

**UNION OF B.C. INDIAN CHIEFS
PLAIN LANGUAGE GUIDE TO THE NISGA'A AGREEMENT**

<u>Table of Contents:</u>	<u>Page:</u>
Preamble	1
Lands	2
Expropriation of Nisga'a Lands	3
Mineral Rights	
Submerged Lands	
Commercial Recreation Tenure	4
Heritage Sites	
Parks/Ecological Reserve	
Water	
Nisga'a Hydro Power Reservation	
Land Title	4
Access	4
Crown Access to Nisga'a Lands	
Roads and Rights of Way	5
Nisga'a Highway	6
Secondary Roads	
Nisga'a Roads	
Forest Resources	6
Timber Harvest on Nisga'a Lands	7
Forest Fires and Forest Health	
Forest Tenures	8
Natural Resources: Fisheries, Wildlife & Migratory Birds	8
Conservation	9
Fisheries	10
Nisga'a Fish Allocation	
Commercial Fishery	
Processing Facilities	
Wildlife and Migratory Birds	11
Designated Species Allocation	
Trapping	
Guiding	
Migratory Birds	
Environmental Assessment and Protection	12
Nisga'a Government	12
Nisga'a Constitution	
Relations with non-Nisga'a	13
Legislative Jurisdiction and Authority	
Penalties	
Seizure of Assets	14
Administration of Justice	14
Police Force	
Community Corrections Services	

Nisga'a Court	
Indian Act Transition	15
Capital Transfer and Negotiation Loan Repayment	15
Fiscal Relations	16
Fiscal Financing Arrangements	
Own Source Revenue Agreements	17
Taxation	17
Cultural Artifacts and Heritage	18
Dispute Resolution	19
Eligibility and Enrollment	19
Ratification	20

PLAIN LANGUAGE GUIDE TO THE NISGA'A AGREEMENT

Preamble:

The Preamble sets out the intentions of the parties in entering into the Agreement. In short, all aboriginal title or rights of the Nisga'a are as set out and defined in the Agreement. Rather than the outright extinguishment which has been required in past treaties, the same ends are accomplished through a changing of Nisga'a aboriginal title and rights into the rights set out in the Agreement-contract.

Nisga'a through this Agreement agree to recognize crown sovereignty, while Canada and B.C. agree to allow for a limited recognition of Nisga'a rights as set forth in Agreement. The intent of the parties is to achieve "certainty" with respect to the Nisga'a exercise of their rights this is done through defining those rights and setting forth how they will be practiced, and what federal and provincial laws will apply to the practice of those rights.

The Agreement is intended to be the "just and equitable settlement of the land question" which reconciles the prior presence (not aboriginal title or rights) of the Nisga'a with Crown sovereignty.

General Provisions:

The Agreement contains clauses which

- convert and reduce all existing aboriginal title or rights of the Nisga'a into those contained within the Agreement;
- ensure that the Agreement will be the "full and final settlement" of all of the Nisga'a aboriginal title or rights;
- release all rights of the Nisga'a not listed in the Agreement to Canada; and
- exhaustively set forth all the Section 35 rights of the Nisga'a, including the manner of their exercise, and all limitations to those rights to which the Parties have agreed.

Nisga'a promises that it has the right to enter into the Agreement on behalf of all Nisga'a with any aboriginal title or rights based on their Nisga'a identity:

The Nisga'a Nation represents and warrants to Canada and British Columbia that, in respect of the matters dealt with in this Agreement, it has the authority to enter, and it enters, into this Agreement on behalf of all persons who have any aboriginal rights, including aboriginal title, in Canada, or any claims to those rights, based on their identify as Nisga'a.

Canada and B.C. Promise that they have authority to deal with the matters in the Agreement "within their respective authorities." B.C. and Canada do not promise that they have authority on behalf of all Canadians and/or British Columbians.

Nisga'a have the right to practice their culture and use their language "in a manner consistent with this Agreement."

The Agreement does not alter federal or provincial division of powers. The Canadian Charter of Rights and Freedoms applies to the Nisga'a government.

Nisga'a will indemnify Canada and B.C. against any action regarding the prior infringement or abrogation of aboriginal title or rights or any actions based on aboriginal title or rights that are not included in the Agreement.

The Agreement will not affect the rights of other Aboriginal Peoples. If an Aboriginal People can show, in court, that their rights are adversely affected by this Agreement the Agreement will operate to the extent that it does not impact those other rights. The Parties will try to amend the Agreement where provisions are made invalid because they affect the rights of other Aboriginal Peoples.

Generally speaking, federal and provincial laws will prevail over those passed by the Nisga'a governments unless the Agreement provides otherwise.

