement and federal or provincial laws. The Nisga'a Final Agreement provisions would take priority over federal and British Columbia laws. However, this does not mean that all Nisga'a laws would take priority, because Nisga'a laws are not part of the Final Agreement. In fact, the Nisga'a Final Agreement also has priority over Nisga'a laws.²⁴⁴

The Nisga'a Final Agreement exhaustively sets out the Nisga'a rights of self-government.²⁴³ Consequently there is no need to set out a list of subjects over which Nisga'a Government could not exercise authority.

An example is the division of matrimonial property upon marital breakdown. The Nisga'a Final Agreement does not specify an authority for Nisga'a Government regarding this matter. Therefore British Columbia's *Family Relations Act* will apply to the division of matrimonial property, including housing and other assets.

Nisga'a laws would only be valid if they are consistent with the Final Agreement; Canada's Constitution and the Nisga'a Constitution.

THE CONCURRENT LAW MODEL

²⁴³ NFA, General Provisions 23, p.20

²⁴⁴ NFA, Nisga'a Government 32, p.165

PRINCIPAL NISGA'A GOVERNMENT AUTHORITIES

These are areas which Canada's Inherent Right to Self-Government Policy describes broadly as internal, integral and essential to an aboriginal group and its government. Nisga'a Government would have principal authority over:

- \$ the administration of Nisga'a Government itself;
- \$ management of Nisga'a lands and assets;
- \$ Nisga'a citizenship; and
- \$ Nisga'a culture and language.

For these subjects valid Nisga'a laws would prevail over valid federal and provincial laws to the extent of an inconsistency or conflict.

As noted earlier there are some important limitations to the Nisga'a law-making authorities in subjects where their laws would have priority -- for example the right to make laws concerning Nisga'a citizenship would not include the right to make laws concerning immigration, Canadian citizenship, registration as an Indian under the Indian Act, nor impose obligations on Canada or British Columbia to provide rights or benefits.²⁴⁵

AUTHORITIES CONTINGENT ON FEDERAL/PROVINCIAL STANDARDS

This category is sometimes described as a meet or beat approach, where minimum federal or provincial standards would have to be met in order for a Nisga'a law to be valid. Examples are:

- \$ education;
- \$ child and family services;
- \$ adoption;
- \$ Nisga'a fish and wildlife harvesting; and
- \$ forestry.

In these areas of authority any Nisga'a law would have to meet certain federal or provincial standards as set out in the Final Agreement in order to be valid. Only a valid Nisga'a law would prevail over an inconsistent or conflicting federal or provincial law, to the extent of the inconsistency or conflict.

This approach is consistent with Canada's Inherent Right policy because of the central importance of such issues to First Nation culture and heritage, and because of the need to reconcile these authorities with other significant public interests. For example in the area of education a Nisga'a law would have to meet curriculum and teacher certification standards set by the province of British Columbia.²⁴⁶ This ensures uniform educational standards for schools in the province. The Nisga'a priority rule ensures that the Nisga'a can supplement these standards by, for example, making the teaching of Nisga'a language and culture a feature of the curriculum. This would provide an opportunity for the Nisga'a to maintain and strengthen their language and culture.

AUTHORITIES WHERE FEDERAL OR PROVINCIAL LAWS PREVAIL

In general, these are areas that might significantly and directly affect other

²⁴⁵ NFA, Nisga'a Government 39, p. 167

²⁴⁶ NFA, Nisga'a Government 100, p.167

Canadians but for which some local authority is appropriate. Examples include:

- \$ environmental assessment and protection;
- \$ public order, peace and safety;
- \$ health services;
- \$ social services;
- \$ buildings and public works;
- \$ traffic and transportation;
- \$ solemnization of marriages;
- \$ fish and wildlife sales; and
- \$ regulation of intoxicants.

In these areas the Nisga'a will have a law-making authority as set out in the Final Agreement, but in the case of a conflict between a valid Nisga'a law and a valid federal or provincial law the federal or provincial law will prevail to the extent of the conflict. This means that the Nisga'a may make laws in these areas using a stricter standard than federal or provincial laws. Or, to reflect their local circumstances, their laws may simply be different from existing federal or provincial laws.

AREAS OF NO NISGA'A LAW-MAKING AUTHORITY

Consistent with Canada's policy, the Nisga'a would not have law-making authority over areas which are of overriding national importance.²⁴⁷ Examples are:

- powers related to Canadian sovereignty, defence and external relations, including:
- \$ international/diplomatic relations and

foreign policy

²⁴⁷ *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation Of Aboriginal Self-Government*, Government of Canada, 1995.

