RECONCILIATION 'AT THE END OF THE DAY': DECOLONIZING TERRITORIAL GOVERNANCE IN BRITISH COLUMBIA AFTER *DELGAMUUKW*

by

Janalyn Gail Kotaska

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Abstract

This dissertation examines new relationships and reconciliation processes between First Nations and the province of British Columbia after the 1997 Supreme Court of Canada ruling in *Delgamuukw*, a decision that confirmed the continuing existence of Aboriginal title in the absence of treaties. Beginning with existing theories and critiques of reconciliation, I construct a framework for evaluating if reconciliation processes, and particularly those related to territorial governance, are genuine. The framework is then applied to an examination of new relationships, including co-governance, and a new Indigenous system of territorial governance: the Coastal First Nations' Regional Monitoring System. In order to better understand how relationships are changing and competing claims to land and resources are being reconciled, I interviewed First Nation and provincial policy- and decision-makers, engaged in participant-observation as an employee of various First Nation groups, studied a case of Indigenous territorial governance, and analysed documentary evidence.

I found that by strategically using the uncertainty of undefined Aboriginal rights, some First Nations are regaining governing power over their territories and inculcating a new vision for reconciliation in the province. Instead of focusing on treaties in a process designed to create certainty for settler governments, reconciliation is now seen by decision-makers on both sides as an incremental and ongoing process of building relationships, creating sustainable economies, co-governing with a common vision, and building capacity to meet these goals. I also argue that, despite systemic change, the relationship between the province and First Nations remains colonial. Ultimately, genuine reconciliation will require a relationship to which First Nations agree. Other requirements include the province relinquishing territorial

control and observing Indigenous sovereignty in practice, the province compensating Indigenous peoples for their losses, and both parties negotiating on equal footing the sharing of decision-making authority and revenues where First Nations agree to co-govern. Overall, the study addresses power as yielded not in a single decolonizing act, but through many small acts in an ongoing process of reconciliation, thereby illuminating decolonization as it is currently and arguably occurring.

Preface

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List of Abbreviations

BC	British Columbia
BCCA	British Columbia Court of Appeal
BCSC	British Columbia Supreme Court
CGWN	Coastal Guardian Watchmen Network
DFO	Fisheries and Oceans Canada (formerly Department of Fisheries and Oceans)
FN	First Nation
FNLC	First Nations Leadership Council
G2G	government-to-government
G20	Group of Twenty Finance Ministers and Central Bank Governors
GPS	Global positioning system
INAC	Indian and Northern Affairs Canada
MARR	(British Columbia) Ministry of Aboriginal Relations and Reconciliation
NAILSMA	North Australian Indigenous Land and Sea Management Alliance
PhD	Doctor of Philosophy
RCAP	Royal Commission on Aboriginal Peoples
RMS	Regional Monitoring System
SCC	Supreme Court of Canada
TEK	Traditional ecological knowledge
TFL	Tree Farm License
TRC	Truth and Reconciliation Commission
UBCIC	Union of British Columbia Indian Chiefs

Glossary

Aboriginal peoples – A term used to refer to the peoples who inhabited what is now Canada prior to the arrival of Europeans. This term came into usage in Canada during the constitutional negotiations in the late seventies (Kulchyski 1994). 'Aboriginal peoples' is used in legal documents like the *Constitution Act, 1982* and is broadly inclusive, describing First Nations, Inuit, Métis, and non-status people (Culhane 1998). I use it where appropriate, primarily in a legal context.

Aboriginal rights – Rights due to Aboriginal peoples because of their sovereignty prior to the assertion of sovereignty by Britain, France, or Canada. They are distinct rights that cannot be claimed by those who came after. Aboriginal rights can be divided into different categories. There are land and resource rights and political rights. The Aboriginal right to land is otherwise known as Aboriginal title.

Colonialism – A practice, policy, or system in which a more powerful nation maintains or extends its authority and control over a less powerful nation or people, generally to access land and/or resources. It may involve the implementation of various political, economic, and social policies.

First Nation – I use this term to refer to the government of an Indigenous community. Community composition has been and continues to be affected by many factors, including colonial policies. For example, communities may be made up of extended families, villages, tribes, groups of tribes, or all members of a language group. 'First Nation' became popular in

Canada, and especially in BC, after the National Indian Brotherhood changed its name to the Assembly of First Nations in 1982 (Penikett, 2006). It highlights the nationhood status of Indigenous groups and their existence prior to the colonizing state.

Indigenous peoples – This is the primary term I use to refer to the peoples who inhabited what is now Canada prior to the arrival of Europeans. This term came into use with the establishment of the United Nations after World War II. The Independent Commission on International Humanitarian Issues includes four elements in the definition of Indigenous peoples: 1) pre-existence; 2) non-dominance; 3) cultural difference; and 4) self-identification as Indigenous (Hitchcock 1994). The term is used to describe "marginal groups that have managed to preserve their traditions in spite of being incorporated into states dominated by other societies" (Martinez Cobo 1987 in Hitchcock 1994) and underscores a group's persistent vulnerability (Dean and Levi 2003).

Referral – Government agencies send referrals to other groups to request input on proposed land or natural resource authorizations or projects. These groups may be other government agencies, First Nations, or existing tenure holders.

Settler – A person who has or whose family has immigrated to Canada in the past few centuries—a non-Indigenous person. I generally refer to settlers as non-Indigenous people because the term does not make demographic claims about who they are, but rather who they are not in this context only. For example, to some, 'settler' may connote someone whose family came several generations ago or someone who is 'white'. I use the term 'settler' in

situations where it is modifying a noun, such as 'settler government' (the governing body) or 'settler state' (the political power), as these governing institutions and powers are, for the most part, a product of settler colonialism. I also use 'settler' to refer to non-Indigenous people in contexts where I am drawing attention to patterns of thought that are developed in settler colonial contexts and the possibilities for decolonizing those patterns of thought.

Settler colonialism – A form of colonialism in which colonizers desire and dispossess Indigenous peoples of their land for settlement and resource development. Initial dispossession is carried out with physical force, a variety of technologies are used to maintain the dispossession (e.g., maps, numbers, and law), and both are legitimated, justified, and reinforced through ideology and discourse about identity (Harris 2004).

Overlapping territory – Space (both marine and terrestrial) was and is shared by neighbouring Indigenous peoples through customary law and practices. The concept of 'overlapping territory' has arisen out of Eurocentric ideas about property used in land claims processes and is an area where more than one contemporary First Nation claims title and/or rights. Overlapping territory can exist because: 1) neighbouring First Nations share territory and have not agreed how to claim it in treaty and other processes; 2) First Nations divided due to colonial policies share territory but choose to negotiate treaties separately; and/or 3) First Nations pursue territorial expansion through treaty negotiations (e.g., Sterritt et al. 1998).

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For Violet and Hazel –

who make profound for me the significance of questions about

justice, peace, freedom, and responsibility

Chapter 1: Introduction

On April 4, 2012, the Haida Gwaii Management Council announced the new allowable annual cut for Haida Gwaii, the maximum amount of timber that can be commercially harvested on the archipelago formerly known as the Queen Charlotte Islands off the North Coast of British Columbia (BC) in Canada.[1] It was the first time in the history of BC that a cut was determined by anyone other than the provincial Chief Forester. In a unanimous consensus-based decision, the Management Council, a joint decision-making body established under provincial and Haida law, reduced the cut by almost half. In commenting on the determination, the President of the Haida Nation, Guujaaw, emphasized the importance of designing a sustainable future for the islands. The provincial Minister of Aboriginal Relations and Reconciliation stressed certainty for forestry operations.

Later that same year, on September 12, Coastal First Nations[2], an alliance of Indigenous nations on the Central and North Coasts of BC, declared a moratorium on the trophy hunting of bears in their territories, a majority of the approximately 70,000 square kilometre area also known as the Great Bear Rainforest. After years of negotiating with the province to have trophy hunting banned, they took unilateral action. Kitasoo/Xaixais First Nation Chief Doug Neasloss stated: "We will now assume the authority to monitor and enforce a closure of this senseless trophy hunt," and "We will protect bears from cruel and unsustainable trophy hunts

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[1] Haida Gwaii's historic Allowable Annual Cut decision, http://www.newsroom.gov.bc.ca/2012/04/haida-gwaiis-historic-allowable-annual-cut-decision.html; accessed April 15, 2013.

[2] The alliance was originally called Coastal First Nations – Turning Point Initiative and is now called Coastal First Nations – Great Bear Initiative. I will simply use 'Coastal First Nations', which is how most people refer to it.

by any and all means."[3] As reported in the *Globe and Mail* by Mark Hume, the provincial Minister of Forests and Lands, Steve Thomson, responded to the ban by saying: "I'm disappointed in the declaration that they have taken. Given that the province has the responsibility for setting the harvest limits, we'd ask them to respect that authority" (Hume 2012).

These two stories provide revealing snapshots of a particular moment in the history of relations between First Nations and the provincial government in BC, a time when relations are varied and rapidly changing and the focus is on, or at least the discourse is about, reconciliation. The provincial government denied Aboriginal title existed until 1990, when it reversed its policy and agreed to negotiate land claims with First Nations and Canada. In just over twenty years, the province has gone from outright denial of First Nations' governance authority to truly shared decision-making, at least in the one case with the Haida Nation. As the second vignette highlights however, it is not a story of a steady and even progression from denial to acceptance and reconciliation. It is more a story of First Nations continually fighting for their rights through all available avenues and the province conceding at times due to a variety of pressures, notably successive losses in the courts and perceived economic uncertainty caused by undefined Aboriginal rights. These two stories highlight innovative territorial co-governance and a continuing contest over governance, in which First Nations are asserting their authority in the face of provincial intransigence.

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[3] Coastal First Nations declare ban on trophy hunting in Central and North Coast, http://www.coastalfirstnations.ca/news-release/september-12-2012-831am; accessed April 16, 2013.

This dissertation examines relationships and reconciliation processes between First Nations and the provincial government in BC after the 1997 Supreme Court of Canada decision in *Delgamuukw v. British Columbia*[4]. *Delgamuukw* was a significant moment in the history of Canada, and specifically BC, because the continuing existence of Aboriginal title was affirmed in the absence of treaties, and settler governments were required by the Supreme Court to consult First Nations on decisions that might affect their lands. The resulting changes in provincial policy gave First Nations an entry point into renewed participation in territorial governance, which they have since leveraged into greater power. That power is manifest in a variety of governance arrangements, including the co-governance and Indigenous governance described in the opening stories. My research focuses on land and resource governance and because provincial governments have jurisdiction over most land and resources in Canada, I focus on relationships between First Nations and the provincial Crown.

It was in the wake of *Delgamuukw* that I was hired by a First Nation, Cowichan Tribes, to manage the onslaught of referrals[5] from government agencies. I brought my background in ecology and environmental planning and began to learn about Aboriginal law and the history of colonialism and dispossession in BC. My professional involvement with Indigenous-state relations through consultation, treaty negotiation, and preparation for litigation led to my academic interest in reconciliation and decolonization, and ultimately this dissertation. I wanted to learn more about the history and strategies of colonization and resistance, and the

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[4] [1997] 3 SCR 1010 [*Delgamuukw*]

[5] Government agencies send referrals to other groups to request input on proposed land or natural resource authorizations or projects. These groups may be other government agencies, First Nations, or existing tenure holders.

theory related to Aboriginal rights. My research interest was shifting power in Indigenous-state relations, and specifically land and resource governance. Reconciliation emerged as an important theme both in the theory and in practice in BC.

When the purpose of colonialism is to settle land, colonizers have to eliminate Indigenous peoples in order to access their territory (Wolfe 2006). This has been attempted in a variety of ways around the world, including directly through genocide and forced removal and indirectly through assimilation. In BC, Indigenous peoples were confined onto tiny reserves over a period of several decades in the late 19th and early 20th centuries, and denied their rights to the rest of their territories (Harris 2002). As in the rest of Canada, Indigenous peoples in BC were also prohibited from self-governance and participation in industrial economies, and subject to a period of harsh and cruel assimilative and discriminatory policies. Because of a variety of circumstances at the time that BC was colonized, the British did not sign treaties with the majority of First Nations. This violated their own laws as outlined in the Royal Proclamation of 1763, and led to the finding in *Delgamuukw* that Aboriginal title continues to exist.

Indigenous peoples in BC were not 'eliminated' and have never stopped protesting and resisting the loss of their lands, resources, and rights to govern. Since at least the 1990s, reconciliation has become a focus of efforts to respond to the legacies of colonialism in Canada. Reconciliation can refer to many different things in the context of settler colonialism. The term often refers to improving relationships, and in the case of settler colonialism, relations can be improved between Indigenous nations and settler governments,

and between Indigenous and non-Indigenous people. Reconciliation also refers to making things compatible, for example Aboriginal title and Canadian sovereignty (Blackburn 2007). Precisely because of the ambiguity of the term, reconciliation can be used to refer to state policies that parade as substantive change but maintain the *status quo* (Short 2008, Woolford 2005, Alfred 2005).

The literature addressing Indigenous-state relations and reconciliation in BC focuses on treaty negotiations (e.g., Alfred 2000; Blackburn 2005, 2007, 2009; Egan 2012, 2013; McKee 2009; Penikett 2006; Price 2009; Rynard 2004; Woolford 2004, 2004a, and 2005). There are, however, many other types of relationships between First Nations and the provincial Crown, and all of these sites of engagement provide insight into how reconciliation is unfolding (or failing to unfold). There are several articles that look at other types of relationships between the province and First Nations, for example co-management (e.g., Booth and Skelton 2011; Goetz 2005; Mabee and Hoberg 2006), consultation (e.g., Schreiber 2006), and newer government-to-government relationships (e.g., Barry 2012). There is a large literature related to Aboriginal rights and case law, but it does not relate specifically to BC for the most part (although many of the cases involve First Nations in BC).

1.1 Research Questions and Approach

This dissertation explores how reconciliation is unfolding within the context of land and resource governance within a particular place built on settler colonialism. I explore and seek to account for the changes in power relations between Indigenous nations and the settler state. Ultimately, colonialism is about the dispossession of land and resources, making

struggles about their governance all the more salient. Harris (2004) addresses the question of how the dispossession of land came about in BC. With this dissertation, I investigate broadly how, and in what patterned and idiosyncratic ways, the repossession of land and resource governance is coming about.

Specifically, this research addresses the following questions.

- What does reconciliation mean in the context of Indigenous rights and relationships between Indigenous nations and the state?
- How have relationships between First Nations and the Province of BC changed since *Delgamuukw*?
- How is the reconciliation of Aboriginal title and Crown sovereignty unfolding in BC?
- At this moment in time, what do those who are engaged in land and resource decision-making and First Nation-BC relations understand reconciliation to entail?

My approach to these questions is categorically interdisciplinary. It draws on literature from classical disciplines such as anthropology, law, history, geography, and political science; interdisciplinary studies such as Canadian, Indigenous, and environmental studies; and applied fields such as natural resource management and public policy. This research, however, primarily joins conversations within anthropology and the interdisciplinary and applied fields listed above.

The dissertation is also informed by fifteen years of professional experience working for First Nations and First Nation organizations in land and resource management contexts, making

participant observation a key research method. I also interviewed twenty-one First Nation and provincial policy- and decision-makers about their understandings and perceptions of Aboriginal rights, First Nation-BC relationships, and reconciliation. In order to develop and present a comprehensive understanding of changing relationships in BC, I drew heavily on documentary evidence, including court judgments, legislation, policy documents, treaty and non-treaty agreements, reports, news releases, and newspaper coverage. And finally, I use a case study of an Indigenous territorial monitoring system to illustrate how, in addition to attempting to reconcile with the provincial government, First Nations are asserting their authority to govern their territories and strategically engaging science in that pursuit.

The research that comprises this work took place within an overarching process of interrogating research done by non-Indigenous scholars on Indigenous peoples and subjects. Insights from fieldwork have guided the course of my work and, ultimately, the content of this thesis. It was through reflecting on field experiences in Indigenous communities that I decided to turn the lens back on a community of which I was more or less a part—resource management policy- and decision-makers. This led me to the study of reconciliation within a resource management context with the ultimate goal of better defining and thereby seeking justice for Indigenous peoples in BC, Canada, and other states built on settler colonialism. Part of this research is about trying to figure out what justice might entail. I do not try to present a 'balanced' perspective, but rather a scholarly perspective drawn from an understanding of Aboriginal law, Indigenous rights, and contemporary histories of Indigenous-state relations. So, for example, when I question how we may reconcile Aboriginal title with the Crown's *asserted* sovereignty, or Crown *claims* to sovereignty, I

could be charged with being biased in my perspective. I state the question this way, however, because even within the Euro-Canadian legal system, Aboriginal title derives from the more solid ground of the laws of Indigenous peoples who have occupied the land since time immemorial (Tully 2000). Crown sovereignty, however, was asserted in 1846 and is based on the racist theory that Indigenous societies were not sufficiently evolved to be worthy of title (Asch 2002). As explained by Borrows (2001, 35), "A faithful application of the rule of law to the Crown's assertion of title throughout the country would suggest that Aboriginal peoples enjoy the very right the Crown claims." From an Indigenous legal perspective, clearly, Crown claims to title and sovereignty are not legitimate.

This research also took place within an ongoing personal process of decolonization that started when I began to work for First Nations fifteen years ago. It was not until then that I even realized the depth of my ignorance about the Indigenous peoples whose land I occupy, the shameful history of dispossession, attempted assimilation, and discrimination in BC and Canada, the ongoing colonial nature of Indigenous-state relations, and the continuing structural violence experienced by Indigenous peoples. The process of learning what I did not know and unlearning what I had been taught began with my colleagues at Cowichan Tribes, has continued through my work with other First Nation organizations, and was the reason I came back to academia and undertook the research that led to this dissertation. For settlers, decolonizing is, at times, an unsettling experience that requires vulnerability, humility, and a willingness to risk their comfort and their understandings of themselves, their ancestors, the stories they have been told, and their privilege (Regan 2010, Barker 2010). Writing this dissertation has been an unsettling process, as I try to find a place for my voice within

scholarship on reconciliation and Indigenous-state relations. And publishing this dissertation feels like a risk, as I know that I may not have it right, even certainly so, but nonetheless hope to treat with respect this subject and the work and words of others. My purpose is, ultimately, to contribute to an ongoing process of decolonizing settlers and territorial governance in BC and to join scholarly conversations about reconciliation in places built on settler colonialism.

The geographic focus of this research is BC, with particular attention given to the Central and North Coasts in the choice of the case study and interviewees. The findings about building co-governance relationships, reconciling title, and decolonizing territorial governance, however, are relevant to other countries established by settler colonialism, particularly those colonized by Great Britain, for example New Zealand, Australia, and the United States.

1.2 Structure and Contributions of the Dissertation

In order to provide the historical context necessary for an examination of reconciliation, I begin the dissertation by characterizing the injustices that have been committed against Indigenous peoples in BC and Canada. Chapter 2 introduces and defines Aboriginal rights, chronicles the political relationships between First Nations and the colonial state since 'contact'[6], and provides an overview of the corresponding development of Aboriginal rights theory and law. It shows how the colonial state moved through periods of recognizing,

[6] I am not suggesting that there was a specific event of contact, but rather I am signaling a general time period in which political relationships between Indigenous and non-Indigenous peoples began to develop.

denying, and then re-recognizing Aboriginal rights, with corresponding shifts in its policy regarding Indigenous peoples and in the strategies of resistance used by First Nations.

Chapter 3 develops the conceptual framework used to assess reconciliation processes in this dissertation. It investigates what might be required for reconciling relationships and competing claims to title where Indigenous and non-Indigenous societies coexist. I begin by reviewing the literature on reconciliation processes that have emerged in response to genocide and mass violence in the post-Cold War era. I then consider the specific case of settler colonialism, where problems arise with both the concept and processes of reconciliation. I review how these problems may be overcome and suggest some requirements for 'genuine' reconciliation, which is ultimately an ongoing process of decolonizing settlers and their governments and institutions. These requirements are then brought into the sphere of territorial governance, resulting in two possible decolonizing jurisdictional arrangements: Indigenous territorial governance and co-governance of Indigenous territories. Some of the critiques of co-management in the literature are used to explore the decolonizing potential of co-jurisdictional models.

With the historical and theoretical groundwork laid, I begin an examination of contemporary relationships between First Nations and the BC government in Chapter 4. I use the idea of engagement strategies—such as litigation, consultation, or treaty negotiation—to structure my examination of how relationships change and new relationships emerge after *Delgamuukw*. The chapter explores the efficacy of the different strategies for each party in meeting its territorial governance goals and I assess whether the changes in relationships that

have occurred since *Delgamuukw* meet the requirements for genuine reconciliation. Chapter 5 further examines the changing relationships between First Nations and BC, but this time from the perspective of people involved in those relationships on a day-to-day basis—First Nation and provincial policy- and decision-makers in coastal BC. I use their answers to questions about colonialism, Aboriginal rights, and current relationships, to explore their perceptions of how power is shifting and whether relationships are still colonial.

In Chapter 6, I return to the decolonizing jurisdictional arrangements laid out in Chapter 3 and examine a case of Indigenous territorial governance on the North and Central Coasts of BC. I present the Coastal First Nations Regional Monitoring System as an example of a contemporary Indigenous approach to territorial governance that does not require First Nations to submit to state-defined reconciliation processes. First Nations are simply asserting their authority in governing their territories and managing their resources. By developing and using the Regional Monitoring System, First Nations are choosing to employ science, both practically and strategically, to achieve their stewardship and territorial governance goals.

Chapter 7 is an in depth exploration of reconciliation in the context of territorial governance in BC using my interviews with policy- and decision-makers. Importantly, they see reconciliation as an incremental and ongoing process that focuses on co-governance and not treaty settlement, at least not in the short term. Many felt that by reconciling relations in an ongoing process of co-governance, the need to reconcile competing claims to title may be eliminated. The components of reconciliation that interviewees emphasized were building

relationships and trust, creating sustainable economies for First Nations, co-governing with a common vision, and building capacity.

And finally, in Chapter 8, I pull together the answers to my research questions from throughout the dissertation and look at implications of this research for the study of reconciliation, and for other places seeking to address the legacies and injustices of settler colonialism. I present some future avenues of research on reconciliation in British Columbian, Canadian, and comparative contexts.

This dissertation makes both theoretical and empirical contributions to the study of reconciliation and decolonization. Theoretically, it advances a framework for assessing reconciliation processes in places built on settler colonialism. Also, it applies the framework drawn from the reconciliation literature to the context of land and resource governance to advance requirements for decolonizing territorial governance. Empirically, this research makes three specific contributions. First, it brings together documentary evidence and interview material to develop an understanding of shifting power relations in contemporary First Nation-BC relationships. Second, it provides a case study of Indigenous territorial governance, or reconciliation through assertion of sovereignty, placed within a framework of decolonization. Finally, the dissertation contributes a comprehensive understanding of reconciliation as it is currently and arguably occurring outside the BC treaty process, filling a gap in the scholarship on Indigenous-state relations in BC, which has to date focused almost exclusively on the treaty process.

1.3 Notes on Terminology

Throughout this thesis, I use different terms to refer collectively to the various peoples who inhabited the place that is now called Canada before the arrival of Europeans. Each term has a different history and carries different connotations. I usually use the term 'Indigenous peoples', a term that came into use with the establishment of the United Nations after World War II. It has replaced many of the words that were tied to evolutionist thinking, such as 'native' or 'tribal' (Dean and Levi 2003). The Independent Commission on International Humanitarian Issues includes four elements in the definition of Indigenous peoples: 1) pre-existence; 2) non-dominance; 3) cultural difference; and 4) self-identification as Indigenous (Hitchcock 1994). The term is used to describe "marginal groups that have managed to preserve their traditions in spite of being incorporated into states dominated by other societies" (Martinez Cobo 1987 in Hitchcock 1994) and underscores a group's persistent vulnerability (Dean and Levi 2003).

I sometimes use the term 'Aboriginal peoples', particularly in the Canadian legal context. 'Aboriginal peoples' is a term that came into usage in Canada during the constitutional negotiations in the late seventies (Kulchyski 1994). The word 'aboriginal' is generally synonymous with 'indigenous' or 'native', and means original, first, or naturally occurring. 'Aboriginal peoples' is used in legal documents like the *Constitution Act, 1982* and is broadly inclusive, describing First Nations, Inuit, Métis, and non-status people (Culhane 1998).

‘First Nations’ is a term that has recently become popular in Canada, and especially so in BC, after the National Indian Brotherhood changed its name to the Assembly of First Nations in 1982 (Penikett, 2006). It highlights the nationhood status of Indigenous groups and their existence prior to the colonizing state. I use ‘First Nation’ when referring to Indigenous nations or governments in BC.

The term ‘Indians’ arose out of an error of geography that stuck for centuries. When Christopher Columbus landed in the Caribbean in 1492, he thought he was in India and therefore called the people he encountered ‘indios’, or in English, ‘Indians’. It is a term that was widely used in Canada for over a century and is still used in legal documents and the legal names of some First Nations’ administrations. Some First Nations choose to continue to use the term, but most have replaced it with First Nation, or just ‘nation’, at least in common usage. I use this term if appropriate in a historical context.

I also use a variety of terms to refer collectively to the people who have come to North America in the past few centuries. I generally use the term ‘non-Indigenous’ because it does not make demographic claims about who newcomers are, but rather who they are not, avoiding some of the concerns with other terms that may tend toward homogenizing or essentializing. Because this dissertation addresses the distinct rights of Indigenous peoples, it is the lack of those rights that is important when I refer to non-Indigenous people.

This dissertation considers reconciliation in places that have been built on settler colonialism. People came—and continue to come—to stay, and colonial governments used force, among

other things, to gain control of the land and resources, creating a particular set of circumstances that requires reconciling. I use the term ‘settler’ in situations where it is modifying a noun, such as ‘settler government’ (the governing body) or ‘settler state’ (the political power), as these governing institutions and powers are, for the most part, a product of settler colonialism. I also use ‘settler’ to refer to non-Indigenous people in contexts where I am drawing attention to patterns of thought that are developed in settler colonial contexts and the possibilities for decolonizing those patterns of thought. Finally, I use ‘colonial’ in historic contexts and when I want to emphasize continuing imbalances of power.

Chapter 2: The Roots of Injustice Lie in History

> The roots of injustice lie in history and it is there where the key to the regeneration of Aboriginal society and a new and better relationship with the rest of Canada can be found. (Erasmus 1996)[7]

> Either we stumble on, ever more frustrated that our society doesn't function as it should, or we start to rethink our history, to re-examine it. If we look, we will discover the First Nations, the Metis and the Inuit at its core. We have to learn how to express that reality, the reality of our history…Our challenge is to learn how to recognize what we have trained ourselves not to see. We must remove the imaginative and historical veils that we have used to obscure this reality. (Saul 2008, 35)

I was born and raised on Musqueam, Tsleil-Waututh, Tsawwassen, and Squamish land in the Greater Vancouver area of BC. Until I was an adult, I knew nothing about these peoples or their rights and title. The only recollections I have of Indigenous people and life in BC from my childhood are of occasionally walking through the reserve or encountering shíshálh in Sechelt, where my family had a cabin. It was not until I was in my twenties that I spent any time with Indigenous people. In 1992, I was part of a group—including three Indigenous people from Ecuador, Papua New Guinea, and the Philippines—that travelled to and met with representatives of several First Nations in BC. The purpose of the tour was to connect members of Indigenous communities from different countries who were working to secure and protect their forest lands, and share stories and strategies. One particularly poignant memory was standing on the banks of the Skeena River with Maas Gaak (Don Ryan), hearing stories about the Gitxsan and Wet'suwet'en Aboriginal title case, and receiving copies of the *Reasons for Judgment* in *Delgamuukw v. the Queen* and *Colonialism on Trial*. I

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[7] George Erasmus, 1996, in the address for the launch of the report of the Royal Commission on Aboriginal Peoples, http://www.aadnc-aandc.gc.ca/eng/1100100014639/1100100014640, accessed December 29, 2012

did not understand the significance of the documents at the time (but kept them through myriad moves), nor did I have a clue about the impact the subsequent *Delgamuukw* decision would have on my life.

It was in the wake of the Supreme Court of Canada ruling in *Delgamuukw* that the Cowichan Tribes created the Environmental Advisor position that I filled in 1998. When I began that job, I could not have defined Aboriginal rights or title, but for the following six years, I worked with Cowichan and the other Hul'qumi'num nations to assert and defend their rights and title through consultation, negotiation, and litigation. That experience made me acutely aware of the void in my education regarding the history of colonialism and dispossession in my homeland and around the world. It was this void that I sought to fill by returning to do my PhD after almost ten years away from academia.

In her book, *Unsettling the Settler Within*, Paulette Regan explores how, for settlers, learning about their colonial past can be achieved in a way that is decolonizing and transformative. Her book focuses on the residential school system and related reconciliation processes, such as Prime Minister Harper's apology to survivors and Canada's Truth and Reconciliation Commission. She asks the following questions.

> Perhaps we, as non-Indigenous people, can begin by asking ourselves some troubling questions. How is it that we know nothing about this history? What does the persistence of such invisibility in the face of the living presence of survivors tell us about our relationship with Indigenous peoples? What does our historical amnesia reveal about our continuing complicity in denying, erasing, and forgetting this part of our own history as colonizers while pathologizing the colonized? How will Canadians who have so selectively forgotten this 'sad chapter in our history' now undertake to remember it? Will such remembering be truly transformative or simply perpetuate

> colonial relations? Surely, without confronting such difficult questions as part of our own truth telling, there can be no genuine reconciliation. (Regan 2010, 6)

Similar questions can be asked about BC's broader history of colonialism and dispossession. How is it that a majority of British Columbians do not know that the lands they call home have never been ceded by First Nations and that the Crown's claims to sovereignty rely on very weak and racist legal arguments? Why is it that they do not question how it is that Indigenous peoples ended up on reserves as wards of the state, continually fighting for their lands, resources, and self-government? It is easy for settlers, who continue to reap the benefits of colonialism, to say, 'Maybe some bad things happened in the past, but that was a long time ago. We have to look forward.'

This dissertation is focused on two aspects of reconciling the history of colonialism and dispossession in BC: possibilities for decolonizing the relationship between First Nations and the provincial government and for reconciling Aboriginal title and rights with Crown claims to sovereignty. It does not explore in depth how we might improve relationships between Indigenous and non-Indigenous peoples generally. That said, for settlers to seriously consider the first two aspects of reconciliation, they must first consider and begin to come to terms with their complicated relationship with their colonial past and present. The first step in decolonizing is questioning the legitimacy of colonization (Wilson and Yellow Bird 2005). One aspect of this questioning involves examining how colonization took place.

I know I am not unique in my experience of being ignorant of Canada's history of oppression and attempted elimination[8] of Indigenous peoples and dispossession of their lands and resources, despite having been born and raised on Indigenous land in BC. Canada's history of colonialism is actively hidden and denied, in the school system, in popular media, and by politicians. In fact, just over a year after delivering his apology to survivors of Canada's residential school system, Stephen Harper bragged during a press conference at the G20 Pittsburg Summit that Canada has "no history of colonialism" (quoted in Hui 2009). National Chief Shawn Atleo of the Assembly of First Nations released a statement in response to the Prime Minister's comment, saying in part:

> The Prime Minister's statement speaks to the need for greater public education about First Nations and Canadian history. It may be possible to use this moment to begin bridging this gulf of misunderstanding. The future cannot be built without due regard to the past, without reconciling the incredible harm and injustice with a genuine commitment to move forward in truth and respect. (quoted in Hui 2009)

My purpose with this chapter is to give due regard to the past by providing a historical overview of Indigenous-state relations in Canada and BC. I begin by introducing and defining Aboriginal rights, a legal means of addressing the prior existence of Indigenous peoples in states built on settler colonialism. I then look at how the colonial state has moved through periods of recognizing, denying, and then re-recognizing Aboriginal rights, and how colonial policy regarding Indigenous peoples has changed correspondingly. Given that colonial forces have been significantly more powerful than First Nations since the early 19th

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[8] Wolfe (2006) explores the relationship between genocide and the settler-colonial tendency he terms 'the logic of elimination'. He explains how 'elimination' of Indigenous peoples is motivated by gaining access to territory and is attempted through myriad means, including encouraging miscegenation, breaking native title into individual freeholds, child abduction, religious conversion, resocialization in institutions, and frontier homicide.

century, avenues for Indigenous resistance to colonialism have been dictated to a large degree by colonial policy. I consider First Nations resistance within this context.

The arguments I make in this dissertation rely on an understanding of the injustices committed against Indigenous peoples in BC, injustices that must be addressed if we are to reconcile relationships between First Nations and the state. Corresponding with my focus on decolonizing territorial governance, this chapter presents some of those injustices, especially those related to land and resources. It looks at a question that settlers might ask, 'What was done in our name, our nationhood?'[9] The period of Indigenous-state relations covered by this chapter is from contact until *Delgamuukw*; Chapter 4 looks closely at the period after *Delgamuukw*.

Settler responses to learning more about Canada's history of colonialism and dispossession are varied and complex, and may include denial, guilt, or empathy, all of which can act as barriers to transformative socio-political change (Regan 2010). Regan argues that settlers should not respond by trying to solve the 'Indian problem', but keep the focus on their own attitudes and collective responsibility for the colonial *status quo* and try to solve the 'settler problem'. A just reconciliation requires decolonization, which must begin with the unsettling process of settlers decolonizing themselves.

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[9] Kwame Anthony Appiah's formulation expressed in a planning meeting for the Facing History and Ourselves conference, cited in Minow 1998, 131.

2.1 Aboriginal Rights

The fundamental problem to which Aboriginal rights seem to be an answer is the coexistence of Indigenous and colonial societies on the same territory (Ivison et al. 2000). In order to understand how we came to be in the legal and political situation we are now in and how to move forward, we need to know about the development of Aboriginal rights in Canada and continuing struggles surrounding their recognition and infringement. With this knowledge, we can consider how to reconcile Indigenous rights, title, and sovereignty with settler claims to title and governance.

What are Aboriginal rights? I will start with some basic definitions. Rights are things due to someone by just claim, legal guarantee, or moral principles. They are also powers or instruments to secure or promote individual and group interests (Ivison et al. 2000). Aboriginal rights are those rights that are due to Aboriginal peoples because of their sovereignty prior to the assertion of sovereignty by Britain, France, or Canada. These are distinct rights that cannot be claimed by those who came after. Aboriginal rights are different from human rights: rights to which people are entitled simply because they are human. Obviously, Indigenous peoples are entitled to human rights, but they are also entitled to a distinct set of rights, rights specific to their situation as unjustly colonized peoples continuing to live in their homelands.

Another distinction between human rights and Aboriginal rights, at least as defined by the Canadian courts, is that human rights are individual rights, whereas Aboriginal rights are held collectively. As explained by Webber (2000; 71) in relation to the right to title, “the

'collective' nature of Indigenous title is an implicit recognition of the political and legal autonomy of Indigenous societies, not a description of the actual form of landholding practiced within them." In theory, the internal governance of those collective rights can be left to the community holding them.

Aboriginal rights can be divided into different categories. First, there are land and resource rights. The Aboriginal right to land is called Aboriginal title. Some of the more commonly considered Aboriginal resource rights are hunting, fishing, trapping, and plant harvesting. The other main category of Aboriginal rights is political rights, which include the right to self-government and a variety of freedoms, such as the freedom to move across borders, freedom of religion or spirituality, and freedom from taxation (Kulchyski 1994).

