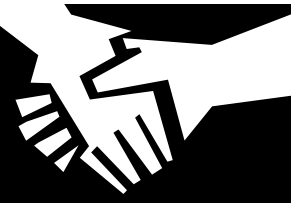


# Nisga'a final agreement

ISSUES & RESPONSES



## *Delgamuukw & Nisga'a Treaty*

### THE ISSUE:

**Some people wonder whether it's prudent for Canada and British Columbia to conclude a Final Agreement with the Nisga'a Tribal Council when there is still confusion over the *Delgamuukw* decision. What if it turns out that the Nisga'a think that *Delgamuukw* has given them more rights than they will get in the Final Agreement, and they decide to open up the Treaty after it's already settled?**

### THE ANSWER:

**The Nisga'a Treaty is an example of the kind of negotiated settlements that the Supreme Court of Canada encouraged in its decision in the *Delgamuukw* case. The three Parties examined the decision before deciding to continue with negotiations. The Parties have agreed that the Treaty is a full and final settlement of the Nisga'a land question.**

**"Let us face it, we are all here to stay."**

THE RT. HON. ANTONIO LAMER  
CHIEF JUSTICE  
SUPREME COURT OF CANADA  
*DELGAMUUKW VS.*  
*THE QUEEN*, DECEMBER 11, 1997

### MORE TO CONSIDER:

**There are amendment provisions in the Final Agreement. Could the Nisga'a Treaty be reopened on the basis of these provisions?**

The amendment provisions will allow the Parties to revise the Treaty, but only for three specific reasons: to reflect decisions and actions specifically permitted by the Final Agreement; to reflect processes specified in the Final Agreement; and to make amendments not covered by the other two categories. An amendment under any of these categories would require the agreement of all three Parties, and in the third case, the approval of the provincial legislature and Parliament would be required.

**Is there any way that the Nisga'a could just "cancel" the deal before it becomes a legally binding Treaty, especially if some Nisga'a people think they could do better by going to the courts?**

All Parties must ratify the Treaty, and if any Party chooses not to ratify the Final Agreement, it will not come into force.

The negotiators for the Nisga'a Tribal Council, B.C., and Canada believe that the Final Agreement represents a fair and responsible agreement that all three Parties mutually arrived at and that it will be ratified.

*more...*



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Before the Final Agreement can become a legally binding Treaty, the Nisga'a and the Governments of B.C. and Canada must each ratify the deal. In the ratification process, some Nisga'a may choose to vote against the Final Agreement, for whatever reason. If more than half of eligible voters vote "No," or if either the B.C. Legislature or Parliament does not ratify the deal, the Final Agreement would not become a Treaty. After the extensive efforts of all three Parties for more than 20 years, this would be a considerable loss, with no guarantee of anything better to replace it.

**"... this litigation has been long and expensive, not only in economic but in human terms as well. By ordering a new trial, I do not necessarily encourage the Parties to proceed to litigation and settle their disputes through the courts."**

THE RT. HON. ANTONIO LAMER  
CHIEF JUSTICE  
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**What about the effect of *Delgamuukw* on other treaty negotiations? Some First Nations have said they are going to court. Why would they take this alternative?**

Canada cannot speak for First Nations that have decided to go to court. But, for its part, the federal government remains fully committed to the treaty negotiation process and feels that the comprehensive nature of treaties, including land, resources, cash and governance, is broader and more inclusive than court decisions on the issue of Aboriginal title.

In his concluding statements in *Delgamuukw*, Chief Justice Antonio Lamer emphasized the importance of negotiation over litigation. Canada agrees that this is the right approach to take. Unlike adversarial courtroom battles, negotiation can produce win-win solutions and provide an effective forum where a broad range of issues can be dealt with in depth.

**Is the B.C. treaty process still a good investment of time and money if some First Nations are going to court?**

Yes. Court decisions are generally narrow, site- and group-specific, and cover the facts of a situation.

In cases where a First Nation has decided to go to court, the federal government reserves the right to consider whether it is in Canada's best interests to continue to negotiate treaty issues with that First Nation. Such decisions are made on a case-by-case basis, with a view to ensuring fairness and consistency in the decision-making process.

**"What we are facing in the current treaty negotiations runs far deeper and is far more complex than the simple legalities of land ownership and self-government. We must all find a way to live together and to share, in an equal and fair manner, the resources of this province... If we are serious, then nothing will stand in our way, and we will all be richer for it, by every measure of wealth we may apply."**

B.C. M.L.A. GORDON WILSON

**Find more information on the Nisga'a Final Agreement at [www.inac.gc.ca](http://www.inac.gc.ca), or contact:**

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