- \$ national defence and security
- \$ security of national borders
- \$ international treaty-making
- \$ immigration, naturalization and aliens
- \$ international trade, including tariffs and import/export controls;

management and regulation of the national economy, including:

- \$ a central bank and the banking system
- \$ bankruptcy and insolvency
- \$ trade and competition policy
- \$ intellectual property
- \$ incorporation of federal corporations;

maintenance of national law and order and substantive criminal law, including:

- \$ offences and penalties under the Criminal Code and other criminal laws
- \$ emergencies and the Apeace, order and good government@ power;

protection of the health and safety of all Canadians; and

federal undertakings and other national interest powers, including:

- \$ broadcasting and telecommunications
- \$ aeronautics, navigation and shipping.

OTHER AUTHORITIES AND EXCEPTIONS

The Final Agreement sets out in detail each Nisga'a law-making authority instead of providing a general list of authorities. It is therefore necessary to read each authority carefully to understand what is included and what is excluded in each case.

An example of a carefully described law-making authority is the authority with

respect to child and family services. Nisga'a laws on this subject will only be valid if they meet or exceed the provincial standard regarding the safety and well-being of children and families.²⁴⁸ Furthermore, the provincial government can act as necessary to protect a child at risk.²⁴⁹ Also, federal and provincial laws which require the reporting of child abuse continue to apply on Nisga'a Lands.²⁵⁰

There are numerous other examples of precisely described law-making authorities which set out conditions for the validity of Nisga'a laws.

If a valid Nisga'a law has an incidental impact on a federal or provincial law where the Nisga'a do not have jurisdiction, the federal or provincial law prevails to the extent of a conflict or inconsistency.²⁵¹

The Final Agreement confirms that the Nisga'a Government will have the ability to make laws or do related things that are necessarily incidental to the exercise of their law-making authorities under the Final Agreement.²⁵² There are also some Nisga'a law-making authorities in other areas such as taxation, policing, courts and the establishment of penalties. As noted above in each of these areas the authority is carefully described. For example the authority to tax (see Issue Paper #24) would

apply only to Nisga'a citizens on Nisga'a Lands. Federal and provincial powers of taxation would not be diminished by the Nisga'a authority and the Final Agreement will not provide any Nisga'a authority to tax non-Nisga'a citizens nor to tax anyone off Nisga'a Lands.²⁵³

CONCLUSION

Nisga'a Government law-making authorities exemplify the practical and workable arrangements which Canada seeks to negotiate under the Inherent Right policy.

²⁴⁸ NFA, Nisga'a Government 89, p.174

²⁴⁹ NFA, Nisga'a Government 90, p.174

²⁵⁰ NFA, Nisga'a Government 93, p.174

²⁵¹ NFA, General Provisions 52, p.25

²⁵² NFA, Nisga'a Government 126-127, p.180

²⁵³ NFA, Taxation 1-2, p.217

ADMINISTRATION OF JUSTICE

CONTENTS	
Policing.....	21.1
Community Corrections Services.....	21.2
Courts	21.3

The Nisga'a Final Agreement creates opportunities for policing, community correction services and a Nisga'a Court. If the Nisga'a choose to exercise these authorities, the arrangements will be within the existing federal and provincial structures for the administration of justice, rather than through a separate justice system. For example, the provincial Cabinet (Lieutenant Governor in Council) must approve arrangements for a Nisga'a police service or a Nisga'a court.

Other police services and courts would continue to have authority within Nisga'a Lands.

POLICING

Under the Nisga'a Final Agreement, the Nisga'a Lisims Government will have the discretion to establish a local police service to operate within Nisga'a Lands. However, Nisga'a Lisims Government is under no obligation to establish a Nisga'a-operated police service. Until the Nisga'a decide to establish a local police service, policing will continue to be provided on Nisga'a Lands in a manner similar to other locations in rural British Columbia. There is currently an RCMP detachment operating in the community of New Aiyansh, the largest

community in what will become Nisga'a

Lands.

The RCMP authority to enforce federal and provincial laws would continue after the Nisga'a Final Agreement comes into effect. Other peace officers and federal officials would also continue to have authority to enforce laws on Nisga'a Lands.

The Nisga'a Final Agreement sets out the authority of police officers and other officials to gain access to Nisga'a Lands to carry out inspections, to enforce laws and to respond to emergencies.²⁵⁴ The *Nisga'a Final Agreement Act* also sets out the enforcement powers of fisheries officers and fish guardians by providing that they will have the same powers to enforce Nisga'a fishery laws as they have when enforcing the *Fisheries Act*.

