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# Six definitions of aboriginal self- government and the unique Haida model

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**BUILDING LEADERSHIP FOR CANADA'S FUTURE**

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For centuries, colonial authorities and settler governments have been negotiating treaties with indigenous nations in the Americas. In the 19th century, Canada signed a series of numbered treaties as railroads and settlers crossed the country towards the West Coast. In 1973, Prime Minister Trudeau sent negotiators into regions without treaties in northern Quebec, the northern territories, and British Columbia. Canada amended its constitution in 1982 to add Section 35:

- The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- In this Act, “Aboriginal Peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
- For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or any that may be acquired in the future.
- Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Canada, British Columbia, and the First Nations Summit created the British Columbia Treaty Commission (BCTC) in 1992 to facilitate land claims and aboriginal self-government negotiations in the province.<sup>1</sup> Self-government negotiations are often a secondary process to land claims settlements. Though on Haida Gwaii, governance negotiations have moved forward without any settlement of the land question, making the situation there unique.

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**By definition, aboriginal government is something that colonial authorities sought to deny First Nations.**

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## I. TODAY'S DEBATES

For five centuries, indigenous Americans have insisted on the right to govern their nations and their lands. For most of that time, colonial powers denied them that right -- a right we now call aboriginal self-government.<sup>2</sup>

After the British and Iroquois armies defeated the French at the Plains of Abraham in 1759, Britain was forced to fight a second war against Indigenous allies of the French who were led by Pontiac, the brilliant Ottawa warrior chief. That war ended with the Royal Proclamation of 1763, which recognized First Nation governments as original landowners and required colonial authorities to “publicly” negotiate treaties with them in order to purchase lands for colonial settlement. Eventually, the Proclamation would lead to the negotiation of almost 400 Indian treaties in the United States and Canada.

In 1876 at Fort Carlton, Saskatchewan, Canada negotiated Treaty 6 with Cree Chiefs with respectful government-to-government formality, but that same year Parliament passed the Indian Act, which turned the treaty signatories into wards or dependents of the federal state. However, Canada’s aboriginal peoples did not give up their struggle for land and governance rights.

In 1973, the Nisga’s land case at the Supreme Court of Canada reopened the aboriginal rights debate. By 1982, Canada included Section 35, an “existing aboriginal rights” clause, in the constitution. Ever since, negotiators and litigators have worked to give content and meaning to Section 35. Although the Supreme Court has now settled many aboriginal law questions, it has not yet issued a definition judgment on aboriginal self-government.

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**A document produced for the British Columbia Region of the Assembly of First Nations offers a second definition: “... self-government describes the right of a First Nation to govern itself, make decisions for its future and exercise a full range of jurisdiction and authority over its lands, peoples and resources.”<sup>3</sup>**

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<sup>1</sup> <http://www.bctreaty.net/>

<sup>2</sup> Penikett, Tony, “A ‘Literacy Test’ for Indigenous Government?” *Northern Public Affairs*, 1.1 (2012)

<sup>3</sup> Micha J. Menczer, “Strategies on Implementing Self-Government,” March 29, 2012

## II. THE BCTC PROCESS

By 1992, the British Columbia Treaty Commission<sup>4</sup> had begun to work with the Indigenous communities who had not yet signed treaties. Under the BCTC process, Ottawa and Victoria share the settlement costs. The federal government contributes money while its provincial partner provides the land. BCTC offers “land-selection” treaties in which First Nations can gain title to a small percent of their traditional territories. At the outset, Premier Mike Harcourt had invited First Nations to select up to five per cent of their traditional lands. Many First Nations, including the Haida, found this formula unacceptable.

Over the last twenty years, the BCTC has spent the best part of billion dollars on negotiations with BC First Nations, but achieved only a handful of treaties. At the current rate of progress, the BCTC will still be negotiating in the 23rd century. For a variety of reasons, self-government has proved to be the most controversial of issues under negotiation at treaty tables.