What are the origins of Aboriginal rights? As stated by Justice Judson in the Supreme Court of Canada title case, *Calder et al. v. Attorney-General of British Columbia*[10], "…the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries…"[11] The origin of Aboriginal rights is in the activities and laws of Indigenous peoples before the arrival of colonizing states. As described by Borrows (2010), Indigenous peoples are diverse and their laws flow from many sources, including sacred teachings, naturalistic observations, positivistic proclamations, deliberative practices, and local and national customs. He also describes how the oral transmission of Indigenous laws allows flexibility and relevance amidst changing circumstances, sustains connections to underlying cultural foundations, and retains connectivity to a living

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[10] [1973] SCR 313 [*Calder*]
[11] *Calder* at 328.

community. Legal ideas are sometimes recorded using mnemonic devices, like wampum belts, masks, totem poles, medicine bundles, culturally modified trees, birch bark scrolls, petroglyphs, button blankets, land forms, and crests, and these "can be supplemented by practices which include such complex customs as pre-hearing preparations, ceremonial repetition, the appointment of witnesses, dances, feasts, songs, poems, the use of testing, and the use and importance of place and geographic space" (Borrows 2010, 57).

Indigenous interests need only be described as rights in the face of colonization. "It is generally the case that the articulation of rights is prompted by some threat or perceived challenge. If there is no threat, why bother articulating it as a right? It is simply the way things are" (Webber 2000; 64). Thus, while interests are fundamental, rights are epiphenomenal, described and shaped by superimposed legal systems (Webber 2000). As the colonizers' legal system only captures a subset of social norms, the content of Aboriginal rights is contested and the result is always some sort of accommodation and not the protection of the Aboriginal interests themselves (Webber 2000). In addition, Indigenous laws and customs continue to evolve and, in recognizing that the origin of Aboriginal rights is in Indigenous laws and customs, the superimposed legal system needs to allow for that evolution (Webber 2000).

The theory underlying Aboriginal rights uses the language of western political and legal thought and not the conceptions of Indigenous peoples, though for strategic reasons, they are constrained to use it (Tully 2000). Indigenous peoples have their own theories and languages, and though "these two languages are not closed, incommensurable or independent of each

other," they are "massively unequal in their effective discursive power in the present" (Tully 2000; 37). Using the term 'rights' imposes one peoples' ideas on another and gives power to lawyers and state actors (Shipton 2003). In order for Indigenous peoples to advance their claims, however, there seems to be no alternative to adopting the language of rights and working within the dominant legal and political system.

Despite the fact that Aboriginal rights are articulated using the legal system and language of the colonizing society, they are an implicit recognition of the existence of both an Indigenous and non-Indigenous legal system. Within Canadian case law, Aboriginal rights are described as *sui generis*, or unique and different from other common law rights. Borrows and Rotman (1997: 3) argue that "the essence of Aboriginal rights is their bridging of Aboriginal and non-Aboriginal cultures" and that by describing them as *sui generis*, there is a recognition of both Aboriginal and non-Aboriginal conceptions and laws. "Categorizing Aboriginal title as *sui generis* allowed the court to recognize the confluence and co-existence of Indigenous and English laws and protect those rights which flowed from pre-existing Indigenous legal systems" (Borrows and Rotman 1997: 7).

The concept of Aboriginal rights has shifted as the relationship between Indigenous peoples and Europeans, and later the colonial and then Canadian state, changed from the times of early contact with Europeans to the present.

2.2 A History of Indigenous-State Relations in Canada

Although above I give a rather straightforward and seemingly factual account of Aboriginal rights, the truth is that "the concept of Aboriginal rights is in the process of evolution" (Bell

& Asch 1997; 38). Understandings of the origins, nature, continuing existence, content, and implications of Aboriginal rights vary over time and with one's interests, whether First Nation, colonial, federal, provincial, or other. In this section, I trace an evolution in thinking about Aboriginal rights over time, mostly from the perspective of the Canadian state. Aboriginal positions on their rights have not changed as much over time, though strategies for pursuing recognition of those rights have necessarily changed as avenues have opened and closed within the dominant legal and political system. I have broken this account into three sections, corresponding to periods of recognition or denial of Aboriginal rights by the European and then Canadian state: 1) recognition and colonization; 2) denial and attempted assimilation; and 3) recognition and talk of reconciliation. Others have also divided Canada's colonial history into stages (e.g., Armitage 1995 and Miller 1990 in Havemann 1999; Penikett 2006); the periods described by the Royal Commission on Aboriginal Peoples (RCAP) correspond most closely to mine. Their four periods are: separate worlds, contact and cooperation, displacement and assimilation, and negotiation and renewal. As I am looking at the relationship between Indigenous peoples and the state, I have not included the pre-contact period. Also, my periods are titled according to the colonizers' response to Aboriginal rights and the relationship between Indigenous peoples and the state.

As described earlier, Aboriginal interests need only be described as rights in the face of colonialism. There were many dimensions to the process of colonialism imposed by European nations in what is now North America. Some of the main ones include: 1) direct destruction of societies by disease and war; 2) forced replacement of traditional governments with foreign ones, including new forms of self-rule; 3) settler displacement of native

population to reserves and appropriation of their territories; 4) treaty-making (Tully 2000); and 5) forced assimilation through residential schools. Both the colonizing society and Indigenous peoples used varying strategies to advance their interests within this system of colonization. Once settlement began, the colonizers sought to extinguish Indigenous peoples either by assimilation or by denying or extinguishing their rights. First Nations continually worked both against the system, in the name of self-determination, and within the system, by internal contestation of colonizing strategies (Tully 2000). In his summary of how colonial powers were used to dispossess Indigenous peoples of their lands and resources, Cole Harris offers the following conclusions.

> My conclusions are these: the initial ability to dispossess rested primarily on physical power and the supporting infrastructure of the state; the momentum to dispossess derived from the interest of capital in profit and of settlers in forging new livelihoods; the legitimation of and moral justification for dispossession lay in a cultural discourse that located civilization and savagery and identified the land uses associated with each; and the management of dispossession rested with a set of disciplinary technologies of which maps, numbers, law, and the geography of resettlement itself were the most important. (Harris 2004; 165)

All of these different modes of colonial power—physical, economic, cultural, and administrative—continue to be used to keep the colonial system in place, deny Aboriginal rights, and resist a just reconciliation in BC.

2.2.1 Recognition and Colonization

The history of contact between Indigenous peoples and Europeans varies with geography. European explorers and traders reached the east of what is now Canada much earlier than they reached the west. Although there is evidence of much earlier visits by Nordic peoples, the Portuguese, English, and French began making trips to what is now Eastern Canada in the

late 15th century and the French began to settle in what became New France in the 17th and 18th centuries. Britain established the Hudson's Bay Company and controlled Newfoundland and the colonies to the south. France and Britain fought for much of the 17th and 18th centuries, with Britain gaining control of most of Eastern Canada at the end of the Seven Years War in 1763.

On the west coast, in what is now BC, there was contact with Russian, Spanish, and then British explorers and traders in the late 18th century, approximately three hundred years later than on the east coast. Europeans mostly used the area for trade until the middle of the 19th century, when settlement began in earnest, about 250 years later than on the east side of Canada. The European worldview generally, and conceptions of Indigenous peoples specifically, changed over the period between European settlement in the east and west of Canada. This led to different experiences of contact and colonization on each coast.

As described by Borrows (1997), power relations between First Nations and settlers in what is now Eastern Canada in the 18th century were quite different from what they are now. First Nations had not been conquered and their military and economic power could still assert a strong influence over colonial affairs. In order to maintain peace, the French and then the British had to give gifts to First Nations in return for sharing their lands. Implicit in activities like gift-giving, and explicit in the writings of colonial officials at the time, was a recognition by Britain of the sovereignty and rights of First Nations.

The Royal Proclamation of 1763, arguably the founding document for Aboriginal rights in Canada, was issued by King George III at the end of the Seven Years War to establish the governing boundaries and administration of Britain's new lands in North America. A good portion of the document deals with Aboriginal interests, but in contradictory ways.
The Royal Proclamation acknowledges that Indians have not ceded their territories, but claims dominion over those same territories, foreshadowing the contradictions inherent in 20th century court judgments that acknowledge that Aboriginal title existed prior to the assertion of Crown sovereignty, yet do not question the validity of that Crown sovereignty.

The Royal Proclamation also outlines what Britain saw as the process for obtaining First Nations' lands.

> …if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie…

Depending on one's perspective, the Royal Proclamation can be seen as a document that undermines or strengthens First Nations' rights. It established a process for dispossessing First Nations of their lands, but also implicitly acknowledged Aboriginal title. The Royal Proclamation was never revoked and is later referenced in Section 25 of the *Canadian Charter of Rights and Freedoms*, passed as part of the *Constitution Act (1982)*.

In addition to trying to understand the colonial meanings attached to historical documents, it is also important to discern Indigenous meanings and the context in which agreements were made. As Indigenous peoples' literacy was orally based, one must to examine other sources

to understand the context of agreements that were made between First Nations and settlers, for example written accounts of speeches given by chiefs, physical symbols, and the conduct of the parties before and after the agreement (Borrows 1997). We can get an understanding of First Nations' perspectives on sovereignty by examining the context in which the Proclamation was presented to First Nations. Borrows (1997) suggests that the Proclamation became a treaty at a conference in Niagara attended by approximately two thousand chiefs from over twenty-four nations. The Proclamation was read, speeches were made, gifts were given, and a two-row wampum belt was used by First Nations to demonstrate their understanding of their relationship with settlers. Wampum belts were used by various nations in what is now Eastern Canada to document the details of treaties or other agreements between nations. As described by Chief Jake Thomas in 1998:

> The Two Row represents two nations living side-by-side, separately but together, each moving along its own path but never crossing into the other. Each nation respects the other and lives independently and peacefully in co-existence. The Two Row includes the Great Law of Peace, which is our constitution. What this treaty says is that it respects our nation. It respects our constitution, our laws, our government, our land – everything. And we must respect the other nation in the same way.[12]

In the period between the issuance of the Royal Proclamation in 1763 and Confederation in 1867, the colonial government made a series of land purchases from First Nations, following the guidelines in the Proclamation, and in so doing, developed a treaty process. As outlined by Surtees (1986), this treaty system contained the following procedures. First, payment for land was made to the First Nation, generally as a lump sum until 1818, when it was replaced with an annuity. Second, hunting, fishing, and occupancy rights were retained by the First Nation. These rights were not included in written agreements until 1850, but were clearly

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[12] http://www.ainc-inac.gc.ca/al/hts/res/pubs/ont/ont-eng.asp (Accessed June 12, 2009)

understood and recorded in treaty negotiation minutes. Third, some lands were reserved exclusively for Indian use, generally sites of villages and fisheries. After confederation, treaty-making continued until 1930, mostly with the so-called 'numbered treaties'. In the view of the government, the purpose of treaties was to extinguish Aboriginal title. Some First Nations saw the treaties as agreements of peace and friendship; others accept that their title was extinguished but argue that their treaty rights go well beyond the understandings in written documents (Kulchyski 1994). Those First Nations that signed treaties have specific rights called treaty rights, which, in addition to activities such as hunting and fishing, and depending on the terms of the treaty, can include things such as health care and education (Kulchyski 1994). Treaty-making was and is another clear recognition by colonial and subsequent governments that Aboriginal rights and title existed.

Although the motives and conduct of the early colonists were questionable and often dishonourable, there are aspects of their relationship with First Nations in this early period that may give some value to a pursuit of *re*conciliation. Early colonists recognized Indigenous title and followed Indigenous laws. Indigenous people, for their part, made clear how they viewed their relationship with the newcomers in symbols like the two-row wampum.

2.2.2 Denial and Attempted Assimilation

In the early part of the 19th century, the relationship between First Nations and colonists began to shift and European settlers began to gain significantly more power. As described by the Royal Commission (RCAP 1996), there were four main reasons for this: 1) European

settlers began to outnumber Aboriginal people; 2) the focus of the colonial economy changed from the fur trade, which depended on Aboriginal people's labour, to timber, minerals, and agriculture, which required their land; 3) Europeans no longer required First Nations as military allies as the continent entered peaceful times; and 4) an ideology of European superiority began to take hold within the minds of settlers. The relationship of mutual respect and relatively equal power that characterized much of the early period of European intrusion into North America turned into a relationship of European domination and First Nations resistance. European recognition of First Nations sovereignty and rights morphed into denial of those rights and attempted assimilation of First Nations people into European cultures.

Britain 'created' the colony of Vancouver Island in 1849 and the colony of BC in 1858, around the time colonists were moving into their period of denial of Aboriginal rights and adopting policies of assimilation. As described in detail by Harris (2002), the Colonial Office in Britain had entered a period of uncertainty and inconsistency with respect to Aboriginal title, and it was left up to officials in the colonies to deal with as they saw fit. Other than fourteen treaties—covering less than 3% of the land—signed by James Douglas on Vancouver Island between 1850 and 1854, and Treaty 8 spilling over from Alberta in the northeast of the province (signed with the Dene in 1899), there were no agreements between First Nations and the colonizers in what is now BC (Harris 2002). BC joined the Dominion of Canada in 1871 and "responsibility for Aboriginal people shifted, in principle, from the Colonial Office in London to the department of the interior in Ottawa…" (Harris 2002, 71). In a long struggle between the federal and provincial government, lasting from 1850 to 1938, and against the protests of First Nations, 1,536 Indian reserves were created and transferred

to the federal government, comprising a mere 835,339 acres of land, or about a third of one percent of the land in the province (Harris 2002). The provincial and federal governments considered the rest of the province to be open for them to do with as they chose.

2.2.2.1 19th Century Legislation

In the 19th and early 20th Centuries, colonial thought about Aboriginal people was that they would either assimilate—'civilize'—or die out, and that the responsibility of the colonial state was to look after them until either of those outcomes was realized.

> [The] national vision was the same for all Aboriginal people, whether men, women or children, 'status' or 'non-status', Indian, and Métis or Inuit. As their homelands were engulfed by the ever expanding Canadian nation, all Aboriginal persons would be expected to abandon their cherished lifeways to become 'civilized' and thus to lose themselves and their culture among the mass of Canadians. This was an unchanging federal determination. The long-serving deputy superintendent general of Indian affairs, Duncan Campbell Scott, assured Parliament in 1920 that "Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question" (RCAP 1996a).

In the 19th century, the colonial policy of assimilation was called enfranchisement, which referred to a process by which Indian people who met certain conditions could be 'freed' from their Indian status and become Canadian citizens. The first legislated version of enfranchisement was the *Gradual Civilization Act* (1857), later amended by the *Gradual Enfranchisement Act* (1876), which, because voluntary enfranchisement was not popular with Indians, added new measures to speed up the process, including involuntary enfranchisement of Indian women who married non-Indian men (Indian Claims Commission 1998). These assimilationist policies were openly reflected in the *Indian Act* until the enfranchisement provisions were repealed in 1985.

The *British North America Act* (1867), which was the legislation that accomplished Confederation, made little mention of Indigenous peoples, except in Section 91(24), which stated that Indians and lands reserved for Indians were (and continue to be) a federal responsibility. As described by the Royal Commission:

> Parliament took on the job [of regulating Indians] with vigour - passing laws to replace traditional Aboriginal governments with band councils with insignificant powers, taking control of valuable resources located on reserves, taking charge of reserve finances, imposing an unfamiliar system of land tenure, and applying non-Aboriginal concepts of marriage and parenting. These laws, and others, were codified in the Indian Acts of 1876, 1880, 1884 and later. The Department of the Interior (later, Indian Affairs) sent Indian agents to every region to see that the laws were obeyed. (RCAP 1996)

The first *Indian Act* was passed in 1876 and it has been amended many times since then, adding sections to control more activities of Indigenous peoples or repealing sections to temper the most racist and destructive aspects, depending on the objectives of government at the time. In describing the *Indian Act*, White *et al.* (2004; 35 and 42) suggest that it "attempts to govern most aspects of Aboriginal life and affairs both on and off the land reserved for Aboriginal Peoples" and that it "is not a document that conveys rights, but instead defines the federal government's relationship with Canadian Aboriginal People in administrative terms." Like other 19th century legislation related to Indigenous peoples, the *Indian Act* was assimilationist and paternalistic (Isaac 2004), and denied them their Aboriginal rights, and in many cases their human rights as well.

It is hard to say which aspects of the *Indian Act* were most destructive to Indigenous peoples and societies, but, with respect to governance in coastal BC, the 1884 amendment banning

the potlatch had an impact, though potlatching and feasting continued despite the ban. Similarly, the banning of the sundance in 1885 had a profound effect on Prairie nations (RCAP 1996). The ban on the potlatch was not lifted until 1951.

2.2.2.2 19th Century Case Law

In this period of increasing denial of Aboriginal rights and attempted assimilation of Indigenous peoples by the colonial and then Canadian state, the courts were attempting to define Aboriginal title. Although the first important case involving Aboriginal title in Canada was not until 1888, Canadian judges drew (and continue to draw) on earlier international cases in making their decisions. From the colonial perspective, one of the main questions plaguing Aboriginal law is how the Crown gained sovereignty. In all of the Aboriginal title decisions, the courts have held that the Crown has sovereignty, and then attempted to define Aboriginal title within that context. But how did the Crown gain sovereignty?

Seventeenth century British legal rules for acquiring sovereignty were developed in a 1608 judgment in *Calvin's Case*, which stated that if the territory being claimed by a Christian nation was not Christian, the claim for sovereignty was valid (Culhane 1998). Over the following century, the rules were further elaborated and then set out in a 1722 memorandum from the Privy Council of Great Britain. In a situation involving uninhabited land (*terra nullius*), the doctrine of discovery applied and Britain could simply proclaim sovereignty. Where there were Indigenous peoples, Britain was to gain sovereignty by military conquest or negotiation of treaties (Culhane 1998).

Because the land was clearly occupied by Indigenous peoples at the time the Crown asserted sovereignty, in areas where there are no treaties, Canada has used a "certain elasticity of logic" and "19th century racist evolutionary theory" (Asch 2002; 24 and 25) to argue that the Indigenous peoples were not worthy of rights and so the land could be assumed to be *terra nullius*. The legal rationale for assuming *terra nullius* derives from an 1818 judgment of the Law Lords of the Privy Council of Great Britain, *Re Southern Rhodesia*[13], where they put forward a scale of social organization to estimate the rights of Indigenous peoples, stating that some tribes are 'civilized' and have rights similar to those in English law and some are 'too primitive' to have recognizable rights. Canadian courts adopted this approach, deciding that Indigenous peoples were too primitive to have sovereignty or underlying title (Asch 2002). Thus, in the perspective of the courts for about a century, the land that was to become Canada was *terra nullius* and therefore available for the assertion of Crown sovereignty.

The Marshall trilogy, an early 19th century series of cases decided by Justice Marshall in the southern United States, was also used by Canadian courts to defend the doctrine of discovery. As stated by Justice Marshall in *Johnston v. McIntosh*[14], "absolute ultimate title [was] considered [in international law] as acquired by discovery, subject only to the Indian title of occupancy, which title the discoverers possessed the exclusive right of acquiring."[15] Bell & Asch (1997; 45-46) explain that "the theory informing this analysis is that Aboriginal lands could be considered vacant and subject to discovery because of the method of Aboriginal land use and the superiority of English institutions. Cultivation and settlement was labour

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[13] [1919] A.C. 211
[14] 21 U.S. (8 Wheat.) 592 (1823) [*Johnston v. McIntosh*]
[15] *Johnston v. McIntosh* in Bell & Asch 1997, 45.

worthy of reward, but roaming the land like 'savages' was not." Although subsequent U.S. decisions limited the doctrine of discovery (e.g., *Worcester* v. *Georgia*) and despite substantial academic commentary, until the late 20th century, Canadian courts still cited *Johnston* v. *McIntosh* to support the legal presumption of Crown sovereignty (Bell & Asch 1997). Surprisingly, some of the fundamental principles in Canadian Aboriginal rights law still stem from the decision in *Johnson* v. *McIntosh* in 1823.

The evolution of European philosophy underlying arguments about rights, *terra nullius*, and colonial attitudes, has been traced back to 17th and 18th century thinkers such as Thomas Hobbes, Jean-Jacques Rousseau, and John Locke (e.g., Shipton 2003; Harris 2002; Harris 2004; Culhane 1998). It is usually Locke's labour theory of property that is used to describe the colonial mentality regarding Aboriginal title in the 19th century.

> Locke held that God's gift of land to Adam and his posterity acquired value only as labor was expended on it, and that labor justified individual property rights. Those who did not labor on the land wandered over what Locke called unassisted nature, land that yielded little and lay in common. This, he thought, was the condition of America before European settlers arrived (Harris 2004; 171).

The first important case involving Aboriginal title in Canada was *St. Catherine's Milling and Lumber Co. v. R.*[16] in 1888. In that case, drawing on an interpretation of the Royal Proclamation, Indian tenure was described as a 'a personal and usufructuary right dependent upon the good will of the Sovereign.' The court decided that Aboriginal rights were created—not recognized—by the Crown (Culhane 1998). The view of Aboriginal title derived from that case was: 1) it could not be alienated except to the Crown; 2) it was less

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[16] [1888] 14 App. Cas. 54 [*St. Catherine's Milling*]

than a fee simple title; 3) the Aboriginal people holding the title had a right to occupy and use the land; 4) the Crown had underlying title; and 5) Aboriginal title was a 'burden' on Crown title (McNeil 1997).

2.2.2.3 20th Century Legislation and Policy

The story of Aboriginal rights in Canada is a story of shifting power relations between Indigenous peoples and the colonizing state. The forces causing the shifts have been varied, but they can be tracked through linked developments in case law, legislation, and policy. This section covers some of the key developments in legislation and policy relating to Aboriginal rights in the 20th century, up until 1973 when *Calder* signaled a shift from the period of denial and assimilation to a period of recognition and talk of reconciliation.

In the early part of the 20th century, First Nations across Canada were using various means to try to force the government to recognize their Aboriginal rights and title. In 1908, the Cowichan made a legal petition to the Privy Council in London, which was followed by a similar one by the Nisga'a a few years later, arguing that they had never relinquished title to their land and therefore it was still theirs (Foster 1995 in Harris 2004). First Nations in BC formed the Allied Tribes of BC to pursue legal cases on Aboriginal rights (INAC 2009) and the Six Nations Council in Ontario was pushing the government to resolve land claims (RCAP 1996a). These legal and political challenges sufficiently scared the Canadian government, and it passed an amendment to the *Indian Act* in 1927, requiring a licence for anyone—Aboriginal or not—soliciting funds for Indian legal claims. This clause effectively prevented First Nations from pursuing land claims and was not repealed until 1951 (RCAP

1996a). This was the same time that the ban on the potlatch and most of the compulsory enfranchisement provisions were also lifted (one exception was the compulsory enfranchisement of Indian women who married non-status men and the compulsory enfranchisement of the women's children).

In keeping with the removal of most of the enfranchisement provisions, registered Indians were granted the right to vote in federal elections in 1960. Before that, they were required to relinquish their Indian status to be considered Canadian citizens and have the right to vote. As described by Kulchyski (1994), once Aboriginal people had the right to vote, it became clear that they had, at a minimum, equal citizenship rights, with a likelihood of additional rights due to their status as prior occupants. This led to the idea of 'citizens plus', advanced by Hawthorne (1966) in his *Survey of Contemporary Indians in Canada*, which was taken up and endorsed by Aboriginal political organizations.

The last major attempt by the federal government to comprehensively and unilaterally eradicate Aboriginal rights and title through assimilation came with the *Statement of the Government of Canada on Indian Policy 1969,* commonly known as the White Paper. In effect, the policy would have repealed the *Indian Act* and removed any distinct legal or political status for Aboriginal people, ostensibly to end discrimination (Kulchyski 1994; Culhane 1998; Isaac 2004). It was received by Indigenous peoples as a "proposal for wholesale assimilation" (Kulchyski 1994, 5) and spurred First Nations across the country to organize and present a "united front in defence of their cultural and political survival" (Culhane 1998). In the words of Aboriginal activist Harold Cardinal (1969 in RCAP 1996a):

> We do not want the *Indian Act* retained because it is a good piece of legislation. It isn't. It is discriminatory from start to finish. But it is a lever in our hands and an embarrassment to the government, as it should be. No just society and no society with even pretensions to being just can long tolerate such a piece of legislation, but we would rather continue to live in bondage under the inequitable *Indian Act* than surrender our sacred rights. Any time the government wants to honour its obligations to us we are more than ready to help devise new Indian legislation.

First Nations used the concept of citizens plus to argue against the White Paper and for their Aboriginal rights. The White Paper was eventually withdrawn in 1971 (Kulchyski 1994).

It is this period of overt racism, denial of Aboriginal rights, dispossession of Indigenous lands and resources, and attempted elimination of Indigenous peoples through assimilation that is most reprehensible. And it is as a result of this period, and its practices, outcomes, and relationships, that reconciliation is offered as a solution.

2.2.3 Recognition and Talk of Reconciliation

In hindsight, it seems, with the death of the White Paper came the beginning of a new era in the relationship between Indigenous peoples and the state in Canada. First Nations had found political strength in unity and the government was beginning to realize that assimilation was not going to work and that Indigenous peoples might have some rights beyond those of other Canadians. It was with the 1973 Supreme Court of Canada decision in *Calder,* the first Aboriginal title case since *St. Catherine's Milling,* that the new era really began. As with many developments in Indigenous-state relations in Canada, government action followed a development in the courts.

2.2.3.1 *Calder* and Land Claims

In *Calder*, the Nisga'a were seeking a declaration from the courts that their title to their lands had never been extinguished. The lower courts ruled against the Nisga'a, who appealed to the Supreme Court of Canada. In the judgment, three of the justices ruled that Aboriginal title still existed, three ruled that it did not, and the seventh justice dismissed the appeal on a technicality. Although the Nisga'a did not get their declaration, the decision was victory for Aboriginal rights.

Both the decision and the dissenting opinion "contain extensive discussions of the Royal Proclamation of 1763, the *St. Catherine's Milling* case, the *Marshall* decisions, and the nature of Aboriginal title and the process of extinguishing it" (Kulchyski 1994, 61). From the perspective of the courts and the Canadian state, there were several developments that came out of *Calder*. First, all of the six justices that actually ruled on the substantive matters in the case agreed that Aboriginal title existed in law and that its origins were in Aboriginal occupancy and institutions; it was not created by the Crown.

> [N]otwithstanding either the course of Canadian history as understood by the descendents of the settlers, immigrants, and colonists or legal precedent derived from British colonial law, the Canadian state was required to recognize the self-evident yet hitherto ignored fact that Aboriginal peoples lived in societies prior to the arrival of Europeans and that, as a consequence, there was a likelihood that their institutions, tenures, and rights to government remained in place despite the presumption of Canadian sovereignty (Asch 1997, ix).

Second, with respect to extinguishment, three of the justices felt that Aboriginal title was a 'mere burden' on Crown title, the Crown had exclusive right to extinguish Aboriginal title, and Aboriginal title had been lawfully extinguished by Britain's declaration of sovereignty

(Culhane 1998). In the dissenting opinion, however, Hall argued that "while the Crown did have the right to extinguish Aboriginal title it must state its intention to do so in 'clear and plain language,' and it could not be concluded that 'implicit' extinguishment had taken place by virtue of colonial authorities having simply ignored Aboriginal title" (Culhane 1998, 82). It is Hall's opinion on the nature of extinguishment that was later adopted by the Supreme Court in *R. v. Sparrow*[17] (Kulchyski 1994).

The judgment in *Calder* was striking enough to convince the Canadian government that it needed to start negotiating comprehensive land claims in places where treaties were not signed (Kulchyski 1994). In 1973, the federal government set out a *Statement of Claims of Indian and Inuit People*, which divided Aboriginal claims into specific claims, dealing with concerns related to government administration of reserve land and assets and non-fulfillment of historic treaties, and comprehensive claims, dealing with continuing Aboriginal title to lands and resources in areas where claims had not been addressed by treaties (INAC 2009a). In 1976, the federal government began negotiating with the Nisga'a Tribal Council.

As described by the federal government (INAC 2009a), in 1981, the main goal of the comprehensive claims process was to obtain 'certainty' respecting ownership, use, and management of lands and resources by trading claims to undefined Aboriginal rights for a clearly defined package of rights and benefits. In 1995, the federal government accepted that there needed to be new approaches to achieving certainty other than exchange and surrender of Aboriginal land rights. As pointed out by Asch (1999, 433), however, the government's

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[17] [1990] 1 SCR 1075 [*Sparrow*]

strategy with respect to land claims is to "ensure, either by extinguishment or a process akin to adhesion, that upon signing a final agreement, the Indigenous party forfeits its ability to rely on Aboriginal rights as a source of political rights (especially fundamental rights) and thus that their rights originate solely from the fact they are Canadian citizens." Land claims negotiations are a slow and frustrating process, and, as described by Culhane (1998), engaging in the comprehensive claims process requires First Nations to adopt the frameworks and tools of their colonizers. Between 1973 and 1997, seven comprehensive claim agreements were ratified and brought into effect, all of them in the North of Canada (INAC 2009a).

In addition to its land claims policies, the federal government adopted its *Inherent Right Policy* in 1995 as an approach to the Aboriginal right to self-government (INAC 2009a). The beginnings of this policy were with Aboriginal pressure on the federal government following the failure of the White Paper. The federal government's Special Committee of the House of Commons on Indian Self-Government recommended in 1983 that the government recognize First Nations as a distinct order of government and pursue Aboriginal self-government. A community-based self-government policy was developed in 1985, but few agreements were reached because of the government's position on law-making authorities. The 1995 Inherent Right Policy is focused on 'practical arrangements' rather than rights and seeks to establish government-to-government relationships that provide for jurisdictional clarity and address capacity and responsibilities for program and service delivery (INAC 2009a).

2.2.3.2 The *Constitution Act* (1982) and Subsequent Case Law

After becoming a dominion in the British Commonwealth in 1867, Britain slowly transferred more powers to Canada. A movement to repatriate the Constitution grew in the 1970s. In 1978, two important events took place: there was a federal proposal for constitutional reform (Bill C-60) and representatives from the three national Aboriginal organizations were invited to be observers at the related first ministers' meeting (Pentney 1987). Aboriginal groups worked hard, both nationally and internationally, politically and in the courts, to strengthen the provisions relating to Aboriginal rights in the Constitution and accompanying Charter of Rights. In the end, the modifications to the Constitution were a victory for First Nations, though not a complete one.

The main Aboriginal provisions are in Section 25 of the *Canadian Charter of Rights and Freedoms* and Section 35 of the *Constitution Act, 1982*. Section 25 of the Charter states:

> The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may so be acquired.

Section 35 of the Constitution states:

> (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

The main victory for First Nations was that Aboriginal rights were elevated from the common law to constitutional law, giving them much stronger protection. It signaled a shift on the part of the federal government, as, in the time between *Calder* and the *Constitution Act*, Canada moved from ignoring and denying Aboriginal rights, to recognizing and affirming them (Asch 1997). The addition of the word 'existing' in Section 35(1), however, was a setback because according to jurisprudence, Aboriginal rights may have been extinguished prior to 1982 through the conclusion of a treaty or by a Crown action demonstrating a clear intention to extinguish specific Aboriginal rights (Ochman 2008). Also, though they were affirmed, the nature and content of these 'existing aboriginal and treaty rights' was unclear. The clause has been described as an 'empty box' that had to be filled through continuing litigation and negotiation (Culhane 1998). Constitutional conferences held in the years following the passing of the *Constitution Act* failed to clarify the meaning of 'existing aboriginal and treaty rights', so it has been left to First Nations to force clarification through the courts.

Aboriginal law in Canada has progressed mainly through the courts, which have set out and interpreted concepts such as Aboriginal rights and title, fiduciary obligations, the honour of the Crown, extinguishment, infringement, and justification (Ochman 2008). In the period following the passing of the *Constitution Act, 1982*, there were many court cases that built on each other and elaborated certain aspects of the Canadian legal interpretation of Aboriginal rights. I will only touch on a few of the major cases respecting Aboriginal rights and title and will not look at cases relating to treaty rights. Other sources give fuller accounts of the

evolution of Aboriginal rights through case law (e.g., Ochman 2008, Isaac 2004, Kulchyski 1994, Elliott 1994).

In 1984, the Supreme Court of Canada handed down its decision in *Guerin v. The Queen*,[18] a case in which the Musqueam Indian Band sued the federal government for breach of trust. The court ruled in favour of the Musqueam, saying that the Crown owed a duty to the Musqueam, that the duty was of a fiduciary nature, and that the duty had been breached (Elliott 1994). White *et al.* (2004, 33) describe the fiduciary responsibility this way.

> The fiduciary relationship between the Crown and Aboriginal Peoples has its roots in the concept of Native or Aboriginal title. The fact that Aboriginal Peoples have a certain interest in lands does not, however, in itself give rise to a fiduciary relationship between Aboriginal Peoples and the Crown. The conclusion that the Crown is a fiduciary depends upon the further proposition that the Aboriginal interest in the land is inalienable except upon surrender to the Crown.

It was also in *Guerin* that Aboriginal rights were first labeled *sui generis*, or unique and of their own class (Borrows & Rotman 1997). As mentioned earlier, what makes them unique is that they bridge Aboriginal and non-Aboriginal legal systems.

The first Supreme Court decision that attempted to fill the 'empty box' of Aboriginal rights created by the Constitution was *Sparrow* in 1990. Another Musqueam case, *Sparrow* dealt with the right to fish. The court found that common law Aboriginal rights are recognized and affirmed by section 35(1) of the Canadian Constitution, which is paramount over all other laws (Culhane 1998). As outlined in Elliott (1994) and Culhane (1998) other elements of the decision are that Aboriginal rights: are affirmed in contemporary form, allowing evolution

[18] [1984] 2 SCR 335 [*Guerin*]

over time; must be integral to a First Nation's distinctive culture; can only be extinguished if the Crown's intent is clear and plain; and are protected from infringement by government regulation unless the infringement is justified. Legislation infringes Aboriginal rights if it imposes an unreasonable limitation or undue hardship, or denies the right holders their preferred means of exercising the right. To show justification, government must demonstrate that it has a valid legislative objective; that it has given the Aboriginal right top priority after the legislative objective; and that there has been minimum infringement, fair compensation for any expropriation, and consultation with the Aboriginal group. The legislative objective must be 'compelling and substantial', for example conservation of a resource or preventing harm to people, and the public interest or reasonableness are not adequate criteria. From the perspective of advancing Aboriginal rights, the judgment contained elements that were advantageous and elements that were disappointing. On the whole, however, the decision was considered a victory for Indigenous peoples.

In *Sparrow*, the court accepted the Aboriginal right to fish for food, social, and ceremonial purposes without dealing with the question of how Aboriginal rights are to be identified and defined (McNeil 2001). That question was dealt with in three fishing cases, known as the *Van der Peet*[19] trilogy, decided by the Supreme Court of Canada in 1996. In *Van der Peet*, Chief Justice Lamer wrote the majority judgment, creating a test for identifying Aboriginal rights. In his words, "in order to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group

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[19] *R. v. Van der Peet* [1996] 2 SCR 507 [*Van der Peet*]; *R. v. N.T.C. Smokehouse Ltd.*, [1996] 2 SCR 672; *R. v. Gladstone*, [1996] 2 SCR 723

claiming the right"[20], prior to contact with Europeans and continuing to be practiced today (Isaac 2004). In the case of Dorothy Van der Peet selling fish caught under an Indian food fish license, Lamer found that although the Sto:lo had traded fish prior to contact with Europeans, it was not an integral part of their distinctive culture, but rather incidental to the primary activity of fishing for food (McNeil 2001). The two dissenting judgments did not agree with "Lamer's narrow, time-oriented approach to the identification and definition of Aboriginal rights" (McNeil 2001, 319). Justice McLauchlin disagreed with the meaning Lamer attached to 'integral to the distinctive culture', instead suggesting a broad definition of Aboriginal rights as "the unity of practices which together make up that culture."[21] She also criticized his categorical definition of Aboriginal rights, preferring to ask if an activity was *like* an established Aboriginal right, and his pre-contact time frame, suggesting that Aboriginal rights need only be based on traditional Aboriginal laws and customs that had historical roots (McNeil 2001). Justice L'Heureux-Dubé characterized Lamer's pre-contact requirement as a 'frozen right' approach, preferring a 'dynamic right' approach.

