

Nisga'a  
Lisims  
Government

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**THE NISGA'A NATION**

**IMPLEMENTATION**

**OF THE**

**NISGA'A FINAL AGREEMENT**

**PRESENTATION TO THE**

**ABORIGINAL FINANCIAL OFFICERS ASSOCIATION OF CANADA**

**NATION CONFERENCE**

**FEBRUARY 21, 22 & 23, 2006**

**WINNIPEG, MANITOBA**

**PRESENTED BY**

**EDMOND WRIGHT, SECRETARY TREASURER**

**NISGA'A LISIMS GOVERNMENT**

## **The Effective Date**

The Nisga'a Final Agreement came into effect on May 11, 2000. Barely settled to carry out our tasks after enacting 18 laws on the effective date, we were in the British Columbia Supreme Court in Vancouver, B.C. on May 15, 2000 defending the Nisga'a Final Agreement in a lawsuit brought in the fall of 1998 by British Columbia Liberals Gordon Campbell, Geoffery Plant and Michael de Jong. The hearing on the matter continued to May 29, 2000.

On July 24, 2000, Mr. Justice Williamson dismissed the applications and ruled in favour of virtually all of the arguments advanced on behalf of the Nisga'a Nation. The day after the decision was handed down, Mr. Campbell's lawyers filed a Notice of Appeal in the British Columbia Court of Appeal, however in late August 2001, they announced that they would abandon their appeal. With the abandonment of the appeal, the British Columbia Supreme Court decision stands as the law of British Columbia unless and until it is overruled by a higher court in some other case.

There is no doubt that the Campbell decision is an extremely important victory, not only for the Nisga'a Nation, but, in our view, for aboriginal peoples across Canada. For the first time a court has specifically and squarely ruled that Section 35 includes an inherent right of self-government that pre-existed the arrival of Europeans in North America and survived confederation. Moreover the court has specifically ruled that self-government is a proper subject matter for treaties and land claims agreements and for the constitutional protection offered by Section 35.

## **Nisga'a Government**

The Nisga'a Nation and each Nisga'a Village are separate and distinct legal entities. They act through Nisga'a Lisims Government and the Nisga'a Village Governments, respectively.

Nisga'a Government is composed of Nisga'a Lisims Government, and the Nisga'a Village Governments in the Nisga'a Villages of Gingolx, Laxgalts'ap, Gitwinksihlkw and New Aiyansh.

Within Nisga'a Lisims Government there is a legislative house known as Wilp Si'ayuukhl Nisga'a (WSN), and the Nisga'a Lisims Government Executive.

Wilp Si'ayuukhl Nisga'a is composed of the Officers of Nisga'a Lisims Government, the Chief Councillor and Councillors of each Nisga'a Village Government, and the two representatives from each of the three Nisga'a Urban Locals. The total membership of our legislative house is 37 members.

Since the effective date, the Nisga'a Nation has conducted two general elections and three by-elections, along with two additional by-elections ordered after the Nisga'a Administrative Decisions Review Board ruled results in the second general election to be invalid.

Under the Nisga'a Treaty, Nisga'a Government has no exclusive jurisdiction. Nisga'a jurisdiction is always concurrent with federal or provincial jurisdiction. A relationship of laws rule is included in our Treaty to determine which law prevails if there is an inconsistency or conflict. Under the Nisga'a Government Chapter, Nisga'a laws prevail in 14 subject matters and federal or provincial laws prevail in 8 subject matters. In other chapters, Nisga'a laws prevail in 7 subject matters and federal or provincial laws prevail in 5 subject matters. There are many subject matters over which Nisga'a Government has no jurisdiction.

Wilp Si'ayuukhl Nisga'a has quarterly meetings and more often when required, and has enacted 32 Nisga'a laws and 28 Nisga'a Statute Amendment Acts, passed a number of resolutions, debated many important and urgent matters, and adopted 6 Nisga'a Nation budgets. During WSN meetings, all members are also able to make statements, participate in question periods, introduce petitions, and introduce motions.

The Nisga'a Lisims Government Executive meets two days each month and more often when required, and have enacted 68 Nisga'a Regulations, passed a number of resolutions and debated many issues.

Nisga'a laws are enactments passed under the authority of the Nisga'a Final Agreement and the Constitution of the Nisga'a Nation, and are not references to the traditional laws and practices (Ayuuk) of the Nisga'a Nation.

### **Strategic Planning**

Planning through consultation with our citizens continues to play a major part of the strength of the Nisga'a Nation.

Prior to the Nisga'a Treaty coming into effect, we held 43 annual assemblies of the Nisga'a Nation. These assemblies were for setting direction for the resolution of our land question. Other annual assemblies were held to deal with health and education issues. Community consultation sessions were held in Nisga'a Villages and Nisga'a Urban Locals between annual assemblies for the last 20 years.