## III. FIRST NATIONS OR LOCAL GOVERNMENT

Are First Nations “nations,” “provinces” or municipalities? In both Canada and the United States, much debate has attended the character of indigenous governments. In 1831, the United States Supreme Court ruled that Indian nations were dependents or wards of the United States<sup>5</sup>, but a few months later the Court found that State Government had no authority on Indian lands.<sup>6</sup> Chief Justice John Marshall wrote: “[The] settled doctrine of the law of nations is, that a weaker power does not surrender its independence – its right to self-government, by associating with a stronger [power], and taking its protection.” Marshall’s doctrine established that the national government of the United States, and not individual states, had authority in American-Indian affairs. The same rule applies in Canada.

Regardless, in 1971, when Congress legislated the Alaska Native Claims Act -- the last “Indian Treaty” signed by the United States -- the United States abandoned Marshall’s “settled doctrine” to convey the treaty lands to state-regulated corporations rather than to Alaska’s “tribes.” Most Canadian First Nations immediately rejected the Alaskan “corporate” model, preferring instead models of tribal governance they styled “aboriginal self-government.”

In 1999, the Nisga’a Nation from the northwest coast signed British Columbia’s first modern treaty. The Nisga’a Treaty recognized tribal title to 1,992 square kilometers of their ancestral lands and province-like governmental powers over matters such as education, health, fish, forests, and direct taxation. Opposition MLAs challenged the constitutionality of the governance arrangement negotiated into the Nisga’a treaty. Rejecting the MLAs argument, the B.C. Supreme Court said in *Campbell et al. v. British Columbia* that self-government “rights cannot be extinguished, but they may be defined [given content] in a treaty. The Nisga’a Final Agreement does the latter expressly.”

After the 2001 provincial election, a new government appealed that decision in the court of public opinion with a province-wide referendum on Aboriginal self-government. Specifically, the province’s 2002 referendum proposed that, “Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.” British Columbia won the referendum but, at treaty tables around the province in the years that followed, it has consistently lost that argument with First Nations, although these “wins” required heroic efforts by their negotiators.

Everywhere in Canada, self-government negotiations were proving to be costly, complex, and endlessly time-consuming because of fears about invasions of provincial jurisdiction.

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**A third definition might state that aboriginal self-government in Canada can encompass both local or municipal and province-like powers.**

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<sup>4</sup> <http://www.bctreaty.net/>

<sup>5</sup> *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831)

<sup>6</sup> *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832)

## IV. JURISDICTION V. ADMINISTRATION:

The Government of Canada's policy, "Gathering Strength", supports negotiation of jurisdiction over matters "internal to the community" (adoption, child welfare, policing) and "integral to the culture" (aboriginal languages and religion), but Canada generally prefers to negotiate the devolution of administrative or program management responsibilities rather than jurisdiction. For First Nations, who claim an inherent right to self-government based on their status as pre-existing political communities, administrative delegation leaves the jurisdiction or law-making power in federal or "colonial" hands.

However, when it comes to protecting indigenous communities and cultures, jurisdiction is what counts. Stephen Cornell, co-founder of the Harvard Project on American Indian Economic Development<sup>7</sup> argues that culturally appropriate jurisdiction is necessary to Aboriginal economic development. A major study on suicide by two UBC scholars, Michael Chandler and Christopher Lalonde, shows that aboriginal communities with higher levels of "cultural continuity" or self-government have lower suicide rates.

Cornell believes First Nations need rebuilding from the bottom up according to their own agendas and, Namgis Nation lawyer, Debra Hanuse has observed that since the dismantling their governments took 150 years, it may take 150 years for First Nations to reconstitute them.<sup>8</sup>

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**A fourth definition might affirm that: aboriginal self-government involves the exercise of both jurisdiction or law-making powers and the administration of those laws.**

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## V. INTERIM MEASURES AND ACCOMMODATION AGREEMENTS

Over the last forty years, Canada has negotiated more than twenty land-claim agreements with Aboriginal peoples across the country's northern regions and in British Columbia. The complexity of the issues under discussion is reflected in the length of these modern treaties, which, unlike their 19th century predecessors, are hundreds of pages long. This attention to detail arises from an appropriate concern not to repeat the "broken treaty promises" of the 19th century. Nevertheless, 200 and 300 page agreements take a long time to negotiate – typically twenty years per treaty. During this time, a First Nation might see the forests on its lands cleared and other resources plundered entirely to the benefit of industry and the province.