LANDS

The Agreement effectively extinguishes all Aboriginal Title of the Nisga'a Nation to the entirety of their traditional territory, and converts Nisga'a Aboriginal title to "fee simple" title to a parcel of 1,930 square kilometres (plus, several smaller pieces of land equaling approximately 62 square kilometres) equaling approximately 8% of the Nisga'a original traditional territory. Underlying Provincial Crown title is recognized over 100% of the area which was formerly Nisga'a's traditional title lands.

Nisga'a can purchase areas of former Nisga'a traditional title lands which are not included in the Agreement. Any additional lands purchased by the Nisga'a will be subject to the conditions that a non-Nisga'a would be bound by (for example, existing permits or licences). Nisga'a Nation can sell its Lands without the consent of Canada or B.C. Certain categories of Nisga'a Lands cannot be seized by creditors in payment of debts owed by the Nisga'a Nation, as long as the Nisga'a Nation or Village Government do not grant an interest in the land (for example, a mortgage).

Nisga'a agree that existing third party interests on Nisga'a Lands will continue, uninterrupted. These include privately owned fee simple lands, forest tenures, and public utility and road rights of way.

Nisga'a governments can designate Nisga'a Lands as either "Public" or "Private" Lands. Private lands will be smaller, and will include those parcels of land which are being used for industrial purposes (i.e., forestry) or for purposes of the Nisga'a which are not consistent with public access.

Expropriation of Nisga'a Land and Nisga'a Fee Simple Lands:

B.C. and Canada reserve the right to expropriate Nisga'a Lands for public purposes, as long as the interest expropriated is:

- for the smallest amount and interest necessary,
- for the shortest time required for the public purpose, and
- has the consent of the Lieutenant Governor in Council for B.C. or Governor in Council for Canada

B.C. maintains a very broad power of expropriation, but Canada agrees that, "as a general principle, estates or interests in Nisga'a Lands, or Nisga'a Fee Simple Lands, will not be expropriated under federal legislation," in order to maintain the integrity of the Nisga'a Land base.

Mineral Rights:

Nisga'a Government retains all mineral rights contained within the 8% parcel of Nisga'a settlement Lands. B.C. owns all of the mineral rights within the rest of the Nisga'a's former traditional territory.

Submerged Lands:

B.C. owns all submerged lands within Nisga'a Lands, except for the former Indian Reserves.

Commercial Recreation Tenure:

B.C. will issue a "Nisga'a commercial recreation tenure" for 27 years. B.C. will not issue other commercial recreation tenures in the Nisga'a commercial tenure area, for seven years.

Heritage Sites:

The Agreement sets out sites that B.C. will designate as heritage sites under provincial law B.C. will register Nisga'a names for those sites. Nisga'a can apply to B.C. to have other sites given Nisga'a names.

Parks/Ecological Reserve:

The Nisga'a Memorial Lava Bed Park and Gingetti Ecological Reserve will remain under provincial ownership and authority. Nisga'a citizens will "have the right to traditional uses of the lands and resources" within these areas, subject to the Agreement and any management plans agreed to by B.C. A Joint Park Management Committee of six people (3 from Nisga'a, 3 from B.C.) will make recommendations regarding the management of the Park. B.C. will not permit commercial harvesting in these areas, unless the Nisga'a agree.

Water:

The provincial water laws will apply to Nisga'a Lands. B.C. owns all water within Nisga'a settlement Lands. B.C. will reserve to Nisga'a a water allotment of 300,000 cubic decametres for domestic, industrial and agricultural purposes. All existing senior water licences (issued prior to March 22, 1996) must be filled before the Nisga'a will be allowed to take from their water allocation. Nisga'a must apply for licences from B.C. in order to make use of the Nisga'a water reservation.

Nisga'a Hydro Power Reservation:

B.C. will establish a Hydro Power Reservation in favour of the Nisga'a for a 20 year period over all streams (not including the Nass) which are wholly or partially within Nisga'a Lands. Nisga'a can propose a hydro project, which B.C. will grant if it conforms with federal and provincial laws.

LAND TITLE

The Nisga'a can apply to have the Provincial Torrens System apply to parcels of Nisga'a Lands to register indefeasible title under the *Land Title Act*. A provincial certificate of indefeasible title will list all conditions and restrictions on the land in favour of Nisga'a or another person, and all charges against the land for a debt owed to the Nisga'a Nation or Nisga'a Village.

Where a Nisga'a or non-Nisga'a person is deprived of an interest in Land because their interest was not recorded when the land came into the provincial registry, they will have no legal means of recovering their land, or of receiving monetary compensation for its loss, aside from where they can show fraud or bad faith.

No title or interest in the land which is contrary to the title registered in the provincial system is valid. Even where another person has been in possession, and has lived on and occupied the land for a long time, this person will have no rights to the land (and no right to sue or bring legal actions) once the land is registered in the provincial registry in another person's name.

