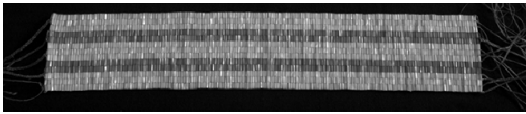


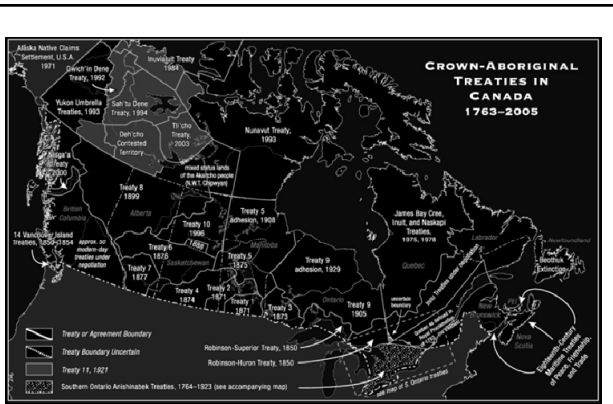
**Crim419 / INDG419  
Fall 2023**

**Treaties, Agreements and Other  
Constructive Arrangements**



**Treaties**

- Three ways one can move in to a territory that are recognized in international law:
  1. The land is vacant
  2. There are people there who are conquered
  3. The territory is ceded via treaty
- Canada took door #3 via the *Royal Proclamation*
- Only Nations can do treaties



**Treaties**

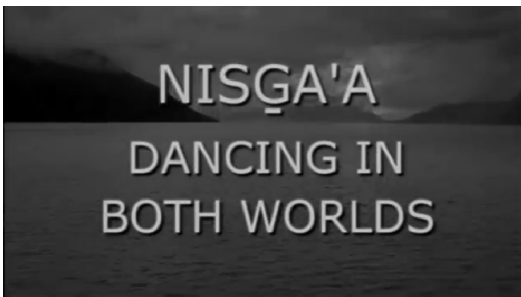
- Most treaties in Canada made with Britain, not Canada; Canada is “successor state”
- Indigenous Peoples: treaties are sacred agreements with international character
- Canada gets into revisionist history; treaties not “real” treaties because
  - IPs not “peoples” within meaning of UN Charter
  - IPs do not constitute “nations”
  - Treaties best considered “domestic” instruments to be adjudicated locally (i.e., in Canadian courts)

## Treaties

- Sharon Venne:
  - Indigenous nations are sovereign
  - The Cree know treaties. Peace, friendship, mutual respect are basic principles
    - How could the Cree give up land?
  - Settlers pitied; welcome to share the land other than in areas reserved for the Cree
  - Revisionist history turns that around; Canada wants end to treaties; Britain says they cannot

## Treaties

- First contemporary treaty by the Nisga'a
- Based on extinguishment
  - Nisga'a rights are now and forever only those outlined in agreement
    - “22. This agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation”



### Pride, apprehension marks 20th anniversary of historic B.C. First Nations treaty

'If the Nisga'a nation can't make it, then modern day treaty making is going to be a failed experiment'

Maryse Zeidler - CBC News - Posted: Nov 03, 2018 9:00 AM PT | Last Updated: November 3

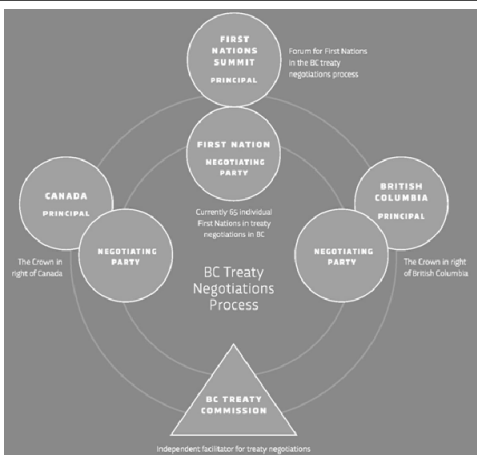


Joseph Gosnell (centre) holds the Nisga'a treaty in 1998, alongside B.C. Premier Glen Clark and Indian Affairs Minister Jane Stewart. (CBC)

## Contemporary Treaties in BC

- Direct action brought about a new treaty process
- Highly contentious on both sides
- New process began in the 1990s
  - "In June 1991, the British Columbia Claims Task Force released its report, setting out a made-in-BC treaty process to "establish a new relationship based on mutual trust, respect, and understanding-through political negotiations". The treaty process was conceived as a constructive alternative to aboriginal rights litigation and confrontation."

