
IMPLEMENTING DELGAMUUK'W

Biography of Don Ryan

Don Ryan was Chief Negotiator of the Gitksan Treaty Office.

Good morning. If you hear me sniffing and wiping my nose, it isn't because I am crying because the Crown won't recognize our title, but because I have got a cold.

It's a pleasure to be here and I wanted to begin by thanking the Union of B.C. Indian Chiefs for their support throughout the whole exercise of taking Delgamuuk'w to the Supreme Court of Canada. Without the Union's involvement, without your participation and your support, we wouldn't have gotten as far as we did. So I thank you for your continued support.

It's very important at this time for everyone to take the initiative and control the agenda for yourselves, and to work with each other to make it much easier for us to implement what we are doing in the court. The centerpiece for the Delgamuuk'w decision and the whole style of how the case was put together is very important for people to understand.

The Gitksan brought forward the case to deal with Gitksan title and to deal with Wet'suwet'en title. That's important for people to start off with that. Aboriginal title is just a generic term that is supplied to all the respective titles that have been developed across this continent over thousands of years. So the case dealt with Gitksan title and Wet'suwet'en title. We also used Gitksan law, Wet'suwet'en law; we used Gitksan oral histories and Wet'suwet'en oral histories. We did a lot of work on mapping the traditional territories. That was put in as evidence. The work that we did on genealogies was very important; that takes a lot of energy and time to do that. We wanted to demonstrate to the court the laws of our people, and you saw how the court dealt with that. I think it is very significant for people to grasp that, because that will determine the type of research that you will do and it will determine the arguments that you will make if you decide to go to court or you get involved in the reconciliation process. So it is very important for people to understand that. And you look at the decision from the Supreme Court of Canada, you will see that the Gitksan law and the Wet'suwet'en law were given equal status to the colonial laws, imperial laws, common law, constitutional law and so forth, and that's the key to what we are doing today. The Gitksan are looking at how you take that decision and how you reconcile that with the Crown's interest on our territories.

So we proposed, shortly after the decision came down from the Supreme Court of Canada, that the first step was to do a bilateral process of reconciliation. The reconciliation process in the first step would be to take the Gitksan title, the laws of the Gitksan and so forth, and reconcile that with Section 91 -- the powers of the federal government in the Constitution -- and Section 92 of the provincial powers. When I first started putting that proposal forward, the response from the Crown was that there will be no other process in British Columbia except the treaty process as designed with the [British Columbia] Treaty Commission. That didn't stop us, because we think that the dual bilateral process is the first step. It is critical and it has to be done. So we were able to convince the province to enter into a reconciliation agreement. It certainly, when you look at the agreement, isn't what we envisioned as Gitksan people because the province is pretty timid about recognizing the title and the rights of our people. So we were prepared to give them comfort all the time.

One of the things that I learned in the negotiations was not to die on the hill over a framework agreement, because it is just a piece of paper. What's important is our process that you put together and how you control that process. The framework agreement is just something that you can refer to. But in the reconciliation process in B.C., what we're going to do is look at the legislative arrangements that the province has on our territory. So you drape that legislative framework over your territories and you can see exactly how those pieces of legislation interact with each other and how they are supposed to interact with your title and your laws. That's important, for people to understand that. You do the same thing with the federal side, Section 91, because you will see, when you are dealing with the provincial powers on your territory, you will see that there is an interfacing that takes place between Section 91 and Section 92 of the Constitution, so it's important for us to look at that in detail.

So you are going to have to identify all the statutory decision-makers. And by the way, I am describing this process so that you can deal with the issue of consultation at the same time, the consultation requirements that the Crown have to do in terms of dealing with you. This process meets that requirement, at the same time reconciling the laws and seeing where you can take the agreements. So the statutory decision-makers have to be identified on your territories. Those are the people who make a determination on the infringement of your rights, so you have to know who those statutory decision-makers are. So you could develop a matrix on all of those individuals, you could actually name them, you could picture them, you could actually have a picture of that individual who makes that decision on your territory. That matrix can be put together. You could develop the decision-making tree for your tribe, so when you are dealing with forests you could see all the things that you have to do to deal with the reconciliation process and the consultation process. You could take the environmental assessment process and you can do the same thing; mining, same thing; water, Municipal Act, all of those pieces of legislation that have some bearing on your territory. So this reconciliation process that we put together is a practical one, it is a simple one, in that it could apply right across the country. The reconciliation process, as I said, takes many years to do.