ACCESS

Canada and B.C. have a broad right to access Nisga'a Lands. Nisga'a will allow public access to Nisga'a Public Lands for "temporary non-commercial and recreational uses" and will also provide reasonable opportunities for the public to fish and hunt. Nisga'a Government can make laws regulating public access, and charge permit or licencing fees for hunting and fishing on Nisga'a Lands.

Crown Access to Nisga'a Lands:

Canada and B.C. are guaranteed a right of access to "enter, cross, and stay temporarily on Nisga'a Lands to deliver and manage programs and services, to carry out inspections under law, to enforce laws, to carry out the terms of this Agreement, and to respond to emergencies." Access is subject to Nisga'a laws so long as Nisga'a laws do not interfere. Similar access provisions are included which gives Nisga'a the right to enter non-Nisga'a Lands, but Nisga'a may have to pay any applicable fees or compensation for this access, and must abide by federal and provincial laws.

Canada and the Minister of National Defence have full authority to carry out activities related to national defence and security on Nisga'a Lands, in accordance with federal laws of general application.

ROADS AND RIGHTS OF WAY

B.C. is entitled to a total rights of way area of 800 hectares of Nisga'a Lands. Nisga'a will grant to B.C., or public utilities (including BC Hydro and BC Tel) rights of way on Nisga'a Lands for public purposes, provided that the request is reasonable, in terms of the area requested, the impact it has on surrounding lands and compensation is offered.

The users of the rights of way will follow Nisga'a laws provided that these laws do not interfere with the purposes for which the right of way was granted, or impose more stringent standards than federal or provincial laws.

Nisga'a Highway:

B.C. maintains its ownership, jurisdiction and control of the main highway corridor going through Nisga'a Lands. The Nisga'a Highway is in addition to B.C.'s total rights of way area.

Secondary Roads:

Nisga'a will grant B.C. rights of way for all secondary provincial roads, the "full, free and uninterrupted right, liberty and rights of way, in perpetuity, for the purposes of using, constructing, re-constructing, repairing, improving, upgrading, and maintaining..." roads open to the public, industrial and resource users.

B.C. will consult with Nisga'a concerning traffic regulation on the Highway and secondary roads. B.C. has the right to set limits on the height and location of buildings on Nisga'a Lands which are adjacent to the Nisga'a Highway or secondary roads for public safety.

Nisga'a Roads:

Nisga'a have control over all other roads within Nisga'a Lands (these are essentially the roads within or servicing existing reserve lands) subject to the Agreement. Nisga'a can close Nisga'a Roads to the public, unless those roads are within Nisga'a Village lands in which case they will be open to the public on a similar basis as roads in B.C. municipalities. Nisga'a can close any of its roads for safety reasons.

FOREST RESOURCES

Nisga'a Nation will own all forest resources upon Nisga'a Lands. However, existing forest tenures on Nisga'a Lands will continue for five years, subject to provincial laws. Nisga'a access to and use of the forestry resource will be phased in over five-years.

The Nisga'a may make laws regarding the harvest of timber, subject to meeting provincial forest standards, but have very little control over the manufacture or sale of timber. B.C. laws regarding timber scaling and timber marks will apply to timber harvested on Nisga'a lands.

For the first nine years, the Agreement sets out the maximum amounts of timber that can be harvested on Nisga'a Lands which includes a guaranteed harvest to third parties for the first five years (timber harvested from former Indian Reserves is excluded from these limits).

Timber Harvest on Nisga'a Lands for the First Nine Years of the Agreement:

Total Timber Harvest on Nisga'a Lands	Harvest by Existing Licensees on Nisga'a Lands, authorized by B.C.	Harvest allowed to be authorized by Nisga'a
Yr 1: 165,000m ³	155,000m ³	10,000 m ³
Yr 2: 165,000m ³	155,000m ³	10,000 m ³
Yr 3: 165,000m ³	155,000m ³	10,000 m ³
Yr 4: 165,000m ³	135,000m ³	30,000 m ³
Yr 5: 165,000m ³	125,000m ³	40,000 m ³
Total harvest amounts are limited for the first nine years of the agreement, as follows:		Nisga'a <i>must authorize</i> the following cut volumes:
Yr 6: 135,000 m ³		135,000 m ³
Yr 7: 135,000 m ³		135,000 m ³
Yr 8: 135,000 m ³		135,000 m ³
Yr 9: 130,000 m ³		130,000 m ³

For the first five years, a Forest Transition Committee, comprised of one member from Nisga'a and B.C., will manage the forests on Nisga'a Lands.

Forest Fires and Forest Health:

On Nisga'a Lands, B.C. will retain its responsibility for fighting fires. After five years, Nisga'a will pay B.C.'s costs in most circumstances. Nisga'a will fight fires on Nisga'a Village Lands and Nisga'a Private Lands.