Since the effective date of our Treaty, we have held special assemblies of the Nisga'a Nation in Gingolx in May of 2001 and in Laxgalts'ap in April of 2004. Our next special assembly will be in Gitwinksihlkw in May of 2006. Special assemblies are now set to be held every two years in a different Nisga'a village or urban local.

Strategic priority planning and visioning workshops are held by Nisga'a Village Governments' members and their administrators, and Nisga'a Lisims Government members and administrators to continually update our evolving development.

At the most recent visioning workshop of Wilp Si'ayuukhl Nisga'a, the tagline of our vision statement that we developed is "One Heart, One Path, One Nation".

### **Nisga'a Nation Budget**

Under our Nisga'a Financial Administration Act, the budget cycle for the Nisga'a Nation is to prepare an initial draft provisional target budget for the next fiscal year by December 7, and to meet various dates for review of the draft provisional budget by the Nisga'a Villages, Nisga'a Lisims Government (NLG) Finance

Committee and NLG Executive, and on or before March 26 of a fiscal year, Wilp Si'ayuukhl Nisga'a must adopt a provisional budget for the next fiscal year. The final budget for the Nisga'a Nation of a fiscal year must be approved by Wilp Si'ayuukhl Nisga'a by October 31 of that fiscal year.

Funding for the Nisga'a Nation is from the Nisga'a Treaty Settlement Funds, Lisims Fisheries Conservation Trust, Nisga'a Nation Fiscal Financing Agreement, and resource development revenues.

### **Nisga'a Capital Finance Commission**

Although funds for the Nisga'a Capital Finance Commission (NCFC) are included in the Nisga'a Nation budget, it may be helpful to describe the purpose of funding. The base year funding provided by Canada is to enable the replacement and major maintenance of agreed-upon capital assets for a 36 year period.

It was our position throughout our Treaty negotiations that since Canada held all Indian reserve lands on our behalf, and that all capital assets developed on those lands were liabilities of Canada, Canada was responsible to replace and maintain the assets, therefore agreement was reached to fund our capital authority.

The NCFC is functioning well in responding to funding requests from the owners of the assets, and all commissioners are appointed by the Nisga'a Village Governments and the NLG Executive pursuant to the NCFC Act.

### **Nisga'a Settlement Trust**

The capital transfer agreed to in our Treaty is \$190 million, to be paid over a 14 year period. We borrowed \$50 million for treaty negotiations and agreed to repay the loan over a 14 year period. Over the payment period, the future value of the capital transfer will total \$280 million, the negotiation loan with interest will total \$84 million to be repaid, leaving a net amount of \$196 million for the Nisga'a Nation.

Provisions for the establishment of the Nisga'a Settlement Trust are in the Fiscal Relations Chapter of the Nisga'a Final Agreement.

Since the effective date, our capital transfer funds are invested in a trust managed by a major financial institution.

Over the past several months, our finance committee working group has been working with an investment consulting firm to complete a risk budgeting analysis. The analysis completed is for a 25 year period, and will directly effect the Nisga'a Nation budgeting process. Our finance committee will be recommending to the NLG Executive that the Nisga'a Settlement Trust Investment Strategy be adopted to ensure that future generations of Nisga'a will benefit from Treaty funds for their development.

### **Lisims Fisheries Conservation Trust**

Canada and the Nisga'a Nation created the Lisims Fisheries Conservation Trust. Canada contributed \$10 million and the Nisga'a Nation contributed \$3 million to the trust. Three trustees are overseeing the trust. One selected by Canada, one selected by the Nisga'a, and a third jointly selected by Canada and the Nisga'a. The purpose of the trust is to promote conservation and protection of Nass Area fish species, and facilitate sustainable management of fisheries for Nass Area species and stocks.

Shortly after the 9-11 terrorist attack in the United States, over a period of time our initial investment of \$13.3 million lost \$2.4 million. We have regained the losses and over the last two fiscal years (2004/05 and 2005/06) the trust has been able to fund our Nisga'a Fishery Program from income earned over the initial investment.

### **Economic Development Opportunity Funding**

We have enacted the Nisga'a Economic Development Fund Act to foster a process that creates wealth, prosperity and cultural well being for the Nisga'a Nation and Nisga'a citizens, by promoting economic development and entrepreneurship by,

and employment of, Nisga'a citizens. Funding for the Act is from Treaty funds, appropriated through our budgeting process. Regulations have been enacted by the NLG Executive that sets out the application process and evaluation criteria, and funding approval levels of administrators, NLG Finance Committee and NLG Executive.

Each Nisga'a Village Government also has economic development equity funds available for their citizens.

