



FIRST NATIONS SUMMIT STATEMENT TO

**THE HON. JANE STEWART,
MINISTER OF INDIAN AFFAIRS,
GOVT. OF CANADA**

&

**THE HON. JOHN CASHORE,
MINISTER OF ABORIGINAL AFFAIRS,
PROV. OF BRITISH COLUMBIA**

ON

**THE SUPREME COURT OF CANADA DECISION IN
*DELGAMUUKW***

**Squamish Nation Recreation Centre
North Vancouver, B.C.**

January 31, 1998

The Supreme Court of Canada's recent decision in *Delgamuukw* confirms what we have been saying since contact with non-aboriginal people. We the First Peoples in the land now called British Columbia have aboriginal title to our lands.

The First Nations Summit is placing the Crown on notice that we are re-establishing our communities, our economies and our laws on our aboriginal title lands. Our aboriginal title has been acknowledged as being on an equal footing with the Crown's title, in the same way that our governments and institutions are on an equal footing with the Crown and its institutions. We are now reassuming our rightful place as Nations with aboriginal title to and control of our lands. We are also calling on Canada and British Columbia to signify their good faith by immediately bringing their policies into line with the requirements of *Delgamuukw* following the joint process put forward by the First Nations Summit.

We are now in a transition process. The Chiefs are committed to working with the Crown during this transition process. The transition process will provide us with the opportunity to fundamentally reshape and restructure the relationship between First Nations and the Crown. First Nations acknowledge that this will not be an easy transition period for non-aboriginal people. It is not First Nations' intention to bankrupt the economy of the Province. Rather, it is our objective to assume our rightful place and to fully participate in the economy and the future of this Province.

I. RELATIONSHIP AMONG FIRST NATIONS

First Nations acknowledge and respect the autonomy of each First Nation. We also want to acknowledge the significant efforts being made by each First Nation to heal and rebuild our communities, including our traditional forms of government. We commend the hereditary chiefs of the Gitksan and Wet'suwet'en for their outstanding courage and perseverance in the pursuit of the rights of aboriginal peoples.

The current policies and actions of both Canada and British Columbia are adversely impacting on First Nations communities by infringing on our aboriginal rights and title. Despite the Supreme Court of Canada's clear recognition of aboriginal title, these non-aboriginal governments are continuing to alienate lands which are subject to our aboriginal title.

II. NEW RELATIONSHIP BETWEEN FIRST NATIONS AND THE CROWN

We agree with the Chief Justice of the Supreme Court's conclusion that "we are all here to stay." First Nations, however, have always insisted that the federal and provincial governments uphold the honour of the Crown in their relationships with First Nations. To this end, First Nations have repeatedly asked the Canadian courts to hold the governments accountable for their actions and have taken the governments to court in the following cases: *Delgamuukw*, *Gladstone*, *Van der Peet*, *NTC Smokehouse*, *Apsassin*, *Sparrow*, *Guerin*, *Calder* and the many other cases. These cases have established a broad framework through which negotiations can be conducted between

First Nations and the Crown. Nevertheless, the Crown has ignored these decisions, except when it has been convenient not to do so. But the Crown cannot ignore the fact that the Supreme Court has now confirmed what First Nations have said all along – we have aboriginal title to our territories.

First Nations are continuing to bring forward cases in the courts to uphold the Crown's duty to respect aboriginal rights and title. The Sechelt First Nation, the Te'mexw Treaty Association, the Westbank First Nation and the Takla Lake First Nation all have cases that are currently before the courts. These cases would not be necessary if Canada and British Columbia stopped carrying on "business as usual" and agreed to expeditiously develop mandates for treaty negotiations which reflect the *Delgamuukw* decision and to build a new relationship between First Nations and the Crown. The Crown must also fully implement both the spirit and intent of the existing treaties in British Columbia, including the the Douglas Treaties and Treaty 8.