If Nisga'a Lisims Government chooses, it can make laws to establish a Nisga'a Police Board and Nisga'a Police Service. Alternatively, it can enter into agreements under which some or all of the policing will be provided by the RCMP or other police services.²⁵⁵ All Parties have agreed in the Nisga'a Final Agreement that a Nisga'a police service should be:

- \$ responsive to the needs and priorities of the Nisga'a Nation;
- \$ have the full range of police responsibilities and the authority to enforce Nisga'a laws, the laws of British

²⁵⁴ NFA, Access 15, p.81

²⁵⁵ See s.1 of AOJ chapter which details how policing can be provided within Nisga'a Lands

Columbia, the criminal law and other federal laws within Nisga'a Lands; and \$ contribute to the administration of justice, maintenance of social order and public security.²⁵⁶

To establish a Nisga'a Police service, the Nisga'a Lisims Government would have to make laws which include provisions which conform with specified provincial policing laws.²⁵⁷ Its laws must also be compatible with other provincial policing laws.²⁵⁸

The Nisga'a Police service would operate under the direction of a Nisga'a Police Board which would be the employer of members of the Nisga'a Police service.²⁵⁹ The provincial Cabinet will approve the structure, membership and qualifications of the Police Board and appoint its members if it is satisfied that Nisga'a Lisims Government has met the appropriate standards required by the Nisga'a Final Agreement.²⁶⁰ This requirement for provincial approval reflects the ultimate authority of the provincial Attorney General with respect to administration of justice. It also ensures that police services are publicly accountable and are independent of the Nisga'a political structure.

The provincial Attorney General will have the power, if necessary, to reorganize Nisga'a policing by appointing constables or using the RCMP, or by other means.²⁶¹

Members of the Nisga'a Police service will normally carry out policing activities within Nisga'a Lands, and will have authority as peace officers in British Columbia.²⁶² The Nisga'a Final Agreement provides for the development of cooperative policing arrangements between the Nisga'a and other police services.²⁶³

COMMUNITY CORRECTIONS SERVICES

Nisga'a Lisims Government may appoint persons to provide community correction services for persons charged with or convicted of offences under Nisga'a laws.²⁶⁴

Canada or British Columbia could negotiate agreements with the Nisga'a for the Nisga'a to provide community corrections services.²⁶⁵

²⁵⁶ NFA, Administration of Justice 2, p.185

²⁵⁷ NFA, Administration of Justice 4, p.185

²⁵⁸ NFA, Administration of Justice 4(b), p.186

²⁵⁹ NFA, Administration of Justice 5, pp.186-187

²⁶⁰ NFA, Administration of Justice 5, 6 and 8 pp.186-187

²⁶¹ NFA, Administration of Justice 19, p.189

²⁶² NFA, Administration of Justice 13, p.188

²⁶³ NFA, Administration of Justice 14-16, p.188

²⁶⁴ NFA, Administration of Justice 23, p.190; see also definition of community correction services in Nisga'a Final Agreement

²⁶⁵ NFA, Administration of Justice 24-26, and 28, p.190

The Nisga'a Final Agreement does not allow the Nisga'a to confine people as punishment for offences, but the Nisga'a police service could temporarily confine people in jails or lockups. Places of confinement for people convicted of offences could only be established if authorized under a separate agreement with Canada.²⁶⁶

COURTS

If the Nisga'a Lisims Government chooses it could establish a Nisga'a Court, but it is not obliged to do so. Unless Nisga'a Lisims Government establishes a Nisga'a Court that has been approved by provincial authorities, offences under Nisga'a laws will be tried in the Provincial Court of British Columbia.²⁶⁷

To establish a Nisga'a Court, Nisga'a Lisims Government would have to make laws that:

- \$ ensure that the Nisga'a Court and its judges comply with generally recognized principles of judicial fairness, independence and impartiality;
- \$ provide for supervision of judges by the Judicial Council of British Columbia or by similar means; and
- \$ provide procedures for appeals of decisions of the Nisga'a Court.²⁶⁸

The Nisga'a Court would only have authority to operate if the provincial Cabinet approved the Nisga'a Court's structure, procedures and method of selection of judges.²⁶⁹

²⁶⁶ NFA, Administration of Justice 29, p.190

²⁶⁷ NFA, Administration of Justice 31, p.191

²⁶⁸ NFA, Administration of Justice 33, p.191

²⁶⁹ NFA, Administration of Justice 34, p.191

A Nisga'a Court, once approved by provincial authorities, would have the power to:

- \$ adjudicate prosecutions under Nisga'a laws;
- \$ review administrative decisions of Nisga'a Public Institutions;
- \$ deal with disputes between Nisga'a citizens that would otherwise be heard in a provincial court;
- \$ deal with other disputes between persons who agree to use the Nisga'a Court; and
- \$ carry out other functions if they are assigned to the court by federal or provincial law.²⁷⁰

²⁷⁰ NFA, Administration of Justice 38-40, p.192

A Nisga'a Court can impose penalties and other remedies for violation of Nisga'a laws, and provincial and federal laws in accordance with generally accepted sentencing principles.²⁷¹ A Nisga'a Court could also apply traditional Nisga'a methods and values such as using Nisga'a elders to assist in adjudicating and sentencing, and by emphasizing restitution.²⁷² However, in proceedings in which a person might receive a sentence of imprisonment under Nisga'a law, the person could elect to be tried in the Provincial Court of British Columbia²⁷³. In addition, the Nisga'a Court could not impose on persons who are not Nisga'a citizens a penalty or sanction different in nature from those generally imposed by other courts without the person's consent.²⁷⁴

Nisga'a Court decisions can be appealed to the Supreme Court of British Columbia on a basis similar to appeals in other courts.²⁷⁵ Further appeals to the British Columbia Court of Appeal and the Supreme Court of Canada would be possible under the ordinary law governing such appeals.