## The View From the BCTC



## Contemporary Treaties in BC

- Nisga'a treaty conceived as model to follow
  - Initially based on extinguishment
  - First Nations engaging the process get loans to prepare; they come due when a treaty is finalized or the First Nation withdraws
- UBCIC vs First Nations Summit
- So why are there so few treaties?

## Colonial Groundhog Day

- Alfred and Tomkins
  - distinguish “recognition” from “regeneration”
  - seeking recognition within Canada is a colonial dead end that results in assimilation
  - “sovereignty” a conceptual minefield that plays the colonizer’s game with colonizer’s rules
  - “self-government” a trap; “self-determination” by nations is the key

## Taiiaki Alfred on Nationhood



## Colonial Groundhog Day

- Must avoid language of the colonizer
- The key lies in “being Indigenous” and being true to those principles
- Key elements of Indigeneity are
  - community: with people and the natural world
  - land: something larger than ourselves; listen
  - language: embodies culture, priority, history
- Don’t ask permission; Just do it

## Tsilhqot’in Nation v. BC

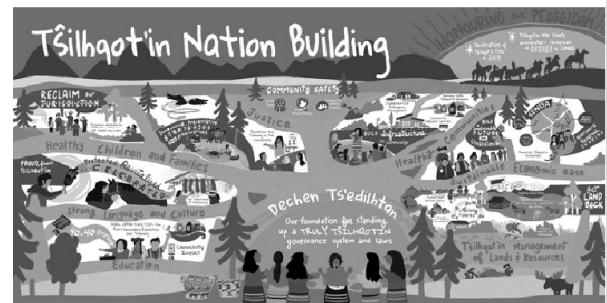
*Supreme Court of Canada Decision  
On Tsilhqot’in Title Case*

1864—Tsilhqot’in/Chilcotin War  
August 23, 1989—Xeni Gwet’in Declaration  
April 16, 1990—Tsaline Case  
May 7, 1992—Henry’s Crossing Road Block  
December 18, 1998—Filing of Xeni Gwet’in Aboriginal Rights & Title Case  
November 18, 2002–April 7, 2007—Xeni Gwet’in/Tsilhqot’in Rights & Title Trial  
November 7, 2015—Case heard at Supreme Court of Canada  
June 26, 2014—Title Declared

## THE 8 PILLARS

 <p><b>Tsilhqot'in Governance</b> • Self-governance for Tsilhqot'in people according to Tsilhqot'in laws, traditions and values</p>	 <p><b>STRONG LANGUAGE &amp; CULTURE</b> • Language is essential to identity and pride of life</p>
 <p><b>Tsilhqot'in Management of Lands &amp; Resources</b> • Tsilhqot'in management of the lands, resources and wildlife, sustainable for future generations</p>	 <p><b>HEALTHY CHILDREN &amp; FAMILIES</b> • Health initiatives can go on better than non-Aboriginal communities • Programs delivered by Tsilhqot'in, based on Tsilhqot'in laws and values</p>
 <p><b>HEALTHY COMMUNITIES</b> • Standard of living on par or better than non-Aboriginal communities • Adequate housing, clean water, roads, infrastructure, etc.</p>	 <p><b>JUSTICE</b> • Education and support for Tsilhqot'in communities • Innovative justice strategies and alternatives</p>
 <p><b>EDUCATION</b> • Funding and resources on par or better than non-Aboriginal schools • Full support services for post-secondary education and training</p>	 <p><b>SUSTAINABLE ECONOMIC BASE</b> • Fairness and equitable economic base to support the above initiatives www.tsilhqot'in.ca Tsilhqot'in National Government</p>

## Gwets'en Nilt'i Pathway Agreement



## Gwets'en Nilt'i Pathway Agreement

The Accord is...	The Accord is NOT...
An Agreement between BC and the Nation to a <b>process</b> of improving the lives and lands of the Tsilhqot'in – a <b>first step</b> to achieving lasting reconciliation for the Tsilhqot'in; An Agreement that protects Tsilhqot'in Title, Rights & cultural values; An Agreement for the entire Tsilhqot'in territory; A way to have more say over what happens on the land and in our communities.	Not a final Agreement or modern treaty; Not an agreement that can take away Tsilhqot'in Title, Rights or ways of life; The "Declared Title Area" is not being negotiated; Not a way for the BC Government to have more control over the Tsilhqot'in.

