



GITKSAN CHIEFS' OFFICE

December 3, 2009

Minister Chuck Strahl
Government of Canada
House of Commons
Ottawa, ON
K1A 0A6

Dear Minister Strahl,

Firstly, I wanted to thank you for agreeing to meet with us on Gitksan public policy concerns.

The specific matter that we would like addressed is the mandate that Canada brings to the Treaty and Reconciliation negotiations. As you know we have been at the Treaty table since the beginning of the BC Treaty Commission process. Our experience at the table is frustrating due to the Crown's recalcitrance to the law as stated by the Supreme Court of Canada.

We entered the Court process after the Canada Constitution Act recognized and affirmed our aboriginal rights in 1982. We explained to the Courts who the Gitksan were as a people; our history; our governance structure; our economic imperatives; our responsibilities; our "fit" under the Canadian Constitutional umbrella. The Supreme Court of Canada accepted our pleadings in 1996 and in the 1997 Delgamuukw decision acknowledged that we were all here to stay.

The Delgamuukw decision instructed us to go to re-trial on the matter of title. We did this in 2002 and got a decision from the BC Supreme Court through Justice Tysoe. He stated that the Supreme Court of BC acknowledged that the Gitksan had title and rights on the area where we had asserted our title. The other major direction that Justice Lamer and his colleagues gave us was to reconcile Gitksan pre-existence with Crown

title. The logic of that instruction was based on a number of pieces of a court built platform. The Supreme Court of Canada and other decisions from the lower Courts have all provided a foundation upon which aboriginal public policy can be built.

In 2006 a Chief Negotiator's meeting took place in Victoria. A challenge was issued to the Gitksan table that asked for Canada, British Columbia and the Gitksan to define and explain the term "Reconciliation" as used by the Courts. The first round of the discussions were led by Chief Commissioner Stephen Point of the British Columbia Treaty Commission. After two meetings Chief Point stepped back and asked former Chief Justice of the BC Court of Appeal, Brian Williams to lead the Reconciliation discussions. After several meetings the Gitksan team found that we needed an interpreter to help us with "white speak". We brought Gordon Gibson in as a learned scholar who could help us focus on what your negotiators were saying.

Earlier in the year we had a meeting with you and senior staff in Vancouver where we explained what we hoped to achieve out of our Reconciliation and Treaty talks.

The following is a summary of what we want to build upon.

The Supreme Court of Canada and the Courts at the lower level have been forced to deal with aboriginal public policy matters almost by default. We believe that negotiation processes can arrive at more viable Aboriginal public policies. The Gitksan went into the Court process expecting fair treatment which we are thankful for. What we are seeking from you as Canada's Crown representative is to work with us in reconciling Canada's and British Columbia's title with Gitksan pre-existence.

The Gitksan have accepted that the Crown is here to stay. The Gitksan have accepted Canada's rights, responsibilities and authorities under Section 91 of the Canada Constitution Act. We have also accepted in whole the provincial - in particular British Columbia's - rights, responsibilities, and authorities under Section 92 of the Supreme laws of

this country. What we put forward in the Delgamuukw Court case was that Gitxsan rights, responsibilities, and authorities were anchored as well in Section 35 of the Canada Constitution Act.

The Courts have acknowledged that the primary governing body that holds title over Gitxsan lands and resources are the Gitxsan Hereditary Chiefs. Paragraph 166 of the Delgamuukw Decision explicitly recognizes that these title holders can decide to what uses the Gitxsan lands may be put. The same section of the Supreme Court of Canada decision also stated that the responsibility had a rider on land use that we had to take into account the responsibility to sustain ourselves as Gitxsan people. Paragraph 166 also stated that Gitxsan title had an inescapable economic component.

Other serious public policy imperatives that the Courts pronounced included other building blocks for Gitxsan Nation building such as the use of oral history, the necessary use of Gitxsanimx (language), and mineral rights.

What we need from the Crown is for you to meet us half way. The Gitxsan do not need to be dependent on the Crown. We do not want to be a burden on anyone and we do want to carry anyone else's burden.

The title that the Gitxsan Simgiighet - Hereditary Chiefs - have to 33,000 square kilometers in northwestern British Columbia can enable the 13,000 Gitxsan to sustain themselves. The resources that are under Gitxsan title can enable us to continue to contribute to the wealth of British Columbia and Canada.

The Gitxsan had economic relationships that worked to everybody's benefit prior to the application of the Indian Act in 1951. Since the imposition of that federal legislation to the Gitxsan villages we have become totally dependent and impoverished. We hear about the bounty of the \$10 billion that is spent of behalf of Canada on Indians. If that particular pie was cut evenly we would all be eligible for more than \$17,000 per year per person. What the Gitxsan Bands and organizations

receive is considerably less than that. Gitksan Bands generally administer poverty like conditions as do other Bands across the country.

We have seen more than 100 million cubic meters of wood taken from Gitksan territories by forests licensees over the past 80 years. The rents, stumpages, and taxes that have accrued to Canada and British Columbia over that time has been more than \$4 billion. All that we have for a public building as a part of our share is a small high school.

What we need is a new arrangement that can bring benefits to the Gitksan and the Crown.

We pay taxes to three levels of Government. We pay taxes through Gitksan feasts into our community. We pay all federal taxes. We pay most provincial taxes as most of the commercial arrangements that we have are in towns like Hazelton, Smithers, and Terrace. Where we need to make changes is to reconcile our Gitksan tax system with what we pay to the Crown.

We need to get parity for services that other Canadians currently receive. Unless we see the \$10 billion federal pie being cut more equitably we would prefer to receive our services through normal British Columbia channels. Our villages need paved streets and sidewalks.

We realize that some Gitksan have been dependent on hand outs for three generations. Most of the young people do not want to get stuck on that path. They need work so that they can look after their own families.

We have organized the Gitksan title lands into nine watershed management units. The Chiefs within those units are working on management plans that would enable them to make land use decisions. One of the Watersheds received more than \$1 million from the federal - provincial stimulus funds recently so that the necessary plans can be developed further. When the project started we were able to hire 7 people that were employed for the first time in the lives. What we need is to get approvals for the 8 remaining Watershed management units. The

applications from these watershed units are being held by Western Diversification Program and Northern Development Trust Initiative.

The Gitksan Nation has also developed policies on Water, Fish , Forests, Minerals, Wildlife and other matters so that Gitksan interests can be transparent to the Crown and potential partners. Our policies have been developed at our own cost. The Courts will be pleased as we have taken steps to reconcile our interests formally in these policies and have been shared freely with Crown agencies and our negotiation table.

We have gone public on matters of public policy because these matters need to be debated. What we are trying to build upon are the building blocks that we got your courts to recognize. We appeal to the Crown's honour to jointly implement that recognition with a reconciliation agreement with the Gitksan.

Yours very truly,

Elmer Derrick

cc George Abbott - Minister of Aboriginal Relations and Reconciliation
Gerry St. Germain - Chair of Aboriginal Senate Committee
Prime Ministers Office