²⁷¹ NFA, Administration of Justice 41(a), p.192

²⁷² NFA, Administration of Justice 41(d), p.192

²⁷³ NFA, Administration of Justice 43, p.192

²⁷⁴ NFA, Administration of Justice 44, p.193

²⁷⁵ NFA, Administration of Justice 45, p.193

ENVIRONMENTAL ASSESSMENT AND PROTECTION

CONTENTS	
Environmental Assessment.....	22.1
Environmental Protection	22.1

Generally, provincial laws in respect of environmental assessment and protection do not apply on Indian reserves. After the effective date of the Final Agreement, British Columbia's environmental laws will apply on Nisga'a Lands and fee simple parcels as they do elsewhere in British Columbia. This includes British Columbia's *Waste Management Act* and *Special Waste Regulation*.

ENVIRONMENTAL ASSESSMENT

Nisga'a Lisims Government will have the authority to make laws regarding environmental assessment, but federal and provincial laws will prevail to the extent of a conflict.²⁷⁶ The Parties will attempt to reach agreement on a harmonization agreement regarding the coordination of the Parties' environmental assessment processes. If there is no harmonization agreement the Parties may carry out their own environmental assessments.²⁷⁷

The Nisga'a Final Agreement also establishes reciprocal arrangements between the Nisga'a, Canada and British Columbia

on notification, consultation, and

²⁷⁶ NFA, Environment 3, p.155

²⁷⁷ NFA, Environment 1 and 4, p.155

participation in environmental assessment processes where proposed projects may have adverse environmental effects on any Party.²⁷⁸

The decision-making authority of federal or provincial Ministers remains intact. The Final Agreement will require that the Parties take into account the recommendations of the environmental assessment.²⁷⁹

ENVIRONMENTAL PROTECTION

Nisga'a Lisims Government will also have authority to make laws regarding environmental protection, however federal and provincial laws would prevail to the extent of a conflict.²⁸⁰

The Nisga'a Final Agreement also makes provision for environmental emergencies and environmental disasters²⁸¹, and Canada and the Nisga'a may enter into agreements to carry out environmental functions.²⁸²

²⁷⁸ NFA, Environment 5 and 6, p.155-156

²⁷⁹ NFA, Environment 9, p.157

²⁸⁰ NFA, Environment 1, p.157

²⁸¹ NFA, Environment 12 and 13, p.157

²⁸² NFA, Environment 14, p.158

COSTS RELATED TO THE NISGA'A FINAL AGREEMENT

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One-time Costs	23.1
Ongoing Costs.....	23.2

The Nisga'a Final Agreement represents significant value for long-term investment in the British Columbia economy by ending economic uncertainty concerning Nisga'a use and ownership of lands and resources. In addition to providing economic opportunities, a portion of investment and income earnings from the capital transfer to the Nisga'a will contribute to the shared funding of Nisga'a programs and services through the Own Source Revenue Agreement.

A significant outcome of the fiscal and taxation arrangements is that Nisga'a citizens will be contributing to the costs of their government through taxation and OSR on the same general basis as other Canadians and will be generally receiving the same programs and services as other Canadians.

ONE-TIME COSTS

The total estimated one-time cost of the Final Agreement to Canada and British Columbia is \$487.1 million, including capital transfers, estimates of land values and lost forestry revenues, and implementation. Canada's share of the total one-time costs is \$255 million. The Nisga'a will receive \$253 million spread out over 15 years, a portion of which reflects

ONGOING COSTS

compensation for revenues that would have accrued to the Nisga'a but for the forestry transition provisions. The Final Agreement also provides that the Nisga'a will pay back, over the same period, the loans used to negotiate the Final Agreement. These loans are estimated to be approximately \$50.3 million. These one-time costs are summarized in Table 1.

Implementation Funding

Training and transition funding, together with other implementation funding, is being provided to the Nisga'a to assist in preparing them to take on new treaty responsibilities and to assist in implementation of the Final Agreement.

This funding consists of:

- \$ \$15 million over five years for the Nisga'a to deal with Final Agreement implementation. This will provide for the transition to Nisga'a management of their lands, resources and government, including training of Nisga'a citizens, establishment of Nisga'a institutions, and the enhancement of land and resource management capability;
- \$ \$15 million over five years to upgrade physical infrastructure in Nisga'a communities; and
- \$ \$10.6 million, which includes funding for other activities necessary to implement the Final Agreement such as fisheries studies, the ratification process, forestry transition training, eligibility and enrolment, and the preparation of Nisga'a laws.