Former chair of the BCTC, Miles Richardson, frequently reminded treaty parties of the importance of "interim measures" to the negotiation process. Indeed, the BCTC process has indeed seen the development of hundreds of interim measures. However, BC treaty negotiators hold a variety of conflicting views about interim measures or Accommodation Agreements, as they are now known.

Nisga'a negotiator Jim Aldridge worried that rather than moving treaty negotiators forward, interim measures could be a big distraction. "When we started on interim measures, what we meant by that was "measures to be in place to protect the lands and of the Nisga'a Nation during the negotiations process'. In other words, here we are negotiating, while watching the trucks continue to take the timber out of the territory."<sup>9</sup>

In the early years of BCTC negotiations, the Province often employed "interim measures" to end road blockades or office occupations by First Nations, but it soon became clear that many of these arrangements were "all pain and no gain". Consequently, Victoria grew increasingly reluctant to negotiate interim measures despite both federal and First Nations protests. To resolve the situation, the province's Negotiations Project Team invented a new instrument the Treaty Related Measure (TRM). TRMs would be cost-shared between Ottawa and Victoria. They could "advance" elements of a final treaty such as lands or forests but First Nations would have to accept that they constituted a "down payment" on the final settlement. By the time the parties had negotiated dozens of TRMs, the Auditor General concluded that federal and provincial

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7 <http://www.ksg.harvard.edu/hpaied/people/cornell.html>

8 Penikett, Tony. *Reconciliation: First Nations Treaty Making in British Columbia*. Vancouver: Douglas & McIntyre, 2006. p195

9 Aldridge, Jim. *Treaty Negotiations: Key Questions*. April 16, 2003. Vancouver: Morris J. Wosk Centre for Dialogue, p81  
[http://www.sfu.ca/dialogue/study+practice/media/pdf/Treaty\\_Key\\_Questions.pdf](http://www.sfu.ca/dialogue/study+practice/media/pdf/Treaty_Key_Questions.pdf)

bureaucrats had not been using TRMs for the purposes they were designed.

Tom Isaac once negotiated for the provincial government. He is now a senior aboriginal law expert, much cited by the Supreme Court of Canada. Isaac sees Accommodation Agreements as a honourable way to address aboriginal interests in land and resources in more comprehensive, fair agreements. “Conversely, there also exists the possibility that the need for treaties will subside, as many Aboriginal rights claims could be dealt with at the consultation and accommodation level.”<sup>10</sup> Isaac clearly anticipated the government’s use of Accommodation Agreements as an efficient, and cheaper, alternative to treaties. Although interim measures can expedite treaty negotiations, they cannot settle either of the two basic questions treaties were meant to address: who owns the land and how it should be governed?

Garry Wouters, a former Associate Deputy Minister at Indian and Northern Affairs Canada, has advised Central Coast First Nations, including the Haida, in numerous government-to-government negotiations since 2001 on land-use planning, ecosystem-based management and capacity building. Wouters has a different perspective on interim measures or Accommodation Agreements. He argues that, rather than a “distractions” or “cheap alternatives,” Accommodation Agreements can be “building blocks” for self-government.

The federal government has long seen the development of Aboriginal self-government in British Columbia as an evolutionary process; Wouters has watched his clients, the Haida especially, engineer one innovation after another. Many First Nations have expressed uncertainty about how to translate their governmental traditions into modern institutions, but by using interim measures they have been experimenting with a variety of structures and institutions.

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**For the signatories of modern treaties in Canada, the fifth and simplest definition might state that: when a tribal group gains collective title to a large tracts, it must manage those lands and the communities on them; that is called self-government.**

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## VI. THE HAIDA MODEL

Haida Gwaii, the “islands of the people,” off the north west coast of British Columbia, cradled the culture of its permanent residents, the Haida. An economy based on cedar and salmon has fed, housed, and transported them for centuries. From cedar, they built houses, sea-going canoes, and totem poles -- art forms so unique that anthropologist Claude Lévi-Strauss considered them the equal of those in ancient Greece and Rome.