As *Sparrow* and *Van der Peet* were key cases for the development of Aboriginal rights doctrine, so the 1997 Supreme Court of Canada judgment in *Delgamuukw* was a landmark decision relating to Aboriginal title. *Delgamuukw* dealt with the land claims of the Gitxsan and Wet'suwet'en and was the first time the Supreme Court ruled on title following *Calder* in 1973. Although a new trial was ordered, the court defined Aboriginal title in the judgment, explaining what is necessary to prove it, clarifying the extent of federal authority over it, and addressing the issues of constitutional protection and infringement (McNeil 2001).

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[20] *Van der Peet* at para 46.
[21] *Ibid* at para 256.

The Supreme Court defined Aboriginal title as "the right to the land itself", which "encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of those aboriginal practices, customs and traditions which are integral to distinctive aboriginal cultures."[22] Minerals, oil, and gas were specifically included in the resources attached to Aboriginal title (McNeil 2001). Aboriginal title is *sui generis* and not like fee simple ownership because it: is inalienable; has its source in the occupation of land prior to assertion of sovereignty by the Crown; cannot be used in ways that are inconsistent with the attachment to the land that gave rise to the title; and is a collective right held communally by all the members of an Aboriginal nation (McNeil 2001). Following earlier cases, Aboriginal title is defined as a particular type of Aboriginal right, and the Court described Aboriginal rights as falling along a spectrum with respect to the degree of connection to the land (Ochman 2008).

> At one end are those Aboriginal rights that are practices, customs, and traditions integral to the distinctive culture of the group claiming the right. These activities have constitutional protection, but the occupation and use of the land where the activities are occurring is not sufficient to support a claim of Aboriginal title to the land. In the middle of the spectrum there are activities that, out of necessity, take place on the land and might be intimately related to a particular parcel of land. While an Aboriginal group may not be able to prove Aboriginal title, it may be able to prove a site-specific Aboriginal right to engage in a particular activity. At the other end of the spectrum, there is Aboriginal title itself, and all the attributes associated with it.[23]

In *Delgamuukw*, the Court also laid out the test for Aboriginal title, which requires that "the Aboriginal people in question were in exclusive occupation of the claimed lands at the time of Crown assertion of sovereignty" (McNeil 2001, 324). In addition to proving occupation

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[22] *Delgamuukw* at para 117 and 140.
[23] *Ibid* at para 138 in Isaac 2004.

and exclusivity, a First Nation must prove continuity between present and pre-sovereignty occupation if present day occupation is being used as proof of occupation (Ochman 2008). Lamer describes Aboriginal title as a 'burden' on the underlying title that the Crown acquired along with sovereignty, thus the importance of proving occupation at the time the Crown asserted sovereignty. He also makes the circular argument that: "…it makes no sense to speak of a burden on the underlying title before that title existed. Aboriginal title crystallized at the time sovereignty was asserted."[24] He does not address the fundamental question of "why the onus is on Aboriginal peoples to prove their own title as against the European colonizers when we all know that they were here occupying lands when the newcomers arrived" (McNeil 2001, 324).

As described by McNeil (2001), another aspect of the *Delgamuukw* decision was resolution of whether Aboriginal title lands were under federal jurisdiction as 'lands reserved for Indians', part of the federal powers decided in the 1867 Constitution. Lamer decided that Aboriginal title lands were 'lands reserved for Indians', and indeed that all Aboriginal rights fall within federal jurisdiction. Thus, they are insulated from provincial laws and therefore the provinces have never had the authority to extinguish Aboriginal title.

The final issue discussed in the *Delgamuukw* judgment is infringement. Although Aboriginal title is proprietary in nature and constitutionally protected, Lamer "reached the startling conclusion that Aboriginal title may be justifiably infringed for a variety of purposes", and included examples of many economic development and environmental protection activities

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[24] *Delgamuukw* at para 145.

(McNeil 2001, 325). As McNeil (2001) points out, this is questionable because most of the activities listed are under provincial jurisdiction (from which Aboriginal title should be protected) and require action akin to expropriation for private purposes, a violation of fundamental principles. Before infringing on Aboriginal rights, Lamer held that consultation with the affected Indigenous peoples must take place. The degree of consultation required depends on the extent of the infringement and lies on a spectrum from 'mere consultation' to consent.

To summarize, the period from the passing of the *Constitution Act, 1982* to the ruling in *Delgamuukw* was a time of immense change in the development of Aboriginal rights in the Canadian legal system. In fifteen years, Aboriginal rights went from being an 'empty box' to being clearly defined and proven in court, and having to be presumed and accommodated when decisions are taken that might affect them. Some of the Aboriginal law doctrine developed through post-1982 case law has been: the fiduciary relationship between the Crown and Aboriginal peoples (*Guerin*); the infringement and justification tests for Aboriginal rights (*Sparrow*); the test for identifying Aboriginal rights (*Van der Peet*); definition of and test for Aboriginal title (*Delgamuukw*); and infringement of Aboriginal title and consultation (*Delgamuukw*).

Although case law has advanced Indigenous claims significantly in the past twenty-five years, it still uses the colonizers' system and puts the onus on Indigenous peoples to prove their rights in the courts. It continues to assume Crown sovereignty without justification. From an Indigenous perspective, the relationship between Indigenous and non-Indigenous

peoples has not been fiduciary nor honourable. If non-Indigenous people were to have to prove their rights in an independent or Indigenous court, what rights would be recognized? What would be considered as evidence? If any rights were proven, what would justifiable infringement include?

This third period in the history of the relationship between Indigenous peoples and the state—the period I have called recognition and talk of reconciliation—began in 1973 with the Supreme Court of Canada decision in *Calder*. That decision forced the federal government into the realization that it had to deal with the land claims of Indigenous peoples in places where treaties were not signed. In 1982, strong legal and political action by Indigenous leaders pushed the federal government to include protection for Aboriginal and treaty rights in the Constitution. Through a long and exhausting series of court cases, Indigenous peoples have advanced their long-standing claims to their lands and their rights.

In this period, we see Indigenous people pushing the government to recognize Aboriginal rights and to talk about ways to reconcile them with the Crown's assumed sovereignty. Indigenous peoples have used litigation, negotiation, and political and direct action to force the government to change its policies. The impacts of the denial of Aboriginal rights on Indigenous peoples and their lands has been monumental, and although there is presently much cause for hope, real change is slow and the infringement of Aboriginal rights continues. I have used the term 'talk of reconciliation' to characterize this period because by the time the judgment came down in *Delgamuukw*: the courts had only signaled the need to reconcile; treaty negotiations (talk of reconciliation) in BC were ongoing and no treaties had

been ratified; for the most part, governments did not recognize Aboriginal rights in practice; and relations between governments and First Nations were far from conciliatory or respectful.

2.3 Conclusion

In this history of the relationship between First Nations and the state in Canada, we see that Aboriginal rights have been acknowledged and denied and acknowledged again. In attempting to tell a (relatively) concise and clear story about the development of Aboriginal rights theory, I have oversimplified a complex history. In the passage below, Kulchyski reminds us that it is not a story with a tidy beginning, nor one of a linear process, nor one where the rules stay the same.

> The recognition and affirmation of Aboriginal rights cannot be seen as an outcome of a progressive liberalization of society, as the latest step in a process by which every day, in every way, things are getting better and better. It is a history of sustained, often vicious struggle, a history of losses and gains, of shifting terrain, of strategic victories and defeats, a history where the losers often win and the winners often lose, where the rules of the game often change before the players can make their next move, where the players change while the logic remains the same, where the moves imply each other just as they cannot cancel each other out. It is a complex history whose end has not been written and whose beginnings are multiple, fragmentary and undecidable. (Kulchyski 1994; 10)

It is also a story that is different for different Indigenous nations and in different places in Canada.

One aspect that deserves more attention, though I cannot give it enough here, is the specific ways that colonization has affected Indigenous peoples and the strength of their resistance. Some broad examples of impacts are: disruption of indigenous systems of governance

through imposition of *Indian Act* systems; loss of possessions, homes, resources, land, and wealth; destruction of sacred sites; prohibition from resource management and harvest; disruption of the learning of languages, knowledge, and skills; and emotional trauma and intergenerational effects of residential schools. Resistance is evident, for example, in Indigenous peoples' continuation of hereditary governance systems, repatriation of possessions, pursuit of claims, assertion of territorial governance, and teaching of languages, knowledge, and skills.

In this chapter, I have outlined some of the developments in relations between Indigenous peoples and colonizers in what is now Canada and BC. I have focused on how colonial governments used—and continue to use—the law to carry out their project of dispossessing First Nations of their lands and removing Indigenous peoples' powers to govern. I have highlighted the fact that, even from the perspective of the colonialist legal system, the Crown's claims to sovereignty are hard to rationalize. BC's power to govern is rooted in racist ideas about Indigenous peoples—specifically that they were not sufficiently evolved to be considered people—and has been imposed with both physical and structural violence. Structural violence refers to constraints on human potential caused by economic and political structures (Galtung 1969), and in this case refers to legislation and policy that has and continues to oppress and dispossess Indigenous people and deny First Nations the right to govern.

Despite the fact that the origins of BC were violent and unjust and non-Indigenous British Columbians are in possession of 'stolen goods', First Nations continually express their

openness to working out a solution that would allow non-Indigenous people to stay and retain control of some (and even a majority) of the lands and resources. Because of their current levels of poverty and dependency on the federal government, First Nations do not enter treaty negotiations free of coercion or urgency, but contemporary treaties are an example of how much First Nations are willing to give up to settle outstanding claims and improve relations. Indigenous people and leaders show a generosity to non-Indigenous people that is hard to understand from within settler culture, a culture that arguably has been built on greed and disrespect.

For non-Indigenous people, learning about this past can induce different and complicated reactions. Non-Indigenous people might be afraid of the implications for themselves, their families, and their ways of life and distrustful of First Nations and their goals. They may put themselves in the place of Indigenous peoples and know that they might not be generous with those who stole their lands and attempted to eliminate them. They might deny this history or place the responsibility for these actions on people now dead, whether their ancestors or not. Or they might wish to ignore the past and look forward, suggesting that as long as they treat everyone equally now, justice will be served. But justice will not be served if they hide behind their fear, deny any responsibility, or ignore the past.

The legal instrument of Aboriginal rights has been and is used in the Canadian legal system to try to reconcile the prior existence of Indigenous peoples with the assumed sovereignty of the Crown. In addition to legal, rights-based arguments for why we must achieve reconciliation, there is a moral argument as well. In her book, *Taking Responsibility for the*

Past, philosopher Janna Thompson makes the case that we have a moral obligation to repair injustices of the past, and that our obligations are related to, but distinct from, the duty to undo presently existing inequalities. There are different arguments for why we should bear the responsibility for past injustices; some rely on descendants of victims' claims of harm or lost possessions and others on descendants of perpetrators (and other non-Indigenous citizens) continuing to reap the benefits of colonialism. Thompson argues, however, that a society or nation is an intergenerational community and its moral and political authority depends on its members accepting transgenerational obligations and honouring historical entitlements. As a society, we generally accept obligations such as the duty to keep promises, honour contracts, pay debts, make recompense for wrongs done, and avoid punishing the innocent. "The commitment we are imposing on ourselves and our successors is, above all, a commitment to maintaining relations of respect. Implied by this commitment is the obligation to make reparation for any unjustified act of disrespect" (Thompson 2002, 34). We feel justified in imposing duties like these on *our* successors, therefore we must also bear responsibility for similar obligations of our ancestors.

Problems arise, however, when duties related to historical entitlements are weighed against other duties, for example the rights of those who currently possess unjustly acquired items. Theories of how to deal with these situations generally fall into two categories: those who believe that present possessors have no rights to the stolen property and those who feel that current needs and inequities should be the deciding factor. Thompson (2002) argues that neither is satisfactory and offers a reconciliatory approach to reparative justice that aims to repair relations damaged by injustice rather than ignore the injustice or attempt to return to a

pre-injustice state. She also specifies that ancestry is irrelevant to historical obligations; one assumes responsibility for the past along with other duties of citizenship.

Once we understand the history of the relationship between Indigenous peoples and the state, and once we recognize Aboriginal rights and title, we must determine how we can address past injustices, repair damaged relations, and reconcile Aboriginal rights with the assumed authority of the Crown. In the next chapter, I engage in an in depth exploration of the concept of reconciliation as it relates to Indigenous-state relations in BC, specifically within the context of territorial governance. I examine arguments for and against a focus on reconciliation and suggest what might be requirements for genuine reconciliation. "After some 500 years of a relationship that has swung from partnership to domination, from mutual respect and co-operation to paternalism and attempted assimilation, Canada must now work out fair and lasting terms of coexistence with Aboriginal people" (RCAP 1996).

Chapter 3: From 'Reconciliation' to Decolonizing Territorial Governance

> There are no tidy endings following mass atrocity.
> (Judge Goldstone in Minow 1998, ix)[25]

> Reconciliation may often fall short of justice…Political leaders should not pretend that reconciliation is the same as justice. But, again, this does not mean that reconciliation is a second-best option…in many cases, reconciliation may be our sole morally significant option. (Dwyer 2003, 108)

> [Reconciliation] is non-threatening, requiring of the Settler only a trite statement of regret and ceasing of the practice of the most open forms of racism—such easy things for liberal-minded Settlers to agree to that it has gained huge public and government support as *the* framework for resolving the colonial problem and has become the paradigm of post-colonial colonialism. (Alfred 2005, 152)

The country of Canada and the province of BC have been built on injustices done to Indigenous peoples. Over time, and through various means, Europeans gained possession of the lands and resources. This required 'elimination' of the Indigenous peoples (Wolfe 2006), whether directly through killing, indirectly through a host of assimilative strategies, or rhetorically through racist concepts like *terra nullius* and the doctrine of discovery. At various points, these injustices have been ignored, actively denied, and covered up. But the reality is clear in a oft-cited statement from the 1973 Supreme Court of Canada *Calder* decision: "The fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries."[26] Another reality is clear in a second oft-cited statement, this time from *Delgamuukw*: "we are all here

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[25] Richard Goldstone, Constitutional Court Judge in South Africa and former Chief Prosecutor, International Criminal Tribunals in the former Yugoslavia and Rwanda
[26] *Calder* at 328.

to stay."[27] These two seemingly simple statements sum up why reconciliation is the focus of so much attention in Canada and other countries built on settler colonialism.

As outlined in the previous chapter, we are currently in a place where Aboriginal rights have been recognized and affirmed in the Constitution, and we have case law that has defined them, determined tests to prove them, and proven some of them in certain places for certain peoples. Although the Supreme Court still insists that the Crown has acquired sovereignty, the legal means by which it may have acquired it are nebulous. The Supreme Court also acknowledges that in places where treaties have not been signed, and within their legal system, Aboriginal title likely still exists in particular places. The Supreme Court has instructed governments, First Nation and colonial, to negotiate a resolution—a reconciliation—of these potentially conflicting titles and governance structures.

There are three components to reconciliation in the context of relationships between Indigenous peoples and newcomers in Canada: 1) reconciling the relationships between Indigenous and non-Indigenous peoples; 2) reconciling the relationships between First Nations and colonial governments; and 3) reconciling Crown claims to sovereignty with Indigenous sovereignty. Achieving any of these will require addressing and overcoming ignorance, racism, fear, and guilt on the part of non-Indigenous people, and continuing colonialism, including structural violence and assimilative policies, on the part of Canada and the provinces and/or territories.

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[27] *Delgamuukw* at para 186.

Although Prime Minister Stephen Harper stated in his residential schools apology of June 11, 2008 that "There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again,"[28] those attitudes and beliefs remain in settlers' minds, colonialist governance structures, and colonialist government policy. If we are to move toward reconciling relationships and competing claims, we must overcome those attitudes and beliefs, ensure we meet the requirements for genuine reconciliation, and create decolonized governance structures.

In this chapter, I begin by giving a brief overview of the literature on the emergence of reconciliation processes as a response to genocide and mass violence. I then talk about internal or settler colonialism—the kind on which states like Canada, Australia, New Zealand, and the United States are built—and special considerations when looking at reconciliation within that context. The rest of this chapter, and indeed the dissertation, deals with the specific context of settler colonialism. I look at problems with reconciliation in this context, both the concept of reconciliation and processes of reconciliation. Overcoming these problems requires attention to goals and processes, through which requirements for 'genuine reconciliation' can be determined.

I then move from a general look at reconciliation to focus on the specific context of land and resource governance. I review the debates in the co-management and related literatures, as co-management has been a primary means used by governments and Indigenous peoples to address rights to manage resources. Finally, I combine the results of my look at reconciliation

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[28] Statement of Apology, http://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649, accessed December 8, 2012

with the debates in the Indigenous resource governance literatures to explore what decolonizing territorial governance might mean.

My focus in this chapter is on developing a set of requirements of, or criteria for, decolonizing or reconciling processes. I set out to answer the following questions. What is required for reconciliation? What has to be reconciled and what will it take for that to be accomplished? How can we decide if a process or relationship is decolonizing? What would decolonized territorial governance look like?

3.1 Reconciliation as a Response to Mass Injustice

In providing only a summary of the goals and processes of reconciliation, I do not properly consider the experiences of victims of mass injustice, nor the depth or interconnections of the concepts related to reconciliation—concepts like truth, justice, vengeance, mercy, and forgiveness. Fortunately others have focused more on these aspects of reconciliation (e.g., Lederach 1997, Minow 1997, Rotberg and Thompson 2000, Hayner 2001, Dwyer 2003). Reconciliation processes have emerged as a common response to genocide and mass violence in the post-Cold War era. As described by Lederach (1997), conflicts *between* states were predominant during the Cold War and peace-building responses focused on statist diplomacy to resolve issues. With *intrastate* conflicts becoming prevalent after the Cold War, reconciliation processes have emerged in attempts to build peaceful relationships between victims and perpetrators of mass violence in countries where they must continue to live together post-conflict.

Reconciliation, at least in the literature that followed the establishment of truth and reconciliation commissions and the outpouring of state apologies in the final two decades of the 20th century, refers to restoring peaceful relationships between communities in societies divided by conflict. As described by Crocker (2003), there are 'thinner' and 'thicker' conceptions of reconciliation in the literature. On the thin end of the spectrum is simple coexistence. In the middle are respectful relationships in which both sides listen to each other and look for compromises. The thicker conceptions of reconciliation involve forgiveness, mercy, a shared comprehensive vision, mutual healing, and/or harmony. Some argue against working toward these thicker conceptions on the grounds that they may involve coercing victims or perpetrators in their pursuit. In practice, the term reconciliation is often used to refer in general to building peace after conflict (Lederach 1997), and not always specifically to improving relationships. Thus, reconciliation is often listed as only one among many goals of reconciliation processes.

In her book *Between Vengeance and Forgiveness*, Martha Minow argues that, in the wake of mass violence, we must refuse to let forgetting or denial succeed. Nations need to ask "What would it take, and what do our current or imagined institutions need to do, to come to terms with the past, to help heal the victims, the bystanders, and even the perpetrators?" (Minow 1998, 21) She explores different responses to collective violence and what they can and cannot achieve, creating a schema for assessing responses to atrocities at the societal level. Beginning from the premise that no response can ever be adequate and that closure would be insulting, she outlines twelve overlapping goals of reconciliation processes, including the following: overcoming communal and official denial; establishing a full accounting of facts;

ending and preventing violence by creating institutional practices of equal respect and dignity; forging a basis for democracy that respects and enforces human rights; promoting reconciliation across social divisions; promoting psychological healing of individuals, groups, victims, bystanders, and offenders; restoring dignity to victims; punishing offenders; and ensuring that such atrocities never occur again.

David Crocker (2003) also sets out goals for reckoning with past wrongs. He begins by ruling out two related goals: vengeance and disregarding the past in favour of the future, for example through denial, forgiving and forgetting, or rationalization. Crocker's eight goals, distilled from international dialogues, are: truth; a public platform for victims; accountability and punishment; rule of law; compensation to victims; institutional reform and long-term development; reconciliation; and public deliberation. Each of these goals brings up a host of questions and concerns specific to particular settings, but they provide another way to think about some of the purposes of reconciliation processes.

For my purposes, that is to examine reconciliation in the context of territorial governance in BC, I will select the following broad goals to explore, which incorporate many of the goals articulated by both Minow and Crocker: truth (overcoming denial, establishing accounting of facts, public platform), justice (accountability and punishment), reparations (restoring dignity, promoting healing, compensation), and reconciliation itself, including institutional (and other types of) reform. Here I will give an overview of these concepts from the general literature on reconciliation in the wake of collective violence. Later in the chapter, I will look specifically at reconciliation in the context of settler colonialism.

Truth and justice are two concepts given much discussion in the reconciliation literature. In his assessment of the links between truth, justice, and reconciliation, Allen (1999, 317) states: "It is not that *no* reconciliation is possible without truth, but, rather, that morally justifiable reconciliation requires the disclosure of truth and some concern to see justice served. Reconciliation on other terms is demeaning or in other ways morally unjustified."

3.1.1 Truth

In his survey of the reconciliation literature, Damien Short (2008) suggests that there is a broad consensus that determining the truth is the first step in processes of reconciliation. He points out that truth, however, is complicated, as it brings up questions of epistemology, objectivity, and relativism. It is also subject to manipulation for political reasons. Following others (e.g., Nagel in Du Toit 2000; Boraine in Crocker 2000), Short distinguishes between factual or forensic truth and 'truth as acknowledgment'. Factual truth is important for determining information about particular events, which in turn is necessary for determining suitable reparations. 'Truth as acknowledgment' highlights that truth-telling: acknowledges victims, their suffering, and the injustice of their suffering; affirms victims' dignity, agency, and voice; and can be therapeutic, both for those giving testimony and those listening to it (Kiss 2000). Both types of truth work against denial, distortion, and disinformation and can disrupt cycles of distrust and violence caused by unacknowledged injustice. Uncovering the truth, then, can be both preventative and restorative (Rotberg 2000). Keeping in mind the purposes of seeking the truth, Short (2008) notes that there is no need to claim epistemological certainty nor establish the whole truth.

One process of reconciliation, the truth commission, has been used in the wake of mass atrocity in many countries in the past few decades, especially in Latin America (e.g., Argentina, Chile, Colombia, El Salvador, Guatemala, Panama, Peru) and Africa (e.g., Ghana, Kenya, Liberia, Morocco, Sierra Leone, South Africa). One of the most well-known examples is South Africa's Truth and Reconciliation Commission, set up by President Nelson Mandela and former Archbishop Desmond Tutu after the transition from apartheid. Much has been written on truth commissions and their purposes and limitations, often is comparison with trials (e.g., Minow 1998, Rotberg and Thompson 2000, Hayner 2001). Although commissions can be better at uncovering truth and providing platforms for victims, ultimately, truth can only be a prelude to reconciliation, and not the sole condition for reconciliation (Soyinka 1998).

3.1.2 Justice

With the knowledge and acknowledgement of what happened, focus turns to justice, which is intimately linked to truth. Like truth, there are different kinds of justice, and in the case of mass atrocities, it can only be partial given the nature of the crimes. Types of justice described in relation to reconciliation processes include retributive justice, justice as recognition, and restorative justice, or justice as restitution and reparations. In the context of settler colonialism, retributive, or criminal, justice is not generally applicable, because the crimes for which there could be direct punishment happened a long time ago and the people

responsible for those injustices are dead.[29] The injustices that continue to occur are structural in nature, and addressing them requires transforming political and economic systems rather than punishing individual perpetrators.

As is evident in the discussion of why truth is important, recognition is an important part of recovering from injustice. It seems insufficient, however, in many cases. 'Justice as recognition' may be argued for in cases where other types of justice will be problematic, for example in transitional democracies, where stability of the new regime is a primary goal. Some might suggest that cases of settler colonialism are similar, in that maintaining economic stability, or *certainty*, is a prime concern. I would suggest that, although the threat of a return to civil war and resumption of reigns of terror may be a justifiable reasons to forego other types of justice at least temporarily, the threat of curtailed investment or even political fallout are not. In the case of transitional democracies, previous victims may continue to be victimized. In the case of settler colonialism, the perpetrators/privileged may suffer some relatively minor economic or political setbacks.

In a different argument against recognition (and not linked to justice specifically), Glen Coulthard (2007, 438) "challenges the idea that the colonial relationship between Indigenous peoples and the Canadian state can be significantly transformed via a politics of recognition." He suggests that recognition that seeks to reconcile Indigenous claims to nationhood with assumed Crown sovereignty through the delegation of land, capital, and political power from

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[29] I am not suggesting that retributive justice is not appropriate for living perpetrators. There is much debate in the literature on truth and reconciliation commissions about the merits of retributive *versus* reconciliatory goals, which I will not elaborate on here (e.g., Minow 1998, Allen 1999, Rotberg and Thompson 2000).

the state to Indigenous communities reproduces the master/slave relationship of colonialism. He argues that instead of seeking recognition from the colonial state and society, Indigenous people must turn away from the colonial state and recognize that, individually and collectively, they "have much to teach the Western world about the establishment of relationships within and between peoples and the natural world that are profoundly non-imperialist" (2007, 456). Recognition, though arguably important as a component of reconciliation processes, cannot be equated with justice in the case of settler colonialism.

In the complex context of responding to profound injustice and reconciling divided societies, restorative justice has become a focus (e.g., Minow 1998, Kiss 2000, Prager 2003). According to Kiss (2000), restorative justice includes the following commitments: to affirm and restore the dignity of victims; to hold perpetrators accountable; to create social conditions in which human rights will be respected; and to reconcile relationships. It is the fourth commitment, reconciliation, that really distinguishes restorative justice from retributive justice. As described by Minow (1998), unlike punishment, restorative justice seeks to *repair* the injustice, to make up for it, and in so doing to repair social connections and peace. It is about what *ought* to be done and the obligations of wrongdoers, or their descendants or successors, for making the repair (Thompson 2002). Thus, restorative justice, also called reparative justice, focuses on reparations.

3.1.3 Reparations

Terms relating to restorative justice are not used consistently in the literature. I use 'reparations' as an umbrella term for all of the various ways restorative justice can be

achieved. I use ‘restitution’ to refer to the return to victims or their descendants of property or rights that were previously taken away. And I use ‘compensation’ to refer to situations in which something (e.g., money, medical services, opportunities) is given to victims or their descendants to make up for an injustice. Other types of reparations are apologies and acts of remembrance, including public art, days of remembrance, new historical narratives, and programs of education.

Situations of mass injustice require response, for moral, legal, preventative, and restorative reasons. As discussed earlier, recognition of the injustice is not sufficient and retribution is not always possible. Even when it is possible, it does not address many of the needs of victims or society at large. Reparations can provide a means of acknowledging the harms done, accepting responsibility, expressing regret, reminding society of social norms, restoring dignity, promoting healing, assisting with non-repetition, improving relations, correcting the public record, and correcting imbalances (Kiss 2000). Reparations can be visionary and can lead to reconciliation.

As Minow (1998) points out, however, there are limitations and dangers to reparations. Even though some amends are made through reparations, the underlying events can never be forgotten. Where monetary reparations are made, they cannot remedy non-monetary harms and in some circumstances, they can trivialize them. And reparations can raise questions about who is entitled to them or what to do about intervening owners in the case of restitution. People’s lives and past worlds cannot be restored, and there are no measures for the value of what was lost. As summarized by Minow (1998. 5-6):

> So this book inevitably becomes a fractured meditation on the incompleteness and inescapable inadequacy of each possible response to collective atrocities. It is also a small effort to join in the resistance to forgetting. It is an effort to speak even of the failures of speech and justice, truth-telling and reparation, remembering and education, in the service of urging, nonetheless, response. It is a missive to the next generation, in the next century, in the fearful acknowledgment that we are not done with mass violence, nor expert on recovering from it.

Although insufficient, reparations are at least a response to injustice.

3.1.4 Reconciliation

The term 'reconciliation', as has already been discussed, has different meanings. Similarly, within the literature on reconciliation, there is variation in the meaning and use of 'reconciliation'. It is used broadly to refer to processes aimed at building peace after injustice, and it is used more specifically to refer to one goal of these processes, generally improving relations between individuals or groups. It is also used to refer to both processes and outcomes. In many cases, authors do not even attempt a definition, let alone an in depth discussion of the concept. Susan Dwyer (2003, 92), however, examines the concept from a philosophical standpoint and asks the following questions of reconciliation.

> But what is reconciliation? Is it the end-state toward which practices of apology and forgiveness aim? Is it a process of which apology and forgiveness are merely parts? Or is it something altogether independent of apology and forgiveness? How is reconciliation to be achieved? And under what conditions should it be sought?

In unpacking the concept of reconciliation, Dwyer points out that it occurs at both micro- and macro-levels, has forward- and backward-looking dimensions, and has both psychological and moral motivations (which can sometimes be at odds). Her perspective is that reconciliation should be understood as the incorporation (not the erasure) of a tension or

disturbance into a narrative of understanding (whether personal or national). In Dwyer's conception, the process of reconciliation is epistemological and requires a clear view of the events, articulation of a range of interpretations of the events, and the choosing of a subset of interpretations that allows each party to accommodate the disruptive event into its ongoing narrative. This conception does not require a single interpretation, but does require all parties to be tolerant of a limited set of interpretations.

Although her focus is conceptual, Dwyer still concludes by highlighting that reconciliation at the macro-level requires credibility that can only be established by concrete action to address substantive injustices. This need for reform—including legislative, political, institutional, and educational—was also included in both Minow's (1998) and Crocker's (2003) goals of reconciliation processes listed earlier. This aspect of reconciliation is particularly important for long term peace. Reforming institutions can help to address inequities and provide concrete assurances that violations will not be repeated. If a nation needs to be (re)created, and in many cases that is what is required, reconstructing institutions is a part of that process.

I will not attempt to answer questions about what reconciliation is or should be here, but I will note that all of the goals discussed above—truth, justice, and reparations—reasonably fit within the broad goal of reconciliation. And the specific goal of restoring relationships arguably requires attention to truth, justice, and reparations. The context within which reconciliation is being attempted specifies what is possible, what ought to be done, how goals are weighed against each other, and which reconciliation processes will be used. I will now turn to an examination of reconciliation within the particular context of settler colonialism.

3.2 Reconciliation as a Response to Settler Colonialism

Reconciliation seems an apt goal in the context of settler colonialism. Its dual meanings—restoring relationships and making things compatible—capture two of the required processes for addressing the legacies of colonialism. Indigenous-state relations need to be improved and Crown claims to sovereignty need to be made compatible with Indigenous title. The concept is not without justifiable criticism, however, some of which stems precisely from its dual definitions. Some of the conceptual problems with reconciliation in the context of settler colonialism, problems that stem from the etymology and connotations of the term, are that it: 1) is vague; 2) has Christian roots; 3) promotes a false notion of moral equivalency; 4) implies returning to a previously harmonious state; and 5) suggests finality and closure. Term aside, the main problem with reconciliation in settler colonialism is the imbalance of power between the parties. This means that reconciliation processes are usually embedded in and perpetuate existing power relations. It also means that Indigenous concepts and processes of reconciliation are rarely paramount.

3.2.1 Conceptual Problems

Related to its dual definitions, the concept of reconciliation is vague: who or what is being reconciled with whom or what? The use of the noun form—'reconciliation'—means that those questions can go unanswered. When the verb form—'reconciling'—is used, one must clarify the subjects and objects. In the words of an Indigenous elder in Australia, Neville 'Chappy' Williams, "What have Aboriginal people got to reconcile? What do we have to reconcile with? Our history of massacres, murders, removal of our children, the taking of our

land?" (Short 2008, 150). Thus, the term reconciliation not only needs definition, but also qualification if and when it is used.

The vagueness of the term also allows it to be translated and co-opted by governments into something much smaller than its potential. It is easy to speak of reconciliation, much more difficult to commit to *reconciling* Crown claims to sovereignty that are based on racist notions about the inferiority of Indigenous peoples *with* Indigenous title. And it is easy to envision reconciliation as creating a place at the colonial table for Indigenous peoples, inviting them to be citizens in the country called Canada. It is more difficult to accept Indigenous title as the legitimate one, and then work out political relationships based on that premise. The tendency of non-Indigenous governments is to focus on the celebratory, ceremonial, ritualistic, or therapeutic aspects of reconciliation rather than the substantive change necessary to address past and continuing injustices.

A second problem with term 'reconciliation' in the context of settler colonialism is its Christian roots. The term was originally used to refer to reunion of a person with the church or an action of restoring humanity to God's favour. Later, it was used to mean an action of restoring estranged parties to friendship and of bringing to agreement or harmony.[30] Given the active participation of Christian churches in the attempted assimilation of Indigenous peoples in Canada, let alone the emotional, physical, and sexual abuse of so many Indigenous children, sensitivity to Christian connotations is important.

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[30] *Oxford English Dictionary*, http://www.oed.com/view/Entry/159781?redirectedFrom=reconciliation#eid, accessed January 1, 2013

A third problem is that 'reconciliation' suggests compromise, give and take on each side. If compromise is the promoted solution, it would seem that the parties share equal blame for the events that led to the need for reconciliation. In the case of settler colonialism, however, the parties do not share equal blame and Indigenous peoples should not be asked to compromise. As pointed out by Dorrell (2009), compromise between unequal parties favours the dominant group. In the case of reconciliation processes in response to settler colonialism, they are often designed to give Indigenous peoples "a place inside settler society with no requirement for settlers to forego any of their ill-gotten gains personally or collectively" (Alfred 2005, 151). Thus *only* Indigenous peoples are asked to compromise. Alfred (2005) argues that this 'false notion of moral equivalency' is a fatal flaw of reconciliation.

A fourth problem with 'reconciliation' is that it connotes the *restoration* of good relations, a return to a previously harmonious time. In situations of settler colonialism, this is not the case. In eastern Canada, an argument could be made that there was a time when relations between Indigenous peoples and Europeans were better, but this preceded the period when Europeans were focused on settlement. Once Europeans wanted land, they viewed Indigenous people as a barrier that needed to be eliminated, whether through killing or assimilation (Wolfe 2006). In *settler* colonialism, then, the goal is not to *restore* peaceful relations, but to create them (Miller 2006, Dorrell 2009).

Finally, the term 'reconciliation' suggests finality and closure, putting the past behind us or closing a 'sad chapter in our history' (as stated by Stephen Harper in his residential schools

apology). But as Keavy Martin (2009) suggests, it is important to 'keep scars visible' and make non-Indigenous Canadians responsible for knowing their history. It is also important that we acknowledge that colonial violence and policies continue today and require eradication before we close any chapters in our history. Reconciliation does not acknowledge the on-going, dynamic process that is required to achieve justice and decolonization.