Nisga'a Government will receive funding through a Fiscal Financing Agreement (FFA) to provide programs and services to Nisga'a citizens and other residents of the Nass valley (see Issue Paper #25). These ongoing costs are summarized in Table 2.

responsibilities related to the implementation of a custodial arrangements agreement including the transportation and insurance of artifacts on loan to the Nisga'a Nation.

Programs and services

The first Fiscal Financing Agreement will have a five-year term and provide for annual transfers of \$32.7 million to the Nisga'a to provide agreed-upon programs and services in the areas of health, social development, education, local services, land and resource management, and capital infrastructure. The Nisga'a will contribute to these programs and services, in part, through their own revenues, as set out in the Own Source Revenue Agreement. Nisga'a Government will have the responsibility to provide the programs and services as set out in the agreement. The Final Agreement and the FFA also set out clear requirements to ensure that Nisga'a Government is accountable to Nisga'a citizens and to the funding governments.

Over 90% of the annual FFA transfer is a continuation of current expenditures by the federal and provincial governments for programs and services for the Nisga'a. The remainder of the funding under the first FFA is related to additional responsibilities assumed by Nisga'a Government under the Final Agreement.

Other ongoing costs

The Department of Fisheries and Oceans will have additional costs related to fisheries

enforcement, stock assessment and management. The Canadian Museum of Civilization will have additional

Table 1 - One-time Costs of the Nisga'a Final Agreement in 1999 Dollars²⁸³**The Nisga'a will receive:**

a capital transfer paid over 15 years	\$196.1 million
funding to increase Nisga'a participation in the commercial fishing industry through the purchase of vessels and licences on the open market	\$11.8 million
transition, training and other one-time implementation funding paid over five years	\$40.6 million
forestry revenue amounts (estimated) provided as compensation to the Nisga'a for revenues accruing to British Columbia for forestry activities on Nisga'a Lands during the transition period (see Issue Paper #15)	\$4.5 million
Total payments to the Nisga'a:	\$253.0 million

Other related costs include:

Canada's contribution to the Lisims Fisheries Conservation Trust, which will support fisheries science on the Nass River, for the benefit of all Canadians (the Nisga'a will provide an additional \$3.1 million)	\$10.3 million
Canada's contribution to British Columbia to assist those who may be affected by the Final Agreement	\$3.2 million
surveys	\$3.1 million
purchase of third-party interests (estimated)	\$30.0 million
British Columbia has also agreed to pave the Nisga'a Highway	\$41.4 million

The Province of British Columbia has ascribed values to:

Nisga'a Lands and fee simple parcels, totaling 2,019 square kilometres	\$108.6 million
Foregone forest revenues	\$37.5 million

Including these ascribed values, the total one-time cost of the Final Agreement is:

\$487.1 million

Canada's share of this cost is:

\$255.0 million

²⁸³ Some of the amounts have been adjusted pursuant to provisions of the Final Agreement.

Table 2 - Ongoing Costs (Millions 1999\$)

	ITEM	TOTAL	CANADA	B.C.
PROGRAMS AND SERVICES	Health	8.6	7.6	1.00
	Social Programs	2.6	2.6	0.0
	Income Assistance	2.5	2.5	0.0
	Education	9.4	9.2	0.2
	Government and Local Services	4.8	4.8	0.0
	Land and Resource Management	0.9	0.9	0.0
	Agreed-Upon Assets	2.1	2.1	0.0
	Housing	1.4	1.4	0.0
	Additional Capital	0.4	0.4	0.0
	TOTAL PROGRAMS AND SERVICES		32.7	31.5
OTHER	DFO & CMC	0.9	0.9	0.0 (current \$)

TAXATION

CONTENTS	
Transition from <i>Indian Act</i>	
Exemption.....	24.1
Tax Authorities	24.1
Tax Exemptions	24.2
Effect on Other Residents	24.2

Taxation matters are dealt with in two places, the Nisga'a Final Agreement and the Nisga'a Nation Taxation Agreement. The Final Agreement is a treaty and its provisions will be protected under Canada's Constitution. The Taxation Agreement is not a treaty and its provisions will not be protected under Canada's Constitution.

There are two categories of taxation matters dealt with in these agreements: tax authorities and tax exemptions. The Taxation Agreement deals primarily with exemptions while the Final Agreement deals with both.

TRANSITION FROM INDIAN ACT EXEMPTION

As noted elsewhere the *Indian Act* will no longer apply to the Nisga'a. One of the features of the *Indian Act* is an exemption from taxation for Indian people who meet certain criteria. This existing exemption will no longer apply on Nisga'a Lands once the Final Agreement is in effect; however, the Final Agreement will provide a limited transition period during which an equivalent exemption will apply.²⁸⁴ This move away

from the *Indian Act* exemption will mean that after the transition period Nisga'a citizens

²⁸⁴ NFA, Taxation 5-9, p.217, 218

will be subject to taxation in the same way as other Canadians.