Nisga'a Nation is responsible for forest health on Nisga'a Lands. If B.C. feels there is a forest health problem which threatens forests on non-Nisga'a Lands, B.C. can enter onto Nisga'a Lands and address the problem themselves. Nisga'a will reimburse B.C.'s costs. If B.C. is aware of a forest health problem on Crown lands that threatens forests on Nisga'a Lands they will attempt to address the problem and compensate Nisga'a for any damage to Nisga'a forest resources.

The Agreement protects the existing B.C. forest industry. Nisga'a agree to not establish a timber harvesting facility (aside from for their own use, or for value-

added manufacturing) for a ten year period, unless as a joint venture with an existing timber manufacturing facility. Nisga'a promise to make timber harvested on Nisga'a lands "reasonably available" to local mills.

Forest Tenures:

B.C. agrees, in principle, to grant Nisga'a Nation a forest tenure for an annual cut of up to 150,000m³, harvested according to federal and provincial laws. Nisga'a will pay all applicable fees (i.e., stumpage fees) for these trees. B.C. will only grant this timber tenure if it meets local employment needs, local public interests, and provides economic opportunities for the region. If Nisga'a want a Tree Farm Licence, the tenure must include a portion of Nisga'a Lands.

Nisga'a may apply for funding from existing federal or provincial forest and habitat restoration programs, and can still apply for forest tenures that any other citizen would be eligible to apply for.

NATURAL RESOURCES: FISHERIES, WILDLIFE & MIGRATORY BIRDS

The Agreement explicitly recognizes the ownership and jurisdiction of Canada and B.C. over the fishery, wildlife, and migratory birds. Nisga'a are allowed an "allocation" or "entitlement" of these resources, but their ownership of these resources is not recognized. Nisga'a jurisdiction is limited to the manner in which they will harvest within their allocations set forth in the Agreement.

Nisga'a harvest of these resources will be for "domestic purposes," subject to conservation, health and public safety requirements. A right to harvest natural resources for domestic purposes precludes an economic use of these resources. A harvest for domestic purposes can be collapsed into a "right to eat" but not to benefit economically from the resources.

Canada or B.C. can authorize uses of Crown land which affect the methods, times and locations of the Nisga'a harvest as long as Nisga'a are not denied a reasonable opportunity to harvest these resources.

Nisga'a will be allowed to trade or barter these resources among themselves, or with other aboriginal peoples. Any commercial sale of these resources must be according to federal and provincial laws.

"Management Committees" (comprised of Nisga'a, and federal and/or provincial representatives) will be established for these resources which will allow the Nisga'a some participation in resource management. Nisga'a will make recommendations for their harvest to these Committees. These Committees will

either approve or disapprove the “Management or Harvest Plans” proposed by Nisga’a, and then forward them to Canada or B.C. (whichever has jurisdiction over the resource). Canada or B.C. has ultimate authority to approve the Management or Harvest Plans.

Nisga’a will not have to pay federal or provincial licencing fees for their resource harvest (note, that this does not apply to the commercial fishery, for which the Nisga’a will have to purchase licences)

Canada’s gun control legislation will apply in full force to the Nisga’a, although they can opt to administer the *Firearms Act* themselves, as other aboriginal peoples will be allowed to do.

Where Nisga’a pass laws, (basically, regarding the manner in which the Nisga’a will harvest their resource allocations) Nisga’a laws will prevail over federal and provincial laws. Nisga’a can make laws regarding the sale of fish or wildlife, but federal and provincial laws will prevail. Federal and provincial laws will prevail in other areas which allow for an economic benefit from resources, such as the sale of furs, hunting and angling guiding.

Nisga’a can still access these resources on the same terms as other Canadian or British Columbia citizens. (For example, they can still enter provincial lotteries for certain game, or apply for commercial fishing rights outside of the Agreement, provided that they pay all applicable fees and follow federal and provincial laws)

Canada and B.C. agree that they will “consult” with Nisga’a before taking any policy decisions or actions which will impact the Nisga’a harvest of these resources. If Canada or B.C. establish regional management bodies within the Nass Area, they will consult with the Nisga’a and, if practical, allow for Nisga’a participation on these bodies.

Conservation:

Nisga’a will be responsible for paying for conservation measures for the fishery and wildlife, along with Canada and B.C.

Fisheries and Wildlife and Migratory Birds are each discussed separately below, but all will be subject to the management structure, ownership and control of these resources as set out above.

FISHERIES

The overall fish entitlement is held by the Nisga'a Nation communally and they cannot sell or give away this entitlement, although they can allow non-Nisga'a to harvest their allocation.