When the Haida welcomed Spanish explorer Juan Perez in 1774, there were perhaps fifty Haida villages with a total population of 30,000 people. European contact was devastating. By 1915, a series of smallpox epidemics has reduced their number to less than 600.

In the twentieth century forest industry giants, like MacMillan Bloedel and Weyerhaeuser, had loaded the Haida’s heritage onto barges and shipped it south. Instead of Weyerhaeuser’s tree plantations, the Haida leadership wanted the entire watersheds to be left untouched with cedar of all ages left standing for future generations.

Nobody believed the rate at which the forests of Haida Gwaii were being logged was sustainable. Local residents, Haida and non-Haida alike, thought their precious forests had been logged far too rapidly. When the provincial government transferred a forest license from the previous operator, MacMillan Bloedel, to Weyerhaeuser in 2000, the Haida challenged the transfer in court. The Province and Weyerhaeuser argued they had no obligation to consult the Haida about logging on the Queen Charlotte Islands until a court had recognized their Aboriginal title. The B.C. Court of Appeal disagreed. It concluded that both the Minister of Forests and Weyerhaeuser had a legal duty to find a “workable accommodation” with the Haida. The province chose to appeal this decision to the Supreme Court of Canada.

The Supreme Court of Canada ruled in the Haida consultation case in November 2004. It found that the BC Government, but not Weyerhaeuser, owed a duty to carry out meaningful

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<sup>10</sup> Tom Isaac, Tony Knox, and Sarah Bird, “The Crown’s Duty to Consult and Accommodate Aboriginal Peoples: The Supreme Court of Canada Decision in Haida,” *The Advocate*, September 2005

consultations and accommodation with First Nations. This duty flowed from a need to address aboriginal rights in the interim until those rights have been reconciled through a treaty or decision of the court, “in the age-old tradition of the common law...”<sup>11</sup>

The Haida had sought a veto but the Court did not grant them that. The treaty commission thought ruling encouraged the negotiation of treaties. For the province, it spurred the negotiation of Accommodation Agreements. On March 6, 2002, the Haida responded by filing a suit claiming aboriginal title to all of Haida Gwaii.

The Haida filing asserted title over the “land, inland waters, seabed and sea” of the Queen Charlotte Islands or Haida Gwaii. Of all the potential Aboriginal title cases in British Columbia, the Haida action was always the one the Province feared most; the Haida lands were not covered by any “overlapping claims” from other First Nations and the Haida have long benefited from having a series of articulate political leaders. However, so far, no court has recognized a single square inch of aboriginal title in BC.

In 1993, the Council of the Haida Nation had entered the British Columbia treaty process. The Department of Indian Affairs reported approximately 3,700 Haida on its band lists of registered Indians but the Haida Nation claimed 7,000 members.

However, it soon became clear that the Haida and the two senior governments were never going to agree on the land question. The Haida believed they owned all of Haida Gwaii, so they were never going to agree to a “land selection” treaty in which they settled for only a small percentage of their heritage. While Canada and BC might concede that aboriginal title could be a “burden” on Crown title, it completely rejected Haida lawyer Louise Mandell’s proposition that Crown title was a burden on aboriginal title.<sup>12</sup>

Much cynicism attends the “land claims industry” in BC, which employs hundreds of consultants, lawyers, and negotiators.<sup>13</sup> This industrial metaphor caused one First Nation lawyer to liken the BCTC process to a fish farm. “We’re all penned up and fed our little pellets,” she complained.

“We can look at the sky and dream our small-fry dreams, but most of us are going nowhere. Someday, somebody may escape towards a treaty, but most of us can only dream.”<sup>14</sup>

To many, the BCTC process seems dysfunctional. The federal government clearly supports negotiations but Federal Finance clearly believes it is cheaper to negotiate forever than finalize treaties. The BC Government, on the other hand, seems to prefer Accommodation Agreements as cheaper and easier alternatives to treaties. BCTC policy forces First Nations to negotiate or litigate; they cannot do both. With the filing of their lawsuit claiming title to Haida Gwaii, the Haida had effectively withdrawn from the BCTC treaty negotiations.