The result will be that transaction tax exemptions (such as for provincial sales tax and the federal GST) will continue for eight years, and then end. Other tax exemptions (such as for income taxes) will continue for twelve years, and then end.²⁸⁵

TAX AUTHORITIES

The Nisga'a government taxation authority as set out in the Final Agreement is limited and defined. The operative provision states that "Anisga'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".²⁸⁶ Federal and provincial taxation authorities are not affected by the Nisga'a authority²⁸⁷ and there are no other Nisga'a Government taxation authorities in the Final Agreement.

Canada or British Columbia may choose to negotiate other taxation arrangements with the Nisga'a Government in the future.²⁸⁸ Any future tax delegation or coordination agreements would not be part of the Final Agreement and would not be protected by

²⁸⁵ NFA, Taxation 6, p.217

²⁸⁶ NFA, Taxation 1, p.217

²⁸⁷ NFA, Taxation 2, p.217

²⁸⁸ NFA, Taxation 3, p.217

Canada's Constitution. Canada and British Columbia, who represent both Nisga'a and non-Nisga'a, have made it clear that they would only agree to tax delegations under terms and conditions that are fair and appropriate to the circumstances.

TAX EXEMPTIONS

The Final Agreement provides that a transfer, or recognition of ownership, of Nisga'a capital under the Final Agreement is not taxable.²⁸⁹ An underlying interest of the Nisga'a Nation or Villages in Nisga'a Lands will not generally be taxable.²⁹⁰

The Taxation Agreement will apply for at least 12 years and will provide as follows:

- \$ Deemed Public Bodies: the Nisga'a Nation and each Nisga'a Village will receive the same income tax exemption that municipalities receive, and their corporations will have the same tax treatment as municipal corporations;²⁹¹
- \$ Sales Taxes: under certain conditions Nisga'a entities will receive a refund of federal GST, provincial sales tax and provincial motor fuel tax;²⁹²
- \$ Mineral Resource Taxes: British Columbia has agreed not to assess mineral taxes on Nisga'a Lands, to reflect the fact that the Nisga'a Nation owns its

mineral resources;²⁹³

- \$ Real Property Taxation: Nisga'a Fee Simple Lands used only for government or non-profit activities will not be subject to property taxation;²⁹⁴
- \$ Nisga'a Settlement Trusts: income earned from investment of settlement capital held in a settlement trust which fits the definition set out in the Final Agreement will not be taxable;²⁹⁵
- \$ Designated Gifts: persons who make gifts to the Nisga'a Nation or a Nisga'a Village will receive the same tax benefit as if the gift had been made to a registered charity;²⁹⁶
- \$ Donated Cultural Artifacts: if certain conditions are met, persons who donate cultural artifacts to the Nisga'a Nation will receive a favourable tax treatment.²⁹⁷

EFFECT ON OTHER RESIDENTS

There are some individuals who currently own private property within the area designated to become Nisga'a Lands. Their lands will not become Nisga'a Lands and they would not be subject to Nisga'a Government taxation laws. Instead they would continue to pay federal, provincial and

²⁸⁹ NFA, Taxation 18, p.220

²⁹⁰ NFA, Taxation 13-17, p.219-220

²⁹¹ Nisga'a Nation Taxation Agreement 4-5, p.3

²⁹² Nisga'a Nation Taxation Agreement 7-20, pp.4-6

²⁹³ Nisga'a Nation Taxation Agreement 24-26, p.7

²⁹⁴ Nisga'a Nation Taxation Agreement 27, p.7

²⁹⁵ Nisga'a Nation Taxation Agreement 28, p.8

²⁹⁶ Nisga'a Nation Taxation Agreement 34, p.9

²⁹⁷ Nisga'a Nation Taxation Agreement 36, p.9

regional district government taxes.

The Final Agreement provides no authorities of taxation to Nisga'a government for a non-Nisga'a individual who resides on, or who owns a parcel of, Nisga'a Lands. In this situation the individual would only be subject to existing taxation from other levels of government.

PROGRAMS AND SERVICES

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Like other communities in Canada the Nisga'a communities must deliver a number of programs and services to their residents. Most funding for the programs and services is currently provided by the Department of Indian Affairs and Northern Development. The Nisga'a are the only First Nation in British Columbia to operate a health board (Nisga'a Valley Health Board) or a provincial school district (School District #92) and continuation of their strong role in delivering programs and services is reflected in the Final Agreement arrangements.

In the Final Agreement and the financial side agreements, Canada and British Columbia have, together with the Nisga'a Nation, set out the principles of a new fiscal relationship. Under these arrangements all three Parties have agreed to share the responsibility for funding the agreed-upon programs and services that the Nisga'a Nation will deliver.²⁹⁸ This is the first time in Canada that such comprehensive and detailed arrangements have been reached with a First Nation for taking the own-source revenues of the First Nation into account when determining its funding.

