



## GITXSAN CHIEFS' OFFICE

February 21, 2013

Frank Osendarp  
Chief Federal Negotiator  
Treaties and Aboriginal Government  
Negotiations West  
600 – 1138 Melville Street  
Vancouver, BC V6E 4S3

Dear Mr. Osendarp

Re: Trespass on Gitksan Land Tenure (1846) by AIP (Kitselas and Kitsumkalum) Land Offer

We thank you for your letter dated February 11, 2013, in response to our concerns expressed in two earlier letters, confirming that Canada will continue the dialogue commenced on December 13, 2012 with the Gitksan Hereditary Chiefs'. As Chief Negotiator for Canada your words carry weight and as a result we respect and rely on what you state.

As Chief Negotiator, you state the reason you are in the process with the Gitksan Hereditary Chiefs is that:

1. "...Canada and British Columbia has a duty to consult and, if necessary, accommodate First Nations whose asserted aboriginal rights, including title, may be adversely impacted by Crown conduct, including matters arising in treaty negotiations".
2. "...the purpose of this consultation is to determine any specific adverse impacts that provisions of the draft AIPs may have on specific asserted Gitksan rights, and if necessary, to determine suitable accommodation on any impacted right".
3. "Canada is now engaged in consultation with Gitksan to gather information to determine whether Gitksan's asserted rights may be adversely affected by any provisions of the AIPs.

Your response to Gitksan requests for Terms of Reference (TOR) for this process is "Canada derives its guidance with respect to the duty to consult and accommodate, from relevant jurisprudence". With respect, this response is insufficient and we note your failure to provide terms of reference or guidelines requested earlier for:

- How you determine the asserted rights and title of the Gitksan Hereditary Chiefs and
- How you would determine that this land offer and provisions of the treaty would adversely affect Gitksan rights and title (written request made December 13, 2012).
- How Gitksan use and occupation of the lands would be adversely affected by these AIPs (Mr. Kolba's statement).

We reiterate our request, in this consultation process for a copy of the analysis done by Canada on Kitselas and Kitsumkalum interests they seek on Gitxsan territory (Mr. Fleming's statement). What are those interests?

We reference the exploratory discussions on the Gitxsan treaty table (May 2008 to November 2012) as some assistance for you to understand the Gitxsan land tenure system. As well we agree with you that any proceedings under the BC Treaty process are without prejudice to the positions of the parties and do not constitute an admission of the *non-existence* of aboriginal rights or title.

The jurisprudence that the Gitxsan rely on is the Supreme Court of Canada's 1997 ruling

- That aboriginal rights and title were never extinguished in British Columbia,
- That in 1846 the Gitxsan were exclusively an organized society with a set of laws and a land tenure system over 33,000 sq km of territory.

Additionally, the British Columbia Supreme Court ruled in 2002:

- that these same Gitxsan Hereditary Chiefs have a strong claim of rights and a good claim of title

And, British Columbia by Agreement in 2003:

- Extended this ruling to the full borders of the Gitxsan land tenure.

The plaintiffs protecting their rights and land in the 1997 SCC ruling are the same Simgiigyet, Tenim gyet, Sakxum Hiigokw and Luulak being affected by the AIP provisions and land offer!

The title and rights in the lands affected by these AIP provisions and land offer are owned by Tenim Gyet, Sakxum Hiigok and Luulak. We seek a right to vote on this AIP as this agreement seriously affects Gitxsan land tenure and rights protected by the Supreme Court of Canada and the Constitution of Canada.

We seek an immediate response to our letter and our right to vote on this matter. We urge you to adjourn the vote scheduled for the Kitsumkalum AIP, March, 2013 to a date later in the fall of 2013.

Yours Truly



Luutkudziiwus (Gordon Sebastian)  
Executive Director

CC. Ken Kolba,  
Gitxsan Chiefs  
BCTC  
British Columbia