Harvest Agreements:

An Annual Harvest Agreement, approved by Canada, will set out the manner in which the fish are to be harvested, to what degree and whether fish harvested can be sold. Federal and provincial laws concerning the sale of fish will apply to the Nisga'a fish allocation.

Nisga'a Fish Allocation:

1. The Nisga'a's annual salmon allocation, of the Nass fishery, includes: 13% of sockeye, 15% of pink, 21% of chinook, 8% of coho, and 8% of chum.
2. The parties will study the Nass steelhead fishery, and will set out the total Nisga'a allowable harvest of steelhead for domestic purposes. Sale of steelhead will be allowed if it is allowable under federal and provincial laws.
3. Nisga'a may harvest of non-salmon and aquatic plants for domestic purposes, but B.C. or Canada can set a total allowable harvest. The parties will negotiate the basic Nisga'a entitlements to: dungeness, tanner and king crabs; halibut; prawns and shrimp; herring; and aquatic plants used for the roe on kelp fishery.
4. Nisga'a, along with other aboriginal peoples, have "the right to the total harvest of Oolichan in the Nass Area."
5. Nisga'a have a right to a domestic harvest of intertidal bivalves (clams) within a defined areas of the Nass. Canada will not authorize commercial harvesting within this area.

Participation in the General Commercial Fishery:

Canada and B.C. will provide funds to enable Nisga'a to increase its participation (through purchasing vessels and licences) in the general commercial fishery. Nisga'a participation will be on the same basis as other commercial fishers, and will be subject to federal and provincial laws. The amounts provided will be as follows: Canada: 5.75 million and B.C.: 5.75 million. (Nisga'a can spend up to 3 million for other fisheries activities).

Processing Facilities:

The Agreement protects existing fish processing plants. Nisga'a agree that they will not "establish a new fish processing facility capable of processing more than 2,000 metric tons of round weight per fish year, within eight years of the effective date, except as agreed to by the Parties."

WILDLIFE AND MIGRATORY BIRDS

The Nisga'a may harvest wildlife and migratory birds within a specific area defined in the Agreement, the "Nass Wildlife Area". B.C. can "designate species" where it decides it is necessary to set harvest limits for conservation purposes. For these species, a total allowable Nisga'a harvest will be established. The initial designated species are grizzly, moose, and mountain goats, for which the Nisga'a allocation is:

Nisga'a Designated Species Allocation:

1. **Moose:** 80% of first 50 moose, 32% of next 50 moose, and 56% of all remaining moose, to a maximum of 170 moose.
2. **Mountain Goats:** 25% of the total allowable harvest.
3. **Grizzly:** 40% (if harvest is 6 or less); 50% (if harvest if 7-8 grizzly); 40% (if the harvest is 9-10 grizzly); and if the harvest is over 10 grizzly, 40% of the first ten and then 30% of the remainder of the total allowable harvest.

For species which are non-designated, Nisga'a have a right to harvest that wildlife for domestic purposes.

Trapping:

Nisga'a acquires all Traplines wholly or partially within Nisga'a Lands that are not registered to any person. Nisga'a and B.C. will attempt to agree upon the transfer of authority over Traplines held by the Nisga'a in the Nass Wildlife Area to the Nisga'a.

Guiding:

Nisga'a will acquire an angling licence for waters outside of Nisga'a Lands, although Nisga'a angling guides must have similar training, insurance and reporting as required outside of Nisga'a Lands. Nisga'a will acquire a guiding certificate over Nisga'a Lands, if one becomes vacant. Nisga'a outfitting will be subject to federal and provincial laws.

Migratory Birds:

Nisga'a have the right to harvest migratory birds for domestic purposes in the Nass Area subject to conservation requirements, public health and safety and so long as their harvest does not interfere with authorized uses of Crown land.

ENVIRONMENTAL ASSESSMENT AND PROTECTION

Federal and provincial laws will be dominant, but Nisga'a can make laws regarding the environmental assessment of projects on Nisga'a Lands. All parties environmental assessment laws will attempt to mitigate damages that could impact Nisga'a Lands or interests, assess environmental impacts on the "economic, social and cultural well-being of Nisga'a citizens", and take into account Nisga'a support of or participation in the projects.

No party will relax its environmental standards in the Nass Area to encourage or keep investment.

If Canada or B.C. establish bodies which will consider environmental assessment or protection for areas that include Nisga'a Lands or may impact Nisga'a interests, Nisga'a will have standing before that board or body, and will be entitled to appoint a member to the board so long as the board is not a decision making body (for example, the Nisga'a have no right to appoint a member to the National Energy Board).

NISGA'A GOVERNMENT

Nisga'a's governance powers are as set out in the Agreement.