The Haida may have walked away from a BCTC land-selection model treaty but they did not abandon their goal of achieving self-government. Surprisingly, they seem to have found a way to use interim measures or Accommodation Agreements, rather than legislation or a treaty to advance their goal.

## VII. CO-JURISDICTION

In its 1996 report, the Royal Commission on Aboriginal Peoples said, “... In our view, mutual recognition and an emphasis on shared ownership and jurisdiction recognize the fact that Aboriginal peoples have, since the onset of European contact, promoted a political relationship based on sharing and co-existence.”<sup>15</sup> In the Haida view, a co-jurisdictional approach would involve the establishment of nation-to-nation protocols and institutions based on the recognition

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11 Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 S.C.R. 511  
<http://scc.lexum.org/en/2004/2004scc73/2004scc73.html>

12 Louise Mandel, presentation to Pacific Business and Law Institute, Vancouver, May 1, 2002

13 Jo-Ann Roberts interviews John Cummins, (CBC Victoria) CBC All Points West, 29-May-2012 17:24

14 Tony Penikett, Reconciliation, etc, page number...? [in Mandates Chapter]

15 “Report of the Royal Commission on Aboriginal Peoples” *Royal Commission on Aboriginal Peoples*. Indian and Northern Affairs Canada, 1996.

of Aboriginal title, rather than its extinguishments. Co-jurisdiction meant sharing policy-making powers. It was more than just co-management. At their worst, co-management bodies exercise merely advisory functions.

Nevertheless, in the 21st century, there seemed little prospect of persuading Ottawa or Victoria to negotiate co-jurisdiction chapters into BCTC treaties. In spite of this, a growing number of B.C. First Nations are becoming interested in co-jurisdiction alternatives to the land-selection model, which would leave them with control over only a tiny portion of their traditional territories.

Not just the Haida but their neighbours, the Tsimshian, the Heiltsuk and the Kwakiutl claim rights and title to the marine resources in and around Queen Charlotte Sound, where off shore oil reserves are thought to lie. Guujaaw told the *Vancouver Sun* on March 16, 2002 that court recognition of their Aboriginal title would give the Haida “overlapping jurisdiction on crown land and veto power over things they don’t want, such as unrestrained logging, environmentally unfriendly development, development of oil and gas properties, and fishing lodges that impact local salmon stocks.”<sup>16</sup>

Ever since quitting the BCTC process the Haida have consistently sought to negotiate, arrangements that would see them strengthen their hand in managing Haida Gwaii’s lands, resources, and waters. Accordingly, they sought radically new governance arrangements with both the federal and provincial authorities in land-use planning, forest management, and fisheries.

Guujaw and other Haida leaders began to articulate a vision of one day assembling all such agreements into a formal Section 35 treaty based on Aboriginal title. Since 1763, Aboriginal American treaties with colonial authorities have been mainly about land. The Haida were thinking about something unique -- a treaty that was all about governance.

## VIII. BC-HAIDA PROTOCOL

Among the Haida’s achievements are: a fifty percent reduction in the (AAC) harvest of Haida forests; land-use plans based on ecosystem-based management; a doubling of parks and protected areas; the protection of almost all culturally important areas; the creation of Gwaii Haanas Park<sup>17</sup> and a Marine Protected Area; access to resources and resource revenues of \$8 million, \$27 million in one-time economic development funding and millions more in carbon offsets; and a major role in strategic planning for Haida Gwaii including representation on a joint Haida Gwaii Management Council to set the AAC, approve objectives for the Great Bear Rain Forest, heritage sites and protected area plans and a Joint Solutions Table to provide a one-window approach to BC-Haida issues.<sup>18</sup>

Many of these achievements are captured in the government-to-government protocol between British Columbia and the Council of the Haida Nation, the “Kunst’aa guu – Kunst’aayah Reconciliation Protocol”.<sup>19</sup> Though from the start, the protocol frankly acknowledges the two competing worldviews. “The Parties hold differing views with regard to sovereignty, title, ownership and jurisdiction over Haida Gwaii, as set out below.”

