

RESPONSE OF THE FEDERAL GOVERNMENT TO  
THE POSITION PAPER OF THE NISHGA TRIBAL  
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On April 27, 1976 the Nishga Tribal Council presented to the B.C. and Federal negotiating teams a position paper on the claim of the Nishga people. During the following six months, several clarification meetings were held and it was understood in October, 1976, that the two Governments would make a joint formal response. This response has been prepared by the Federal Government on its own behalf without being able to engage in discussions on any of the substantive issues with the Government of British Columbia. It reflects only the Federal view of the claim and the direction negotiations might take and is presented at this time on the understanding that the Government of British Columbia, to whom the claim was also submitted, will be tabling its own response separately.

The Federal response is being made in the same spirit in which the initial position of the Nishga Tribal Council was set forth. In the Council's words, the position paper was "not meant to be a definitive last statement". Rather, its purpose was to indicate a number of areas of Nishga concern and, in doing so, it set forth the important premises on which the Nishga claim rests. The Federal response presents broad

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objectives for a settlement without precluding the possibility of variation or modification. A number of possible elements of agreement are included without suggesting that others may not exist, or exist in some other form.

The Federal response is based on the statement of the Government's policy on comprehensive land claims issued by the Minister of Indian Affairs and Northern Development on August 8, 1973. The statement expressed the willingness of the Federal Government to deal with claims related to the loss of traditional use and occupancy of lands where native title has never been extinguished by treaty or superseded by law. The statement also made clear that where claims involve lands and resources falling under provincial jurisdiction, the participation of the province concerned is essential for a final agreement to be reached. Finally, the statement specified as an important objective that settlements should contribute to a lasting solution of the cultural, social and economic needs and problems of Canada's native peoples.

In the Nishga Declaration and the Council's position paper, the Nishgas show a particular concern for the lands they have inhabited and used since time immemorial. There is also a special emphasis on the protection of the Nishga culture and on the preservation of a unique identity linked to language, tradition and geography. In addition, the Nishgas want

continued access to the resources of their areas required for their economic well-being in order "to become full participants contributing in a positive way to the well-being of the Nass Valley in particular and the country in general". To this end the Nishgas contemplate participation in joint economic development ventures with government and private enterprise. Local government, protection of the environment, improved community services, education, health care, monetary compensation and taxation are other matters of concern which the Nishgas wish to pursue in negotiations.

The Federal Government is in agreement with the broad social, economic and cultural objectives stated in the Council's position paper. The Federal Government recognizes as well the unique cultural contribution the Nishga people have made to Canadian society. It is committed to participate in the protection and preservation of the Nishga culture. The Federal Government also shares the commitment of the Nishga people to becoming full participants in the life of the country and in the social, economic and political development of the Nass River region. It wishes to explore with the Council and with the Province the means by which the Nishgas can participate to their greater advantage in the development of the Nass region. It favours a form of local government with greater responsibility for the conduct of their own affairs by the Nishga people.

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As the basis upon which negotiations might now proceed, the Federal Government proposes the following broad objectives for the settlement of the Nishga claim:

1. The settlement should further encourage and promote the participation of the Nishgas in all aspects of Canadian society, assure them of the protection and furtherance of the Nishga language and other attributes of the Nishga culture, and acknowledge them as descendants of the country's first inhabitants.
2. The settlement should provide to the Nishga people the means of achieving their reasonable and rightful aspirations for economic, social and political development.
3. The settlement should acknowledge the historical occupancy of land and use of resources by the Nishga people and the cultural significance to them of the land and its resources, and attempt to secure for them interests in land areas and natural resources to be agreed upon.
4. The settlement should be confirmed by Parliament and should constitute a full and final settlement of all Nishga claims, present, past and future, based on traditional use and occupancy of land.

Within these general objectives, the following subjects would appear to be useful areas for detailed discussion and negotiation:

1. Protection and Furtherance of the Nishga Culture

Explored here would be various means to ensure the proper protection and furtherance of the Nishgas' right to maintain their age-old customs and their expression of a rich culture. The three parties might also consider the establishment of programs to support the continuance of the Nishga arts and the preservation of their cultural artifacts. Steps to further the use and retention of the Nishga language is also a subject of major importance.

2. Protection of the Environment

Safeguarding the quality of the environment is essential to the life-style of the Nishgas and, indeed, is important for all Canadians. Ways in which this protection can be provided should be explored, including the establishment of an effective Nishga voice in decisions affecting the environment of the Nass River valley.