Settler governments, at least in Canada, are seeking finality and certainty through reconciliation processes. Their various policies of rights and title extinguishment or 'modification' in treaty processes are examples of their quest for closure. Indigenous conceptions of reconciliation, however, often include on-going and dynamic processes that requires constant renewal. As pointed out by Jim Tully at a forum on treaty-making in 2000, "For [Indigenous people], reconciliation is an ongoing activity, a continuous process of cross-cultural dialogue over time between partners over matters of their shared concern."[31] Similarly, Miller (2006, 8), in describing Coast Salish ritual practices relating to reconciliation, says: "Ritual work marks out the continuation of a relationship, one that has a past and a future. This, in turn, requires that the parties conduct further work to continue to cement the relationship; there is no unilateral ritual work." Alfred (2005) argues that settler courts and governments seek certainty and finality—resolution—in order to achieve order that ratifies colonial institutions and perpetuates the original injustice. He suggests that 'resurgence' should replace 'resolution', and that contention and conflict are necessary to transform colonial society and institutions.

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[31] BC Treaty Commission Annual Report 2000, http://www.bctreaty.net/files/pdf_documents/2000_Annual-Report.pdf, accessed January 2, 2013

3.2.2 Processual Problems

Reconciliation processes are invoked in situations where two sides need to achieve peaceful coexistence. Other than this overarching goal of peace, however, the objectives of the two sides can often be quite different, especially in cases of settler colonialism. In situations where there is an imbalance of power, for example between Indigenous nations and a colonizing state, reconciliation processes are vulnerable to control and cooptation by the more powerful state. The state controls the land, resources, governance, and finances of Indigenous communities; the state also has the physical force to maintain that control. Given these conditions, it follows that the state can control any process of reconciliation.

Asymmetry of power in settler colonial processes of reconciliation can lead to state objectives of legitimation and certainty overriding questions of justice and decolonization: "Reconciliation becomes a way for the dominant culture to reinscribe the *status quo* rather than make amends for previous injustices" (Corntassel et al. 2009, 144). In some situations, such as apologies and truth and reconciliation processes, the state uses reparations to attribute culpability to others, even their past selves, with the effect of legitimizing ongoing inequalities and injustices (Sundar 2004).

In addition to attempting to achieve legitimation and certainty, some state-controlled processes of reconciliation continue to or are designed to place assimilative pressures on Indigenous peoples. In *Reconciliation and Colonial Power*, Damien Short (2008, 177) suggests that the Australian reconciliation process:

> …positively promoted an overt nation-building agenda which aimed to cosmetically legitimize the settler nation, by the inclusion of previously excluded Aboriginal people, while at the same time indigenizing settler culture and effectively restricting Indigenous aspirations to participation 'within' the political and cultural confines of the nation state.

In the BC context, Andrew Woolford (2004a) argues that the BC Treaty Process is similarly assimilationist. He distinguishes between 'reparations as certainty-making'—political negotiations designed to bring an expedient and practical harmony to a history of conflict and brutality—and 'reparations as justice-making'—an ongoing reconciliatory process through which tolerance, trust, and reconciliation are gradually developed. He argues that balancing the two forms of reparation is a difficult, but necessary task. In some cases, such as the BC Treaty Process, he describes a disingenuous form of certainty-making that prevails:

> the reparative process is used as a subtle means of force through which a dominant group places assimilative pressures on a less powerful group. In the modern context, this typically involves enrolling the group into the project of neoliberal governance to an extent that it becomes difficult for the group to assert its difference in any way contrary to the prevailing political and economic norms of local and global markets (Woolford 2004a, 430).

To guard against these assimilationist tendencies, Short argues that, in the context of settler colonialism, the desired outcomes of reconciliation need to be clear. Referring to Crocker's thinner and thinker conceptions of the goals of reconciliation described earlier in this chapter, Short argues that there are strong reasons to support the thinnest conception—'simple coexistence'—over the other two in situations where there is the continued existence of the colonial state. He equates the second conception—'democratic reciprocity'—with settler state granted citizenship rights, which 1) fail to protect Indigenous cultures from assimilationist pressures; 2) fail to do justice to unique Indigenous status; and 3) emanate

from an illegitimate settler state, in the eyes of many Indigenous peoples. He sees the third conception—'a shared comprehensive vision of mutual healing, restoration and mutual forgiveness'—as inappropriate because it demands conformity and does not allow for Indigenous peoples to have their own visions. He suggests that a simple cessation to hostilities is preferable to the second and third conceptions of reconciliation because it is not laden with colonialist assumptions.

Corntassel et al. (2009, 145) argue that reconciliation is not an Indigenous concept and that Indigenous peoples' overarching goal "should not be to restore an asymmetrical relationship with the state but to restory our communities toward justice." Reconciliation *per se* may not be an Indigenous concept, but there are certainly concepts like reconciliation in coastal BC Indigenous worldviews. In their book, *Staying the Course, Staying Alive*, Frank and Kathy Brown document fundamental truths told to them by three coastal First Nations keepers of the knowledge. Haida knowledge keeper Kii'iljuus (Barb Wilson) talks about *Tll Yahda*, or 'making it right'.

> Tll Yahda is the ability to make things right if something has been done contrary to the way it should be. This Tll Yahda is the underlying law of everything…If everything is right you don't have to worry about your actions. If things have been done without Yahgudang [respect], then Tll Yahda must be enacted. It is done by the party who has done a wrong to someone or something, standing up publicly with witnesses and making it right by talking about what was done, making retribution to that person or thing, either in monetary payment or with something which will make the thing whole again. (Brown and Brown 2009, 7)

Kwakwaka'wakw knowledge keeper Wikalalisame'ga (Gloria Cranmer-Webster) talks about hosting feasts to wipe away shame after improper behavior. "Each of them taught me the importance of proper behaviour, for if one behaved badly, the whole family was shamed.

This required the family to host a feast in order to digita, that is, to wipe away the shame" (Brown and Brown 2009, 8).

In his examination of Coast Salish rituals of reconciliation, Bruce Miller (2006) argues that: state reparations cannot be concluded outside a formal, ritual setting; failing to include Indigenous protocols in reconciliation processes undermines them; and there is a high probability that rituals conducted by outsiders (let alone insiders) will be conducted incorrectly and carry the wrong meaning. He remains optimistic about the potential for engagement between state representatives and First Nation communities, however, because there are examples of Coast Salish communities incorporating 'important outsiders' into longhouse rituals to reorder political and economic relations with mainstream society.

Paulette Regan (2010) describes her experience as a non-Indigenous federal government employee involved in hosting a potlatch, organized by the Gitxsan, to apologize to the Gitxsan for the internment of Gitxsan children at Indian Residential Schools.

> As a host, I then had to step forward to explain why certain feast protocols were not being followed and to apologize to the *simgigyat* and *sigid'm hanaak* for this breach…I had not been forewarned that I would be speaking, but I had learned this protocol…Therefore, I was able to conduct myself properly. I felt a great responsibility to make sure that I did not do or say anything that would bring further shame on Canada. (Regan 2010, 195)

It is clear from these accounts that many Indigenous peoples in BC—these examples include Coast Salish, Kwakwaka'wakw, Haida, and Gitxsan—have their own conceptions and processes of reconciliation. Because reconciliation in BC is, at least in part, about correcting behaviour on the part of the Crown that was disrespectful (at best), it is important that the

process of reconciliation be conducted with the utmost respect. Approaching reconciliation respectfully, the state ought to work together with Indigenous nations to determine how it might approach reconciliation in a locally appropriate way.

Conceptions of reconciliation that continue to give disproportionate power to the colonizing state, whether to recognize Indigenous rights and sovereignty or grant citizenship rights, are not appropriate in situations of settler colonialism. The questionable legitimacy of the settler state vis-à-vis the Indigenous nation requires that reconciliation be conceived of at least in terms of a nation-to-nation relationship. Similarly, given the histories of attempted assimilation and unequal power of settler nations, reconciliation processes need to provide room for Indigenous visions to coexist rather than conform with non-Indigenous ones. In fact, because reconciliation should be directed toward addressing past injustices against Indigenous peoples (and not toward promoting equality), particular attention needs to be paid to ensuring that Indigenous aspirations are paramount in reconciliation processes.

Given all of these conceptual and processual problems, one might suggest discarding the concept of reconciliation in the context of settler colonialism. And perhaps we should. I will leave that question open for the time being. In the meantime, I will use the preceding discussion and critique of reconciliation to construct a framework for what I will preliminarily call 'genuine reconciliation' in the context of settler colonialism.

3.3 Requirements for Genuine Reconciliation in Settler Colonialism

In summarizing the previous two sections, which discuss reconciliation as a response to mass injustice and as a response to settler colonialism, some requirements for genuine reconciliation in situations of settler colonialism emerge. From the first section, which gives an overview of the literature on reconciliation, mostly in transitional justice contexts, we see that some requirements of reconciliation are: truth, justice, reparations, improved relations, and various types of institutional reform. From the second section, which presents some of the critique of reconciliation within the context of settler colonialism, some other requirements become apparent. First, we need to be clear about what we are and are not talking about when we use the term reconciliation. Second, there needs to be constant vigilance to ensure that reconciliation processes are not embedded in or perpetuating existing power inequalities. And finally, Indigenous peoples, their goals, and their conceptions of reconciliation processes need to be paramount.

These requirements of genuine reconciliation can be separated (more or less) into preconditions, goals, and processes. To begin with, it needs to be clear that the parties to the reconciliation are not morally equivalent: the colonial state is the party that has committed injustices toward Indigenous peoples and it is the state and non-Indigenous people that need to make concessions, to give up power and stolen goods. To address the problem of imbalances of power, the relationship between the parties needs to be nation-to-nation. As the party who has committed the injustice, it is incumbent upon the state to try to restore its honour and pay particular attention to respectful relations and Indigenous goals and

processes. A clear outline of the goals of reconciliation (to follow) will make clear its definition: who or what is being reconciled with whom or what.

3.3.1 Goals of Reconciliation

The review of the reconciliation literature identified truth as a first step, or goal, in reconciliation processes. Truth is important because it: acknowledges victims and affirms their dignity, agency, and voice; helps to determine what reparations are due; works against denial and distortion; and disrupts cycles of distrust and violence. In Canada, truth has been sought through processes such as the Royal Commission and the Indian Residential Schools Truth and Reconciliation Commission. Though processes such as treaty negotiations, court cases, and consultation (to a lesser degree) are adversarial in nature, a significant amount of research into 'factual truth' has also been undertaken in support of them. As far as 'truth as acknowledgment' is concerned, the residential schools apology and events related to the Truth and Reconciliation Commission are directed toward this end, but there has not been much engagement by mainstream Canadians in learning about or acknowledging the truth.

Justice in the face of mass atrocity can only be partial, and can take different forms: retributive justice, justice as recognition, and restorative justice. As I argued earlier, in the case of settler colonialism, retribution is generally not possible, recognition is not sufficient, and so the focus must be on restorative justice. What is required for justice in the case of settler colonialism? In a word, decolonization. I will elaborate on processes of decolonization in the next sections.

Ultimately, the goal is freedom for Indigenous peoples and peaceful co-existence between Indigenous and settler peoples and governments (Alfred 2005, Short 2008). As laid out by Lenzerini (2008, 62):

> Every day in this world, we can hear the angry cries shared by too many people, that there cannot be peace without justice. That is to say that a stable world cannot exist without justice. It is an indisputable axiom that justice definitely includes the need to make good the torts inflicted on Indigenous peoples since the past centuries. The recognition and realization of the right to reparation for such peoples—translating in practice to no more than allowing them to 'regain control of their lives and their lands'—would not destabilize any state. On the contrary, it would provide great assistance in the realization—in a stable manner—of a finer society and a more serene social environment, which, in the long run, is favourable to everybody, Indigenous or not.

I return, now, to the question of who or what is being reconciled with whom or what. Of the many meanings of reconcile, I will highlight these four to answer this question: 1) to bring into a state of acceptance of; 2) to make something agree with a fact; 3) to make compatible or consistent; and 4) to make peace between.[32] I will also recall Dwyer's (2003) conception of reconciliation as the incorporation of a tension or disturbance into a personal or national narrative of understanding. In settler colonialism, then, reconciliation means that the following need to happen.

- Settlers need to reconcile with (accept) the truth of their colonial past and present. Doing this means that settlers must change their personal narratives of understanding and Canada must incorporate its colonial past into its national narrative of understanding.

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[32] *Oxford English Dictionary*, http://www.oed.com/view/Entry/159773?redirectedFrom=reconcile#eid, accessed January 2, 2013.

- Non-Indigenous people need to reconcile (make compatible) their legal, political, and institutional systems with Indigenous title because it is superior to the Crown's claims to sovereignty, which remain unexplainable without employing racism (Asch and Zlotkin 2002).
- Settler nations and governments need to reconcile with (accept) the fact that Indigenous peoples constitute nations with rights to govern themselves and their lands.
- Settler nations and governments need to reconcile (make peace) with Indigenous nations and governments.
- Non-Indigenous people need to reconcile (make peace) with Indigenous peoples.

Why is it that settlers and their nations and governments need to do the reconciling? Precisely because there is not moral equivalency. Injustices were and continue to be done to Indigenous peoples by settlers and their governments. Thus it is settlers that need to reconcile. Because the groups with whom they must reconcile are Indigenous peoples, processes of reconciliation can be said to be between Indigenous and settler peoples or governments. The question then turns to the processes by which these reconciliations—this decolonization—can be achieved.

3.3.2 Processes of Decolonization

The aim of reconciliation in situations of settler colonialism, then, is decolonizing settlers and their governments and institutions. The following processes are needed to achieve this decolonization: creating a nation-to-nation relationship of mutual respect; observing

Indigenous title and sovereignty and dismantling colonial systems of governance; making other reparations, including restituting, compensating, apologizing, and remembering; and decolonizing settlers. Note that all of these processes are described using a verb to highlight the ongoing nature of processes of reconciliation. They are also all the responsibility of settlers and settler governments. This does not mean that Indigenous peoples and nations will not guide and be actively involved in these processes, only that, as the party who has done wrong, settlers need to be responsible for the work. It is also incumbent upon non-Indigenous people to maintain pressure on their governments, to hold them accountable for these changes. It will, however, inevitably require ongoing contention and agitation on the part of Indigenous peoples to make sure that attention to these processes is maintained.

3.3.2.1 Creating a Nation-to-Nation Relationship of Mutual Respect

The final report of the Royal Commission goes into detail about how settler governments could create better relationships with Indigenous nations. The over-riding question of the Royal Commission consultations was: What are the foundations of a fair and honourable relationship between the Aboriginal and non-Aboriginal people of Canada? Given that the Commission held 178 days of public hearings, visited 96 communities, consulted dozens of experts, commissioned scores of research studies, and reviewed past inquiries and reports, I suggest that they thoroughly examined the question. Their findings correspond well with my conclusions, based on the literature and my experience working for Indigenous communities. I will use their recommendations to elaborate this section.

In answering that question, the Royal Commission report explains that assimilative policies, ones that have and continue to try to absorb Indigenous people into Canadian society, have done great damage to Indigenous individuals, families, and communities and to the spirit of Canada. Fundamentally, the report states, Canadians need to reverse the assumptions of assimilation by recognizing Indigenous people as *nations*, with values and lifeways distinct from those of other Canadians. The report points out that this does not mean they are nation-states seeking independence from Canada, but it does mean they have a right to govern themselves. The report stresses that recognizing Indigenous nationhood does not pose a threat to Canada or its political and territorial integrity.

The Royal Commission report sets out four principles as the basis for a renewed relationship. *Recognition* calls on non-Indigenous people to recognize Indigenous people as the original inhabitants and caretakers of the land, who therefore have distinctive rights and responsibilities. It calls on Indigenous people to accept that non-Indigenous people are also of this land now. And it requires both parties to relate to one another as partners, respecting each other's laws and institutions and cooperating for mutual benefit. *Respect* calls on both parties to create a climate of positive mutual regard and ensure one partner does not dominate. It calls on non-Indigenous people to respect Indigenous peoples and their rights. *Sharing* is the basis on which Canada was founded; in many cases, Indigenous people shared their land, resources, and knowledge. It calls for giving and receiving benefits in fair measure. Finally, *responsibility* calls on the partners to be accountable for promises made, act honourably, and be accountable for the impact of their actions on each other.

The Report notes the need for Indigenous nations to rebuild themselves. Because of the impacts of disease, relocations, and assimilationist government policies, including those that fragmented nations and their lands into bands and reserves, many nations have been undermined and exist as small separate communities. This poses problems for self-governance and for nation-to-nation relationships with settler governments. Some Indigenous nations have been reconstructing their nations and others will have to in order to fulfill these responsibilities. Another need identified by the report is what is often referred to as capacity building, and may include healing, economic development, human resources development, and aboriginal institution building.

The Report suggests that the first step is for the Government of Canada to make a clear commitment to renewing the relationship through a major, symbolic statement of intent—such as a new Royal Proclamation—accompanied by the laws necessary to turn intention into action. It has been almost twenty years since the report was released and there has been no movement on this front.

3.3.2.2 Observing Indigenous Title and Sovereignty

As has already been elaborated, the colonial state dispossessed Indigenous peoples of their land, resources, and powers to govern themselves through a variety of means. Because these processes were both morally and legally wrong, the situation calls for repair. Restitution refers to a process of returning something to its rightful owner, and would seem to be what is necessary to remedy wrongful dispossession. Within BC, however, Indigenous rights to their lands, resources, and self-governance are recognized by the Canadian legal system, at least

theoretically. Nadasdy (2009) argues that in the Canadian North, where treaties were not signed and Indigenous people have been able to retain access to their lands for the most part, land claims processes are the antithesis of restitution—they are designed to take land rights away from Indigenous peoples. From a legal standpoint, a similar argument can be made in the BC case; in practice, however, First Nations in BC have been largely dispossessed of their lands. For this reason, I suggest that non-Indigenous governments need to *observe* Indigenous title and sovereignty (from a legal standpoint) and there needs to be a process of restitution (from a practical standpoint). Although others use the term 'recognize', I specifically use the term 'observe' to avoid some of the pitfalls of 'recognize'. Meanings of 'observe' include following, upholding, obeying, and abiding by, whereas 'recognize' means accepting the claim or title of a group of people to be valid or true. 'Recognize' seems to give all of the power to the state in a way that 'observe' does not, and, as argued by Coulthard (2007), a 'politics of recognition' promises to reproduce colonial power structures.

Settler governments need to observe Indigenous title and sovereignty and live up to their fiduciary duty to protect Aboriginal interests. In turn, the burden of proof would be lifted from Indigenous peoples and rights extinguishment or modification policies would be moot. In their argument for a new basis for comprehensive claims negotiations in Canada, Asch and Zlotkin (2002, 209) state that "the focus of negotiations between the Canadian government and Aboriginal peoples should be on reconciliation based on affirmation of Aboriginal title and rights, according to the principle of equitable sharing of ownership and jurisdiction." They persuasively argue that: the policy of extinguishment of Aboriginal title should be

rejected; there are serious difficulties with both parties holding underlying title; and Aboriginal title is the better of the two titles.

> The only way to envision a non-Aboriginal self-determined right to underlying title is to assume that there are certain conditions under which such title could legitimately be asserted without developing a relationship with Aboriginal peoples. Contemporary understanding of the nature of colonialism and of conquest makes such a proposition unacceptable. (Asch and Zlotkin 2002, 227)

If the government were to recognize Aboriginal title, they argue, we could move away from a discussion about title to one about how to develop appropriate political relationships. They point out that:

> Aboriginal peoples have, from the time of European contact, promoted a political relationship that is based on sharing and mutual accommodation. This approach is based on the philosophical premise that underlying title was gifted to Aboriginal people by the Creator, but only on the basis that they maintain an ethic of sharing. (Asch and Zlotkin 2002, 228)

Asch and Zlotkin (2002, 229) present a proposal that would allow Canadians "to construct a history of and future for Canada that avoids colonialist assumptions."

The idea of 'recognizing' Aboriginal rights and title is not completely foreign to non-Indigenous governments. As will be described in Chapter 4, the BC government proposed such legislation in 2009, but it was shelved, due in large part to concerns of First Nations. This example highlights that these processes of reconciliation or decolonization are not easy and require in depth discussions, not just between governments, but also between Indigenous leadership and the communities they represent. After these discussions, risks need to be taken

on both sides. Ensuring that processes are ongoing and modifications can be made if the interests of First Nations are not being met could make it easier to take those risks.

Observing Indigenous title and sovereignty will require that Indigenous and non-Indigenous governments work out jurisdiction over lands and resources. This may mean negotiating areas where each party will govern, the terms of co-jurisdiction over a shared area, or both. As my focus is territorial governance, I will not elaborate on processes that may be required regarding the transfer of authority over such things as health, education, and other services. It will also require working out how Indigenous governments will be financed in the transition period—the time before they realize the economic benefits of self-government and renewed access to the wealth of their territories. As argued by the Royal Commission, failure to observe Indigenous sovereignty and redistribute lands and resources will keep Indigenous people dependent on other Canadians and maintain grievances on both sides.

Creating a nation-to-nation relationship and observing Indigenous title and sovereignty are steps toward the dismantling of colonial systems of governance. To actualize both of these processes requires that non-Indigenous governments make their legislation, policies, and institutions compatible with a nation-to-nation relationship and Indigenous title and sovereignty. Drawing on the Royal Commission report again, what is required is the co-creation of legislation to replace colonial legislation, removing First Nations from the control of the federal government, setting out the terms of control and decision-making processes for land and resources, and providing financing to First Nations. Financing would be important, especially in the interim, but in the long term, it would be important that it not be framed as

‘financing’, leaving the power in the hands of non-Indigenous governments and perpetuating existing power relations. Instead, the transfer of money to First Nations could be considered payment for the use of their land and resources—lease payments, rents, royalties, tariffs, levies. First Nations would then retain a measure of control in the arrangement (depending on the terms of the lease, for example) and the payments would not be able to be construed as handouts, as they currently are.

3.3.2.3 Making Other Reparations

Reparations can include restitution, compensation, apologies, and acts of remembrance. As stated earlier, I am using restitution to mean returning wrongfully acquired things to their rightful owners, including things that have been wrongfully acquired in action but not deed (e.g., the land still ‘belongs’ to Indigenous peoples but they no longer have access to much of it). Given my focus on territorial governance, the ‘things’ that need to be returned are land, resources, and governance powers. More details about how this might occur will be elaborated later in this chapter.

Compensation is due for those ‘things’ that cannot be returned or for injustices done, which in the case of settler colonialism, are many. There could be compensation for lands and resources that cannot easily be returned, for example those that are now private property. There could be compensation for resources that no longer exist—those that were taken, used, or have become scarce due to mismanagement by non-Indigenous governments. Compensation could be made for lost opportunities during the years when Indigenous peoples were prevented from participating in mainstream political and economic systems by

colonial laws and practices. And compensation could be made for harms done, to individuals, families, and communities. Given the enormity of the losses and harms, and the non-monetary nature of them, compensation can never be sufficient to address them. This does not mean that thought should not be given to how to address compensation and that compensation that is made should not be generous. Settler government policy has been that compensation is not on the table in treaty negotiations.

Both the federal and BC government have issued statements of regret and/or apologies: the federal government made a 'statement of reconciliation' in 1998, the BC government included 'words of regret' for past mistakes and paternalistic policies in its 2003 Speech from the Throne, and the federal government offered a 'statement of apology' for its Indian Residential Schools policy. There have also been instances when the BC government has apologized or expressed regret for specific actions of previous colonial governments, for example the Chilcotin War of 1864 and the wrongful hanging of two Hesquiaht men in 1869. These apologies can be important parts of reconciliation processes, for individuals, both Indigenous and non-Indigenous, for Indigenous-state relations in general, and for relations between settler governments and specific First Nations. They can also be seen as easy acts that mean nothing if not accompanied by substantive change.

Acts of remembrance, such as commissioning or creating public art, proclaiming and observing days of remembrance, and creating new historical narratives are important for acknowledging Indigenous peoples and the injustices done to them, and also for educating non-Indigenous people and providing more formal means for them to come to terms with

their complicity in colonialism. Given that non-Indigenous people are generally abysmally ignorant of the Indigenous peoples whose territories they inhabit, Indigenous peoples in Canada generally, Canada's historical and contemporary colonial policies, and the history of Indigenous-state relations in Canada, many programs of education targeting different segments of the Canadian population are required.

3.3.2.4 Decolonizing Settlers

The Royal Commission recommends a broad and creative campaign of public education to counteract settler beliefs and ensure non-Indigenous people know that Indigenous people are not an inconsequential minority group with problems that need fixing and outmoded attitudes that need modernizing. Non-Indigenous people need to understand that Indigenous peoples are nations—collectivities with their own character and traditions, a right to autonomous government, and a special place in the flexible federalism of Canada. They note that the backlash embodied in the 'equality approach'—for example, "one law for all British Columbians"—needs to be addressed as it is the modern equivalent of mindset that led to assimilative policies.

> It is wrong to suggest that all people should be treated the same, regardless of the inequalities of their situation. It is wrong to turn a blind eye to the dispossession and racism that distort the circumstances of Aboriginal people and limit their life chances. It is wrong to ignore the historical rights that Aboriginal people still enjoy as self-governing political entities… (RCAP 1996)

Alfred (2005) argues that settlers' knowledge and acceptance of history and of their relationship with Indigenous peoples are necessary for a meaningful discussion of true reconciliation. He also suggests that settlers need to go deeper than the facts. For

decolonization to occur, settlers need to question the normalcy of Euro-Canadian beliefs and assumptions, such as: sharing and equality are wrong; selfishness and competitiveness are good; science and technology are 'progressive' and therefore good, whereas humans are bad and nature is fearsome; order is of higher value than truth and justice; and Euro-American culture is the perfect form of human existence. Challenging these assumptions will help address racist ideas and open a space for dialogue about how to live and govern alongside one another.

Educating and decolonizing settlers will be the biggest task of reconciliation (RCAP 1996), and is also the most important, because it is necessary for the realization of all of the other processes of reconciliation. This is not to suggest that they cannot occur until every settler is decolonized (thank goodness), but that the support of non-Indigenous people for decolonizing processes will be necessary to ensure there is the government will to engage in them in an ongoing and meaningful way.

In summary, 'genuine reconciliation' in settler colonialism requires decolonizing settlers and their governments and institutions. In pursuing decolonization, settler governments need to ensure that: culpability is assigned correctly to settlers and their governments; attention is given to local Indigenous reconciliation protocols; the focus is on Indigenous goals; asymmetrical power relations are avoided; and that reconciling is an ongoing process of dialogue. Very simply, "Something was stolen, lies were told, and they've never been made right" (Alfred 2005, 153). A young child could tell you that what is required in that situation is to give the stolen goods back, tell the truth, apologize, and make peace.

3.4 Decolonizing Territorial Governance

The focus of this dissertation is on reconciliation in the context of land and resource management. Building on the conclusion of the previous sections of this chapter—that reconciliation in the context of settler colonialism entails decolonizing settlers and their governments and institutions—the focus of the dissertation is on decolonizing territorial governance. Instead of looking generally at goals and processes of reconciliation and decolonization, this section will look at the specific goals and processes required for decolonizing territorial governance.

In the following quotes, Morse recounts the aspirations of Indigenous peoples around regaining territory and renewing responsibilities in relation to it, and Hilistis talks about the importance of working together to protect and sustain territory for ourselves and the generations to come.

> The truth is we have lived in our traditional lands since time began and we will continue to do so until time ends. While our resource and land bases have been diminished over the generations, we are committed to maintaining the legacy of our ancestors by taking measures to protect and sustain what is left of our inheritance. This is not only for this generation but for the benefit of those yet to come. It is incumbent on us to take the necessary steps to create a sound foundation upon which to build relationships with all who have a responsibility to sustain and preserve the most beautiful place on earth upon which we live and thrive. (Hilistis/Pauline Waterfall in Brown and Brown 2009, 7)

> Reparations issues for First Nations, Inuit and Metis peoples primarily revolve around efforts to regain their traditional territory and renew their responsibilities in relation to it—as all of the land is alive itself and owed obligations of respect and care by human beings as well as being the sustainer of life, culture and spiritual connection. Achieving this objective requires regaining—or perhaps more accurately, successfully reasserting—the sovereign authority of their nationhoods. (Morse 2008, 279)

These quotes highlight two Indigenous goals with respect to territorial governance: working together and fulfilling responsibilities for respecting and caring for the land.[33] These goals invoke the more general reconciliation goals and processes of creating relationships of mutual respect, observing Indigenous title and sovereignty, and dismantling colonial systems of governance.

For territorial governance, there are three possible types of jurisdictional relationships between settler and Indigenous governments: Indigenous jurisdiction, co-jurisdiction, and Crown jurisdiction. These types of jurisdiction can be distributed across responsibilities and territories in different ways. Almost exclusively, the current reality in areas without contemporary treaties is Crown jurisdiction across all responsibilities and throughout the territories of each First Nation. Contemporary treaties, and to a lesser extent other 'new relationships' (as discussed in Chapter 4), partition territories and responsibilities into areas where there is Indigenous jurisdiction, areas where there is some form of co-jurisdiction, and areas where there is Crown jurisdiction. Any move toward observing Indigenous title and sovereignty and decreasing colonial control could arguably be a part of the decolonizing process, but for cases in which these 'decolonizing' processes are embedded within and perpetuate existing (colonial) power relations, the term seems inappropriate.

Borrowing from the earlier discussion of requirements for 'genuine reconciliation', decolonizing territorial governance ought to include the following processes: making

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[33] I am not suggesting that there are universal Indigenous goals or that Indigenous goals are always 'environmental'. Indigenous peoples and nations have and are entitled to many and differing goals. These are two.

reparations, improving relations, observing Indigenous title and sovereignty, dismantling colonial systems of governance, and decolonizing settlers. More specifically, decolonizing territorial governance ought to include:

- settler governments acknowledging and apologizing for past and current colonial relations and policies (making reparations);
- creating a nation-to-nation[34] relationship of mutual respect (improving relations, observing Indigenous sovereignty);
- creating relationships of mutual respect between the politicians, bureaucrats, and operational staff of Indigenous and settler governments who are involved in land and resource governance (improving relations, decolonizing settlers);
- settler governments observing Indigenous title and rights (as defined by Indigenous nations) over each nation's entire territory;
- settler governments supporting the continuation of local Indigenous laws and governance institutions (observing Indigenous sovereignty, making reparations);
- Indigenous and settler governments co-creating new systems of co-governance over areas or resources that First Nations have agreed to share with non-Indigenous people (dismantling colonial systems of governance);
- Indigenous governments collecting resource revenues from their entire territories and sharing resource revenues with settler governments in areas where they have agreed to share with non-Indigenous people (observing Indigenous sovereignty, dismantling colonial systems of governance); and

[34] In the case of a relationship with the province, this may be a government-to-government relationship, as provinces are not nations, but with recognition that First Nations are also nations.

- settler governments compensating Indigenous peoples for lost lands, resources, and opportunities (making reparations).

My focus in this dissertation is mostly on improving relations, observing Indigenous title and sovereignty, and dismantling colonial systems of governance. I will elaborate on these decolonizing processes in two sections that correspond to options for decolonized governance. The first looks at Indigenous territorial governance and the second looks at co-governance of Indigenous territories. How these are distributed on the landscape is a matter for negotiation between individual First Nations and settler governments. For each of these governance arrangements, I will discuss the following aspects of territorial governance: title to the land, jurisdiction over land and resources, governance institutions, laws and policy, resource revenues, and Indigenous use of resources. Business as usual, or unilaterally imposed and enforced Crown title and governance, is not a part of decolonized territorial governance.

3.4.1 Indigenous Territorial Governance

This category of governance describes areas where Indigenous nations have title to the land and jurisdiction over the land and resources. They are able to decide to what purposes the lands and resources can be put, including whether land, resources, or responsibilities are delegated, leased, or sold to other governments or third parties. Correspondingly, they decide whether and how revenue is collected and used when resources are utilized. In the transition back to Indigenous governance, there may be areas where First Nations want sole jurisdiction, but where third parties currently hold rights through a lease, permit, or other

agreement. In these cases, First Nations can take over as the lessor or permit granter, with the same conditions, or settler governments can cancel the lease or permit and negotiate compensation with the third party.

In areas where they have jurisdiction, Indigenous nations can also decide whether and how to regulate the exercise by their members of what are currently referred to as Aboriginal rights, for example harvesting plants, hunting, and fishing. This leaves settler governments out of any decisions about what constitutes Aboriginal rights, who can exercise them, or how they can be exercised.

Returning to Indigenous governance after a long intervening period of colonialism and repression of Indigenous governance and communities has many challenges. In addition to the challenges caused by settler governments resisting a change to Indigenous authority over the land and resources, and issues arising because of third party interests, some Indigenous nations require rebuilding and many require significant capacity building in order to take over current responsibilities. Rebuilding nations from separate communities and reserves that, in some cases, have been governed autonomously for a long time can be difficult for a variety of reasons. Some communities see more benefits in being autonomous, have differences with other communities that are difficult to overcome, or no longer have a larger nation to which they are connected. It is also difficult for nations to balance the needs and levels of influence of smaller and larger communities within the nation. In some instances, communities or First Nations that were not historically part of a nation are now working together in regional groups toward political and economic goals. By joining together to

reform or create new nations, Indigenous communities gain the advantages of having a larger population and territory to draw from to develop their economies[35] and human resources and to enable economies of scale for governing institutions and service provision. They also reduce the problems caused by 'overlapping territories'[36] for both Indigenous jurisdiction and co-jurisdiction.

Indigenous nations often need to recreate governance institutions and laws because of the long period of suppression by colonial governments and to meet the needs of the contemporary context. In addition to governing Indigenous land and resource activities (for domestic or commercial purposes), Indigenous nations may need to create governance structures for managing resource development and use by settler governments or third parties if they wish to allow those activities.

A final challenge for Indigenous nations is building and rebuilding human resource capacity in the many areas that First Nations have been excluded from in the colonial period. Few Indigenous people have pursued education and training related to land and resource governance, for example as biologists, engineers, geoscientists, agrologists, foresters, or environmental scientists. Granted, suggesting that these types of professionals are required to undertake land and resource governance assumes a reliance on Western science in resource management; however, most First Nations have seen it necessary to hire these types of

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[35] I do not mean to suggest a neoliberal agenda; 'economy' is used here to refer generally to the management of material and/or financial resources of the nation, whether within or outside the global capitalist system.

[36] The concept of 'overlapping territory' has arisen out of Eurocentric ideas about property used in land claims processes and is an area where more than one contemporary First Nation claims title and/or rights.

professionals, and in some cases many of them, in the period after the *Delgamuukw* decision, when they have been consulted by settler governments on land and resource governance decisions. Perhaps in an era of Indigenous governance their reliance on science-based professionals will diminish, but if they continue to be involved in commercial resource development, they will likely continue to need to employ these professionals. In addition, there may be an increased need for individuals who have apprenticed (for want of a better word) with local knowledge keepers in Indigenous territorial knowledge and governance.

3.4.2 Co-Governance of Indigenous Territories

This category of governance describes areas where Indigenous nations have title to the land and settler governments may or may not have title to the land, depending on the arrangement worked out between the nation and the settler governments. Regardless of the title arrangement, Indigenous and settler governments share jurisdiction over the land and resources. How that governance is shared can vary greatly and is the subject of much debate at negotiating tables and much scholarship in academic circles.

The literature on co-management describes a trend toward increasing involvement of Indigenous peoples in natural resource management since the 1980s due to the failure of top-down environmental management systems, increasing legal rights and land ownership of Indigenous peoples, acknowledgement of the achievements of Indigenous people with respect to natural resource management, and government policies of self-determination and alleviation of Indigenous disadvantage (Ens et al. 2012; Borrini-Feyerabend et al. 2004; Ross et al. 2011). The term ‘co-management’ is used to describe a variety of natural resource

governance arrangements between the state and resource users (Berkes 2009), which vary in their degree of power sharing.

