Land Claim Agreements Coalition

10 Fundamental Points

A new land claims implementation policy must be situated in the following context:

1. The history of nation-to-nation contact and interaction between the Crown and the Aboriginal peoples in Canada has created an enduring relationship between the Crown and Aboriginal peoples, one that is fundamentally predicated on the honour of the Crown.

2. "[T]he doctrine of Aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, Aboriginal peoples *were already here*, living in communities on the land, and participating in distinctive cultures, as they had done for centuries." Supreme Court of Canada.[1]

3. "The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve "the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown." Supreme Court of Canada.[2]

4. Relations between the Crown and Aboriginal peoples have been and will always be manifested in a wide variety of political and legal arrangements and instruments. No single political or legal arrangement or instrument can be said to comprehensively express the dimensions, in breadth, depth or time, of the ongoing and evolving relationship that connects the Crown and an Aboriginal people.

5. Treaties and land claims agreements between the Crown and Aboriginal peoples are acknowledged to be "basic building blocks in the creation of our country …[T]reaties -- both historical and modern -- and the relationship they represent provide a basis for developing a strengthened and forward-looking partnership with Aboriginal people." Government of Canada.[3]

6. Among the key political and legal instruments that affirm the relationship between the Crown and Aboriginal peoples are modern land claims agreements, and ancillary agreements such as implementation and self-government agreements that attach to or follow from land claims agreements.

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[1] *Van der Peet*, [1996] 2 S.C.R. 507 at para 30.

[2] *Haida Nation v. British Columbia (Minister of Forests)* [2004] S.C.C. 73 at para 17, quoting *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 186, quoting *R. v. Van der Peet*, [1996] 2 S.C.R. 507 at para. 31.

[3] Gathering Strength -- Canada's Aboriginal Action Plan. QS-6121-000-EE-A1 Catalogue No. R32-189-1997E. ISBN 0-662-26427-4

7. Modern land claims agreements, which give rise to treaty rights, are multi-faceted, and the ongoing rights they affirm are, among other things, constitutional, statutory, contractual, fiduciary, and in keeping with the "living tree" principle of Canadian law, evolving and progressive in nature.

8. The negotiation and implementation of modern land claims agreements, and their ancillary agreements, engage the honour of the Crown, and demand results and ongoing outcomes that are just. "Where treaties remain to be concluded, the honour of the Crown requires negotiations *leading to a just settlement of Aboriginal claims*." Supreme Court of Canada.[4]

9. The treaty rights arising from modern land claims agreements express the mutual desire of the Crown and Aboriginal peoples in Canada to reconcile through sharing the lands, resources and natural wealth of this subcontinent in a manner that is equitable and just – no longer so as to solely assimilate, take or extinguish the interest of the Aboriginal peoples involved, but rather so as to implement mutual objectives that will ensure their socio-economic, political and cultural survival, well-being and development as peoples.

10. Aboriginal and treaty rights are human rights, and they are not amenable to extinguishment as a matter of respect for Canada's international human rights obligations. "The situation of the Aboriginal peoples remains the most pressing human rights issue facing Canadians…. [T]he practice of extinguishing inherent Aboriginal rights be abandoned as incompatible with article 1 of the [International] Covenant [on Civil and Political Rights]." United Nations Human Rights Committee.[5]

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[4] *Haida Nation v. British Columbia (Minister of Forests)* [2004] S.C.C. 73 at para. 20 , quoting *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at pp. 1105-6; "Section 35 calls for a just settlement for aboriginal peoples." *Sparrow v. The Queen*, [1990] 1 S.C.R. at 1106.

[5] *Concluding Observations of the Human Rights Committee - Canada*. 07/04/99 CCPR/C/79/Add.105.