3. Economic and Social Development

The Nishga Tribal Council has placed heavy emphasis on economic and social development and this is expected to be a major topic of discussion. Adequate access to land and use of natural resources for both traditional and contemporary purposes will be an important aspect of that discussion. Associated with such access will be the question of hunting, fishing and trapping rights within the context of

all three parties must be thoroughly explored. Specific attention will have to be paid to the question of the application of local property taxes, and of tax exemptions on the benefits to be granted in the agreement.

6. Eligibility

Among points on this subject to be negotiated are eligibility criteria, the status of non-band members under the agreement, and enumeration and appeal procedures.

The Nishgas assert certain rights over land and resources by virtue of their claim of use and occupancy since time immemorial. These rights asserted by the Nishgas are the manifestation of the historical interests which they claim in the land. As an expression of a unique cultural and historical link with the land, the assertion of aboriginal rights is entirely understandable. It is a statement of the Nishga historical perspective and experience not to be ignored. This view of the Nishga historical and cultural interests is understood and appreciated.

Government policy, set forth in the 1973 statement on claims and subsequent ministerial statements, is to engage in negotiations which will bring about the settlement of claims in respect of long-standing grievances coming from groups of native people who have not entered into treaty relationships with the Crown. Such claims find their basis in what is



variously described as "native title", "aboriginal title", "original title", "Indian title" or "usufructuary rights", and relate to the loss of traditional use and occupancy of lands by native people. These terms and the nature of these interests have not been definitively expressed in law. Some native groups have stated that, in order to satisfy these claims, they seek confirmation of the native interest in such a manner as to give them outright and exclusive control over the lands and resources in the entire area of traditional use. The Federal Government, however, while agreeing to negotiate with many claimants and recognizing their desire to share in the development and benefits of the areas in which they live, has made it clear that there is no question about the overriding sovereignty of the Crown in all areas of Canada, and that native land claims settlements must take into account the interest of all residents in the area concerned as well as the interests of Canadians as a whole.

The settlement of the claim requires that an acceptable balance be reached between the interests of the Nishga people and the interests of the public at large. Social and political realities cannot be ignored in seeking a settlement. At the same time, the settlement cannot ignore the increasingly intensive utilization of land and natural resources that has developed in the Nass region. The development of a more intensive land and primary resource economy in Canada since

the colonial period has been and remains the foundation of Canada's prosperity. Many Indian and other native groups have for various reasons shared inadequately in the growth of the nation's prosperity, and overcoming the social and economic inequities of these communities is therefore a major objective of Federal policy on comprehensive land claims. The economic development of natural resources in the Nass region has fortunately been, in relative terms, much more beneficial to the Nishga people than is generally the case, due, in no small measure, to their determination to respond to changing circumstances in a manner consistent with their self-interest.

The Federal Government believes that the traditional use and occupancy of lands and resources justifies for the native people concerned a greater share of the benefits than they now derive from those lands and resources. It is therefore prepared to negotiate specific benefits for the Nishga people because of their traditional use of lands and resources in the Nass Valley, and to have such benefits confirmed in the settlement and implementing legislation.

The settlement of the Nishga claim will for all time proudly reflect its fundamental basis - the ancient presence of Nishga people on their traditional lands. At the same time, the claim now made must be completely and wholly satisfied by the settlement, and the right ever again to raise any sort of claim based on traditional use and occupancy of the land



will be for all time discharged and satisfied as between the Nishga people and the Crown. The historic place of the Nishgas on traditional lands in the Nass Valley will be enshrined as the foundation of the settlement and will stand confirmed by the Canadian people in the implementing legislation.

The federal Government believes that the further development of a framework for negotiations will enhance and expedite the attainment of a comprehensive settlement of the Nishga claim. It is suggested that, in the next tripartite meeting, all the parties should commit themselves to a general schedule for further negotiations which would include the exploration and development of the main elements of agreement, followed by a step-by-step adoption of principles in respect of each element, and the adoption of a target date for an agreement. The needs of the general public and of other specific parties with interests affected by these negotiations, to be informed and to offer their input through consultation, must also be the subject of early consideration and agreement among the parties.

The preliminary tripartite negotiations held in 1976 indicate that there already exists among the parties a substantial unanimity of interests on fundamental social and economic goals. Such accord on social objectives needs to be nurtured by all of the parties in a common effort to overcome

any differences in the assumptions underlying the claim and the negotiations. For a just and lasting resolution to be reached, it is necessary to concentrate on the common interests of the parties rather than any differences of view on the philosophical and legal foundations of the claim.

In order for a settlement of the historic claim of the Nishga people to be achieved, the Federal Government holds strongly to the view that a commitment now is necessary by all the parties to intensive and sustained negotiations in a concerted search for pragmatic grounds and areas of agreement.

Department of Indian and Northern Affairs,  
January, 1978