The Nisga'a Nation and Nisga'a Village are separate and distinct legal entities with the capacity and rights of a natural person, including the right to contract, buy and sell property, sue and be sued. (This is the legally description of a corporation, and the powers of a corporation). Each level of Nisga'a government will be bound by the Agreement, the Nisga'a Constitution and Nisga'a laws.

Nisga'a Constitution:

The Nisga'a Nation will pass a Nisga'a Constitution which provides for the codification of Nisga'a laws. The Nisga'a Constitution will set out the powers of the Nisga'a governments; processes for challenging the decisions of Nisga'a governments and Public Institutions; how Nisga'a governments can dispose of, or create estates or interests in Nisga'a Lands; and, recognize and protect the rights and freedoms of Nisga'a citizens.

The Nisga'a Constitution must be passed by, and require an initial amending procedure, requiring support of 70% of Nisga'a citizens voting in a referendum.

Nisga'a Government will consist of at least three people generally elected, the elected members of the Nisga'a Village Governments and one representative

elected by each Urban Local. Elections will be held within six months of the effective date.

Relations with Individuals who are not Nisga'a Citizens:

Nisga'a government will consult with people who are not Nisga'a Citizens who are resident within Nisga'a Lands about matters which directly and significantly affect them. This can include ensuring their participation in Nisga'a Public Institutions (ie, School Boards).

Legislative Jurisdiction and Authority:

The Agreement will prevail over any Nisga'a laws. Nisga'a governments have the principle authority, as defined in the Agreement, over Nisga'a Government, citizenship, culture, language, Lands, and assets. Nisga'a Government can make laws these areas, and Nisga'a laws will prevail over federal and provincial laws.

Some of the areas in which Nisga'a Governments can make laws are:

- financial administration of Nisga'a governments and institutions
- elections and referenda
- creation or dissolution of Nisga'a Villages or Nisga'a Urban Locals
- Nisga'a citizenship (which will not grant any rights of Canadian citizenship, or the right to registered as an "Indian" under the *Indian Act*)
- preservation and promotion of the Nisga'a language
- planning and zoning of Nisga'a Lands
- regulation and control of any activities on Nisga'a Lands that constitute a nuisance, trespass or danger to public health and safety

In many areas , Nisga'a can make laws, subject to meeting federal or provincial standards. Examples are child and family services, solemnization of marriages, and K-12 Education on Nisga'a Lands

Penalties:

Nisga'a Government has no authority over criminal law.

Nisga'a Government can prescribe penalties for the violations of its laws, including penalties, imprisonment and fines but these cannot exceed the penalties for summary convictions under federal and provincial laws (currently, this is approximately 6 months in jail and a \$2,000 fine). Nisga'a Government has no authority over criminal law.

Seizure of Assets:

In the event of an outstanding debt, where a third party (creditor, bank, etc.) wishes to seize the assets of the Nisga'a Nation or a Nisga'a Village, they will require the permission of the Supreme Court of B.C. In deciding whether or not to allow Nisga'a assets to be seized, the Court will consider the immunities from asset seizure guaranteed under this Agreement.

ADMINISTRATION OF JUSTICE**Police Force:**

Nisga'a Nation can, at its own cost, provide police services on Nisga'a. Nisga'a police services will be governed according to standards substantially the same as provincial standards. B.C. must approve the Nisga'a Police Board, including its structure and membership, and will appoint its members, subject to Nisga'a recommendation.

If B.C. decides that "effective policing in accordance with standards prevailing elsewhere in British Columbia is not being delivered within Nisga'a Lands" or it is necessary in order to ensure effective delivery of policing services, B.C. can step in and reorganize Nisga'a policing.

Community Corrections Services:

Nisga'a Nation can appoint a person to provide community correction services regarding persons charged with or convicted of offences under Nisga'a laws. B.C. and Canada may enter into agreements with Nisga'a for the provision of correctional regarding violations of federal and provincial laws.

Nisga'a Nation is not authorized to establish places of confinement, other than jails or lockups operated by the police force.

Nisga'a Court:

Nisga'a Government can establish a court to administer Nisga'a laws, but B.C. must approve the Court's structure, procedures and method of selection of judges. The Nisga'a Court is bound by the same sentencing principles and can impose the same remedies as provincial courts, but it "may apply traditional Nisga'a methods and values, such as using Nisga'a elders to assist in adjudicating and sentencing, and emphasizing restitution."

Nisga'a Court may hear to following matters:

- review of administrative decisions made by Nisga'a Public Institutions;
- adjudication and prosecution of Nisga'a laws;
- disputes arising between Nisga'a citizens on Nisga'a Lands that would have otherwise been in the jurisdiction of the provincial court of B.C.; and
- other matters where both parties to a dispute agree upon the Nisga'a Court's jurisdiction.