Nisga'a commercial fishers have been able to access financing to increase capacity and to give them a better opportunity to survive in the coastal commercial fishery. We have entered into a partnership arrangement with an aboriginal capital corporation to deal with our commercial fishers' funding requirements. Funds for this initiative is from the \$8 million Commercial Fishery Opportunity Fund provided in our Treaty.

### **Same Economic Position**

Existing forest licences were allowed a 5 year transition period to phase themselves out of Nisga'a Lands. British Columbia made payments to the Nisga'a Nation in respect of timber harvested by the licences during the transition period. Licences would be able to harvest 725,000m<sup>3</sup> of timber, of which 476,000m<sup>3</sup> had to be contracted with Nisga'a logging contractors.

The major forest licence holder went bankrupt midway through the transition period, leaving half the total allowable harvest volume uncut, and our loggers without contracts. The transition period ended on May 10, 2005 and the undercut volume became part to the Nisga'a Nation logging plan.

The initial plan was that the Nisga'a Nation would be in the same economic position by allowing the 5 year transition period in exchange of receiving stumpage payments for all timber harvested and Nisga'a logging contractors employed to harvest over one-half the timber volume during the transition period.

In addition to the undercut volume, the Nisga'a Nation owns all forest resources on Nisga'a Lands and presently have an annual volume of 135,000m<sup>3</sup> of timber to harvest.

### **Fiscal Financing Agreement**

We are presently in tripartite negotiations attempting to reach agreement on a second Nisga'a Nation Fiscal Financing Agreement. All budget proposals have been made to Canada and British Columbia, and the redrafting of the FFA is nearing completion.

The four Nisga'a Villages, three Nisga'a Urban Locals, Wilp Wilxo'oskwhl Nisga'a (a post secondary education institution), Nisga'a Valley Health Board, School District #92 (Nisga'a), and Nisga'a Lisims Government all participated by developing and presenting their FFA budget proposals to Canada and British Columbia.

### **Land Claims Agreement Coalition**

The Nisga'a Nation is part of a coalition of modern treaty nations that was formed in 2003 to address the issue of the implementation of treaties. On November 11-14, 2003 in Ottawa the coalition co-hosted a conference with the theme "Redefining Relationships: Learning from a Decade of Land Claims Implementation".

Generally, the coalition continues to press the federal government for a new policy to properly implement modern treaties, ensure that the land claims agreements are treated as agreements with Canada and not with the Department of Indian Affairs and Northern Development, and to establish an independent body such as the Auditor General of Canada that will report to Parliament on treaty implementation.

The coalition has developed a policy paper entitled "A New Land Claims Implementation Policy" that was presented to Prime Minister Paul Martin on March 24, 2004.

On June 27-30, 2006 in Gatineau, Quebec the coalition is co-hosting a second conference "Achieving Objectives: A New Approach to Land Claims Agreements in Canada".

## **Conclusion**

The past 5 years has been a very busy period for Nisga'a Government in the development of our laws, administration and resource development plans, and the ongoing learning of each of us that are elected by our citizens.

Far too often the word "transparency" is only related to financial records and reporting. Transparency as it relates to aboriginal governments, must also include communication of decisions made, code of conduct, avoiding conflict of interest, consulting with members, and filing of disclosure statements.

Shortly after our second general election, at the November 2004 orientation session of all our members of Wilp Si'ayuukhl Nisga'a, we invited retired B.C. Court of Appeal Judge, Josiah Wood to speak to our WSN members on their responsibilities and obligations of trust as elected members of our Nation.

Mr. Wood's grandfather was a member of the Senate of Canada, and in his grandfather's memoirs he quoted us the following: "governing is nine tenth common sense, and one tenth law".

In his talk to us Mr. Wood stated:

"Each of you has a fiduciary-like duty to act at all times in what you believe to be the best interest of your constituents and the Nisga'a Nation. In exercising the discretion which your constituents have vested in you, to decide the many issues that must be decided in this chamber over the next four years, each of you must exercise that discretion reasonably."

Many Indigenous nations' representatives from all parts of the world have visited us in the Nass Valley to get a better understanding of the Nisga'a Treaty. Consul Generals, Ambassadors, and elected government members from various countries also visited our government.

Information sharing on the contents of the Nisga'a Treaty with First Nations in Canada started before the effective date of the Nisga'a Final Agreement, and we are committed to continue the information sharing.

To quote one of our citizens "One of the things that we've known all along is that the Treaty is not a book of guarantees – it's a book of opportunities".

The Nisga'a Nation will continue to move forward on the basis that "Our language and culture are the foundation of our identity" and "Learning is a way of life".

Thank you for inviting me to speak to your conference.

Edmond Wright  
Secretary-Treasurer  
Nisga'a Lisims Government