“The Haida Nation asserts that: Haida Gwaii is Haida lands, including the waters and resources, subject to the rights, sovereignty, ownership, jurisdiction and collective Title of the Haida Nation who will manage Haida Gwaii in accordance with its laws, policies, customs and traditions.

British Columbia asserts that: Haida Gwaii is Crown land, subject to certain private rights or interests, and subject to the sovereignty of her Majesty the Queen and the legislative jurisdiction of the Parliament of Canada and the Legislature of the Province of British Columbia.”

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16 Guujaaw, “Voices of Haida Gwaii,” *Vancouver Sun*, 16 March 2002, D3

17 Gwaii Haanas National Park Reserve and Haida Heritage Site

18 Conversation with Garry Wouters, July 4, 2012

19 [http://www.newrelationship.gov.bc.ca/shared/downloads/haida\\_reconciliation\\_protocol.pdf](http://www.newrelationship.gov.bc.ca/shared/downloads/haida_reconciliation_protocol.pdf)

But the protocol goes on to assert: “Notwithstanding and without prejudice to the aforesaid divergence of viewpoints, the Parties seek a more productive relationship and hereby choose a more respectful approach to co- existence by way of land and natural resource management on Haida Gwaii through shared decision-making and ultimately, a Reconciliation Agreement.”

As documented in the protocol, the Province and the Haida have agreed to take an incremental approach towards the negotiation of a comprehensive Reconciliation Agreement on the lands and resources issues between them. Both also identify Canada as a necessary partner in a Reconciliation Agreement, not least because the Haida still want co-management with Ottawa of Haida Gwaii’s fisheries allocations and a commercial fishing boat buyout plan.

## **IX. SHARED GOVERNANCE**

Rather than purely “co-jurisdiction,” the agreements covered by this protocol might be more accurately described as “shared governance,” or as the Province seems to prefer, “shared and joint decision-making”.

Shared governance can involve a combination of co-management or co-jurisdiction arrangements negotiated as interim measures or accommodation agreements in a variety of areas of vital interest to the indigenous authority. Shared governance has another advantage too. Successful implementation of aboriginal self-government agreements generally depends on a multitude of intergovernmental agreements, not just with the federal department of Aboriginal Affairs and Northern Development but with other federal departments, but also provincial ministry resource-revenue sharing arrangements, joint-service agreements with local municipalities and “economies-of-scale” accords with regional tribal authorities. The Shared Governance concept can encompass all of these.

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**Shared governance could be defined as a sixth form of aboriginal self-government by which a First Nation negotiates accommodation agreements, co-management, co-jurisdiction, resource-revenue, and other inter-governmental arrangements to empower itself and reassert legitimate authority over its people, lands, and resources.**

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## **X. COMPARE & CONTRAST:**

At the risk of oversimplifying an extremely complex subject, brief descriptions of other new models of aboriginal self-government might allow readers to compare and contrast these arrangements with the form-shared governance model under development on Haida Gwaii.

### ***Yukon Model:***

The northern treaties negotiated between arctic and sub-arctic Aboriginal groups and the governments of Canada over the last thirty plus years or so typically run between 200 and 400 pages. These comprehensive land claims settlements include far more than the meager provisions of the 19th century treaties for reserve lands, annual annuities, and farm implements. The treaties of the late 20th century cover subjects as varied as General Provisions, Lands, Forest Resources, Access, Fisheries, Wildlife, Taxation, Dispute Resolution, Eligibility and Enrollment, and Implementation.