## Gwets'en Nilt'i Pathway Agreement

<p><b>TNG enact wildlife law for declared title lands</b> The declaration of declared title lands is a key milestone in achieving the Tsilhqot'in goal to have more say over what happens on the land and in our communities.</p> 	<p><b>Premier Horgan Visits Tsilhqot'in Nation for Discussions</b> The Premier of British Columbia, Mr. John Horgan, visited the Tsilhqot'in Nation in 2019.</p> 	<p><b>TNG reasserts mining policy for mineral exploration in Chilcotin</b> The TNG will continue to promote, enhance, protect and maintain the mining in Tsilhqot'in territory.</p> 
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# Tsilhqot'in-Ottawa deal will be new model for relations with First Nations: chief

By GORD MATHIE, Ottawa, Nov. 12, 2016, 7 p.m.

AMY SMITH/WILLIAMS LANE, I.C.

The leader of Canada's first Indigenous group to win title to its territory says an updated agreement with the federal government is part of a new model of relations between Ottawa and First Nations.

Chief Joe Alphonse, tribal council chairman for the Tsilhqot'in National Government, said the agreement is due to be signed by spring and will outline a financial relationship between Canada and the six First Nations that his council represents in British Columbia's central interior.

Mr. Alphonse said previous funding models, which he described as "magnolia," no longer apply now that the Tsilhqot'in title-land claims have been formally recognised by the court.

"We have proven rights and we have proven title and that funding formula is not suited for Tsilhqot'in. Canada had to come up with a new formula. And whatever we develop will be a new standard

for First Nations all across the country, so it's really essential for this government to establish that and show some leadership and demonstrate goodwill," he said.

Mr. Alphonse said negotiations are just beginning and could not put a price tag on the value of the agreement, but said it will be subject to approval by the federal treasury board. The agreement will be the next step in defining the relationship between Canada and the Tsilhqot'in, he said.

The Supreme Court of Canada recognised Indigenous title rights for the first time in Canadian history in the homeland of the Tsilhqot'in people in 2014. It covers more than 1,700 square kilometre of land in the Chilcotin region.

While the Crown historically acceded land from many First Nations across the country by signing treaties, only 14 treaties on Vancouver Island had been signed by the time B.C. joined Confederation in 1871, and Indigenous title to the rest of the province was left unsorted.

The process for negotiating Indigenous land rights was established in 1993 by agreement of the province, the federal government and the First Nations Council. Some First Nations are in the process of negotiating modern-day treaties, but the Tsilhqot'in did not have a treaty when it won the landmark case.

The Tsilhqot'in case illustrates that while the treaty negotiation process has not proven to be a faster route to reconciliation, it was. However, in January 2012, the six chief making up the Tsilhqot'in tribal council signed a memorandum of understanding with the federal government outlining a shared vision for the reconciliation agreement. Priority areas in the agreement include closing the "confidence gap" in education, health and mental health care, housing, infrastructure and access to clean water, establishing new financial relationships based on stable, predictable and flexible funding, and recognizing and implementing Tsilhqot'in govern-

ance and law.

Last week, Prime Minister Justin Trudeau visited the nation's title lands in the Nicola Valley about three hours west of Williams Lake, B.C., to apologise directly to community members for the hangings of six Tsilhqot'in chiefs more than 160 years ago.

"I know this is just a start, there is still a lot more work ahead of us," he told the crowd that gathered for the apology. "Canada is fully committed to recognize the Tsilhqot'in and its right to governance and self-determination. As I have told your chiefs, we are determined to work toward a more comprehensive governance agreement by spring 2017 to support you on your path to self-determination."

During the ceremony, Mr. Trudeau signed a "Pathways Agreement," which Mr. Alphonse said included short-term funding for some housing on the title lands and outlined a commitment to work on longer term funding.

"One of the biggest things in our community right now is the

housing crisis. I have 340 homes in my community and probably about 90 per cent of my people don't have off-reserve, 400 of whom want to come home," Mr. Alphonse said.

Mr. Alphonse said it was important for Mr. Trudeau to drive through the title lands and see the conditions on-site during his visit. The Tsilhqot'in did not fully go to court for title so that it could separate from Canada, he said, but so that it could have a more formal relationship with it that also recognizes the nation's authority.

"The big fear that signing agreement and strengthening relationships with Indigenous people is weakening this country, I think that, that's backward thinking. By developing partnerships with us on a nation-to-nation way we can pursue projects together in the responsible way and actually allow Canada to grow in a way that it's never seen," he said.

THE CANADIAN PRESS