If a person is eligible to receive a prison sentence under Nisga'a law, they can elect instead to be tried before a provincial court. Nisga'a cannot impose on non-Nisga'a citizens any penalty or sanction that would not be imposed by courts elsewhere in Canada, without that person's consent.

INDIAN ACT TRANSITION

Generally, the *Indian Act* no longer applies to the Nisga'a Nation or its citizens.

Nisga'a Indian Bands are transformed into Village Governments under the Agreement, and the former Indian Bands and Indian Reserve Lands will cease to exist.

All rights, title, interests, assets, obligations and liabilities of the Nisga'a Tribal Council are transferred to the Nisga'a Nation and the Nisga'a Tribal Council ceases to exist.

CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT

The Agreement sets out how the capital amounts that B.C. and Canada will transfer to the Nisga'a will be calculated. The total amounts are not included in the Agreement, but will be paid out over fifteen years.

Canada and B.C. will pay to the Nisga'a (Canada will pay 92.4% and B.C. 7.6 % of the amounts due)

- 22 million at effective date
- 22 million next year
- 13 million for the second-seventh anniversaries
- the amount for the eighth to fourteenth anniversaries will be determined according to the formula set out in the Agreement.

Nisga'a will repay, with interest, the negotiating loans it received from Canada. On the second to seventh anniversaries of the Agreement Nisga'a will repay to

Canada two million dollars (for a partial total of twelve million to be repaid). The overall total of the loan is still to be calculated. Canada can deduct from a capital transfer amount it owes to the Nisga'a any loan repayment that the Nisga'a is scheduled to pay. The Nisga'a can pre-pay loan amounts without bonus or penalty.

FISCAL RELATIONS

Nisga'a settlement trusts will be established under federal and provincial laws to hold capital transfers from Canada or B.C. Funds from the settlement trusts can only be invested in limited investments, and can be loaned at low rates of interest to Nisga'a governments, or loaned interest-free or at a low interest to Nisga'a citizens for residential housing, educational or small business purposes. Trust funds cannot be used to establish or carry on business activities. The distributions from the trust can only be made to benefit of the Nisga'a.

Fiscal Financing Arrangements:

Every five years the parties will agree upon fiscal financing agreements by which Canada and B.C. will provide funds to enable Nisga'a to carry out agreed-upon public programs and services to Nisga'a and, where agreed, non-Nisga'a citizens. The levels of funding provided will be comparable to funding generally available in northwest B.C. The recognition of Nisga'a jurisdiction in certain areas does not create or imply a financial obligation on the part of Canada or B.C.

Nisga'a citizens are eligible to participate in programs operated by B.C. and Canada for the public, to the extent that Nisga'a has not assumed responsibility for those programs and services under a fiscal financing arrangement. The parties will negotiate and attempt to reach agreements with respect to agreements in respect of grants in lieu of property taxes between them

The funding for Nisga'a Nation and Villages "is a shared responsibility of the Parties and it is the shared objective of the Parties that, where feasible, the reliance of the Nisga'a Nation and Nisga'a Villages on transfers will be reduced over time." The long-term goal is to have Nisga'a self-finance the programs and services which it delivers.

In negotiating the amounts that B.C. and Canada will pay to Nisga'a to enable them to provide programs and services, the parties will consider, among other things:

- efficiency and effectiveness in providing public programs and services;
- location and accessibility of Nisga'a Lands;
- the population receiving the services;
- other sources of funding provided by B.C. or Canada to the Nisga'a;
- desirability of stable and predictable funding arrangements;
- prevailing fiscal policies of Canada and B.C.;
- Nisga'a cultural values; and
- Nisga'a Nation own source revenue capacity.

Own Source Revenue Agreements:

A main goal of the Agreement is to ensure that the Nisga'a become "self sufficient" in providing the agreed upon federal and provincial programs and services. The Agreement sets out a formula for determining Nisga'a "own source revenue" to determine where revenue of the Nisga'a (gained through resource extraction, or taxes, for example) should be used to finance programs and services. Ultimately, Nisga'a own source revenue will be used to reduce payments for programs and services received from the federal and provincial governments.

Factors which will be used to determine Nisga'a's own source revenue include, the need to not unreasonably reduce the incentive for the Nisga'a to raise revenues, and the amounts that Canada and B.C. may have collected if this Agreement were not in place.

Revenues from the sale of Nisga'a Lands, capital transfers, capital in settlement trusts (only capital gains from the trusts will be taken into account), the Nisga'a capital finance authority (except where it pays out to a beneficiary, and this pay out becomes eligible for inclusion), will not be used to determine Nisga'a own source revenue capacity.

Nisga'a Nation own source revenue capacity will be phased in over a twelve year period, but will start on the effective date.