This proposal that we put forward is a very technical one. You have to have the research background and all the of the materials -- the databases that help you in reacting to that whole process, the mapping, the technical information like GIS [Geographic Information System] and GPS [Global Positioning System] -- those things all have to be a part of this whole process. So we are going to systematically deal with that. One of the things that is emerging from the table with the province, and we have got two working groups -- you have to remember that when you are interacting with the Crown, that it's on the dirt side of things and on the people side of things -- so we have got two working groups dealing with these two topics, and what has emerged from the discussions on the dirt side of things is that there will be an overarching agreement with the Crown because of how the different ministries interact with each other based on the legislative framework that I was talking about. So you see the same thing applies to people, the interaction you have between yourselves and B.C. on health and education, child welfare, family services, income support and so forth. All of those legislative initiatives have to be dealt with in terms of the reconciliation process. So in that model you deal with the operational side of things from all of the ministries. At the same time, you're dealing with them at the strategic planning level. The depth of the strategic planning level is quite deep and people have to be ready to do that. So you could see operational type of interaction, strategic planning interaction and then you start to deal with the deputy minister's committee. That's another group that you have to interact with. They make a lot of decisions on infringing on your rights on a day-to-day basis, so you have to track that committee. They have got one in Victoria and they have one active in Ottawa. Then you are encountering the Cabinet. You have to interact with the Cabinet because they make lots of decisions on your territory as well. Then you start to deal with the legislative agenda of the province and of Canada, so you have to interact with them on that level.

So it is important for people to see how much work there is in this whole process of reconciliation and seeing how you could make some changes. Just to point out one of the issues that really comes to mind, you will cover the policy from B.C. on aboriginal rights and you will see that in that policy document they don't want to talk about title because they're afraid that people will be really concerned about losing their property. So they won't talk about title, but they'll talk about the rights. That policy was developed without any input from any of us and that's part of the problem that I see. You have to be prepared to take the work to that level so that you could interact with policy-makers and the people who are advising the Cabinet and the legislature. So we are going to have to work on all of those levels and really press the agenda in terms of title and the laws of our people. So we are going to have to work through that whole reconciliation process. You are going to see changes in terms of how the government interacts with you as you go through that whole exercise. You are going to deal with some really important issues, particularly in the areas of compensation, the issue of revenue sharing and so forth. This process will set the agenda for that. So on the provincial side we are seeing how that can proceed. We will give them a few years to see how they react to this process. So on the federal side, the federal government has been reluctant to get involved on a bilateral basis. They prefer to send us through the treaty process and we're not interested in doing this at this point in time. The Gitksan certainly are not prepared to go to the treaty process the way it's designed, and let me point out some of the reasons why.

If you look at the way the court dealt with our case -- the Supreme Court of Canada -- you will see that Section 35 and all of us that were involved in that whole exercise in getting Section 35 in the Constitution, you remember at that time that we all assumed that Section 35 was a full box. If you hear this reference about "the full box" and "the empty box," that really tells how old you are and the issues of politics here. So I won't tell you how old I am, but I have been around for a while, particularly around Section 35. So our position was that Section 35 was full and the Delgamuuk'w case certainly gave us some hope in terms of how the courts were viewing Section 35. In the treaty process, it's a simple process as well. All you are doing is emptying Section 35 and putting them into Section 25. So it's a modern day agreement. It is a land and resources agreement, and sometimes governance will be included in Section 25. I remember sitting in the technical room in the constitutional talks when we were dealing with Section 25 and that certainly wasn't what I saw that clause to be. I saw that clause to be to try to protect the interest of the different tribes that have ready-made agreements in the country before Section 35 was put in the Constitution in 1982. But the way it is set out now, is that they are using that as a way to empty out Section 25. And if you don't believe me you just have to take a look at some of the things they are doing in the province right now in terms of the current agreements that are being debated. So it's pretty straight forward. So if you are prepared to do that, if you are prepared to do that exercise, that's up to you. But I wouldn't recommend that you do that. That's a personal opinion from me. The other thing is that, if you are interested in the land selection model, then you can do the same thing: you could go to B.C.T.C. [British Columbia Treaty Commission] and see if you could change that if you wanted to, if you wanted to put some energy to the negotiations. But the current state of affairs in the province in terms of the B.C.T.C., there is only a preferred model and that's the land selection model and they want concessions from you, they want you to cede and surrender your title. And they'll use any type of term. They used to use extinguishment and people didn't want to do that, and now they've talked about certainty and they'll use other kinds of other different things in the negotiations to get you to concede and surrender your title.