This new relationship between First Nations and the Crown should be founded on the following **fundamental principles**:

1. Aboriginal title is a collective, communal interest. Decisions about aboriginal title and interests must be made by all members of the First Nation. Aboriginal title is a legal and proprietary interest in land. We assert our aboriginal title to all of BC. Our aboriginal title continues. The governments should not put us in a position to prove aboriginal title.
2. As aboriginal peoples, we continue to have and will continue to exercise a **complete** range of uses to and in our territories. We exercise these aboriginal rights on the land according to our traditions. This range of uses is similar to the concept of jurisdiction.
3. Aboriginal title exists in its full force in British Columbia. The BC government has no authority to extinguish aboriginal title and aboriginal rights. The Supreme Court suggests Canada may be able to extinguish aboriginal title by surrender. It is the firm position of First Nations in BC that there will be **no extinguishment** of aboriginal title or rights. Canada must, as part of its rejection of its assimilation policies, reject the concepts of extinguishment, the "doctrine" of discovery and the notion of terra nullius. In its place should be a concept of certainty based on sharing and coexistence. We are all here to stay.

Canada is not negotiating with First Nations to extinguish Crown title. Neither will First Nations negotiate with Canada to extinguish aboriginal title. The inherent authority of our Nations is not on the table.

4. The federal government has been charged with a legal responsibility to protect aboriginal title and aboriginal rights. It must act quickly to ensure that the continued actions of the provincial government do not undermine or infringe on this title and these rights. All provincial and federal government alienation of lands and resources must be suspended until arrangements are made with First Nations and our informed consent is obtained. Without this, it is our position that all actions (licenses, leases, permits and so on) by the provincial and federal

governments constitute unlawful infringements. There must be a full accounting for all past alienation and uses of First Nations' territories and resources.

5. First Nations continue to have and will assert complete authority, jurisdiction, and decision-making in our territories and over our resources. First Nations assert that the authority of the provincial governments is limited and that it has no jurisdiction over the decisions or the decision-making processes of First Nations.

Existing government policies and actions of mere consultation with our Nations are unlawful and not acceptable. There is a limit to the uses by First Nations of our land. This limit is governed by our teachings about our connection to our land and everything on it. The continuation of our relationship to our lands is the only acceptable limit to First Nations' use of our lands and resources covered by aboriginal title.

6. Any infringement on our title and rights must have the full and informed consent of our Nations. Where First Nations consent to infringement, fair compensation must be provided. The details of this compensation will be negotiated between First Nations and the other governments. This may include such things as revenue sharing (i.e. stumpage, royalties). As well, First Nations need to be involved in the policy and legislative agenda of the governments. Existing policies and legislation must be reviewed and revised.
7. First Nations acknowledge the aspirations of non-aboriginal people. The uncertainty arising from the court cases must be resolved through fair negotiations and fair agreements. First Nations want to rebuild our relationships with the business community and the non-aboriginal public. Both the business community and our neighbours want certainty. We want to engage in negotiations that meet all of our respective needs on that front.
8. The Supreme Court of Canada has stated that the best way to resolve these issues is through meaningful negotiations conducted in good faith. The Crown has a moral and legal duty to negotiate fairly and honestly. Negotiations should be about sharing and coexistence. The basic purpose of negotiations is "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown."

III. IMPLEMENTATION OF *DELGAMUUKW*

In *Delgamuukw*, the Supreme Court of Canada has clearly acknowledged that First Nations have aboriginal title, which is a legal interest in land and a right to land itself. First Nations have a right to and will exercise our uses of our lands for a complete range of purposes, including contemporary economic activities. The only limit on the range of uses is that we must use our lands in such a way as to protect our connection to our lands. This limitation is one which is consistent with our understanding of ourselves as caretakers and owners of the land. Finally, the Court confirmed that aboriginal title is on

an equal legal footing with the Crown's title.

IV. IMMEDIATE STEP - INTERIM LAND FREEZE & JOINT PROCESS

The Supreme Court of Canada in *Delgamuukw* has placed into question the honour of the Crown. There is a compelling need for the honour of the Crown to be restored. Canada and British Columbia must put an immediate freeze on any further alienation of land and resources within the province and restore the honour of the Crown. The purpose of such an interim freeze is to protect lands and resources while province-wide tripartite interim measures agreements are being negotiated.