Co-management is a controversial regime, with proponents arguing that it can reduce resource conflicts and empower communities (Caruso 2011). Those who explore co-management ethnographically are more inclined to focus on its weaknesses: the potential for the state to abuse its power, silence opposition through 'inclusion' in decision-making, and force participants to conform to bureaucratic thinking and processes (Nadasdy 1999, 2005). Nadasdy 2005 argues that it not only obscures and reinforces existing power relations, it actually extends the power of the state farther into First Nation communities and prevents meaningful change by tying people up in bureaucratic processes.

Related to co-management, there is a large literature on Indigenous knowledge, and specifically traditional ecological knowledge (TEK), and its use in resource management (e.g., Bohensky and Maru 2011, Menzies 2006). Berkes' (1993, 3) widely cited definition of TEK is "a cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationships of living beings (including humans) with one another and with their environment." Ecological science is a different body of knowledge, practice and belief, evolving through the scientific method over a much shorter period of time, about the same types of relationships. A difference that is often noted between the two types of ecological knowledge is that TEK is often more specific to a locale, while ecological science often relates to a broader scale.

As with co-management, the integration of Indigenous and scientific knowledge in resource management is controversial because of issues of power. It is almost invariably Indigenous knowledge that is being integrated *into* science-based resource management systems, often is ways that divorce it from the knowledge holders and context, rendering it practically meaningless. Nadasdy (1999) argues that the integration project takes for granted existing power relations, assumes TEK is simply a new form of data, and forces Indigenous people to express themselves in ways that conform to state practices and institutions.

Some critics suggest that the answer to some of these problems would be if Indigenous peoples were using scientific knowledge for their own purposes. "Making meaningful progress in the future will entail a willingness on the part of conservation scientists and practitioners to work with Indigenous/local communities in new ways, ways in which the tools of Western science are offered in support of local conservation priorities" (Brosius 2006, 41). There are few examples described in the literature, but this situation occurs in 'Indigenous territorial governance' (described above) and is the subject of Chapter 6.

The critiques of co-management and knowledge integration are based on the same premise as much of the critique of reconciliation—that they are embedded in and perpetuate existing and colonial power relations. To be decolonizing, then, the creation of systems of co-jurisdiction must counteract current power imbalances, during both their creation and operationalization.

In co-jurisdiction models, a key question is who has the final authority: the Indigenous nation, the settler government, or both, through a consensus-based decision. There is also a question of the process undertaken before the final decision. Both the process and who has final authority can vary by resource sector and/or type of decision. For example, in a particular resource sector, Indigenous nations may decide to let the settler governments deal with routine decisions like permitting, but want to share authority for larger decisions or policy development. Or they may want to be in complete control of fisheries and uninvolved in highway maintenance. The degree to which co-jurisdiction models are decolonizing depends on whether nations achieve the level of authority they desire and whether the decision-making process is designed in a way that privileges Indigenous worldviews, knowledge, and governance systems, or at least gives them equal weight with non-Indigenous ones (depending on the desires of the nation). Arguments can be made for privileging Indigenous worldviews because of their prior existence, the *Indigenous* nature of them (they developed *in situ*), and to counteract current power imbalances that favour and normalize settler worldviews. The need to ensure Indigenous worldviews (ontologies[37], values), epistemologies, processes, and knowledge are privileged or at least equally weighted continues throughout the development of co-governance institutions, including in the development of laws and policy and the hiring and training of staff.

As resource rights are shared in co-jurisdiction areas, the sharing of resource revenues also needs to be worked out. It would make sense for the terms of sharing in co-jurisdiction areas

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[37] Nadasdy 2007 argues that anthropologists and non-Indigenous resource managers generally view Indigenous conceptions of human-animal relations as symbolic and not factual, contributing to their marginalization and foreclosing important avenues of inquiry.

to be related to the proportion of the territory that is under Indigenous jurisdiction *versus* shared jurisdiction. For example, a smaller proportion of territory under Indigenous control would mean a larger share of revenues from co-jurisdiction areas.

I would suggest that the goal in revenue sharing is not 'equal' distribution between Indigenous and non-Indigenous people, for example on a per capita basis. The goal is also not to protect settlers' and their governments' current economic positions. A 'fair' sharing means that settlers and their governments have to diminish their economic positions and opportunities—to give things up. Addressing past injustices toward Indigenous peoples—the taking of their lands, resources, and economic opportunities even within the imposed economic system—requires that they be entitled to a greater share now. Settlers cannot 'cheat' for 150 years and then demand a level playing field. Additionally, because of historic and ongoing oppression and the federal government not living up to its fiduciary duty, the present economic needs of Indigenous communities are arguably greater than those of non-Indigenous communities (e.g., on a per capita basis). Whether to provide equity, return stolen goods, or compensate for lost resources and opportunities under colonialism, resource revenue sharing within a decolonizing context would allow for Indigenous nations to retain a greater portion of resource revenues. I realize that any suggestion of 'unequal' rights or sharing of resources is the cause of much of the backlash by non-Indigenous people against Indigenous peoples. Significant effort and education will be required to preempt or address backlash.

There is also the question of how Indigenous use of resources is governed in co-jurisdiction areas. Issues around which 'Aboriginal rights' can be exercised, by whom, and for what purposes may need to be resolved when settler governments continue to have a role in governance. Or they may just fall under the purview of Indigenous nations. And finally, there may be areas where Indigenous peoples are willing to give complete or a large portion of control to settler governments, for example only retaining 'Aboriginal rights' or a right of consultation.

In summary, decolonizing territorial governance requires nation-to-nation relationships of mutual respect between Indigenous and non-Indigenous governments. Within these relationships, the details of how non-Indigenous governments will observe Indigenous sovereignty and dismantle colonials systems of governance can be worked out and periodically revisited. To begin with, non-Indigenous governments ought to observe Indigenous title throughout each nation's territory. Territorial governance could follow either an Indigenous governance or co-governance model, with the distribution of these models being worked out by the parties. Both during negotiations regarding decolonization and after, in areas of co-jurisdiction, constant attention must be paid to ensure that imbalances of power are counteracted and that Indigenous peoples and their goals and processes are paramount.

3.5 Conclusion

In this chapter, I have looked at concepts, goals, and processes that emerge from the literature on reconciliation, and particular problems that arise when reconciliation is used in situations of settler colonialism. From the critiques of reconciliation emerge some requirements for

goals and processes of 'genuine reconciliation' in settler colonialism. Whether the term reconciliation is used or discarded, the ultimate goals are freedom for Indigenous peoples and peaceful coexistence between Indigenous and non-Indigenous peoples and governments (Alfred 2005). Achievement of these goals requires decolonizing settlers and their governments and institutions, which in turn can be broken down into: creating a nation-to-nation relationship of mutual respect between Indigenous and non-Indigenous governments; observing Indigenous title and sovereignty; dismantling colonial systems of governance; making other reparations; and decolonizing settlers.

In the particular context of territorial governance, decolonization requires non-Indigenous governments to observe Indigenous title and sovereignty throughout each nation's territory. There are then two types of jurisdictional arrangements possible—Indigenous governance and co-governance. In co-governance arrangements, power imbalances between the parties are easily perpetuated and can even be enhanced (Nadasdy 2005). Just like reconciliation processes in general, co-governance is highly vulnerable to co-optation by settler governments. When settler governments are guided by liberal political theory and neoliberal capitalist economics, and when settlers assume Euro-American cultural superiority, the potential for peaceful co-governance is limited (following Alfred 2005). To counteract the tendency for cooptation and thus the continuation of an assimilative agenda, decolonizing co-governance must privilege Indigenous worldviews, knowledge, institutions, and processes.

In the Royal Commission report the commissioners state: "The changes we propose are not modest…What we propose is fundamental, sweeping and perhaps disturbing – but also

exciting, liberating, ripe with possibilities" (RCAP 1996). Indeed, transformative change is scary for non-Indigenous people, as is the prospect of giving up economic and political power. At the same time, many would admit that they are not happy with the current political, economic, or environmental situation: concentrated political power that is primarily responsive to big business, significant economic disparity, especially between the upper 1% and the rest of the population, and resource development that gives little regard to the health of local communities and ecosystems. Put in this perspective, letting go of the iron grip on settler values and systems to make space for Indigenous ones can be 'exciting, liberating and ripe with possibilities'. In the words of 'Namgis knowledge keeper Wikalalisame'ga (Gloria Cranmer-Webster):

> We, as Aboriginal people, didn't cause these disasters, but might have something to teach those who are responsible, if only they would listen, not only for their sake, but for ours as well. We were doing a pretty good job taking care of our world before it was damaged and destroyed by those who thought they were invincible. The reality we face is that we can no longer transfer knowledge in the traditional way, but must develop new ways of teaching that include not only our own people but also those who came later. (Brown and Brown 2009, 68)

There are good arguments why settler governments should make their land and resource governance goals compatible with Indigenous territorial governance goals. As argued earlier, it is incumbent upon settler governments to reconcile with Indigenous ones. Indigenous nations have the prior claim and settler governments have a responsibility to observe Indigenous title and create nation-to-nation relationships of mutual respect. Second, in Canadian law, settler governments have a fiduciary duty to put Indigenous interests first. Third, the values of many non-Indigenous Canadians (some would say a majority) align with many First Nations' values regarding territorial governance. Settler governments, however,

often create policy and make decisions that favour economic goals, minimizing environmental goals and ignoring Indigenous opposition. Making settler governments' resource management goals compatible (or at least more compatible) with Indigenous territorial governance goals would facilitate reconciliation immeasurably. In addition to reducing conflict over land and resource decisions, negotiating positions could be more flexible and accommodating if each side trusted the other's territorial governance goals.

3.6 Postscript: Reconciliation in Canada

'Reconciliation' has been used in writing related to conflicts of all sorts for centuries, including conflicts between Indigenous and non-Indigenous peoples. It has become a focus of efforts to respond to the legacies of settler colonialism in Canada at least since the 1990s. The Royal Commission was established in 1991 to:

> …investigate the evolution of the relationship among aboriginal peoples (Indian, Inuit and Métis), the Canadian government, and Canadian society as a whole. It should propose specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront aboriginal peoples today.[38]

The terms of reference for the Royal Commission laid out a sixteen point mandate. In the section suggesting an investigation into the history of relations between Aboriginal peoples, the Canadian government and Canadian society as a whole, the terms of reference state: "Building upon this historical analysis, the Commission may make recommendations

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[38] The Commission's Terms of Reference, Report of the Royal Commission on Aboriginal Peoples, Volume 1, Part 3, Appendix A; http://www.collectionscanada.gc.ca/webarchives/20071124130522/http://www.ainc-inac.gc.ca/ch/rcap/sg/sga1_e.htm, accessed December 29, 2012

promoting *reconciliation* between aboriginal peoples and Canadian society as a whole…"[39] The final report of the Royal Commission was released in 1996 and contains many references to reconciliation; in fact, the commission refers to its recommendations as 'avenues of reconciliation' and suggests we enter a 'new era of reconciliation with aboriginal nations'.

Also in 1996, the Supreme Court of Canada began to use the term 'reconciliation' in reference to Aboriginal rights and conflicting Indigenous and Crown claims to sovereignty. In *Van der Peet*, Chief Justice Lamer (as he then was) proclaimed that "It is, similarly, the reconciliation of pre-existing aboriginal claims to the territory that now constitutes Canada, with the assertion of British sovereignty over that territory, to which the recognition and affirmation of aboriginal rights in s. 35(1) is directed."[40] In fact, a good deal of the *Van der Peet* judgment wrestles with the meaning of 'reconciliation'. To promote reconciliation, then Chief Justice Lamer felt that infringing on Aboriginal rights was acceptable if the activity was important to the broader community.

> Aboriginal rights are a necessary part of the reconciliation of aboriginal societies with the broader political community of which they are part; limits placed on those rights are, where the objectives furthered by those limits are of sufficient importance to the broader community as a whole, equally a necessary part of that reconciliation.[41]

In her dissenting opinion, however, Justice Beverly McLaughlin (as she then was) held different views about how to balance Aboriginal and non-Aboriginal interests to achieve reconciliation.

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[39] *Ibid,* emphasis added.
[40] *Van der Peet* at para 36.
[41] *Van der Peet* at para 73.

> The question is how this reconciliation of the different legal cultures of aboriginal and non-aboriginal peoples is to be accomplished. More particularly, does the goal of reconciliation of aboriginal and non-aboriginal interests require that we permit the Crown to require a judicially authorized transfer of the aboriginal right to non-aboriginals without the consent of the aboriginal people, without treaty, and without compensation? I cannot think it does.[42]

McLachlin argued for a stricter adherence to the principles of justification of infringement laid out in *Sparrow*: that the infringing law or regulation has a 'compelling and substantial' purpose, such as conservation of the resource or public safety, and is consistent with the Crown's fiduciary duty toward Aboriginal peoples. She felt that extending the concept of compelling objective to matters like economic and regional fairness and interests of non-Aboriginal fishers would negate the Aboriginal right itself in the pursuit of reconciliation. She points out that the framers of section 35(1) of the *Constitution Act, 1982*, "deliberately chose not to subordinate the exercise of aboriginal rights to the good of society as a whole."[43]

The Supreme Court has continued to wrestle with 'reconciliation' in its Aboriginal rights decisions. In *Delgamuukw*, Lamer continued to opine that the reconciliation of the prior occupation of North America by Aboriginal peoples and the assertion of Crown sovereignty justified the infringement of Aboriginal rights for purposes such as

> the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment and or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims.[44]

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[42] McLachlin, J (dissenting) in *Van der Peet*, at para 310.
[43] McLachlin, J (dissenting) in *Van der Peet*, at para 308.
[44] *Delgamuukw* at para 165.

The 2001 judgment in *Mitchell v. the Minister of National Revenue*[45] describes how Aboriginal rights must be reconciled with the 'merged sovereignty' of Aboriginal and non-Aboriginal Canadians.

> The modern embodiment of the "two-row" wampum concept, modified to reflect some of the realities of a modern state, is the idea of a "merged" or "shared" sovereignty. "Merged sovereignty" asserts that First Nations were not wholly subordinated to non-aboriginal sovereignty but over time became merger partners. The final *Report of the Royal Commission on Aboriginal Peoples*, vol. 2 (*Restructuring the Relationship* (1996)), at p. 214, says that "Aboriginal governments give the constitution [of Canada] its deepest and most resilient roots in the Canadian soil." This updated concept of Crown sovereignty is of importance. Whereas historically the Crown may have been portrayed as an entity across the seas with which aboriginal people could scarcely be expected to identify, this was no longer the case in 1982 when the s. 35(1) reconciliation process was established. The Constitution was patriated and all aspects of our sovereignty became firmly located within our borders. If the principle of "merged sovereignty" articulated by the Royal Commission on Aboriginal Peoples is to have any true meaning, it must include at least the idea that aboriginal and non-aboriginal Canadians *together* form a sovereign entity with a measure of common purpose and united effort. It is this new entity, as inheritor of the historical attributes of sovereignty, with which existing aboriginal and treaty rights must be reconciled.[46]
>
> The constitutional objective is reconciliation not mutual isolation. What is significant is that the Royal Commission itself sees aboriginal peoples as full participants with non-aboriginal peoples in a shared Canadian sovereignty. Aboriginal peoples do not stand in opposition to, nor are they subjugated by, Canadian sovereignty. They are part of it.[47]

In *Haida Nation v. British Columbia (Minister of Forests)*[48] in 2004, reconciliation is conceived as a process that began with the assertion of sovereignty by the Crown and continues indefinitely: "The duty to consult and accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty and continues beyond formal claims resolution." This is reiterated in 2005 in *Mikisew Cree First Nation v. Canada*:

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[45] [2001] 1 SCR 911 [*Mitchell v. MNR*]
[46] *Mitchell v. MNR* at para 129.
[47] *Ibid*
[48] [2004] 3 SCR 511 [*Haida*]

"Treaty making is an important stage in the long process of reconciliation, but it is only a stage."[49] And in the 2010 decision in *Beckman v. Little Salmon/Carmacks First Nation*: "Reconciliation in the Yukon, as elsewhere, is not an accomplished fact. It is a work in progress."[50]

Reconciliation, then, is both the Royal Commission's and the Supreme Court of Canada's approach to resolving the legacies of settler colonialism. In both cases, reconciliation is used in reference to relationships and to interests. As summarized by the Supreme Court of Canada: "The fundamental objective of the modern law of aboriginal and treaty rights is the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions."[51]

In the wake of the Royal Commission, the federal government also started to focus on 'reconciliation'. For example, on January 7, 1998, in response to the work of the Royal Commission, the Honourable Jane Stewart, Minister of Indian Affairs and Northern Development, unveiled *Gathering Strength – Canada's Aboriginal Action Plan* and made a Statement of Reconciliation.[52] Beginning in the late 1990s, 'reconciliation' became a primary goal of relations with First Nations at both the federal and BC provincial government level, within and outside treaty processes.

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[49] [2005] 3 SCR 388 [*Mikisew*] at para 54.
[50] [2010] 3 SCR 103, at para 52.
[51] *Mikisew* at para 1.
[52] Notes for an Address by the Honourable Jane Stewart, Ottawa, Ontario, January 7, 1998; http://www.aadnc-aandc.gc.ca/eng/1100100015725/1100100015726, accessed December 30, 2012.

Canada established a Truth and Reconciliation Commission (TRC) in 2008 as part of the Indian Residential Schools Settlement Agreement, a class-action settlement for former residential school students who took the federal government and churches to court. The Commission has a five-year mandate to prepare a comprehensive historical record on the policies and operations of the schools, make recommendations to the government, educate the public, and commemorate former students. The first message you see when you go to the TRC website is "The truth of our common experiences will help set our spirits free and pave the way to reconciliation."[53] I do not agree that our spirits will be set free by the truth; in fact my spirit is heavy and anything but free when I hear survivors' stories of their residential school experiences. But I also know it is important to hear them and use that knowledge in building processes of reconciliation. Disappointingly, the general public has not engaged with the TRC and the federal government has not approached the creation of the TRC in a manner reflective of a desire for reconciliation. The original chair of the commission resigned, blaming in part political interference in the commission's independence (TRC of Canada, 2012). In addition, the federal government has provided the commission with only a small portion of the relevant documents in its possession. At the time of writing, the TRC is asking the court to intervene to force the federal government to release documents. In the words of TRC counsel Julian Falconer, "What is at stake here is control over history."[54]

Despite apologies, commissions, and rhetoric about reconciliation, relations between First Nations and the federal government are currently particularly strained. At the time of writing

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[53] http://www.trc.ca/websites/trcinstitution/index.php?p=26, accessed December 9, 2012
[54]http://www.myrobust.com/websites/trcinstitution/File/TRC%20NEWS%20RELEASE%20TRC%20makes%20reference%20to%20court%203%20Dec%202012.pdf, accessed December 9, 2012

in 2013, Idle No More—a grassroots movement of Indigenous peoples—is emerging and gaining momentum across Canada. The movement was sparked by the introduction of an omnibus budget bill that changes legislation contained in 64 federal acts or regulations, including the Indian Act, Navigation Protection Act, and Environmental Assessment Act.[55] The concerns that led to the movement, however, have been around for a long time.

> Idle No More calls on all people to join in a revolution which honors and fulfills Indigenous sovereignty which protects land and water. Colonization continues through attacks to Indigenous rights and damage to the land and water. We must repair these violations, live the spirit and intent of the treaty relationship, work towards justice in action, and protect Mother Earth.[56]

There have been teach-ins, protests, hunger strikes, rallies, marches, flashmob round dances, transportation disruptions, and lots of media attention.

An aspect of Idle No More that is noteworthy in the context of this dissertation is that it calls on all Canadians to join with Indigenous peoples to protect lands and waters. And many Canadians, especially those concerned with environmental issues, are. Pamela Palmater (2013), spokesperson for Idle No More, says:

> This movement is also unique because it includes Canadians as our allies. Just as in the early days of contact when the settlers needed our help to survive the harsh winter months, and seek out a new life here, Canadians once again need our help. They need our help to stop Harper's destructive environmental agenda. First Nations represent Canadians last best hope at stopping Harper from unfettered mass destruction of our shared lands, waters, plants and animals in the name of resource development for export to foreign countries…When First Nations organize in Idle No More to oppose

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[55] 9 questions about Idle No More, CBC News, January 5, 2013; http://www.cbc.ca/news/canada/story/2013/01/04/f-idlenomore-faq.html, accessed January 15, 2013.
[56] http://idlenomore.ca/index.php/about-us/item/2-mission-and-plan-of-action; accessed January 16, 2013.

> this legislation, they do so to protect all our interests – First Nation and Canadian alike.[57]

Environmentalists already realize that First Nations are in the strongest position to challenge industrial resource development and many environmental groups and foundations work closely with and fund First Nations territorial governance activities and capacity building. Support comes from far beyond the environmental community as well. In a Commentary piece titled "Canada's future: Let's be divided no more," which ran in the Globe and Mail on January 11, 2013, Lloyd Axworthy (current President of the University of Winnipeg, former Liberal Cabinet minister) and Wab Kinew (Director of Indigenous Inclusion at the University of Winnipeg) write:

> Indigenous people are standing up for themselves, but they're also standing up for the benefit of all Canadians. Their cultures call on them to be stewards and protectors of the land, and so they raise legitimate concerns about the future of our environment. This will benefit all of our descendants.[58]

As argued previously in the conclusion of this chapter, there are many reasons why settler governments should align their resource management goals with Indigenous territorial governance goals.

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[57] Palmater, Pamela. 2013. "Idle No More: What do we want and where are we headed?" rabble.ca, January 4. http://rabble.ca/blogs/bloggers/pamela-palmater/2013/01/what-idle-no-more-movement-really, accessed January 15, 2013.
[58] http://www.theglobeandmail.com/commentary/canadas-future-lets-be-divided-no-more/article7199421/. accessed January 15, 2013.

Chapter 4: New (Colonial) Relationships in BC After *Delgamuukw*

Relationships between Indigenous peoples and the colonizing state in what is now called Canada have varied considerably since the early days of contact, when power was more equal, through the harshest times of oppression and resistance, to contemporary times, as First Nations and other Indigenous peoples regain power and are entering into 'new relationships' with Canada and the provinces. Correspondingly, the colonizing state has had periods of recognizing Aboriginal rights, denying them, and then re-recognizing and attempting to define and reconcile them with shaky Crown claims to sovereignty.

With respect to governance of land and resources, First Nations and settler governments often have divergent and conflicting goals. Borrows (2005) describes some of the goals of First Nations, including recognition of their rights and title; affirmation of their laws and right to govern land and resources; and protection of environmental values.

> Aboriginal peoples want an acknowledgement of their use of the entire continent of North America for their physical, spiritual, emotional, and social sustenance in the recent past. They wish for an affirmation of their intimate knowledge of the land today…They want others to affirm Aboriginal values, norms, customs, and laws to govern land and resource use. These traditions taught Aboriginal people how to take from the land while respecting the interactions and interdependence of the non-human world. The ancient and enduring relationships are now profoundly restricted, and they want this trend reversed. Aboriginal territories have been reduced to such an extent that it threatens the maintenance of these relationships. (Borrows 2005, 17)

First Nations also want to be able to effectively govern their territories for the purposes of the economic development of their communities. Like all governments, First Nations need to access revenue to provide employment and services to their citizens. As a result of the dispossession of their lands and resources, First Nations have not been able to meet these

economic development goals and many First Nation communities experience very high levels of unemployment, rates of poverty, and related social issues.

Some of the goals of settler governments are to protect and uphold: their occupation and governance of the land and their control of natural resources; non-Indigenous people's private ownership of land under the colonial system; resource rights they have granted to industry; and income streams from resource development. Within the context of conflicts between First Nations and BC over land and resource governance, this is often captured in the province's oft-stated goal of achieving 'certainty'.

In this chapter, I examine how relationships between the provincial government and First Nations in BC have changed since *Delgamuukw*. I look at the engagement strategies used by each side, broadly in the period leading up to *Delgamuukw*, and in greater detail after *Delgamuukw*, as First Nations continue to gain more power and additional strategies become available. By engagement strategy, I mean the ways that the parties approach each other to resolve a particular dispute or underlying territorial governance conflict. I explore whether each party is effective at meeting its land and resource governance goals within each of the 'new relationships'. Because engagement strategies are the means by which the parties relate, they fundamentally define and structure the relationships.

Over the history of relationships between the provincial government and First Nations in BC, different engagement strategies have become available or unavailable to each party. By the time BC became a province of Canada, it was apparent to First Nation leaders that the

colonizers had significantly more military power, making war an unavailable strategy for the most part. Although there have been struggles and disagreements between the federal and provincial governments, especially with respect to policy relating to First Nations (Harris 2001, Harris 2002), taken together, federal and provincial actions work to exert and maintain colonial power, thus controlling the strategies available for use by First Nations. Force, whether military or police, used or just threatened, has been an available and effective way for BC to enforce its role in land and resource governance.

Although BC has maintained control of most of the strategies, both which strategies are used and the terms of engagement, First Nations have continuously influenced them. Each party reacts to the other's actions in a dynamic interplay. The predominant tools used by governments to exert and then maintain colonial power changed over time depending on the task at hand, European and then mainstream Canadian attitudes toward Indigenous peoples and their rights, and tactics employed by First Nations. Similarly, the predominant tools used by First Nations to resist colonialism and seek redress have varied, but often depended on which tools were available to them within the colonial system.

As important as force was (and is) for maintaining colonial power, shifts in the attitudes of the colonizers has played a pivotal role in the erosion of that power. I do not explore the causes of shifts in attitudes, but suggest it is likely a combination of constant pressure and work on the part of First Nations people and leaders and general changes in attitudes of Canadian mainstream society. It was the attitudes of colonizers and settlers that led to the denial of Aboriginal title and rights when BC was formed, and it has been shifts in attitudes

that has led to the recognition of Aboriginal title and rights first by the Supreme Court of Canada and then by government leaders. The recognition or denial of Aboriginal rights and title by government officials has been a strong determiner of the engagement strategies employed by the parties.

When it comes to First Nations' power, BC is an uneven landscape and strategies that are effective for one nation may not be effective for another. Each party keeps an arsenal of strategies, using whichever suite is effective for their particular goals at a particular time. Often, the policies and/or actions of the BC Government are contradictory, recognizing rights in one arena and denying them in another.

Using the conceptual framework developed in Chapter 3, I assess whether the changes in relationships that have occurred since *Delgamuukw* constitute reconciliation. The conceptual framework outlines what is necessary to decolonize relationships and territorial governance; if those requirements are not met, then relationships and governance are arguably 'still colonial'. Although the changes in First Nation-BC relations have been dramatic and rapid, I argue that the relationships are still colonial and current developments only start to address some components of reconciliation. This is not to cast aspersions on the hard work and achievements of many committed individuals and groups, but rather to highlight that there are still significant power inequalities between the parties and governing power has not shifted enough toward First Nations, and point to some of the places where decolonizing work needs to continue in order to constitute a just reconciliation.

4.1 Engagement Strategies Before *Delgamuukw*

In *Making Native Space: Colonialism, Resistance and Reserves in British Columbia*, Cole Harris outlines in careful detail how First Nations were dispossessed of their land and resources—and thereby their governance of those lands and resources—by the colonial state. The process mostly took place in the latter half of the nineteenth century and by the time all of the reserves were laid out, First Nations were left with about one third of one percent of the land in BC, and activities on that land were subject to the *Indian Act*. As pointed out by Borrows (2005), the colonial state's possession of the land and imposition of new systems of governance were—and still are—in essence an illegal occupation protected by force.

Avenues open to First Nations to protest this dispossession and seek redress were limited, given their comparative lack of force and the governments' ability to close avenues as they gained effect. First Nations were restricted to using the few engagement strategies allowed within the colonial legal system. As is evident in the table of Pre-*Delgamuukw* Events (Appendix A), First Nations leaders held assemblies; wrote and presented petitions; sent delegations to Victoria, Ottawa, and London; formed associations; signed declarations; met with premiers, prime ministers, and monarchs; made statements; and organized protests. The government often responded with legislation prohibiting First Nations people from using these very means. From 1880 to 1927, 'Indians' were prohibited from assembly through an amendment to the *Indian Act*. Similarly, from 1927 to 1951, raising money or hiring lawyers to pursue land claims was prohibited, effectively removing the courts as an avenue of redress. Starting in the mid-1960s, however, cases involving Aboriginal and treaty rights started

making it to the Supreme Court of Canada. First Nations were using litigation as an engagement strategy.

Historically, treaty negotiation was not an available strategy for most First Nations in BC because the province refused to negotiate treaties. The so-called Douglas Treaties, signed on Vancouver Island between 1850 and 1854, were negotiated before the Colony of Vancouver Island joined BC. In 1899, several nations in the northeast of BC signed on to Treaty 8 with Canada, which included First Nations in northern Alberta, northwest Saskatchewan, and the southern Northwest Territories.[59] BC was not a party to Treaty 8.

'Modern-day' treaty negotiation opened up as an engagement strategy for First Nations in Canada after the 1973 Supreme Court of Canada decision in *Calder.* At that point, almost half of Canada had unsettled land claims. The judgment in *Calder* was striking enough to convince the Canadian government that it needed to start negotiating comprehensive land claims in places where treaties were not signed (Kulchyski 1994). Much of the land with unsettled claims was in the North of Canada and most northern Indigenous peoples have since signed land claims agreements with the federal government. Almost all of the land claims in BC, however, remain unsettled. Although the federal government effectively acknowledged continuing Aboriginal title in their 1973 *Statement of Claims of Indian and Inuit People*, the BC government continued to deny it until 1990, when they finally agreed to negotiate land claims with First Nations and Canada. Thus, BC and First Nations only began to use treaty negotiation as an engagement strategy in 1990.

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[59] http://www.gov.bc.ca/arr/firstnation/treaty_8/default.html (accessed September 7, 2012)

BC, Canada, and the First Nations Summit established the BC Treaty Commission in 1992 and began the tripartite treaty process in 1993, holding initial meetings with 42 First Nations.[60] The process of treaty negotiations has proven long, slow, and frustrating, and by the time *Delgamuukw* was decided, only one treaty had been signed. The Nisga'a Final Agreement, negotiated outside of the BC Treaty Commission process, was signed in 1996 and came into effect in 2000, not without significant controversy and a court challenge by then BC Liberal party leader, Gordon Campbell, and two other members of the Official Opposition in BC.

The American Heritage Dictionary of the English Language defines 'direct action' as the "strategic use of immediately effective acts, such as strikes, demonstrations, or sabotage, to achieve a political or social end."[61] This engagement strategy has always been open to First Nations and has been used throughout the history of the relationship. Some examples include the Nisga'a resisting surveyors in 1886; the Native Brotherhood of BC organizing protests on fishing, lands, taxation and social issues beginning in 1931; and the many acts of individual Indigenous people exercising Aboriginal rights such as hunting, fishing, selling fish, or cutting timber despite colonial laws prohibiting these activities. The Crown's reaction to the exercise of Aboriginal rights in defiance of colonial law is often to charge the individual, which has lead to many of the key court decisions on Aboriginal and treaty rights (e.g., *Sioui, Sparrow, Badger, Gladstone, Marshall*).

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[60] Indian and Northern Affairs Canada, *Fact Sheet: Aboriginal rights in BC*, http://www.ainc-inac.gc.ca/ai/mr/is/abr-eng.asp; accessed July 4, 2009
[61] http://www.thefreedictionary.com/direct+action; accessed August 20, 2012

Beginning in the early 1980s in BC, direct action in the form of blockades and protests became an important and ultimately effective strategy for First Nations in their quest to regain influence in land and resource governance in the province. Meares Island, located in Clayoquot Sound on the west coast of Vancouver Island, was the site of a controversy over logging, where the Nuu-chah-nulth, supported by environmentalists, erected a blockade in 1984. Litigation ensued and they were ultimately successful in protecting the island from logging. Around the same time, the Haida began protesting logging on Haida Gwaii,[62] which led to a federal-provincial agreement and the creation of a jointly managed (Haida and Parks Canada) protected area, Gwaii Haanas National Park Reserve. The early 1990s saw another logging protest erupt in Clayoquot Sound, this time leading to the largest arrest of protesters in Canadian history, an Interim Measures Agreement[63] with five Nuu-chah-nulth nations containing co-management provisions respecting resources, the formation of a Science Panel to develop logging recommendations in the Sound, and the purchase of 51% of the logging rights in the area by the Nuu-chah-nulth (giving them another form of governance over the area).

In summary, some of the main engagement strategies used by the BC government to achieve their land and resource governance goals in the early part of the pre-*Delgamuukw* period were force and legislation. For their part, First Nations were limited to using political

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[62] Haida Gwaii is an archipelago off the north coast of BC. It was also known as the Queen Charlotte Islands, so-named by the colonial administration, until 2010, when the Haida officially returned that name to the Province.

[63] Interim Measures Agreements are negotiated to protect Aboriginal land and resource interests during the process of treaty negotiations.

pressure and direct action, though their ability to engage in direct action (i.e., assembly) was also directly prohibited by colonial governments for a time. Starting in the 1950s, litigation was opened up as a strategy for First Nations and in the 1990s, treaty negotiations with the provincial government became an option. When the Supreme Court of Canada handed down its decision in *Delgamuukw* in 1997, relationships between First Nations and the Province of BC were being played out at blockades, in court, and at the treaty table. Co-management between First Nations and the province was just beginning to emerge as an engagement strategy, for example in Clayoquot Sound.

4.2 Significance of *Delgamuukw* to Indigenous-State Relations

The relationship between First Nations and the BC government has changed dramatically in the time since the 1997 decision in *Delgamuukw*. Although *Delgamuukw* was just one event in the history of the relationship, and the findings of the court were still based on racist colonial assumptions[64], it was a pivotal moment. Chief Justice Lamer ordered a new trial, but the effect of the decision was that the existence of Aboriginal title was affirmed and its protection from provincial laws was declared. In essence, the court found that in areas where treaties had not been signed, which includes most of BC, Aboriginal title likely still exists in many places. Governments were instructed to consult with First Nations on decisions that may infringe Aboriginal title. In requiring consultation, the court effectively forced the provincial government to consider the effects of their actions on and initiate a different type of relationship with First Nations.

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[64] See, for example: Alfred 2000, Christie 2000, McNeil 1999

Consultation was first mentioned in the context of Aboriginal rights by the Supreme Court of Canada in the 1990 decision in *R. v. Sparrow*.

> Within the analysis of justification, there are further questions to be addressed, depending on the circumstances of the inquiry. These include the questions of whether there has been as little infringement as possible in order to effect the desired result; whether, in a situation of expropriation, fair compensation is available; and, whether the aboriginal group in question has been consulted with respect to the conservation measures being implemented. The aboriginal peoples, with their history of conservation-consciousness and interdependence with natural resources, would surely be expected, at the least, to be informed regarding the determination of an appropriate scheme for the regulation of the fisheries.[65]

This passage was part of what became known as the *Sparrow* test for justification of the infringement of an Aboriginal right and is quoted and used in several 1996 decisions relating to Aboriginal fishing and treaty hunting rights.

In *Delgamuukw*, the duty to consult is dealt with more directly and fully.