So I think the whole process, then, is to take the Delgamuuk'w decision -- and the decision certainly gave us an option to justify what I just talked about, the land selection model and the cede-and-surrender process -- recognizing fully your title and your own laws. How do you go about doing that reconciliation process? I don't have the answers to that, but one of the things that I put forward over the years to our people is that you have sovereignty. People don't want to talk about it, the Crown certainly doesn't want to talk about it, the courts are certainly nervous when you talk about sovereignty, but you do have sovereignty. And if you do have sovereignty and you believe in that -- and I see that as the exercise that I am interested in working with other people in the province and other parts of the country -- is to take that and implement it. It has to be driven by us. So in the Gitksan side of things we are fortunate enough to have our house system still in place. We are fortunate enough to have the hereditary chiefs in place in order to carry that through. I think that's one of the things that gives us hope and we'll use that process in dealing with the reconciliation process, so all the house groups have to be at a certain stage and a certain level so they can do that. So that's been the priority since the decision from the Supreme Court of Canada, was to get that capacity in place so the house groups can do that. We have now divided the whole Gitksan territory into nine tables by watershed groups and the watershed groups have so many number of houses inside that watershed. They have to work together. They've been doing a lot of work in the last few months in putting together strategic plans on where they want to take their interests. I find it very encouraging to see that because of the discussion coming at that level, because that is the real agenda.

I'm only sent out by the Gitksan to entertain the Crown and I do that very well, in terms of the negotiations, because I have learned many things along the way in terms of the Delgamuuk'w case. You don't really need the lawyers, you don't need the anthros [anthropologists], you don't need the legal expertise because you can learn a lot of that on your own in the process. I can take on all of the teams that they throw at us. I could run several different tables and put the heat on the province, but I can't run what happens on a day-to-day basis on the territory because it's too big. So we really have to mobilize our people on the territories and in our communities to make this happen. It can't be done by the national offices of the tribes. I'm telling you this. Don't look to the Union of B.C. Indian Chiefs, they are not going to do it. Don't look to the Summit, because they are not going to do it. Don't look to the B.C. Aboriginal Fisheries Commission, they're not going to do it. Don't look to the AFN [Assembly of First Nations], they're not going to do it. It has to come from the communities. In our case, the Gitksan case, it's the house groups that will drive that agenda for

implementation. That's where it's going to come from and that's where it's going to make a difference. So the national office, as I see it, only gives you the tools. And that's what I have been able to do as a negotiator, is to give the tools to the people so that they can drive the agenda themselves.

So I will close by saying that I am very optimistic about the implementation process designed in the reconciliation process. Like I say, you could work that whole process out, you could design that, but in the end if you don't drive it nothing is going to come out of the decision, nothing is going to come out of the negotiations that you undertake. It has to come from the communities and you have to do a lot of organizing at that level.

So again I want to say thank you very much for your support. I wish you well in all of the work that you are doing. There are lots of things that we are doing and people are interested in seeing what we are doing. Come up and see the work that is happening in our area -- gives you first hand knowledge on what we're doing. We are prepared to interact with you. There are lots of different things that we have designed that we'll share with you at no cost. But in some cases we will give you a bill and you have to donate some money to us for some of the legal costs that we have. But I want to thank you again for listening to me this morning and thanks to the Union for organizing this and good luck. Thank you.