The Yukon treaty, which covers 7,000 first citizens in a dozen different bands, provides title to 41,000 square kilometers (8.6% of the territory), and mineral rights on two-thirds of that land, as well as aboriginal self-government. Yukon First Nations negotiated their aboriginal self-government agreements alongside the Umbrella Final Lands Claims Agreements between 1973 and 1992. The negotiations were unusual for their time in that the Yukon Territorial Government was a full partner in the negotiations and the willingness of the territorial administration to negotiate jurisdictional matters significantly shaped the self-government agreements, of which there were no existing Canadian models at the time.

The Yukon Territory's self-government agreements recognized extensive province-like powers for tribal governments and were the first of their kind in Canada. Unlike the land claims agreements, which enjoyed constitutional Section 35 protection, Yukon's aboriginal self-governments enjoyed only the protection of a federal statute. However, the Yukon land claims treaty had entrenched a constitutional commitment to negotiate self-government, which gave First Nations considerable leverage.

Unfortunately, implementation of Yukon self-government agreements has been very slow, in part because money has been in short supply. Barry Stuart, Yukon's chief negotiator from 1985 to 1990, once likened the Yukon self-government agreements to getting a brand-new Cadillac with no gas in the tank.

More troubling perhaps is the realization that twenty-years after they were negotiated, the Yukon's accords represent more than half of all the aboriginal self-government agreements in Canada.

### ***Nisga'a Model:***

For six thousand indigenous citizens, the Nisga'a treaty provides substantial self-government powers. Although, the Nisga'a accords were substantially based on the Yukon's, which had preceded them, there was one important difference. Nisga'a negotiators wove the self-government provisions into the language of every chapter. No doubt, this helped the Nisga'a secure Section 35 protection for its governments. However, this interweaving strategy could not shield Chapter 11, the specific self-government chapter, from its critics in the BC Legislature.

Worth mentioning though is the often forgotten advantage for the implementation of Nisga'a Lisims government was that the Nations villages had pre-existing education and health authorities. More importantly, that their institutions were founded on ancient principles, "Ayuukhl Nisga'a, the code our own strict and ancient laws of property ownership, succession, and civil order..."<sup>20</sup>

Since the signing of the Nisga'a treaty, other BC tribal groups (Tsawwassen and Maa-Nulth) have concluded treaties, which include similar self-government powers.

### ***Federal Policy:***

Canada's Constitution Act 1982 recognizes Aboriginal and treaty rights. No longer can governments simply extinguish Aboriginal rights and, while the Supreme Court of Canada has not done much to define the self-government right in its decisions since 1982, it has declared, "... although the right of Aboriginal people to govern themselves was diminished, it was not extinguished."<sup>21</sup> Nevertheless, progress towards the re-establishment of aboriginal self-government in Canada has been very slow.

In 1986, Parliament passed the Sechelt Indian Band Government Act, which created a form of municipal government for the Sechelt First Nation. Canada also legislated a stand-alone self-government agreement in the West bank First Nation Self-Government Act in 1996, which establishes rules for government structures, procedures and a financial transfer agreement.

The federal government has also passed laws that provide limited improvements in governance for First Nations opting into these arrangements, including:

- First Nations Fiscal and Statistical Management Act, which provides for property taxation, financial management, and access to capital markets;
- First Nations Oil and Gas and Moneys Management Act recognizes jurisdiction over oil and gas exploration on reserves; and
- First Nations Jurisdiction Over Education Act in British Columbia offers BC First Nations jurisdiction over K-12 schools on reserves.

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20 Gosnell, Joseph. "The Nisga'a Treaty" (speech to British Columbia legislature, December 2, 1998). *The British Columbia Quarterly*, Winter:120 (1998 -99), p6.

21 R. v. Pamajewon, [1996] 2 S.C.R. 821, p. 834

Article 4 of the 2007 United Nations adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states, “recognizes that indigenous peoples, in exercising their right of self-determination, have the right to autonomy or self-government in matters relating to their internal affairs.” Not until November 12, 2010, did Canada endorse UNDRIP and that endorsement has not be followed by federal legislation to provide for aboriginal self-government. However, the BC-AFN has been drafting self-government enabling legislation for introduction to parliament as a private member’s bill.

The negotiations continue, on Haida Gwaii, and throughout Canada. Self-government is a work in progress.