> …the fiduciary relationship between the Crown and aboriginal peoples may be satisfied by the involvement of aboriginal peoples in decisions taken with respect to their lands. There is always a duty of consultation…In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an aboriginal nation…The economic aspect of aboriginal title suggests that compensation is relevant to the question as well… fair compensation will ordinarily be required when aboriginal title is infringed.[66]

Because *Delgamuukw* dealt with Aboriginal title, the scope of consultation that the province would have to undertake was unprecedented. Most of the province was (is) subject to land claims, meaning virtually every land and resource decision taken by the province would

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[65] *Sparrow* at para 1119.
[66] *Delgamuukw* at para 168 and 169.

require consultation with at least one First Nation and usually more, due to either the extent of the area affected or an area being claimed by more than one First Nation, and often both. The duty to consult that was initiated in *Sparrow* was conceived in the relatively narrow context of justifying the infringement of Aboriginal rights, primarily with respect to conservation of fish or wildlife. With *Delgamuukw*, the duty to consult expanded significantly, becoming a critical component of all land and resource decisions in the province of BC.

In addition to consultation, the decision in *Delgamuukw* talks about accommodation in the context of Aboriginal title. Accommodation refers to how a government takes care of the interests of Aboriginal peoples. *Delgamuukw* suggests that First Nations should be financially compensated when governments infringe Aboriginal title. In his decision, Chief Justice Lamer states:

> …[A]boriginal title, unlike the aboriginal right to fish for food, has an inescapably economic aspect, particularly when one takes into account the modern uses to which lands held pursuant to aboriginal title can be put. The economic aspect of aboriginal title suggests that compensation is relevant to the question of justification as well…In keeping with the duty of honour and good faith on the Crown, fair compensation will ordinarily be required when aboriginal title is infringed. The amount of compensation payable will vary with the nature of the particular aboriginal title affected and with the nature and severity of the infringement and the extent to which aboriginal interests were accommodated.[67]

The duty to consult First Nations on decisions taken with respect to their lands or rights was further elaborated in the Supreme Court judgment in *Haida* and reinforced in *Taku River*

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[67] *Delgamuukw* at para 169.

Tlingit First Nation v. British Columbia[68], both decided in 2004. In *Haida*, Chief Justice McLachlin states the following.

> The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the principle of the honour of the Crown, which must be understood generously…The scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed…Finally, the duty to consult and accommodate applies to the provincial government.[69]

With *Delgamuukw*, then, a new engagement strategy and type of relationship emerged between the province and First Nations. Even though the province was in control of the process, consultation would prove to be a strategy that effectively shifted power in land and resource governance in the direction of First Nations, both directly and indirectly.

4.3 Engagement Strategies After *Delgamuukw*

Although consultation and accommodation became new engagement strategies after *Delgamuukw*, BC and First Nations continued to use all of the pre-*Delgamuukw* strategies to achieve their governance goals: litigation, direct action/force, and treaty negotiation. In the following sections, I trace the development of each of these strategies, identify their benefits and challenges, examine their effectiveness for each party, and explore their potential for decolonizing territorial governance and achieving reconciliation. I also show how consultation and accommodation evolved into other new relationships, including government-to-government negotiations and the New Relationship. The New Relationship is

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[68] [2004] 3 SCR 550 [*Taku*]
[69] *Haida*

a formal policy statement of the province and First Nations leadership, declared in 2005, outlining their shared approach to reconciliation.

Much of my general understanding of the development of the engagement strategies for this chapter was gained as a participant in them—first as an employee of the Cowichan Tribes (involved in consultation and preparation for litigation from 1998 to 2002) and then as a consultant working for the Hul'qumi'num Treaty Group (involved in treaty negotiations, consultation, and preparation for litigation from 2002 to 2004). I began my PhD in 2004 and since 2009, have also been consulting for Coastal First Nations on projects connected to stewardship capacity building and land and marine use planning and implementation. Since 2004 I have been more of an observer than a participant in the various engagement strategies, but have remained informed through documentary research, attendance at related meetings, personal communication with people directly involved, membership in topical listserves, and a close following and search of the media (print and radio) for developments in First Nation-BC relations.

4.3.1 Direct Action and Force/Occupation

I use direct action and force/occupation as two sides of the same strategy. Both refer to strategies used to directly achieve a result. The term 'direct action' is generally used to describe actions taken by a less powerful group against a more powerful group. It is the term used by many First Nations to describe activities like exercising an Aboriginal right in contravention of colonial law or blockading to stop contested resource development. Force is "the power to influence, affect, or control" and "the use of exertion against a person or thing

that resists."[70] This aptly describes BC's imposition and maintenance of colonial power and governance. Occupation refers to "possession, settlement, or use of land" and "the control of a country by a foreign military power."[71] In his report on occupations of land for the Ipperwash Inquiry, Borrows (2005) uses 'occupation' to describe direct actions by both sides to meet their governance goals. He points out that, from the perspective of Indigenous law, colonial governments have used occupations and blockades to prevent Indigenous peoples from accessing their land and resources from the times of the European settlement of BC. I use direct action to refer to the strategy used by First Nations, as it includes more than occupations and highlights the power imbalances. I use force/occupation to refer to the strategy used by BC to control Indigenous peoples and govern land and resources.

With respect to the incidence of physical occupations on the part of First Nations, Borrows (2005) speculates that involvement in engagement strategies such as treaty negotiation and litigation have reduced the number of blockades. This may be true of some types of occupations or for certain periods of time (I do not attempt a quantitative analysis), but direct action continues to be used strategically by First Nations to achieve territorial governance goals. As can be seen in the table of Post-*Delgamuukw* Events (Appendix B), many nations or groups of nations (e.g., Westbank, Neskonlith, St'at'imc, Haida, Tahltan, Halalt, Okanagan, Sinixt, Wet'suwet'en, Tsilhqot'in, Ktunaxa, Musqueam) continue to use direct action to halt land or resource development activities or to use their resources without settler

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[70] force. Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition. HarperCollins Publishers. http://dictionary.reference.com/browse/force (accessed: September 18, 2012).
[71] occupation. Dictionary.com. Collins English Dictionary - Complete & Unabridged 10th Edition. HarperCollins Publishers. http://dictionary.reference.com/browse/occupation (accessed: September 19, 2012).

government approval. I do not claim that the table is complete, containing every noteworthy event related to engagement strategies, but I do note that I have not reported the use of direct action from the period 2005 to 2009, which is the period after the BC government and First Nations leadership entered into the New Relationship. Since 2009, however, there seems to have been a re-engagement of this strategy, perhaps because the honeymoon period wore off. A newspaper article of September 27, 2012 suggests that Indigenous people are warning of more conflict and confrontation as major resource development projects are being planned without their consent. When asked by the reporter if he anticipates another Oka or Gustafsen—armed stand-offs that occurred in 1990 and 1995—Grand Chief Stewart Phillip, president of the Union of BC Indian Chiefs, responded:

> When you consider that the BC treaty process just acknowledged their 20th anniversary last week and sadly acknowledged that the Government of Canada and the Province of British Columbia have not followed through on the commitments they made 20 years ago, and when you consider also the BC Court of Appeal brought down a very racist decision with respect to the *Tsilhqot'in* [Nation] case…my point is when we can no longer rely on the honour of the Crown through political negotiation or rely on the courts to protect and defend our aboriginal title and rights, we'll be forced to do that directly ourselves. That's the long answer…The short answer is yes.' (Pablo 2012)

Settler governments' responses to direct actions by First Nations have varied, in some case seeking injunctions to stop activities and in other cases quietly ignoring them. The courts, for their part, have decided in favour of either side depending on the circumstances. For the government, litigation on direct action is uncertain, causes delays in resource development, is costly, and seriously impacts the development climate of the province. It is in BC's best interest to avoid conflict that leads to direct action, making it a strategy that First Nations can use effectively.

BC continues to use force and/or occupation to meet its land and resource governance goals. Arguably this is its best and most effective strategy. The province really only uses other engagement strategies in service of maintaining the *status quo* of using force and occupation until First Nations agree to some sort of reconciliation or settlement of their claims. It is only when First Nations consent to BC's presence and governance (in a different form) that it would effectively cease to be occupation and force.

Direct action is the ultimate decolonizing act and force/occupation is the ultimate colonizing act. Although direct action may have indirect effects toward reconciling First Nation and BC interests and improving their relationship, it cannot be seen as part of reconciliation, and in fact is antithetical to it. With genuine reconciliation, direct action on the part of First Nations and force/occupation on the part of the government theoretically become moot. With restored power in governance, First Nation governments would be making laws and decisions about their territories and therefore would not need to act in opposition to them (this is not to say that First Nation citizens and others would not use direct action against First Nation governments). Indigenous leaders consistently promote a political relationship based on sharing and mutual accommodation (e.g., Asch and Zlotkin 1997) and thus reconciliation would likely involve an agreement about areas in which non-Indigenous peoples can live and conduct business, changing the illegal occupation of Indigenous land into occupation with consent.

4.3.2 Litigation

Litigation is used by both BC and First Nations to achieve land and resource governance goals. BC uses litigation in response to the use of direct action—the assertion of Aboriginal rights in contravention of colonial law—by First Nation individuals and governments, for example in cases of hunting or cutting trees (e.g., *R. v. Morris, R. v. Seward, BC v. Okanagan Indian Band, BC v. Westbank First Nation, BC v. Adams Lake Band*). Litigation is used by First Nations to advance Aboriginal title claims (e.g., *Calder, Delgamuukw, Tsilhqot'in*) and to have the court intervene in process and relationship concerns, especially with respect to consultation (e.g., *Kitkatla Band v. BC, Haida Nation v. BC, Taku River Tlingit First Nation v. BC, West Moberly First Nation v. BC, Carrier Sekani Tribal Council v. BC, Musqueam Indian Band v. BC, Halfway River First Nation v BC*).

Since the decision in *Calder* in 1973, litigation has been the engagement strategy that has proven the most effective catalyst for change. It has been litigation that has pressured governments into changing policy in many cases. As mentioned earlier, *Calder* led to a change in the federal government's position on land claims and *Delgamuukw* pushed the BC government to begin consulting with First Nations on all decisions affecting land and resources. Continued losses in the courts or avoiding litigation have been cited by BC as the impetus for policy directions. At the level of individual nations, both threats of and actual litigation are used to push the government to consult meaningfully and consider more appropriate accommodation of the First Nation's interests. In the late 1990s and early 2000s, Cowichan Tribes regularly threatened to file or actually filed writs to get BC's attention and action on addressing its concerns. When First Nations remain dissatisfied with BC's

response, court cases continue, leading to outcomes for individual nations at lower courts (e.g., *Halfway River, Musqueam, West Moberly*, *Da'naxda'xw/Awaetlala*) and developments in the case law on consultation and accommodation at the Supreme Court of Canada (e.g., *Haida, Taku*).

In December 2003, just before the sixth anniversary of *Delgamuukw*, many First Nations in BC launched legal action against the province and Canada for infringement of title. They feared BC and Canada would use the BC *Limitations Act*—which sets limits on the period of time a plaintiff has to bring a case—to prevent title cases. Despite First Nations' arguments that applying limitations was not in keeping with the Crown's fiduciary role and would be unfair, especially given that the time was spent in treaty negotiations, the province and Canada would not agree to forego using the *Limitations Act* nor change the legislation.[72]

In 2007, another landmark Aboriginal title decision was handed down, but this time by the Supreme Court of BC. The case was *Tsilhqot'in Nation v. British Columbia*[73], and it was the first examination of Aboriginal title using the *Delgamuukw* principles of occupation, exclusivity, and continuity. Justice Vickers "found that the Aboriginal plaintiffs had met the test for Aboriginal title in a little less than half of the lands claimed" (Ochman 2008, 338)—approximately 1,900 square kilometers, or 200,000 hectares—but, using a procedural loophole to find the plaintiffs' claim to title all-or-nothing, the judge concluded he could not

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[72] "First Nations Launch Legal Action," *Treaty Commission Update*, February 2004, page 2, http://www.bctreaty.net/files/pdf_documents/Feb04.pdf, accessed September 30, 2012
[73] [2007] BCSC 1700 [*Tsilhqot'in*]

actually declare title to the Tsilhqot'in. Relying heavily on Mandell (2008), I will summarize relevant findings in the case.

Justice Vickers found that the province has no jurisdiction to apply its *Forest Act* on Aboriginal title lands because it would render meaningless the Aboriginal right to manage Aboriginal title land. He also found that Section 88 of the *Indian Act*, which can incorporate provincial laws into federal law with respect to Indians, applies only to 'Indians' and not 'lands reserved for Indians', thus they can infringe rights, but not title. Consistent with *Delgamuukw*, Vickers decided that provincial fee simple grants do not extinguish Aboriginal title, which continues to exist on privately held lands. Regarding rights, Vickers found that the Tsilhqot'in have an Aboriginal right to hunt, trap, and trade throughout the claim area, not just in the areas where there was evidence of title. The right to trade was limited to earning a 'moderate livelihood', as defined by the Supreme Court of Canada in *R. v. Marshall; R. v. Bernard*[74]. Vickers also concluded that, for Aboriginal title and rights, the factors that should be used to determine the proper rights-holding community are shared language, customs, traditions, historical experiences, and territory. In this case, it was clearly the Tsilhqot'in Nation and not an Indian band, as argued by the province.

All three parties—Tsilhqot'in, Canada, and BC—filed appeals. The decision from the BC Court of Appeal came down on June 27, 2012, upholding the Tsilhqot'in's hunting and trapping rights, but disagreeing with Justice Vicker's opinion that the Tsilhqot'in had

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[74] [2005] SCC 43, [2005] 2 SCR 220 [*Marshall*]

sufficient evidence to support a claim to Aboriginal title over 40% of their claim area.[75] Justice Groberman rejected the idea that Aboriginal title could be demonstrated on a territorial basis, but rather that it needed to be site-specific. His reasoning relied in large part on his conception of what is required for reconciliation.

> There is a need to search out a practical compromise that can protect Aboriginal traditions without unnecessarily interfering with Crown sovereignty and with the well-being of all Canadians. As I see it, an overly-broad recognition of Aboriginal title is not conducive to these goals.[76]

These statements are evidence of the perils of having to use the colonizer's courts to plead a case for Aboriginal title. Instead of evaluating the claims simply on their merits, the judge decided the case in a manner that avoided 'unnecessarily interfering with Crown sovereignty and with the well-being of all Canadians'. As with all Aboriginal rights cases, the basis of the not-to-be-interfered-with Crown sovereignty is not rationalized. In fact, the judge states that it is "difficult to rationalize from a modern perspective."[77] In addition, protecting the 'well-being of all Canadians' at the expense of a just definition of Aboriginal title perpetuates the racism and structural violence of the past century and a half in BC.

As with the judgment in *Delgamuukw*, the implications of the *Tsilhqot'in* decision are huge, including impacts on future litigation, consultation and accommodation, treaty negotiation mandates, and relationships between First Nations, the Province of BC, and Canada (Mandell 2008). As only two title cases have made it to the Supreme Court of Canada, case law on Aboriginal title develops dramatically with each new case. It remains to be seen how

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[75] *William v. British Columbia* [2012] BCCA 285 [*William*]
[76] *Ibid* at para 239.
[77] *Ibid* at para 166.

Canadian law will view the nature and extent of Aboriginal title after the Tsilhqot'in case is heard by the Supreme Court of Canada.

Although litigation has been very effective for First Nations in achieving policy change and quashing unfavorable government decisions, as an engagement strategy it is adversarial, expensive, and usually requires a follow-up strategy to actually achieve territorial governance goals. In the case of quashed decisions, the court instructs the government to go back and do a better job of consultation. Government policy change generally just leads to new engagement strategies (like treaty negotiation, consultation and accommodation, and economic agreements). In describing *West Moberly First Nations v. BC*[78], Booth and Skelton (2011, 49) state: "What is significant is that once again the almost worst case scenario had happened. Once again, time, resources and good will have been wasted in an adversarial and confrontational response to a failure in an environmental assessment process." I disagree that the court case was anywhere near a worst case scenario in that West Moberly was successful in achieving its goals and BC had to learn yet again that it must take First Nations' interests seriously. These are not aspects of a worst case scenario. I agree, however, that a lot of time, resources, and good will were *used* (not wasted) to achieve those ends and they could have been achieved more easily and cheaply if BC had taken West Moberly's concerns seriously in the first place.

For the province, litigation has not been a very successful strategy for meeting its land and resource governance goals. In addition to the fact that it has lost many cases, litigation

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[78] *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2010 BCSC 359 [*West Moberly*]

impedes specific resource development projects and has negatively affected the overall investment climate in the province. It is precisely because of the ineffectiveness of litigation in meeting its territorial governance goals that the province has explored many of its new relationships with First Nations.

Litigation as an engagement strategy is fundamentally colonial. It takes place in colonial courts using colonial laws and rules. Although there have been advances in the courts' thinking about Aboriginal rights and title and the use of oral histories, the courts still take Crown title and sovereignty for granted and place the burden of proof on First Nations to prove their rights and title against those of the Crown (McNeil 2001). The tests for Aboriginal rights and title and the justifications for infringements of those rights are established by the courts and are based on colonial worldviews and conceptions of Indigenous peoples, lands, and ownership, governance, and use of lands and resources.

Practically, however, litigation has been instrumental in achieving gains with respect to aspects of reconciling First Nations' and the BC Government's land and resource governance interests. Litigation has directly led to the BC Government's recognition of the existence of Aboriginal title and rights and economic accommodation of those rights through resource revenue sharing and other agreements. Arguably, it has also indirectly improved the relationship between First Nations and BC by forcing the provincial government to respect First Nations and work with them to achieve land and resource governance goals. As described by Asch (1997, ix):

> Law has two contrasting faces. On one face, the rule of law represents a crucial means whereby the dominant rules and values in a society are applied and enforced. On the other hand, law represents a place where, sometimes, those rules and values are challenged and new ways of understanding may emerge. Such is the case with Aboriginal rights law. It is axiomatic that, since Confederation, Canadian law has represented a fundamental means whereby the values and institutions derived from the culture of the settlers, immigrants, colonists, and their descendants were to be imposed upon Indigenous peoples. At the same time, there have been moments when these institutions and values have been successfully challenged through the application of the rule of law.

Indigenous peoples have been able to effectively use Canadian law to challenge unilateral governance of land and resources by the provincial government in BC.

4.3.3 Treaty Negotiation

Treaty negotiation continues as an engagement strategy used by both sides after *Delgamuukw*. By 2012, however, after almost twenty years of negotiating, only two treaties in addition to the Nisga'a Final Agreement have come into effect in BC. The Tsawwassen Final Agreement was signed in 2007 and came into effect in 2009 and the Maa-nulth Final Agreement was signed in 2009 and came into effect in 2011. There are six stages to the BC treaty negotiation process: 1) statement of intent to negotiate, 2) readiness to negotiate, 3) negotiation of a framework agreement, 4) negotiation of an agreement in principle, 5) negotiation to finalize a treaty, and 6) implementation of a treaty. Currently, Tsawwassen and Maa-nulth are in stage six, there are six nations in stage five, forty-four nations in stage four, two nations in stage three, and six nations in stage two. Once a treaty is initialed in stage five, it needs to be ratified by a vote of the membership of the First Nation and then passed through the BC legislature and the House of Commons before becoming law.

The following progress report gives an idea of the potential to finalize a treaty in the near future for the nations in stage five. The Lheidli T'enneh Final Agreement, was initialed in 2006, submitted to a vote in 2007, and rejected by a majority of members (111 voted yes and 123 voted no). The Yale Final Agreement was initialed in 2010, ratified by members (68% in favour) and the BC legislature in 2011, and is waiting ratification by Canada. The Tla'amin Final Agreement was initialed in 2011, ratified by members in 2012 (318 voted yes and 235 voted no), ratified by BC in 2013, and has yet to be ratified by Canada. The final agreements of the other three nations in stage five have not yet been initialed. Thus, there are two more treaties that are in the process of being finalized and have passed the most risky point of ratification by members.

A coarse assessment of these numbers—sixty nations negotiating and only four treaties secured in twenty years—might lead one to conclude that there is something seriously wrong with the BC treaty process. Although there are serious problems with treaty-making in BC, I agree with the BC Treaty Commission that slow progress is to be expected (BCTC 2001). These are complex negotiations that require finding solutions to unsolvable problems that have developed over a long period of time. Settler governments are required to give up some control of land and resources, which carries significant known and unknown political, economic, environmental, and social risks. First Nations, for their part, have to establish and maintain the support of their communities, rapidly create the capacity to negotiate, and navigate their own enormous set of risks. Modern treaties as first imagined by settler governments were to be comprehensive (dealing with all of the issues) and final (with no room to adapt over time), and would extinguish all of the First Nations' Aboriginal rights.

For First Nations, signing a treaty with these conditions means trading all of their potential Aboriginal rights (which are still being defined and expanded by the courts), including title over potentially large areas of their territory and the right to self-government (which is also still being defined), for a package of limited powers and treaty rights, a very small amount of their traditional territory, and some cash. It is akin to a gambling game with an increasing jackpot that may evaporate at any point. And the stakes are high: in many First Nation communities, the situation is desperate and economic needs are both great and immediate. How does a community collectively decide between a small and immediate settlement and an uncertain but potentially much better treaty or other relationship farther in the future? It is understandable that treaties divide communities and that progress has been slow.

There have been many overviews (e.g., Penikett 2006, McKee 2009), evaluations (e.g., BCTC 2001; BCTC Annual Reports), and academic analyses (e.g., Hannah 2011, Alcantara 2009, Price 2009, Woolford 2005, Day and Sadik 2002, Alfred 2000) of the BC treaty process. Land claims processes (e.g., Nadasdy 2012, DePasquale 2007, Alcantara 2007, Nadasdy 2003) and the Nisga'a treaty (e.g., Blackburn 2009, 2007, and 2005, Rynard 2004) have also been rigorously examined. There is no need for me to repeat these detailed explorations. My purpose here is to look generally at developments in engagement strategies since *Delgamuukw*, especially as related to development of new relationships, and evaluate their potential for decolonizing territorial governance in BC. Thus, I will outline how specific problems with the treaty process have led to new strategies, explore the effectiveness of the treaty process for First Nations and BC in meeting their land and resource goals, and use my

reconciliation framework to consider the potential for the BC treaty process to decolonize territorial governance.

One way to conceptualize the myriad challenges in negotiating treaties in BC is to pose questions that need to be asked of treaties and treaty making. In brackets, I have elaborated examples of more specific questions with respect to the BC treaty process.

- Who should negotiate treaties? (Should BC be at the table? What constitutes a First Nation?)
- What are the starting premises? (What history of BC can the parties agree to? Who owns the land and resources, who has the right to govern here, whose laws apply? Who is 'giving' and who is 'receiving'?)
- What is the nature of the treaty and what are the relative standings of each party? (Is it a treaty, agreement, or settlement? Is it nation-to-nation or are First Nations conceived of as corporations or municipal-style governments? Is it a full and final settlement or is it a dynamic relationship?)
- What are the goals of each party in treaty making? What are the goals of the treaty? (What do justice, certainty, and reconciliation mean and how are they related?)
- Are treaties the right mechanism for achieving each party's goals? If so, should they be negotiated now or in the future?
- What process should be followed to negotiate a treaty?
- How should the serious imbalances in power and human and financial resources be addressed to ensure the negotiations are fair?

- What should be included in treaties? (Should compensation, other forms of redress, co-governance, revenue-sharing, or private lands be on the table?)
- Who should fund the negotiations, the 'settlement package', and implementation? (Should negotiation funding for First Nations be in the form of grants or loans? What happens to the loans if a First Nation decides to leave the process? How can BC and Canada negotiate effectively with sixty nations?)
- What should happen with land and resources while treaties are being negotiated? (Who makes decisions? Who receives revenue?)
- What happens to the Aboriginal rights First Nations and members after a treaty is signed? (Are they 'extinguished', 'modified and released', or retained?)
- How do we ensure treaties will be upheld?

As summarized by Woolford (2005), the BC Treaty Commission attempted to address many of these questions when it developed its initial recommendations for the BC treaty process. The fact that settler governments currently have control of the land, resources, and governance of BC, however, means that they are in the position to control the redistribution of resources and therefore the treaty process. Due to their illegal seizure of territory and governance, they are also seriously disproportionally endowed with the human and financial resources necessary for negotiating treaties. The treaty process and final agreements that have resulted, therefore, are shamefully lopsided.

Over the two decades since the inception of the BC treaty process, the federal and provincial governments have had to make policy and mandate changes due to a lack of progress at

negotiation tables. Many First Nations were simply unwilling to accept some of the settler governments' positions. Other First Nations, given the pressures to find solutions to the economic and social crises occurring in their communities, have abandoned hopes of achieving justice through treaties and focused on creating practical arrangements with BC and Canada.

One of the major problems with treaties is the length of time it takes to negotiate them, which affects the ability of the parties to meet their land and resource goals in the meantime. This disproportionately affects First Nations, as they are the ones who are trying to regain access to their land and resources, while the settler governments continue to reap the benefits of maintaining complete control. In the early days, Penikett (2006) reveals, the federal government felt it was cheaper to negotiate than settle treaties. After *Delgamuukw*, he suggests, this was no longer true. With *Delgamuukw*, and later *Haida* and *Taku*, non-Aboriginal governments' needs for certainty and a reduction in the resource decision-making gridlock caused by consultation became paramount, causing them to push harder for treaties and seek other means of addressing First Nations' goals before treaty resolution. As summarized by the BC Treaty Commission:

> The Supreme Court of Canada's decision in *Delgamuukw* on December 11, 1997 was the defining event of the Treaty Commission's 1997/98 fiscal year. To First Nations, the *Delgamuukw* decision is a vindication of their claim of title to their territories. They see their bargaining strength at both the treaty table and the interim measures table as being substantially fortified. To non-aboriginal British Columbia, especially the resource industry, the decision is seen as creating uncertainty by undermining provincial authority to create past, present or future rights in land and resources. It is also seen as increasing the cost of treaties at a time when the economy is clearly fragile.[79]

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[79] BC Treaty Commission Annual Report 1998

Interim measures—agreements to support negotiations or affect territorial use and management while treaties are being negotiated—and incremental treaty agreements are two mechanisms that have been pursued within the treaty process. Initially, it was First Nations who were pushing for interim measures that would protect resources and provide economic and capacity development opportunities during the long process of treaty negotiation. Settler governments refused to negotiate them or used them as a carrot—making them contingent on having signed an agreement-in-principle. Following 2000, however, a flood of interim measures agreements were signed (BCTC 2001).

In 2002, the three parties agreed to the idea of negotiating incremental treaty agreements, but none was signed until 2008. In the 2008 to 2012 period, three incremental treaty agreements have been signed and one was rejected by the First Nation's members.[80] They are bilateral, between the province and First Nations, and their stated purpose is to "build trust among the parties, create incentives to reach further milestones and provide certainty over land and resources."[81] More specifically, the agreements 'transfer' lands and/or pay money to the First Nation and give assurances from each party to the other, including that the First Nation will not take legal action against the province with respect to consultation on land and resource decisions and that the province will provide assistance with capacity building for consultation, treaty negotiation, or economic development. Both sides agree to try to

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[80] The three that have been signed are with Tla-o-qui-aht First Nations (2008), Klahoose First Nation (2009), and Nazko First Nation (2012). Haisla Nation members rejected an incremental treaty agreement.
[81] BC Ministry of Aboriginal Relations and Reconciliation, Incremental Treaty Agreements. http://www.gov.bc.ca/arr/treaty/incremental_treaty_agreements/default.html (accessed September 19, 2012)

accelerate the treaty process. The agreements state that they "constitute a contribution by the Province toward the reconciliation of the Province's and [the First Nation] interests, aboriginal rights and title claims through treaty negotiation."[82]

The 2005 Annual Report of the BC Treaty Commission is titled "Changing Point." It outlines some major developments, including the Supreme Court of Canada decisions in *Haida* and *Taku*, the subsequent launching of as many as 34 new court cases, and the New Relationship announced by the Premier and Indigenous leaders, and concludes:

> These are the major developments the Treaty Commission has had to consider in assessing the current status of treaty negotiations. Having made that assessment, we are of the view that we are at the changing point—that unmistakable day when a new reality has arisen and an old way of thinking has been put to rest. These significant developments signal that, today, reconciliation has a meaning closer to the long-held First Nation view of an ongoing multi-faceted relationship than the federal and provincial view of reconciliation as the full and final settlement of outstanding aboriginal rights in a treaty. Finality is no longer an option and perhaps was never a viable idea.

And, in hindsight, it was a changing point for the treaty process. Both the province and many First Nations (other than the handful at the front of the treaty negotiation pack)[83] began to turn their attention to other relationships. Concerned by continuing losses in the courts, BC had to think about new ways of working with First Nations. Bolstered by their success in the courts, First Nations' expectations grew far beyond what was being offered in the treaty process. In addition to continued litigation, consultation and accommodation, direct bilateral

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[82] Incremental Treaty Agreement Between Nazko First Nations and The Province of BC, June 29, 2012. http://www.treaties.gov.bc.ca/nazko_ita_signed.pdf (accessed September 19, 2012)

[83] Non-Indigenous governments' relationships with First Nations in treaty negotiations are uneven. 'Lead' tables are given more resources and negotiators have better mandates. At other tables, the pace of negotiations is slow and debt can accumulate with few tangible results. Also, tables can slide back if the government feels it has better chances of settlement with other nations. With about sixty nations in the treaty process, chances of achieving results in the treaty process are not high.

government-to-government negotiations, and new types of agreements provided other means for each party to meet its territorial governance goals. Many nations also started to deal directly and make agreements with industry that wanted to access resources within their territories.

When it was the only hope of achieving territorial governance goals, First Nations engaged in the treaty process even though settler governments' control of and position at the negotiations table were offensive. In the words of Kathryn Teneese, Ktunaxa Nation Chair, "We, as the First Nations, make the biggest compromise the minute that we decide to enter into treaty negotiations."[84] By making treaties about First Nations giving up their Aboriginal title and rights for small land and cash deals, instead of about First Nations retaining a connection to all of their territory and creating new governance relationships, settler governments made the treaty process unattractive to many nations. Some never really engaged in the process because they had other options. Squamish Chief Gibby Jacob put it this way: "…until the Squamish see…equality at the table, they will continue to look at all options to attain self-sustaining socioeconomic betterment for Squamish people."[85] And others did engage, but have since found some greater success outside the treaty process, as summarized in the *Vancouver Sun* by Art Sterritt, Executive Director of Coastal First Nations:

> The best building blocks for first nations prosperity, environmental sustainability and ultimately, treaties are local economic and environmental agreements, not the never-ending treaty process…As someone who's been involved in the BC treaty process – first as a BC treaty commissioner and then as a first nations negotiator for over a

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[84] BC Treaty Commission Annual Report 2006
[85] BC Treaty Commission Annual Report 2006

> decade – I find it apparent that coastal first nations communities have achieved more in five years through economic and environmental agreements than they have in two decades of treaty-making in BC. (Sterritt, 2009)

In 2011, the provincial government formally announced their switch in policy away from a focus on treaties, as reported in the *Globe and Mail* on November 4:

> British Columbia Premier Christy Clark is breaking with a decades-long pursuit of treaties with first nations, saying that process has failed to deliver either economic growth for aboriginal communities or security for business investors. The Premier is directing her government to focus instead on striking economic development deals with native leaders who are willing to do business. (Justine Hunter 2011)

To summarize then, given the scope and complexity of the negotiations, it is unreasonable to expect the treaty process to move quickly. That does not mean, however, that there are not serious problems with the process—power imbalances being the most significant. During the long process of treaty making, there needs to be opportunities for First Nations to participate in territorial governance, economic development, and capacity development, a point that First Nations have made successfully in the courts. This has led to the development of new engagement strategies within the treaty process—interim measures and incremental treaty agreements—and outside the process—consultation and accommodation, government-to-government negotiations, the New Relationship, and economic agreements. And finally, many First Nations and BC have decided that treaties should not be the focus—at least in the near term—for meeting their land and resource governance goals.

The potential for treaties to decolonize territorial governance in BC is huge. In fact, they are an obvious means of achieving reconciliation between the province and First Nations, as they are agreements between nations about relationships. Through treaties, new relationships

could be clarified and conflicts between First Nations' sovereignty and the presumed authority of colonial governments could be reconciled. The power imbalances between the parties, however, have for the most part proved insurmountable. In concluding his examination of the BC Treaty process, Woolford (2005, 172) states:

> …the procedural model upon which the BC treaty process rests…lacks clear substantive guideposts and is therefore susceptible to power imbalances. This allows the non-Aboriginal governments to define the parameters of the negotiations, limiting visions of justice and certainty to those that correspond to the project of neoliberal globalization. Those First Nations visions that call for transformative justice – that is, for a significant reconfiguration of the relationship between Aboriginal and non-Aboriginal persons that begins with non-Aboriginal governments acknowledging past injustices, recognizing First Nations powers of self-determination, and providing meaningful monetary compensation and land restitution – are deemed inadmissible to this process since they contradict this dominant economic and political 'reality.'

Settler governments have shown little respect for First Nations and their positions, taking control of the process and making it into a project of legalizing Canada's and BC's presumption of governing authority. "In essence, the BCTC process is designed to solve the perceived problem of Indigenous nationhood by extinguishing it and bringing Indigenous peoples into Canada's own domestic political and legal structures with certainty and finality" (Alfred 2000, 3). Using the reconciliation framework from Chapter 3, my review of BC treaty process documents and literature, and an analysis of the land and resource governance aspects of the Maa-nulth First Nations and Tsawwassen First Nation final agreements, I conclude, like others (e.g., Hannah 2011, Woolford 2005, Alfred 2000), that the requirements of reconciliation are not met and the BC treaty process has failed to provide a genuine means of decolonizing territorial governance.

As already explored in this section, the BC treaty process has not been able to create a relationship of mutual respect, and despite wording in the preambles to the contrary, the resulting final agreements set up a post-treaty relationship that remains severely lopsided. For example, in the Maa-nulth final agreement, "The Parties are committed to the reconciliation of the prior presence of the Maa-nulth First Nations and the sovereignty of the Crown through the negotiation of this Agreement which will establish new government-to-government relationships based on mutual respect." I suggest there is a contradiction in this statement between the stated goals of 1) reconciling the First Nation's *prior presence* with the Crown's *sovereignty* (when it is more appropriately the First Nation's sovereignty with the Crown's presence) and 2) establishing a relationship based on mutual respect. If mutual respect were at play, the wording of what needs to be reconciled would be different. A second example from the preamble illustrates how non-Indigenous governments refuse to take responsibility or apologize for colonialism and continue to deny its consequences, acts that are not in keeping with a relationship of mutual respect.

> Canada and British Columbia acknowledge *the perspective of the Maa-nulth First Nations* that harm and losses in relation to their aboriginal rights have occurred in the past and *express regret* if any actions or omissions of the Crown have contributed *to that perspective*, and the Parties rely on this Agreement to move them beyond the difficult circumstances of the past.[86]

With this statement, the Crown is suggesting that there is another valid perspective, and even that that perspective could be held by everyone other than the Maa-nulth First Nations, a suggestion that does not reflect contemporary understandings of the harm caused by colonial actions and is ultimately destructive to reconciliation.

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[86] Maa-nulth First Nations Final Agreement, emphasis added

The Maa-nulth and Tsawwassen final agreements do not recognize Indigenous title or sovereignty post-treaty. Aboriginal rights and title are effectively extinguished, though the terms used are 'exhaustively set out' and 'modified'. The very small areas of First Nations' territories that remain theirs are turned into fee simple lands where federal and provincial laws apply. There are limited law-making powers and federal and provincial laws almost always prevail to the extent of a conflict.