EXISTING PROGRAMS AND

²⁹⁸ NFA, Fiscal Relations 8, p.212

SERVICES

Each of the four Nisga'a bands and the Nisga'a Tribal Council have entered into a wide range of program and service arrangements with the federal and provincial governments.

Education

Nisga'a elementary and secondary school services are provided through provincially-owned and -operated schools. The Nisga'a bands also run five pre-school facilities located throughout each of the four Nisga'a communities.

School District #92 is operated by Nisga'a representatives and serves all residents of the Nass Valley. To accommodate the interests of the small minority of non-Nisga'a, one of the seats on the school board is reserved for residents of the Nass Valley who are not Nisga'a.

A post-secondary program is also administered through the Nisga'a band governments. In 1994 the Nisga'a established Wilp Wilxo=oskwhl Nisga'a (WWN), a post-secondary organization associated with the University of Northern British Columbia and other community colleges. WWN offers Bachelor's level programs in Native Studies. It also provides courses in Nisga'a culture and language programs, and a variety of other adult education programs.

Social Development and Child and Family Services

The four Nisga'a bands administer a full range of social development programs on behalf of DIAND.

In 1997, Canada, British Columbia and the Nisga'a Tribal Council signed a Nisga'a Child and Family Services Delegation Enabling Agreement. This agreement specifies that over time, the Director of the Nisga'a Child and Family Services Agency will have responsibility for the delivery of child and family programs and services. The Nisga'a will have full responsibility under the terms of this agreement by 2000.

Health Services

Since October 1984, the Nisga'a have been providing health services to residents of the Nass Valley through the Nisga'a Valley Health Board (NVHB), a provincially-incorporated society. The board consists of a Nisga'a Tribal Council-appointed chairperson and five elected representatives, including one from each of the four Nisga'a communities and one from the nearby community of Nass Camp.

The NVHB is responsible for a wide range of health services which it delivers through the Nisga'a Valley Health Centre in New Aiyansh, and three satellite health stations located in Gingolx (Kincolith), Gitwinksihlkw (Canyon City) and Laxgalt-sap (Greenville). The centre is designated as a diagnostic and treatment facility and is the only one in British Columbia operated by a First Nation.

In March of 1990, the NVHB completed a Health Service Transfer Agreement with
EXISTING FUNDING

Health Canada. Under this agreement, Health Canada delegated to the NVHB the responsibility for delivering Health Canada programs to the Nisga'a. Under this agreement, Health Canada provides funding to the NVHB to run the Nisga'a Valley Health Centre to offer various Health Canada programs and to provide nursing, dental and mental health services.

In addition to the transfer agreement, the NVHB has service agreements with the Province of British Columbia's Medical Services Commission, Acute and Continuing Care Division and the Northwest Aboriginal Health Council. Under these agreements funding is provided for the health centre, physicians services and other health programs.

In September of 1998, the NVHB signed an agreement with Health Canada to transfer funding and responsibility for the delivery of non-insured health benefits such as medical transportation, prescription drugs, optometric services, dental care and health insurance premiums to the Nisga'a. The agreement on this pilot project further recognizes the Nisga'a as leaders in the administration and delivery of community-based health programs and services.

Local Services

The Nisga'a bands receive DIAND program funding to provide local services such as band and tribal council governance and the operation and maintenance of on-reserve assets. In addition, the bands provide fire protection and other municipal services to their members.

ARRANGEMENTS

DIAND provides annual funding to each of the four Nisga'a bands through a variety of programs. DIAND also has some funding arrangements with British Columbia, which delivers certain programs to the Nisga'a bands.

Health Canada and the Department of Fisheries and Oceans also have separate funding arrangements for program, service and project delivery with the Nisga'a bands and the Nisga'a Tribal Council.

PROPOSED FUNDING ARRANGEMENTS

Fiscal Financing Agreement

The Fiscal Financing Agreement (FFA) is a financial arrangement between the three Parties which specifies the funding provided by Canada and British Columbia to the Nisga'a Nation and sets out the responsibilities of Nisga'a Government in delivering agreed upon programs and services. The first FFA will replace the existing arrangements between Canada and the Nisga'a and is to be re-negotiated every five years.

Through the FFA, Canada will consolidate and transfer federal funds to the Nisga'a Nation to provide agreed-upon public programs and services in such areas as: education; health; social development; child and family services; infrastructure and local government. These programs will apply to Nisga'a citizens and, where applicable, non-Nisga'a occupants of Nisga'a Lands.²⁹⁹

²⁹⁹ NFA Fiscal Relations 3, p.212

Own Source Revenue Agreement

The Final Agreement and the Own Source Revenue (OSR) Agreement set out how the Nisga'a Nation will contribute to the costs of their programs and services. The formula for the Nisga'a contribution will be phased in beginning two years after the effective date and will be fully operative twelve years after the effective date.³⁰⁰

This OSR Agreement is a renewable twelve-year agreement between the Parties which sets out how the Nisga'a Nation will contribute to the costs of its programs and services.³⁰¹ As the Nisga'a Nation's own source revenues increase over time, they will contribute more to the cost of their government programs and services and the federal and provincial transfer will be correspondingly reduced.