TAXATION

Nisga'a Government can make laws to directly tax Nisga'a citizens on Nisga'a Lands to raise revenues for government purposes, but this does not limit Canada or B.C.'s powers to impose taxes. Nisga'a can agree with Canada and/or B.C. to

grant Nisga'a authority to tax non-Nisga'a citizens on Nisga'a Lands or to coordinate Nisga'a tax regimes with federal and provincial systems.

The tax immunity granted by section 87 of the *Indian Act* will eventually not apply to Nisga'a citizens. After eight years Nisga'a citizens will have to pay all transaction (sales) taxes, and after twelve years they will have to pay all other taxes (income and property taxes, for example). Nisga'a citizens have no immunity from taxes leveled by Nisga'a governments on them.

Nisga'a Nation or Villages is not subject to capital or real property taxation on lands for which there are no improvements, or designated improvements (such as public buildings, public works and forest resources).

A transfer of capital to the Nisga'a under this Agreement is not taxable, but Nisga'a Nation and Villages are subject to taxation arising from a disposition of capital.

If, within 20 years of the Agreement, Canada or B.C. enter into another treaty in northwest B.C. which provides for a broader tax exemption than that allowed in this Agreement the parties will negotiate and attempt to reach an agreement to provide the Nisga'a Nation and Villages with a similar tax exemption. Theoretically, no tax exemption will be granted to Nisga'a citizens.

Amounts paid to Nisga'a participants under this Agreement are taxable if they can be considered a distribution of capital transfer. If Nisga'a give treaty payments to their members these amounts are taxable when they are received.

CULTURAL ARTIFACTS AND HERITAGE

The Royal B.C. Museum and the Canadian Museum of Civilization, agree to return specific artifacts to the Nisga'a. The museums will retain other artifacts, and will enter into "custodial arrangements" with the Nisga'a, which comply with federal and provincial laws, and "respect Nisga'a laws and practices" for these artifacts. If Canada or B.C. come into possession of artifacts in the future, they will lend these artifact to the Nisga'a, or may agree to give them to the Nisga'a.

At Nisga'a's request Canada and B.C. will make reasonable efforts to help them access Nisga'a human remains and artifacts held in other private or public collections.

Subject to federal and provincial laws, human remains of persons of Nisga'a ancestry that are removed from heritage sites will be delivered to the Nisga'a Nation.

DISPUTE RESOLUTION

The parties agree that their relationship will be cooperative and non-adversarial, and they will endeavor to minimize disagreements or to resolve them as quickly and cost-effectively as possible when they occur.

The Agreement includes a three stage dispute resolution process. Each party will bear its own costs in the dispute resolution process, but will share common costs. The stages are:

1. unassisted and informal discussions;
2. a mediation stage involving a neutral third party with no capacity to enforce a decision; and
3. a process of final adjudication of the dispute through arbitration.

All parties can commence court actions at any time to prevent the loss of a right due to the expiration of a limitation period, or to seek interlocutory or interim relief pending the resolution of the dispute under this process.

ELIGIBILITY AND ENROLLMENT

A person is eligible to be enrolled under the Agreement if that person is of Nisga'a ancestry and their mother was born into one of the Nisga'a tribes (or they are the descendent or adopted child of such an individual), or they are married to a person of Nisga'a ancestry and have been adopted according to the customs of the Nisga'a tribes. A person cannot be enrolled in this Agreement and another land claims agreement in Canada at the same time.

An Enrollment Committee of eight people will consider applications for enrollment. The eight members consist of two members from each Nisga'a tribe, who understand Nisga'a culture and reside in a Nisga'a Village. Each applicant has the burden of proof of showing that they should be enrolled. Nisga'a, Canada and B.C. will be provided with a copy of the register. During the initial enrollment period, Canada and B.C. will share the costs of the Enrollment Appeal Board.

An Enrollment Appeal Board will be established with one member appointed by Nisga'a, one appointed by Canada, and one joint appointee for appeal of enrollment decisions. A decision of the Enrollment Appeal Board can be appealed to the Supreme Court of British Columbia within 60 days.

After the initial enrollment period, Nisga'a Government will be responsible for establishing and maintaining an enrollment process and providing annual enrollment updates to Canada and B.C.

RATIFICATION

Ratification by the Nisga'a Nation:

1. A debate at an assembly about whether or not to send the Agreement to a referendum, and the passing of a motion by a simple majority vote in agreement; and, then
2. A referendum in which a simple majority (50% plus one) *of those who vote* approve the Agreement.¹

The referendum will be conducted by secret ballot, by the Nisga'a Ratification Committee (including representatives from Canada and B.C.). A person is eligible to vote if they are included on the enrollment registry, are at least eighteen years old, and are ordinarily resident in Canada.

¹ Although the language of the Agreement says that it must be ratified by 50% of all eligible voters, the definition section defines eligible voters as those who are entitled to vote, and who actually do vote.