First Nation members retain rights to fish, hunt, and harvest plants for 'domestic' (meaning non-commercial) purposes within specific areas, and First Nations can make laws relating to the harvest and distribution of resources. Sale of these resources is generally prohibited, but trade and barter with other Canadian Aboriginal people resident in BC are allowed. Federal and provincial ministers retain authority for resource management, with specific situations outlined in which they will consult (federal government) or negotiate with (provincial government) the First Nations. There are not provisions for joint decision-making with respect to resource management, although the opportunity for future shared decision-making with BC is left open. Ironically, in the Maa-nulth Final Agreement, the 'Joint Fisheries Committee' facilitates the cooperative planning and management of *Maa-nulth First Nations activities*. The Joint Fisheries Committee does not facilitate cooperative management of fisheries, nor of both parties' activities, but only the activities of Maa-nulth First Nations.

There is a cash element to treaties, but it is generally not considered compensation for lost resources or opportunities. The Tsawwassen final agreement provides for a sum of

approximately $50,000 to establish a wildlife fund as compensation for the limited opportunity to harvest wildlife in their territory. This is incredible: for effectively destroying the right to hunt for all Tsawwassen people, now and in the future, settler governments paid $50,000. This amount of money might buy half an acre of agricultural land or a tenth of the cheapest house in Tsawwassen territory[87]. There is also a resource revenue sharing component to the Maa-nulth final agreement, which amounts to a tiny proportion of revenues, with a minimum and maximum total amount stated. Clearly, payment for lost resources and opportunities are not meaningfully addressed.

To participate in any of the relationships with settler governments, First Nations must develop specific governance structures and human and financial resources, and this is especially true of treaty negotiations. Implementation of treaties requires yet another structure and staff with different skills. Indigenous governance institutions are evolving to advance the goals of First Nations, but unfortunately, settler governments control most of the relationships and First Nations have had to learn to use the language and play within the rules of the colonial system. With respect to new governance structures, First Nations have to decide how to bring together the desirable elements of more 'traditional' Indigenous governance, *Indian Act*-style governance (if there are any), Indigenous governance that has emerged to fight for Indigenous rights in the face of colonialism, and other relevant models of governance. The final agreements stipulate some aspects of the post-treaty governance structure, for example allowing for appointment of hereditary leaders to First Nation governments, but requiring the majority of members to be elected. The major impediment of

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[87] Based on search of real estate listings on October 1, 2012 at www.realtor.ca; 46 acres of agricultural land for $4,799,800 and the cheapest house was $440,000.

the final agreements to strong Indigenous governance, though, is that they extinguish First Nations' connection to the majority of their territories.

As with my analysis of all of these relationships and engagement strategies, I do not mean to criticize any nation's use of the strategy nor the results of their extremely hard and diligent work. My criticism is reserved for the moral stance and negotiating mandates of non-Indigenous governments. I understand, respect, and support First Nations' strategic decisions to get results now, in whatever way they can. All of my professional work over the past fifteen years has been to support First Nations in regaining territorial governance using various engagement strategies, including treaty. Tsawwassen First Nation Chief Kim Baird has said a treaty is "not utopia with a bow on it. It's a toolbox, with some resources and money and jurisdiction to help us rebuild our community."[88] It is easy to sit on the sidelines, or even at the table, as a non-Indigenous person privileged by colonialism, and make judgments about whether justice has been served. The irony is not lost on me. The purpose of this analysis, however, is to better understand and so contribute to working toward genuine reconciliation with Indigenous peoples.

4.3.4 Consultation and Accommodation

Consultation became an engagement strategy primarily because of *Delgamuukw*. In his description of the duty to consult, Chief Justice Lamer left a lot of room for interpretation. Engagement could range from 'mere consultation' to 'consent' depending on the

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[88] BC Treaty Commission Annual Report 2004

circumstances. This room for interpretation has been the cause of much confrontation within First Nation-BC relations.

Although the province developed an Aboriginal rights policy in 1995 due to emerging case law, their first consultation guidelines were issued in 1998. BC laid out its *Provincial Policy for Consultation with First Nations* in 2002 and did not revise it until 2010, when it published its 'Interim' *Updated Procedures For Meeting Legal Obligations When Consulting First Nations*. Ironically, they are interim "in order to review them with First Nations."[89] Case law, the consultation process, and relationships between First Nations and BC developed a lot between 2002 and 2010; interestingly, the 2002 and 2010 policies are not all that different. The tone of each is different—the 2002 policy blatantly focuses on minimizing the scope and depth of consultation, showing decision-makers how to meet legal obligations quickly and with little or no change in their decisions.

> The Province recognizes the need to streamline existing consultation processes and incorporate the *consideration* of aboriginal interests into Provincial land and resource use decision-making. It is essential that consultation activities are well defined and carried out efficiently, prior to approvals/authorizations being made. (BC 2002, p 18, emphasis added)

The 2010 document talks about building new relationships, reconciliation, meaningful consultation, and the honour of the Crown. It still stresses, however, the conditional nature of accommodating Aboriginal interests. In the 2010 document, the consultation process has evolved into a much clearer, detailed, and more complex process, with operating guides and information tools to assist at various stages in the process.

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[89] http://www.gov.bc.ca/arr/consultation/index.html; accessed August 18, 2012.

Consultation is one of the most demanding engagement strategies for First Nation governments (Morellato 2009). In 1998, I was hired by the Cowichan Tribes, in part, to coordinate Cowichan's involvement in the process of consultation on land and resource decisions. The position was created in response to the *Delgamuukw*-induced flood of referrals the band started to receive. Some nations, especially larger ones or ones with their own sources of funding, have been able to create positions, departments, processes, and systems to coordinate the consultation process. Other nations have piles and boxes of referrals that form on the desks and in the offices of land managers, chiefs, and/or councilors. Capacity to respond to referrals is highly uneven over the province.

The resources put into consultation are often not matched with positive results to First Nations, yet they are obliged to engage or forfeit the opportunity to have a say in land and resource governance. Consultation usually happens too late in the planning process, when proponents of projects have already invested a lot of time and resources in particular outcomes. Consultation also puts too much power in the hands of government. In the past, the province often consulted with First Nations, only to go on to do whatever they planned to do in the first case, perhaps with minor changes to accommodate First Nations' concerns. As stated by Chief Justice Finch of the BC Court of Appeal in *West Moberly v. BC (Chief Inspector of Mines)*:

> MEMPR never considered the possibility that the petitioners' position might have to be preferred. It based its concept of consultation on the premise that the exploration projects should proceed and that some sort of mitigation plan would suffice. However, to commence consultation on that basis does not recognize the full range of possible

> outcomes, and amounts to nothing more than an opportunity for the First Nations "to blow off steam".[90]

Because many decisions have not substantially taken into consideration First Nations' interests and concerns, First Nations continually take the province to court over lack of adequate consultation and accommodation. In many cases, the courts have set aside the province's decisions and instructed them to do a better job of consulting (e.g., *Haida*, *West Moberly*, *Musqueam*, many more at BC Supreme Court). First Nations have also pursued other strategies to meet their resource governance goals with respect to development decisions, for example direct action and agreements directly with industry.

Early attempts by the province to deal with increasing uncertainty on the land base and a chilly investment climate caused by inadequate consultation and the resulting often successful litigation by First Nations came in the form of 'economic accommodation'. In the Speech from the Throne in 2003, BC announced that it would pursue revenue sharing with First Nations and create more opportunities for First Nations to participate in the forest sector through access to timber. That same year, the Ministry of Forests put out its strategic policy on approaches to accommodation, which launched the negotiation of Forest and Range Agreements. These early forestry agreements offered nations cash and timber (calculated on a per capita basis) in exchange for 'operational stability', or an agreement that the nation had been accommodated and would not engage in direct action or litigation. Many nations were not satisfied with these agreements and the Huu-Ay-Aht First Nation successfully took the

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[90] *West Moberly* at para 149.

Minister of Forests to court[91] over the ability of Forest and Range Agreements to meet the Crown's duty to consult (Rogers 2007). Due to widespread discontent, the province replaced Forest and Range Agreements with Forest and Range Opportunities Agreements after the commitment to the New Relationship, but did not address First Nations' concerns, including exclusion from forest planning and decision-making and insufficient economic accommodation. Another problem with these agreements was that the 'opportunities' were based on a per capita formula and revenue sharing was not related to forest activity within a nation's territory. In 2010, the province addressed some of these concerns, linking the economic 'benefits' to local harvesting activities, including a detailed consultation process, and changing the name to Forest Consultation and Revenue Sharing Agreements.

More recently, the province committed to sharing revenue from new mining projects and major mining project expansions with First Nations. The first mining revenue-sharing agreements were signed in 2010 with the Stk'emlupsecm of the Secwepemc Nation for royalties from the New Afton Mine and the McLeod Lake Indian Band for the Mt. Milligan Mine. Another agreement related to the Mt. Milligan Mine was signed in 2012 with the Nak'azdli First Nation. According to Mary Polak, former Minister of Aboriginal Relations and Reconciliation, revenue sharing from oil and gas development is also on the table: "Revenue-sharing—from mining, forestry operations and oil and gas—is unique to B.C. It helps create certainty on the land base, and builds partnerships with local First Nations and helps to close the socio-economic gaps."[92]

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[91] *Huu-Ay-Aht First Nation et al. v. The Minister of Forests et al.*, [2005] BCSC 697
[92] http://www.newsroom.gov.bc.ca/ministries/aboriginal-relations-and-reconciliation/factsheets/op-ed-bc-benefits-from-innovative-first-nations-partnerships.html, accessed September 30, 2012

Strategic Engagement Agreements, similar to the forestry agreements but pertaining to consultation in general (not just on forest-related decisions), are now being signed to set out the consultation relationship between the province and First Nations. As described in BC's press releases, the purpose of these agreements is to streamline consultation, provide certainty for investors, develop a more co-operative form of decision-making, and move away from costly litigation.[93] As of September 2012, there are Strategic Engagement Agreements with the Nanwakolas, Tsilhqot'in, Ktunaxa, Taku River Tlingit, Sto:lo, and Kaska Dene. Most of these are groups of nations, and the agreements provide funding to create a process in which there is a 'single window' for referrals. This streamlines the consultation for the government and proponents and allows nations to work out overlapping territory concerns internally. The agreements provide funding for nations to participate in consultation and set out a detailed and complicated engagement framework with varying degrees of involvement and different timelines depending on the type of decision and level of impact. As an example of the magnitude of consultation requirements these agreements are trying to address, Nanwakolas received nearly 1,300 referrals from the province during the 2008 to 2009 fiscal year. Streamlining is clearly necessary for all parties.

Within the literature, academics and others have weighed in on how to fix consultation (Booth and Skelton 2011, International Human Rights Clinic 2010, Morellato 2009, Turner et al. 2008, Borrows 2005), with most including a reconsideration or replacement of the

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[93] http://www2.news.gov.bc.ca/news_releases_2009-2013/2010FOR0088-000708.htm and http://www2.news.gov.bc.ca/news_releases_2009-2013/2009FOR0089-000771.htm (accessed September 6, 2012)

process itself as one of their recommendations. The fundamental problem with consultation is that it is an inherently colonial relationship. It provides an avenue for First Nations to express concerns within the context of a government decision, but not to express concerns about the fact that the government is making the decision in the first place. As pointed out by Schreiber (2006), consultation separates questions of environmental damage from questions of rights regarding territory (which should be negotiated outside of consultation), a distinction supported by the Supreme Court of Canada in *Taku*. In this way, consultation is a way for governments to maintain control of territorial governance, while taking into consideration, but not necessarily addressing, First Nations' concerns. Both First Nations and the provincial government know the process is ineffective and dysfunctional, and have developed other 'new relationships' to try to reduce the need for consultation.

4.3.5 Government-to-Government Negotiation and The New Relationship

The government-to-government nature of the relationship between First Nations and the province has been formally acknowledged at least since a 1993 protocol between the First Nations Summit and the BC Government on interim measures agreements.[94] Government-to-government negotiations between First Nations and the province were a significant aspect of the Central and North Coast land and resource management planning processes in the early 2000s. Government-to-government processes are laid out in the 2001 "General Protocol

[94] The protocol is referenced in the preamble to many of the government-to-government agreements and there are quotes from the protocol in the Transcript of Proceedings (Hansard) of the Select Standing Committee on Aboriginal Affairs, Nanaimo, October 16, 1996, Issue No. 8. http://www.leg.bc.ca/cmt/36thParl/CMT01/1997/hansard/ab1016.htm (accessed September 6, 2012)

Agreement on Land Use Planning and Interim Measures"[95], an agreement between the Central Coast First Nations (collectively) and the province, and also in individual "Strategic Land Use Planning Agreements"[96], signed in 2006 between individual nations and the provincial government. As noted by Barry (2012), it was the government-to-government negotiations on these plans that helped define government-to-government, taking it from a theoretical concept into an institutionalized approach. As an engagement strategy, government-to-government negotiations formally recognize the distinct nature of the relationship between First Nations and the province, addressing First Nations' long-standing rejection of being categorized as stakeholders. Low and Shaw (2011) argue that it also reduced the influence of stakeholders such as industry and environmentalists in land use planning processes.

In 2005, the province and the First Nations Leadership Council[97] formally entered into The New Relationship. The New Relationship document includes the following vision statements.

> We are all here to stay. We agree to a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights. Our shared vision includes respect for our respective laws and responsibilities. Through this new relationship, we commit to reconciliation of Aboriginal and Crown titles and jurisdictions.
>
> We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing, recognizing, as has been determined in court decisions, that the right to aboriginal title "in its full form", including the inherent right for the community to make decisions as to the use of the

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[95] Available at: http://www.coastforestconservationinitiative.com/pdf/finalprotocol.pdf (accessed September 6, 2012)
[96] Available at: http://archive.ilmb.gov.bc.ca/slrp/lrmp/nanaimo/central_north_coast/plan/slupas.html (accessed September 6, 2012)
[97] The First Nations Leadership Council is a working relationship of the political executives of the Union of BC Indian Chiefs, First Nations Summit, and BC Assembly of First Nations.

> land and therefore the right to have a political structure for making those decisions, is constitutionally guaranteed by Section 35. These inherent rights flow from First Nations' historical and sacred relationship with their territories.[98]

In an attempt to compel the province to implement the commitments of The New Relationship, the First Nations Leadership Council advanced the idea of recognition and reconciliation legislation. The province agreed to the concept, a discussion paper was released in 2009, and a series of regional sessions was scheduled by the First Nations Leadership Council to explore its content with First Nations. As outlined in the discussion paper, the purpose of the legislation was to:

- recognize that Aboriginal rights and title exist in British Columbia throughout the territory of each Indigenous Nation that is the proper title and rights holder, without requirement of proof or strength of claim;
- enable and guide the establishment of mechanisms for shared decision-making in regard to planning, management and tenuring decisions over lands and resources;
- enable and guide the completion of revenue and benefit sharing agreements between Indigenous Nations and the Province;
- set out a vision of re-building Indigenous Nations and establish a new institution to support and facilitate the process;
- establish processes, mechanisms or a new institution to assist in resolving any disputes than may arise regarding the interpretation or implementation of the legislation, regulations or any agreements concluded pursuant to the legislation.[99]

A major component of the proposal was the 'reconstitution of Indigenous nations', whereby the 'proper title and rights holders' would be represented by one political structure. On the face of it, trying to undo some of the effects of the *Indian Act* on the constitution of First Nations seems like a worthy goal. Some First Nations, however, reacted strongly to the

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[98] The New Relationship, http://www.newrelationship.gov.bc.ca/shared/downloads/new_relationship.pdf (accessed September 6, 2012)

[99] Discussion Paper on Instruction for Implementing the New Relationship, February 19, 2009 http://www.gov.bc.ca/arr/attachments/implementing_the_new_relationship_0309.pdf, accessed October 1, 2012

proposed reconstitution, and felt that it would interfere with their self-determination by decreasing the governing power they held as individual nations. Other concerns raised by First Nations at the regional sessions included: whether the province had jurisdiction to pass such legislation, whether they would implement it, the risk of recognizing Crown title in any form, the absence of Canada, and a weakening of the scope and substance of title recognition within section 35 of the *Constitution*.[100] Basically, First Nation communities agreed with the concept, but not the discussion paper and the First Nations Leadership Council set it aside with the idea that they would continue to work on it. No similar legislation has subsequently been introduced, but recent agreements, both the reconciliation protocols discussed below and, to a lesser extent, the strategic engagement agreements presented earlier, clearly have some of the same purposes in mind.

Under the auspices of The New Relationship, and building on previous agreements, several reconciliation protocols have been signed between First Nations and the province. In 2009, Coastal First Nations and the Haida Nation each signed a reconciliation protocol with the province.[101] Several nations represented by the Nanwakolas Council, a collective of Vancouver Island and Central Coast nations, signed a framework agreement in 2009 and a reconciliation protocol in 2011. According to one of the province's press releases, these protocols "provide a framework for lasting reconciliation" and "will increase economic and legal certainty for resource and land use, establish a process for shared decision-making and

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[100] Union of BC Indian Chiefs, Proposed Recognition and Reconciliation Legislation Important Meeting Notice, July 14, 2009, http://www.ubcic.bc.ca/issues/newrelationship/recognition.htm#axzz27z7KmMLD, accessed October 1, 2012

[101] Although the Haida Nation is a part of Coastal Nations for some purposes, it signed a separate and different reconciliation protocol.

opportunities for participation in the green economy."[102] Although they all address shared land and resource decision-making and economic opportunities, the details are different.

Both the Coastal First Nations and Nanwakolas protocols contain frameworks for shared decision-making, with different decision types requiring different levels of engagement and timelines, depending on location and complexity of the decision. Significantly, Haida's protocol, *Kunst'aa guu – Kust'aayah*, means "the beginning" and "confirms an incremental step in the process of reconciliation of Haida and Crown titles."[103] The ultimate goal of the Haida protocol is a comprehensive Reconciliation Agreement. In addition to shared decision-making, the Haida protocol includes joint decision-making on particular decisions. In the BC context, joint decision-making is a more equal form of co-governance that requires consensus of both parties. Alternatively, in shared decision-making, the province retains the final authority. The Haida were able to negotiate joint decision-making because of their uniquely strong Aboriginal title claim (there are no overlapping territory issues) and litigation history (Findlay 2010). All of the reconciliation protocols include revenue sharing and specific economic opportunities, including forest tenures, carbon offsets, tourism opportunities, and alternative energy and transportation projects.

In order to make government-to-government relationships workable, complex engagement structures, or 'governance frameworks', have been developed, with working groups and decision-making bodies comprised of members from each side at the technical/operational,

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[102] http://www2.news.gov.bc.ca/news_releases_2009-2013/2009PREM0078-000747.htm (accessed September 6, 2012)
[103] http://www.newrelationship.gov.bc.ca/shared/downloads/haida_reconciliation_protocol.pdf (accessed September 6, 2012)

senior management, and executive levels. This type of integrated structure can be seen as indicative of a relationship of working together rather than working against one another, or of a more interactive rather than positional relationship (Barry 2012). These integrated structures, and the dramatically increased opportunities for First Nations to re-engage in territorial governance, require the development of significant capacity for the First Nations involved. Although agreements have been signed, many First Nations' are still in the process of developing the bureaucratic structures and hiring and training the staff necessary to implement them. This is a focus of my current professional work—supporting the development of stewardship capacity for Coastal First Nations.

Government-to-government relationships are in the early stages of implementation and their effectiveness for each party to meet its governance goals is not yet clear. For First Nations, there have been both positive and negative examples of their effectiveness. In *Da'naxda'xw/Awaetlala First Nation v. BC (Environment),*[104] a case in which the First Nation contested a conservancy boundary enacted in provincial legislation after years of negotiation in a government-to-government context, Justice Fisher quashed the Minister's decision, finding that no accommodation of the First Nation's interests had been considered and the Minister failed to fulfill his constitutional duty to adequately consult with the Da'naxda'xw. Justice Fisher also stated:

> As I have determined, the scope of consultation in this case requires the Minister to consider the Da'naxda'xw's request in the context of the terms of the June 2007 Collaborative Agreement and the on-going negotiations about a government-to-government process for managing the conservancy and considering boundary amendments, and to provide them with an opportunity to respond to his concerns about

[104] 2011 BCSC 620

> the potential negative environmental impacts of the Project…It requires an opportunity for some dialogue on a government-to-government basis with a view to considering a reasonable accommodation of the Da'naxda'xw's interests…[105]

In 2012, BC enacted legislation changing the boundary of the conservancy. The government-to-government relationship was clearly not an effective engagement strategy for the First Nation in this case, as it had to use litigation to force the government to consider its interests. There are also signs that government-to-government relationships can be effective, for example in the case of the Haida-BC joint decision-making council's decision on the allowable annual cut for Haida Gwaii. Although significant, this government-to-government decision must be considered in the context of Haida's uniquely powerful position described above. Other nations may not be able to wield the same power in government-to-government negotiations.

For the province, government-to-government relationships are arguably an effective strategy to meet their governance goals at this point in time. Other engagement strategies—treaty negotiation, litigation, and consultation—have not been working for them. Recalling that their central goal is certainty, government-to-government provides a framework for working together and ensuring that First Nations' interests are accommodated in decision-making. In accommodating First Nations' interests, government is providing certainty for investors.

With respect to reconciliation, government-to-government relationships can provide a bridge to decolonizing land and resource governance. Although most of them do not fetter provincial decision-makers, they are all living documents, providing for continued

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[105] *Ibid* at para 235.

development of the government-to-government relationship and the reconciliation of competing interests. The current protocols are written in a way as to be transitional and not final agreements. It is significant to note, however, that these relationships are not with Canada and are not nation-to-nation. Although the term government-to-government is appropriate for engagement with BC, a government seemingly more committed to reconciliation than Canada, a nation-to-nation relationship would acknowledge Indigenous nations as nations, and would not allow an interpretation that could compare First Nations to municipalities, for example.

4.4 New Relationships and Reconciliation

Although I have neatly divided First Nations-BC relationships into different types based on engagement strategies for ease of explanation and analysis, in reality, the engagement strategies cannot actually be defined in any discrete and mutually exclusive way, nor are they used that way. For example, consultation and government-to-government are arguably the same thing: according to case law, consultation can vary from 'mere' consultation to consent. Government-to-government refers to bilateral negotiations. Clearly, there is overlap. Not to contradict the Supreme Court of Canada, but analytically, I would suggest that we should distinguish between consultation and consent, with consent falling more within the purview of co-governance or joint decision-making. So, although the terms are sometimes used interchangeably and together, I would define consultation as a strategy, controlled by BC, in which it seeks information from First Nations to inform its decision-making, usually after projects or processes have been planned. This is consistent with the province's 2010 Updated Procedures. I use government-to-government to refer to bilateral processes in which First

Nations and government are working together to plan or make decisions, although the final decision may still be controlled by government. Both consultation and consent may be components of government-to-government processes.

Similarly, the evolution of the relationship between First Nations and the BC government is not neatly divided into phases. It is more of a collage or mash-up, as groups add new strategies onto the mix they are using and revive old strategies as new ones prove unfruitful. Relationships improve, degenerate, and improve again. It is not linear and there are not discrete phases. I begin my analysis with *Delgamuukw* because, as argued earlier, it was a significant turning point in that it required the province to consult First Nations and accommodate their interests on all decisions taken with respect to land and resources in BC. This 'new relationship' of consultation and accommodation had a very rocky start, but constant litigation forced the government to begin to take First Nations concerns seriously and ultimately led to other 'new relationships.' The New Relationship commitment of 2005 was not so much a turning point in the relationship, but rather formal acknowledgment of BC's changing approach.

Within all of the relationships, First Nations have to continually pressure the province to treat them with respect, acknowledge BC's colonial past and present, recognize Aboriginal rights and title, and share governing power and resources. BC has made statements that acknowledge rights and title, but its actions do not genuinely reflect that recognition, except perhaps in the case of its relationship with the Haida. What can be said, though, is that First Nations have gained governing power: BC can no longer ignore or legislate away its

‘colonial problem’. It can no longer force treaty negotiations with highly restricted and colonial mandates to be the only avenue of redress for First Nations. And it can no longer engage in ‘mere consultation’ on land and resource decisions and continue with business as usual.

First Nations, as a rule, do not want to give up a connection with and/or authority over their territories. At the Hul’qumi’num Treaty Group, our community-given mandate was to ‘get to 100%’ in treaty negotiations, which meant regaining a connection to 100% of the territory for the Hul’qumi’num people. As clarified by Hul’qumi’num Chief Negotiator Robert Morales, “a new relationship then I think is one that we have been saying, ‘Well, if Hul’qumi’num doesn’t get back a large part of their original territory, that we ought to be part of the decision-making process in the territory.’”[106] For efforts toward reconciliation to be successful, then, they must build on the premise of continuing Indigenous title and/or sovereignty over their territories. This is not a new idea—it is the case made by many Indigenous peoples and has been argued by scholars (e.g., Asch and Zlotkin 1997). Co-governance is a way of operationalizing continuing Indigenous sovereignty. As described by Penikett (2006, 216):

> At the moment, the BC treaty process does not encourage negotiations for anything other than the federal/provincial land-and-money formulas. Yet co-jurisdiction arrangements might be the best possible model for a true accommodation of Aboriginal ideas about land tenure and governance. Co-jurisdiction could mean the crafting of nation-to-nation protocols and institutions founded on government recognition of Aboriginal title, rather than its extinguishment.

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[106] BC Treaty Commission Annual Report 2004

Opportunities for co-governance are emerging in BC: government-to-government relationships and reconciliation protocols hold potential for BC and First Nations to work together in land and resource governance. Revenue sharing, though not at anywhere near a level that I would argue recognizes the contributions of First Nations, is also an aspect of co-governance.

As they are developing complex working relationships with the province, First Nations are having to 'develop capacity'. There are problems with this, both practically and conceptually. Indigenous peoples have been prohibited from officially governing their territories since the settlement and colonization of BC. In that time, the activities undertaken on the land and the skills used to manage land and resources have changed considerably. Although termed shared decision-making, the laws, bureaucracies, and tools used are usually those of BC and Canada. In order to participate, First Nations are having to hire outside people with the necessary skills and experience to work with the province in its system, encourage their youth to pursue education that will enable them to take over in the future, and create corollary structures of governance within their own organizations. Legitimate concerns have been raised about the impacts of these processes on Indigenous communities (e.g., Nadasdy 2003 and 2005); ultimately, however, if there is room for relationships to change over time, First Nations can work to decolonize these systems, recreating new Indigenous structures of governance.

For each of the engagement strategies explored in this chapter, I argue that the relationship is still colonial and we are no where near genuine reconciliation. The province still needs to

acknowledge and apologize for colonialism and its impact on Indigenous peoples. Although it has theoretically recognized Indigenous title and rights, it does not observe them and continues to assert its own, without a rational argument. For genuine reconciliation, the province has to relinquish territorial control; focus on co-creating new systems of joint (not shared) decision-making over areas that First Nations agree to share; support the continuation and evolution of Indigenous governance institutions; negotiate a fairer sharing of resources and revenues; and determine approaches to compensation with First Nations. This will actualize the rhetoric of reconciliation and 'relationships of mutual respect' and provide BC with the certainty it desires.

Chapter 5: 'Leveling the Playing Field' in New Relationships

First Nations and the BC Government have been engaged in a long battle over governance of lands and resources. From the early days of European colonization and settlement until today, contestations over land, resources, and governance have been the focus of Indigenous-state relations in the province. In the period since *Delgamuukw*, Aboriginal rights have had radical implications for the way that land and resource decisions are made, and have resulted in a variety of 'new relationships' between First Nations and BC.

The people who are engaged in these new relationships—leaders, policy analysts, and decision-makers on both sides—are challenged with understanding developing case law, building and maintaining relationships, and working within a constantly changing policy environment. These bureaucrats have to be innovative to achieve results, yet are beholden to the laws and views of their leaders and constituents. And a lot rests on them, including a portion of the economy of the province, industry's access to natural resources, economic opportunities for Indigenous and non-Indigenous communities, protection of cultural and environmental values, and reestablishment or maintenance of governance authority over land and resources. Frontline policy- and decision-makers are in a unique position to 1) describe the relationships between First Nations and BC as they are unfolding and 2) provide perspectives on reconciliation as individuals who wrestle with the dynamic process every day. How bureaucrats and decision-makers think and talk about Aboriginal rights and reconciliation also impacts the process and outcomes of land and resource decisions in BC, and how the relationship between First Nations and BC, and reconciliation itself, unfolds.

In order to find out more about the perspectives[107] of people involved in making policy and decisions with respect to land and resources, I interviewed twenty-one of them. With the interviews, I explored how powerful and mid-level policy- and decision-makers reflected on the changing relationship between First Nations and the BC Government and the changing nature of resource management in the province. I also asked them about their perspectives on the goals and processes of reconciliation, including achieving certainty and addressing dual title. In presenting the interview material, I have grouped my discussion into two chapters. This chapter looks at how interviewees see the relationship between First Nations and BC, including 1) the main impacts of colonialism on Aboriginal peoples, 2) Aboriginal rights and their impact on interviewees' work, and 3) the current relationship between the parties. Chapter 7 looks at interviewees' perspectives on reconciliation.

In considering changing relationships between First Nations and BC, the people I interviewed talked about 'leveling the playing field'. They talked about it directly, using the idiom, and they talked about the concept attached to the idiom—that of balancing the power of the parties. In this chapter, I argue that, in the answers that interviewees gave to questions about colonialism, Aboriginal rights, and relationships between First Nations and BC, there is a recognition of: 1) the colonial nature of the relationship both in the past and present (though that recognition is uncomfortable for some) and 2) the need to share power—or level the playing field. When interviewees talk about processes such as the following, I understand them to be talking about exactly this leveling: decolonizing by creating new relationships on

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[107] When I speak of perspectives, I do not claim to have found out what interviewees 'truly believe'. I acknowledge that there are many things that influence how interviewees respond to questions. Unless there are clear indications to the contrary, however, I take interviewees' statements seriously (see, e.g., Alvesson 2011). None of the conclusions I make rely on uncovering what people 'truly believe'.

terms agreed to by First Nations; strategically using Aboriginal rights to increase their power (First Nations); yielding power by no longer simply asserting itself (the province); creating government-to-government relationships and shared decision-making frameworks; and sharing resource revenues.

To be clear, when I talk about 'leveling the playing field' in this chapter, I am talking about reducing the power imbalances between First Nations and the provincial government *within their relationship* and regarding territorial governance. I am *not* talking about 'closing the gap' between Indigenous and non-Indigenous people and communities in terms of socio-economic outcomes or access to economic opportunities. That is, I am *not* talking about working toward 'equal rights' for Indigenous people, as in the motivation behind the phrase 'one law for all British Columbians'. And finally, I am not equating leveling the playing field—creating more equal power in the relationship—with reconciling or decolonizing, although it is a required step in these processes.

In his opening address to a forum on the BC treaty process held in 2000, James Tully made the argument that First Nations and the provincial and federal governments need to be equals in the negotiation process, that the process needs to happen on a nation-to-nation basis.

> If, in contrast, [First Nations] are treated as minorities in Canada, then the old, unfair relationship continues to structure the treaty process and a form of 'colonization' or 'domestication' continues unexamined. That is, the *process of decolonization* of Indigenous peoples that the treaty process should address is evaded rather than confronted at the outset. (Tully 2001, 8, emphasis in original)

He goes on to explain the basis of the need for First Nations and the federal and provincial governments to be on equal footing in the treaty process.

> This vision of the fair starting point of the treaty process – of equal peoples – is grounded in the history of Aboriginal peoples' occupation and governance of their territories prior to the coming of the Crown and the continuation of that status into the present. It also finds support in the final *Report of the Royal Commission on Aboriginal Peoples*…[and] in the evolving international law of Indigenous peoples. (Tully 2001, 8)

Similarly, Woolford (2005, 182) criticizes the BC treaty process and the liberal-pluralist view that "conveniently glosses over the power imbalances of treaty making and assumes a level playing field…" He also points out the need for equal footing, but emphasizes the violent and assimilative nature of negotiations in the absence of equal power: "reconciliation requires that the parties negotiate the process of living together on equal ground. If these negotiations are not equitable, then the process is not one of reconciliation but, rather, one of force, violence, and/or assimilation" (2005, 180). Although both Tully and Woolford are talking about the BC treaty process, the argument stands for all relationships between the federal and provincial governments and First Nations.

In their exploration of new relationships in BC, interviewees were evidently concerned with power relations between First Nations and BC. Though it is clear that the two parties are still not on equal footing and there is still a long way to go with improving relationships, decision-makers on both sides acknowledged that the relationship has changed dramatically. From their answers, and the analysis of new relationships in Chapter 4, I argue that systemic change *has* taken place in BC. Goetz (2005, 254) describes systemic change as "The fundamental restructuring of the relationship between Indigenous peoples and liberal-

democratic governments, specifically in terms of the distribution of power." Through various agreements and protocols, First Nations have negotiated formal power at different political and bureaucratic levels. They also talk about how they have informal access to power, for example through personal relationships or the ability to easily meet with politicians and bureaucrats at the highest levels. In describing how the relationship between First Nations and BC has improved, interviewees talked about how the relationship has gone from one of government-to-stakeholder to government-to-government.

Despite these dramatic changes, the relationship remains colonial. This is evidenced in the ongoing imbalance of governing and negotiating power and in persisting colonial structures and attitudes. The provincial government continues to maintain power by relying on its unilaterally imposed laws and the resources it appropriates. Goetz (2005) identifies one of the most significant impediments to shifting to a government-to-government relationship as the explicit reluctance of federal and provincial governments to renegotiate legislative powers. This is true in the case of BC, who, with the exception of Kunst'aa Guu – Kunst'aayah (the Haida reconciliation protocol), has not negotiated power sharing that requires a legislative change—they have not been willing to 'fetter the minister'. These types of colonialist policies are a reflection of an ethnocentric Euro-Canadian attitude, which also comes through in some of the interviews.

In various critiques of new relationships (e.g., consultation, co-management, treaty negotiation), scholars point out how Indigenous people have to adopt the socio-political structures, concepts, and language of colonial governments in order to engage with them

(e.g., Nadasdy 2003 and 2012; Schreiber 2006; Woolford 2004 and 2005; Alfred 2005). In the case of the North of Canada, Nadasdy argues that, far from decolonizing, processes such as land claims and co-management actually extend colonialism farther into Indigenous communities. In BC, I would argue that, while new relationships do require First Nations to adopt colonial structures and concepts, this is part of a process that has been underway since the beginnings of the colonial encounter. Within each site of encounter—whether petitions to the Queen, protests, violence, litigation, negotiation, or consultation—Indigenous people have used the concepts and language of the colonizing state to make their points. To suggest, as some do (e.g., Schreiber 2006), that their decisions to engage are not calculated, that they are not aware they have to play the colonizers' game, and that they do not realize the ramifications, is to deny their political astuteness. Indeed, the First Nation leaders whom I interviewed were clear about how they choose sites of engagement and the ramifications of those choices.

I begin this chapter by describing the people I interviewed and then I explore the perspectives they shared with me, starting with their answers to a question about BC's colonial past. I look at some of the impacts colonialism has had on Indigenous peoples and settlers and the consequences for decolonizing and reconciling relationships. Next, in interviewees' stories of learning about, using, and addressing Aboriginal rights in their work, the role rights have had in leveling the playing field in First Nation-BC relationships becomes apparent. In the following section, I present some of the reasons interviewees provide for explaining why they think the relationship between First Nations and BC has improved. Their thinking often emphasizes a balancing of power between the parties. In this sense, First Nations can be said

to have gained power and are compelling the province and its governing agents to change their views and yield governing power. Finally, I explore the nature of the present relationship, in part using interviewees' responses to my question about whether the relationship is 'still colonial'.