As soon as the interim land freeze is in place, a joint process must be established among Canada, British Columbia and First Nations to:

1. negotiate province-wide interim measures agreements immediately; and
2. determine how the treaty process will be brought into line with the requirements of *Delgamuukw* and the RCAP Report.

Any excessive delays or failure by Canada or British Columbia to comply with this process will be interpreted as a breach of good faith and will contribute to the break down of the treaty process.

V. AGENDA FOR FOLLOW-UP

The *Delgamuukw* decision confirms First Nations' longstanding views on aboriginal rights and title, as well as our approach to reconciliation through treaty negotiations. We are well placed to assist the Crown in determining how to meet its fiduciary obligations and to adapt its mandates to the new requirements established by *Delgamuukw*.

We propose that high-level representatives of First Nations, Canada and British Columbia develop a joint process with firm deadlines to review the adequacy of the existing treaty negotiation process and address the following agenda items:

- ! **Interim measures** - to protect aboriginal rights and title through legally binding agreements until treaties are negotiated through the negotiation of province-wide agreements on interim measures
- ! **Consultation & consent** - to ensure that First Nations are consulted and that their consent is obtained with respect to any infringement of their aboriginal rights or title
- ! **Compensation** - to compensate for past, present and future infringement of aboriginal rights or title

- ! **Extinguishment/certainty** - to confirm that First Nations will not extinguish or surrender their title and rights through treaty negotiations
- ! **Exercise of First Nations' jurisdiction** - to recognize the inherent right of First Nations to exercise jurisdiction over their lands and persons residing on those lands, including the right to develop and implement their own laws and policies
- ! **Joint management** - to become partners in the development and implementation of decision-making processes with respect to lands and resources that are subject to aboriginal title
- ! **Policy development** - to include First Nations in the development of federal and provincial policy which in any way impacts on First Nations
- ! **Review of existing laws and policies** - to change existing laws and policies to ensure that they do not infringe on aboriginal rights and title
- ! **Principles for good faith negotiations** - to ensure that the honour of the federal and provincial Crown is upheld throughout the treaty negotiation process and to implement a new approach to treaty negotiations that levels the playing field and respects international law principles on treaty-making
- ! **Funding for First Nations' participation in treaty negotiations** - to increase the level of funding available to First Nations in order to meet their needs, to ensure that their treaty negotiation funding is in the form of contributions (not loans), and to forgive all existing loans
- ! **Commitment of government resources to the treaty process** - to increase the resources committed by Canada and British Columbia to their own participation in the treaty process to ensure that negotiations at all the treaty tables proceed at a pace acceptable to First Nations
- ! **Role of Canada in protecting aboriginal title** - to ensure that Canada fulfills its responsibility to protect aboriginal title
- ! **Role of British Columbia Treaty Commission** - to ensure that it can effectively meet its obligations as the keeper of the treaty negotiation process
- ! **Stay of prosecutions** - to drop all hunting and fishing charges against First Nation citizens that are currently in the judicial system

To assist in understanding First Nations' perspectives on these issues, the First Nations Summit will be developing discussion papers on some of these issues.

The negotiations between Canada, British Columbia and First Nations should lead to a consensus approach to implementing *Delgamuukw* and the recommendations of the RCAP Report that relate to the treaty process. We propose that Canada, British Columbia and First Nations jointly determine their future course. This is the only way we

can successfully complete the reconciliation process. The honour of the Crown is at stake.

Dated the 31st day of January, 1998.

We the undersigned hereditary and elected leaders of First Nations in British Columbia endorse this statement for presentation to the Crown in right of Canada and the Crown in right of British Columbia, as represented by the Minister of Indian Affairs and the Minister of Aboriginal Affairs respectively. We call on the Prime Minister of Canada and the Premier of British Columbia to respond to this statement and to deal with these issues directly.

SIGNATURES

LEADER/REPRESENTATIVE

FIRST NATION

ORIGINAL SIGNED BY 103 LEADERS/REPRESENTATIVES ON BEHALF OF THEIR FIRST NATION.