The OSR Agreement includes five categories of own source revenues: commercial and investment income; fees and charges; tax revenues; Nisga'a Settlement Trust income; and other revenues.³⁰²

HOW THE NISGA'A WILL CONTRIBUTE

The Nisga'a Nation will contribute to the

³⁰⁰ NFA Fiscal Relations 19, p.216

³⁰¹ NFA Fiscal Relations 16, p.214-215

³⁰² OSRA 7-18, pp.5-8

costs of their programs and services in two ways, through OSR calculations (see above) and through income and transaction taxes of Nisga'a citizens (see Issue Paper #24). The attached Table 1 shows how Nisga'a Government will contribute to the cost of its programs and services and how Nisga'a own source revenues will be used to reduce federal and provincial FFA transfers.

THE ONGOING FISCAL RELATIONSHIP

Canada, British Columbia and the Nisga'a Nation have established a new fiscal relationship through the Final Agreement and the associated financial side agreements.

Under the terms of these agreements and the Nisga'a Constitution, an open and democratic government will be established with requirements to be accountable to its citizens. The FFA also identifies the terms and conditions that the Nisga'a must satisfy in the provision of the programs and services identified in the FFA. Generally speaking these terms and conditions are constructed to ensure program and service delivery is open and transparent, that policies and regulations are objective, and that public appeal processes are established. Where the program or service falls within provincial jurisdiction, provincial delivery standards apply.

The OSR Agreement also establishes a Tripartite Finance Committee which will carry out annual reviews of the FFA, make recommendations for changes to the FFA and attempt to resolve disputes.^{303 304} Any

³⁰³ Nisga'a Nation Fiscal Financing Agreement 65-66 , pp.17-18

disputes that cannot be resolved by the Committee will be referred to dispute resolution as detailed in the FFA,³⁰⁵ the OSR Agreement³⁰⁶ and the Final Agreement (see Issue Paper #10).

In addition, the FFA identifies the Nisga'a Nation reporting responsibilities for each program and service area. The Nisga'a Nation will maintain financial accounts and audited annual financial statements in a manner comparable to standards generally accepted for governments in Canada.^{307 308} Where funding has been provided by Canada the Auditor General will have the ability to review annual financial statements.³⁰⁹

³⁰⁴ OSR Agreement 32-34, p.13

³⁰⁵ FFA 67-71, p.18

³⁰⁶ OSR Agreement 35-38, p.13

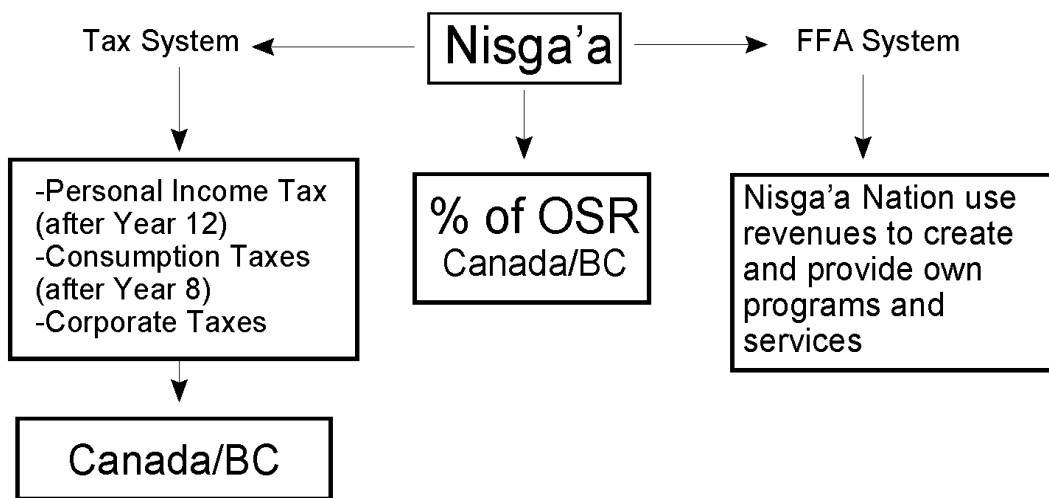
³⁰⁷ NFA, Nisga'a Government 9(1), p.161

³⁰⁸ FFA 72-73, pp.18-19

³⁰⁹ FFA 73(a), p.19

Table 1 - How the Nisga'a Will Contribute

How the Nisga'a Contribute



The Fiscal Transfer System

$$\text{Net Transfer} = \text{Program Block Funding} - \% \text{ of OSR}$$