5.1 The Interviews

In selecting interviewees, I chose people who had a decision- or policy-making role, and therefore had some influence in how the relationships between the parties or resource decision-making unfold. I also wanted a balance of people working for First Nations and for the provincial government, to see if their perspectives and narratives were similar or different. Instead of looking at the treaty process, the focus of much previous scholarship, I looked at land and resource decision-making. Land and resource decision-making is the focus of the relationship between First Nations and BC because land and resources are provincial jurisdiction (for the most part). I did not specifically include marine planning and decision-making because it is mostly within the purview of the federal government, nor did I exclude it, because First Nations may not make the same distinction between land- and marine-based stewardship and because the province is beginning to play a larger role in marine planning. Focusing on land and resource decision-making also allowed for consideration (by the interviewees and me) of all of the different engagement strategies used by the parties, rather than just one.

On the BC side, I spoke to statutory decision-makers, executive directors, regional directors, a manager, and a negotiator who work in the Ministries of: Aboriginal Relations and

Reconciliation (MARR); Forests, Lands, and Natural Resource Operations; and Energy, Mines, and Natural Gas. The eleven provincial employees were spread across the Ministry of Aboriginal Relations and Reconciliation (six interviews) and the 'dirt ministries'—the Ministry of Forests, Lands, and Natural Resource Operations (three interviews) and the Ministry of Energy, Mines, and Natural Gas (two interviews). It was more difficult to get interviews with the people in the dirt ministries than those in MARR. This observation was corroborated by one interviewee. The work of MARR employees, s/he noted, focuses on reconciliation and relationships, rendering them more interested in talking about it. Many of the employees working in lands, forestry, or mining are focused on trying to make resource use decisions, and relationships with First Nations complicate their work.

> Yeah and I think in trying to interview district managers about this, I would, it doesn't surprise me at all that they would be apprehensive to, just because they see these issues as so, so contentious and they're in the thick of it all the time, and it's often not what they signed up for. (BC8, 2012)

On the First Nation side, I spoke with members of chiefs and council (decision-makers), leaders and staff of regional First Nations organizations (e.g., Nanwakolas Council, Coastal First Nations), natural resource or stewardship directors at individual First Nations, and consultants who work for First Nations and/or regional First Nations organizations. Of the ten First Nation representatives, six worked for regional organizations and four for individual First Nations, though some who currently work for a regional organization also work or have worked for individual nations in the past and vice versa.

On both sides, if the interviewee had a regional focus, it included the coast of BC. I focused on the coastal region of the province, specifically the Central and North Coasts, for a number

of reasons. The number of potential interviewees across the province would have been too large for me to get a meaningful sample. By focusing on a particular region, I was able to talk to a more representative sample of the potential interviewees. I also ensured that I talked to people from each side who are actually engaged with one another in relationships. The Central and North Coast of BC is a particularly interesting place to do research on reconciliation because the province and First Nations in this region are creating some of the most innovative relationships and resource decision-making and economic opportunities for First Nations.

Because the number of potential interviewees that met my criteria was relatively small, I had to be particularly careful when writing this dissertation not to identify individuals who wished to remain anonymous when using their quotes. For this reason, I do not specify interviewees' gender, position, or employer, as the risk is too great that they could be identified. In some cases, I did not use particular quotes because there was too much context given and the speaker would have been known to others who work in the region.

I do not suggest that my results are representative of the views across the province, or even of all First Nations in the region. The interviews do, however, capture the expressed views of leaders involved in decision- and policy-making on both sides in the Central and North Coast Region. On the First Nation side, all of the people I spoke with work for regional groups or nations that are involved in regional groups. In the future, it would be interesting to interview decision-makers for First Nations not involved in regional groups. There may be a difference in views expressed by these nations, as nations that are not involved in regional groups are

not *given* the same opportunities for relationships with BC—clear evidence of the continuing power imbalance between the parties to reconciliation.

Demographically, the interviewees ranged in age from those at the beginning of their career (mid-twenties and thirties) to those at the end of their career, but were more heavily weighted in the late career range, likely given the senior level of bureaucrats I was targeting. More of the interviewees were non-Indigenous (fourteen) and male (seventeen). Most of the non-Indigenous interviewees had university degrees related to resource management, forestry, or engineering. About half of the Indigenous interviewees had post-secondary education, though not in resource management. Most of them learned about 'resource management' from their grandparents or other family members, or on the job in resource management related work or politics.

The interviews were semi-structured and the questions changed slightly over time. Unproductive questions were dropped and when new angles emerged, new questions were added. I stayed fairly close to the interview script (Appendix C) to ensure that all of the questions were covered with each interviewee. When arranging the interviews, I left the choice of a phone or in person interview to the interviewee. I did not suggest one or the other; when asked, I provided both options. All except one of the interviews with Indigenous participants were in person; all except two of the interviews with non-Indigenous participants were over the phone. All of the BC employees and all of the non-Indigenous interviewees chose to remain anonymous. Three of the Indigenous participants, all of whom worked for First Nations or First Nation organizations, chose to have their statements attributed.

5.2 Colonialism and Its Impacts on Indigenous Peoples and Settlers

In exploring First Nation-BC relationships with interviewees, I felt it important to talk about the colonial roots of the relationship. The reason relationships need to be mended, and the reason the parties are exploring ways to reconcile competing claims, is because of colonialism, past and present. I was also curious about how interviewees would talk about colonialism and the 'other'. Their perspectives on both are likely significant determinants of their thoughts about relationships and reconciliation.

I spent a lot of time considering questions that I could ask interviewees that would allow them to talk about colonialism, without making non-Indigenous interviewees defensive or alienating them from the research. My goal was to explore directly their ideas about the connections between colonialism and the current relationship between the parties. I settled on asking them "What would you say were the main impacts of colonialism on Aboriginal peoples from a land and resource perspective?" I followed that question by an exploration of current relationships between First Nations and BC. At the end of their comments about current relationships, I asked if they thought the relationship was 'still colonial'.

My exchanges about colonialism with non-Indigenous decision-makers[108], particularly the question about the current relationship, were the most emotionally charged portions of the interviews. Depending on the interviewee's response to the first question, I sometimes

[108] In my discussion of the interviews, I use the term 'decision-maker' to refer to all of the interviewees, even if their role is more policy-related and they are not statutory decision-makers (for the province) or members of chief and council (for First Nations).

omitted the second question. I did not want to risk negatively impacting the remainder of the interview with a question that they were unlikely to answer. Some were unwilling to answer the first question, so asking the second, which is arguably more uncomfortable than the first, seemed to have a potentially high cost for a small chance of yielding interesting perspectives. An example of a response to the first question that caused me to omit the second is: "[Chuckles] I, I have no idea. No" (BC10, 2013).

Many of the non-Indigenous interviewees' responses to my questions about colonialism point to what Fletcher (2012) describes as 'imperialist amnesia', following on Rosaldo's (1993) concept of 'imperialist nostalgia'. Imperialist amnesia is the:

> tendency on the part of 'agents of postcolonialism' to either ignore the history of colonial domination in their accounts or to present a sanitised version of colonialism from which evidence of exploitation, persecution, subjugation and genocide has been effectively effaced. (Fletcher 2012, 423)

He suggests that colonialism is simultaneously admitted to and denied, and that this contributes to its mystification as a 'public secret'. Earlier in this dissertation, I relayed the story of Stephen Harper denying colonialism on the world stage several months after his residential school apology, a situation that could be considered a case of imperialist amnesia. Similarly, in the context of my interviews, which were about Aboriginal rights and reconciliation (both of which exist because of colonialism), it is curious that it was difficult or at times impossible to speak directly about colonialism.

5.2.1 Disenfranchisement and Discrimination

In reflecting on impacts of colonialism on Aboriginal peoples, Indigenous and non-Indigenous interviewees[109] talked about disenfranchisement from land, resources, economies, and governance systems. In addition to 'disenfranchisement', they used forms of the following terms: taking away, (re)allocating or giving to others, severing connection, displacing, loss, manipulation, and interruption.

> And I would characterize it, frankly, as a systematic disenfranchisement of the relationship to land and resources. On a whole bunch of levels. And utilizing a whole bunch of different tools. Lack of ability to retain legal counsel, lack of ability to vote, lack of ability to assemble, the potlatch law, and on and on. Largely designed with the goal of assimilation. (BC3, 2012)

Indigenous interviewees also talked about discrimination and exclusion from economies and industries in the 20th century, specifically exclusion from logging, fishing, and mining. FN3 describes how Indigenous people became loggers, then they were excluded by legislation from the forest industry, and then their land was taken and given to industry.

> And like any other coastal First Nations, they were loggers and fishermen. And what happened was there was discriminatory legislation that was enacted, where only registered voters could get hand-logging permits. And so somebody lobbied the government and what that did was basically displace all of the coastal First Nations that had been participating in the forest industry. And then our land was given in the form of tree farm licenses to HR MacMillan…And our title was denied or ignored. And it was taken from us and given in the form of tree farm licenses to these other people…And those tree farm licenses still exist today. And that's an example of how our rights have been impacted by the forces of colonization. And that's an injustice that has been done to our people that hasn't ever been righted…And there are similar stories on the fishing side. (FN3, 2012)

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[109] In different sections, I sometimes distinguish between Indigenous and non-Indigenous interviewees and sometimes between interviewees who work for First Nations and those who work for the provincial government. This is not the same distinction, as there were three non-Indigenous interviewees who worked for First Nations. My choice of which distinction to make depends on the coherency of each group of answers.

FN7 describes the same processes of excluding First Nations from timber harvesting and fishing, and highlights the effects on the Indigenous economy.

> Yeah, I think it was about manipulating the economy of the Aboriginal people when they regulated fishing and timber harvesting. I think a lot of that started before that, but in 1912, the province of British Columbia began regulating timber licenses and you had to be on the voters' list in order to apply for a license. And if you don't know it, Aboriginal people weren't, British Columbia First Nations weren't allowed to vote until 1967…Our people were already involved in doing A-framing and so on before 1912. So it basically took that part of the economy away from our people. One year later the Department of Fisheries and Oceans regulated the fishing licenses. No Indian was allowed to hold a license after 1913. So it basically was a really big hit to our economy and that was really all part of making our people dependent on the federal government for handouts and so that was a really tough part. (FN7, 2012)

Art Sterritt also talks about the impacts on Indigenous economies of the government's reallocation of resources to industry.

> The reality was we were all doing pretty well. First Nations in the Hazeltons were loggers, they were miners, they were well to do. People on the coast were loggers and fishermen. And they were well to do. It wasn't until government began to reallocate resources. Most of our people had a license to go and cut trees. You know they worked with government, but when government began to come along and reallocate resources, like TFL 1, where they took all of the resources in the Gitxsan and Nisga'a territories and everything and gave them to one company. And when these companies began to, to strip our territories of resources, whether they were in the upper Skeena or on the coast, then our people began to say, 'Hey this isn't right. You know, we have a right to an economy here. We have a right to access these resources and you're just pulling the economy right out from underneath us.' It was at that point in time that our people began to talk about moving their agenda forward on the legal side and that was where the *Delgamuukw* case and the *Sparrow* case and other cases like this, they came right from within people, individuals who were being abused by a process. (Art Sterritt, 2013)

These three quotes suggest a conception of the evolution of the economy in BC in which emerging resource-based industrial economies were a part of the Indigenous economy. Later,

First Nations were systematically excluded from these economies through discriminatory laws and regulations, and through reallocation of their lands and resources to third parties. The interviewees talk about being displaced from the forest industry, about the impact of 'manipulating the economy of Aboriginal people', about regulations 'taking away part of the economy from our people', and companies 'pulling the economy right out from underneath us'. FN7 points out how these actions made First Nations dependent on the government and Art Sterritt talks about how it compelled Indigenous people to fight for their rights in court. Recent scholarship also describes this trajectory, detailing how Indigenous people shaped emerging resource economies and how government processes then specifically excluded First Nations from those economies (e.g., Menzies and Butler 2008, Harris 2008).

This trajectory is different from commonly held ideas in settler society that Indigenous people never participated in or need support to participate in the industrial economy (as opposed to the removal of discriminatory laws and regulations). Discriminatory exclusion of Indigenous peoples from resource economies was not specifically mentioned by non-Indigenous interviewees. As described by the interviewees above, it is a part of the injustice done to First Nations by the colonial state and is relevant to their ideas about reconciliation (which are presented in Chapter 7). They point to the exclusion of Indigenous people from the developing economy (that they were a part of) as an injustice done to First Nations, not the changes in their societies that resulted from the developing economy. They also point to the dispossession of their land.

5.2.2 Adoption of Colonial Ways

Dallas Smith, President of the Nanwakolas Council, suggested that one of the main impacts of colonialism is that First Nations are compelled to recreate the dysfunctional governance system of settler governments rather than drawing on their own traditions of governance to re-build contemporary systems.

> I mean beyond the givens of disease and just that sort of thing, I think one of the biggest long lasting impacts is we're trying to build a governance system, we see how fucked up the provincial and federal government system is, and we're trying to build an identical one. That's a colonization thing. We used to have this vastly articulate governance system through potlatch and through our culture and song and dance that was just so effective and efficient that it managed ten to fifteen times the population we have in our communities now. And those communities, I mean we've obviously gotten way smaller, our communities were able to provide for many many many many more of us than it hasn't been able to now. And so trying to see how we can get back to that. Obviously it's not going to get back to, you know, chiefs doing what they needed to do to run their communities and dictatorships, but we can build a more robust system that doesn't have to copy this colonialized government that we've all sort of been taught is the only way to do governance. (Dallas Smith, 2012)

In much of his scholarship, Paul Nadasdy explores power relations between Indigenous and settler governments in land and resource management. A persistent theme relates to how participation in co-governance aimed at empowering First Nations leads to further extensions of colonialism into Indigenous communities. Instead of focusing on an internal compulsion of First Nations to copy provincial and federal governance systems, Nadasdy (2012) puts the blame on settler governments for forcing First Nations to adopt Euro-Canadian style laws and political institutions in order to prove their readiness for self-governance. He argues that because land claim agreements, and by extension government-to-government relationships, compel First Nations people to adopt Euro-Canadian forms of governance, they serve “to extend the colonial project even as the agreements grant newly emerging First Nation polities

a measure of power within the state context" (Nadasdy 2012, 529). Dallas Smith's comment above offers the same argument, but from the perspective of an Indigenous person facing the hegemony of Euro-Canadian style governance while rebuilding and reasserting Indigenous governance systems.

In his contention that Indigenous people have been taught that Euro-Canadian government systems are the only way to do governance, Dallas Smith is highlighting Bourdieu's concept of 'symbolic violence', which is explained by Andrew Woolford.

> This is a notion of violence in which those to be dominated are encouraged to participate in their domination by performing an act of "misrecognition" rather than challenging the arbitrary imposition of the dominant worldview (Bourdieu 1991). The goal of symbolic violence, then, is to persuade the "other" to embrace the interests of the dominant group(s) by constructing the parameters for rational action in a way that makes it difficult to discuss, or even to "think," matters outside of these limited parameters. (Woolford 2004, 118)

Symbolic violence is ubiquitous in all of the various sites of engagement between First Nations and BC. Indeed, it is even pervasive within contexts that can be described as Indigenous territorial governance (as opposed to co-governance). It is significant to note that Indigenous leaders are well aware of this 'symbolic violence'.

5.2.3 Imperialist Amnesia

Some non-Indigenous interviewees sandwiched their comments about the impacts of colonialism with rationalizing statements, for example claims about the 'good' aspects of colonialism, that the land was virtually unoccupied at the time because of population declines, or that we should not judge people in the past by today's standards. Such

rationalizations at the beginning and end were interesting interpretive punctuations in their own right, but on second reading I also found that they were often contradictory or qualified later on. I do not present these comments to find fault with these individuals or other people who have similar patterns of thought. My interest is instead in the stories that settlers have been told, tell themselves, and/or feel are acceptable to tell others about colonialism. These narrative framings of history are important to understand if we are to move toward reconciling, to succeed in 'determining the truth' and working against denial, distortion, and disinformation to disrupt cycles of distrust caused by unacknowledged injustice. As presented in Chapter 3, Dwyer's (2003) definition of reconciliation is the incorporation of a tension into a narrative of understanding, requiring a clear view of the events and the choosing of a common subset of interpretations that allows each party to accommodate the disruptive event into its ongoing narrative. Understanding the stories people tell (to themselves and others) about colonialism is thus important for determining how to arrive at a 'clear view of the events' and choose a common subset of interpretations that can aid in reconciling relationships and building trust.

In response to the question about the impacts of colonialism, BC11 talks about the 'good and bad' of colonialism, but in the end discounts or qualifies the apparent 'goods'.

> I would say it's a trade off between the good and the bad. You know there's technological advances that were brought forward. But then there were the social ills that came with it as well. In some cases, First Nations were able to manage those technological advances and the social ills, but in others, they, it totally affected their culture in a negative way and those negative ways are still being felt today. It's really hard to take a democratic kind of culture that the Europeans were bringing in and dealing with a band system and trying to merge the two, forcing that kind of democratically elected governance model on a on a house system where families advance, and members of families and your name basically dictates your seat at some

> kind of position of power within the government. And you know the INAC[110] system of the bands and the house system like we have in many of the First Nations at least in this region, has been very problematic. It creates a lot of opportunity for abuse of power. Again, you see a lot of people living in housing that's you know, to a standard of some would say, less than ideal, but, and there's opportunities for education, there's opportunities for a bunch of different things that First Nations wouldn't have had without colonialism, but then they wouldn't have had the residential school system, they wouldn't have had [rueful laugh] significant unemployment, whatever. There's good and bad. (BC11, 2013)

Above, in addition to negative impacts like 'social ills' and disrupted governance systems, BC11 points out some apparently beneficial impacts of colonialism, for example housing and education. S/he goes on to say, however, that the quality of the housing is less than ideal and the residential school system was in fact a negative impact. In the next example, BC5 says at the beginning that the land was unoccupied because of population declines, suggesting perhaps that colonialism did not occur. S/he concludes, however, that First Nations people at the time of treaty signing may have so overwhelmed the European population that they were not worried about signing treaties.

> Yeah that's very difficult to sort out because, at about that time First Nations, at least on the coast from what I've been reading, suffered population declines of about 85 percent. So the land was unoccupied. But I mean logically it was the imposition of different governances and the sort of allocation of their, kind of, ability to self-determination and governance to the federal system and the physical, legal allocation of resources and property to third parties. I mean there's some very interesting and early examples in British Columbia of treaties completed basically by the British colonial government through the Hudson's Bay Company which indicate that First Nations were, either didn't understand or were quite supportive of, European colonial actions because these treaties were entered into without duress, sort of thing. So one has to think that they either didn't understand or they were, at that time, they so overwhelmed the European population that they weren't worried about it. (BC5, 2012)

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[110] Indian and Northern Affairs Canada, a previous name for the federal agency that makes policies relating to Aboriginal peoples in Canada, currently called Aboriginal Affairs and Northern Development Canada.

Below, BC7 begins her/his response to the question with comments about preferring not to judge people in the past. S/he repeats this sentiment at the end.

> I think colonialism, and I think past government policies, have been extremely hard on the natural resources, which were very hard on the [specific Indigenous people]. Another thing that I choose not to do, is I choose not to go back into the past and blame everybody. Because at the time, whether it was driving a bulldozer right up the river, at the time they probably thought, that's okay. So I don't choose to prejudge people back, because it's just, it's very hurtful and it's not very positive moving forward. (BC7, 2012)

The contradictions included in and positive spin put on these discussions of the effects of colonialism are similar to 'partial' imperialist amnesia described by Fletcher (2012, 424), "in which colonialism is acknowledged but its distasteful aspect effaced." Settlers try to wipe out or minimize the effects of colonialism, even when it is implicitly the subject of the conversation. As Fletcher describes, it is selective attention to the effects of colonialism, rather than outright suppression, which allows the simultaneous acknowledgement and denial found in contradictory statements. Imperialist amnesia facilitates settlers' present-day actions and enjoyment of privileges by disavowing colonial actions in the past.

When I asked non-Indigenous interviewees: "Would you say the relationship is still colonial?", it was sometimes met with a prolonged silence (e.g., 8, 15, 20 seconds), which was not true of other questions. Some interviewees asked for clarification, for example "What do you mean by that?" and "What is the definition of colonial?" One person reacted very strongly to the question.

> I don't know what that means. It's meant to be, it's a pejorative word. So in that sense, I was thinking, you know when you asked me to describe sort of colonial experience etc., that is a word that tends to work best in a fault-finding relationship, which tends to devolve to legal. And that frankly works against—. These are negotiation and

> reconciliation, and there may be a legal component from time to time for intractable issues, but if you're taking every issue to court, then you don't really have a working relationship. What you have is a legal framework to deal with your dysfunctional relationship. So the issue of whether we're still colonial etc. frankly just inflames the emotions and it's great for getting people to go to war. But that's not what you're trying to do here. You're trying to make a fruitful peace. So the question itself is actually dysfunctional for what you're trying to accomplish. (FN4, 2012)

The awkwardness surrounding questions about colonialism and the reactions by interviewees provide support for Fletcher's contention that colonialism is a 'public secret' (Taussig 1999). Although it is widely known to have occurred, and there is a clear case for it in the present, there is an official silence about it that members of settler society conspire to produce by relying on 'active not-knowing' (Taussig 1999). I suggest that it was my subconscious knowledge of this official silence that led me to fear the questions about colonialism, and my breaking of the official silence that led to the prolonged silences, clarifying questions, and strong reactions in response. Although the silences and questions could be attributed to a 'genuine' lack of understanding, I would argue that ignorance about the definition of colonialism in the context of reconciliation work is an extension of and results from the same root causes as imperialist amnesia.

Ross Wilson (2012) expressed his frustration with what Fletcher calls the imperialist amnesia of settlers: "Stop claiming ignorance. Stop saying 'I didn't know that'. You're living in Indian country, and we've been fighting this battle for hundred plus years." Trudy Govier (2001) outlines the advantages of denying fundamental truths about our history, ignoring evidence that we have been beneficiaries of or complicit in serious wrongs perpetrated against Indigenous people, and claiming not to know about the poverty experienced by many Indigenous people and communities. She suggests that we have evidence, but that we ignore

it. “Ignoring presupposes noticing, and ignoring is based on decision and choice. Ignoring leads to ignorance, or not knowing, and not knowing provides a convenient excuse for insensitivity and inaction. What we do not attend to, we will not know…” (Govier 2001, 110).

In summary, interviewees felt that some of the main impacts of colonialism on Indigenous peoples were disenfranchisement from lands, resources, economies (including industrial economies), and governance systems. Dallas Smith also highlighted how colonialism makes Indigenous people feel like they must copy their oppressors’ governance systems, an example of what Bourdieu calls symbolic violence. Many non-Indigenous interviewees’ responses to questions about colonialism reflect what Fletcher has termed imperialist amnesia, in which settlers maintain an official silence about and give selective attention to the effects of colonialism. The contradictions included in non-Indigenous interviewees’ answers also suggest that there may not be not clear understandings of historical events, a prerequisite for reconciling relationships and decolonizing settlers and governance systems. Truth as knowledge and truth as acknowledgment are both essential components of the reconciliation process. Settlers need to know the details of the injustices done to Indigenous peoples through colonialism and they need to acknowledge them, in the stories they tell themselves and others, and through public acts of acknowledgement. As explained by Woolford (2005, 118),

> An admission of historical guilt, in combination with as engagement with First Nations narratives of contact and colonialism, will serve to limit the non-Aboriginal governments’ power in the treaty process and place the parties on an equal footing by clarifying that it is non-Aboriginal society that owes a debt to First Nations peoples, not First Nations peoples who must appeal for “handouts” from government.

In his argument, it is at least partly through the admission of their guilt that non-Indigenous governments are limited in their power, leveling the playing field within relationships with First Nations.

5.3 Learning About, Using, and Addressing Aboriginal Rights

As Aboriginal rights in many ways are the impetus for and structure current relationships between BC and First Nations, I wanted to know how decision-makers learned about Aboriginal rights, what they knew about them, whether they felt their understandings had changed over time, and how they felt Aboriginal rights affected their work, now and in the past. Not surprisingly, Indigenous and non-Indigenous decision-makers generally learned about Aboriginal rights quite differently, though both spoke of learning about them one way and then coming to the realization that there were other aspects to them when they started thinking about them in the context of their work. First Nation decision-makers talked about the power derived from Aboriginal rights, the need to use rights strategically, and the difference between Indigenous people's expectations for rights and the reality of what they have achieved. BC decision-makers described Aboriginal rights as the crux of their work, impacting every aspect of resource management. Some felt the differences between the parties in interpretations of Aboriginal rights are what causes friction and drives conflict.

5.3.1 Learning About Aboriginal Rights

Most non-Indigenous interviewees felt they did not know much about Aboriginal rights until they encountered them at work. This was certainly true for me, as I described at the

beginning of Chapter 2. There were answers in which the interviewee talked about a particular event that brought Aboriginal rights into their awareness. BC4 remembered the Meares Island controversy as a 'wake-up call'. "But I think it's been, you know, absolutely with the Meares Island controversy that, hey, a wake-up call for myself that unsettled land claims still existed" (BC4, 2012). Similarly, BC6 talks about the 'eye-opener' of learning about the legal framework of Aboriginal rights, and how most of the public is not aware of it.

> I would say pre-government, I just didn't have, and I think this is true of a lot of just Joe Blow public, you don't understand the legal framework at all. You don't understand that First Nations have an inherent right to the critters on the land and in some cases the land itself. You just don't understand that. So you leap to, or some leap to a very different view of it, which in my view is the racial divide, and is the unhealthy part of it all. So coming into government for me and learning about what Aboriginal relations, or Aboriginal rights are, to the extent that we've been able to define them, has been a major eye-opener. To understand that there is a legal thrust there. (BC6, 2012)

FN3 describes the same ignorance in the public about Aboriginal rights, suggesting that people feel there are social obligations, but not legal ones.

> One of the comments that I made was the perception of our people, around our Aboriginal rights was, you know, in the general public, was quite uninformed and ignorant about the realities, the legal obligations. And a lot of times it gets characterized as a moral and social obligation around Canada being a benevolent socially just society, but in reality there is a legal underpinning. (FN3, 2012)

My experience and the insights of these interviewees point to the need, in general, to educate non-Indigenous people about the legal situation caused by Canada's, and in particular BC's, colonial history. Education of non-Indigenous people was identified by the Royal Commission (RCAP 1996) and earlier in this dissertation as one of the requirements for reconciliation. An education campaign would also help to break the official silence and public secret around colonialism.

In the context of the question about when and how they learned about Aboriginal rights, BC decision-makers sometimes made comments that call to mind ethnocentric assumptions people can make, assumptions that are particularly problematic in the context of 'white' people talking about the 'other'. I did not explore these comments with the interviewees, so I am not claiming to know what they were meaning when they said them. I only highlight them to call attention to some of the ethnocentric traps that people can fall into. In the following quote, BC6 (2012) suggests that someone can have no bias: "So when I came into the role I just had no preconceived notions, no bias, no personal bias, no—, nothing…I was fortunate enough because I had no preconceived notions, I started from scratch really in 2004." Even if a person comes into an unknown situation without any previous knowledge of the players, there are still biases that shape how s/he comes to understand the situation. In the case of decision-makers in BC, anyone who has grown up or even lived in Canada for a moderate amount of time brings understandings and stories about Indigenous people, First Nations, colonialism, and the history of Canada to the situation. In the next quote, BC5 suggests that provincial decision-makers can *objectively* consider impacts on Aboriginal rights and title.

> Well, yeah, because if we were to take decisions around, as government, around impacts, allocation of the land or impacts to the land, you've got to very pragmatically and objectively consider the impacts of those decisions on the First Nation's rights and/or title. (BC5, 2012)

The sense that Euro-Canadian beliefs and assumptions are 'normal' can lead Euro-Canadians to believe that they do not have bias or that they can be objective.

During my first few interviews with Indigenous decision-makers, I felt awkward about asking the question "When and how did you first learn about Aboriginal rights?" I was worried about the appropriateness of the question for people who may have had daily experience exercising Aboriginal rights. None of the interviewees brushed off the question and the responses were revealing and varied. Most focused on when they learned about the legal construct of Aboriginal rights. Art Sterritt told me about how in the 1960s there were men with megaphones on the sidelines of the village soccer fields telling people about the Royal Proclamation.

> I remember growing up in the upper Skeena. In the spring there were soccer tournaments in every village. Soccer and softball tournaments. So we would go into Kispiox and Kitwanga and Gitanyow and all of these different places in our teens to go and play soccer. And I can remember some of the older fellows who had gone off and gotten educated, whether it was in residential school or, you know, whatever, on the sidelines of the fields with megaphones talking about the Royal Proclamation of 1763. I'm talking, I'm talking fifty some odd years ago. Fifty, fifty-five years ago, there were people in our community who knew all about rights and title. They knew what the Royal Proclamation was. Well we didn't know what the heck that meant, but it was beginning to sink in. (Art Sterritt, 2013)

Ross Wilson (2012) recounted how he remembered his grandfather talking about not having rights: "When I was little. I remember my grandfather, he talked about, I don't remember the words verbatim, but he always talked about not having the right to do this and that. He always talked about having to live by the man." FN3 also talked about her/his grandfather, and uncle, talking about their rights.

> Aboriginal rights wasn't a term that I knew, but I used to sit with my grandfather and my uncle around the kitchen table as a little boy and they talked about their land, and the sea, and the resources and the fish, and how they… Sometimes my grandpa used to get really mad and say stuff like, 'I'll take my, even though I've got a single shot rifle, I'll fight for my land and my rights because people can't just come in and do whatever they want with our land.' (FN3, 2012)

In these three stories, we see again how Indigenous people have been thinking about the concept of rights and various strategies for fighting for them for a long time and they have understood and used the laws of colonial governments in that fight.

FN11 felt that the more significant moment was when s/he learned that there were other people who claimed First Nations' land and did not know about Aboriginal rights.

> That's a difficult question. I mean I grew up...I grew up in a really traditional family. That was and still is very close to the land and to our traditional territory and resources. I grew up in a family where we were given really strong cultural teachings from a really young age and actually the bigger thing for me to mark was realizing that other people didn't understand First Nations' rights and title. I grew up being taught that my territory belonged to my people and that we had a huge responsibility to care for it and steward it and have a strong relationship to place. And the realization was actually that other people claimed it. Not that I was coming into an awareness that we claimed it. (FN11, 2013)

Three of the Indigenous interviewees recounted learning about Aboriginal rights at university or through their work, the predominant way that all of the non-Indigenous interviewees remembered learning about them. For the non-Indigenous interviewees, it was almost evenly split between learning on the job and at university (eight learned on the job, six at university). Only one had learned about them from Indigenous friends growing up. In the following response, BC12 distinguishes between learning about Aboriginal rights in university, but really understanding them working for government. S/he also notes that the understanding continues to evolve.

> Well, university I guess. It is part of the core program of resource management through UBC. The resource management program there in the School of Forestry. When did I really understand it though was, you know, working for government. And that is

> continuing to evolve. Like, you asked earlier in your question, you asked what's changed since 2000, and you know it's, the First Nation question is the, in the natural resources area, like if you talk to any statutory decision-maker, which you probably have, they'll likely identify that as one of the biggest issues they have around doing their job. (BC12, 2013)

In all these stories of learning about rights, we see that learning about Aboriginal rights is an ongoing process and understandings change over time. Indigenous people generally learn about the legal construct earlier in life, and non-Indigenous people often do not learn about them at all unless Aboriginal rights are related to their education or work. In work related to natural resources, as we see in the next section, Aboriginal rights are now ubiquitous.

5.3.2 Using and Addressing Aboriginal Rights

In response to the question "How do Aboriginal rights affect your work?", many of the people I spoke with expressed, in one way or another, that Aboriginal rights, and specifically their undefined nature, are what drives their work. Interviewees who work for First Nations talked about how Aboriginal rights provide them with power; they talked about *using* Aboriginal rights. They also distinguished between the legal right, something that exists in law, and the right in practice, how it is used by First Nations. This is explained by FN2 (2012): "Well, what I learned in undergrad and grad school was kind of the formal, legal interpretation of them. And what has changed is my understanding of how they actually work in practice…They provide opportunities and leverage, rather than actual legal rights." Art Sterritt talks about using the power of Aboriginal rights strategically to create opportunities, highlighting the difference between *having* them and *using* them. He suggests that Aboriginal rights can be used either like a feather or a club, depending on the situation.

> But we have found out that Aboriginal rights are not something that you just kind of sit on and think that they're going to hatch some kind of opportunity. You have to take those rights and use them in strategic ways so that you create opportunities. So you can use them in a number of ways, you can use Aboriginal rights and title either as a great big club that you can take and hit a logger over the head with if you like, or you can use it as a feather to offer them an opportunity to work together. The preference is to offer the feather to people to work together and that really is where we've had the most success. But there are times when people will show up at our table and decide that they aren't going to, they don't want to work with us and that they're going to have their way with the region, and that's when the hammer comes out. And we're good at doing that as well. So you know we back ourselves up with good legal counsel. And we know what our rights are, we know what title means and if people want to take us on, like Northern Gateway Pipeline or anyone else. (Art Sterritt, 2013)

In her analysis of the Interim Measures Agreement for Clayoquot Sound, negotiated between the five Central Region Nuu-chah-nulth First Nations and BC, Goetz (2005) makes a distinction between rights recognized in legal documents and rights expressed as tangible activities in daily life. She suggests that statements made by Nuu-chah-nulth interviewees in her study highlight how the agreement facilitates the process of clarifying and engaging rights that remain undefined. I would argue that statements made in my interviews with decision-makers working for First Nations on the Central and North Coasts of BC, like the statements above, also show how decision-makers distinguish between rights in law and rights in practice, and how First Nations are engaging and using rights that have not been defined by the courts of settler governments.

Dallas Smith agrees that Aboriginal rights are important in creating a First Nation's 'seat at the table' and points out that then it is important to figure out how to use and protect them.

> So that was just sort of my first understanding of, okay, it's a very important thing—that's your seat at the table. Now how do you use that seat at the table? Your Aboriginal rights and title are fine, but what do you do to protect them? What do they mean to you? How do you protect them going forward? But how do you not let them stop you

> from your community getting to where it needs to go? And that sort of the double-edged sword. It's saying I've got this beautiful inherent Aboriginal rights and title, but it's always there. It's not something I can ignore at times when it benefits us. So we have to look people in the eye when we've started getting involved in independent power and things like that. When we've protected certain areas adjacent to power projects and things like that. It's just, there's a lot more you have to do to keep your credibility when you base things on Aboriginal rights and title. (Dallas Smith, 2012)

Dallas Smith also describes a struggle with figuring out *what* they mean: how can communities protect them without letting them get in the way of moving forward? This concern about keeping credibility when balancing conservation with economic development points to the no-win situation in which First Nations often find themselves in the court of public opinion. They are either too Indian or not Indian enough. If they do not engage in economic development, they are backward and dependent on government handouts. If they do engage in economic development, they are not acting like authentic Indigenous people[111], who should be one with nature and the original environmentalists.[112] As Dallas Smith points out, First Nations have to be careful to keep their credibility when they base things on rights and title. First Nations' actions are continually judged by non-Indigenous people, whether it is negotiators, decision-makers, and lawyers for settler governments, judges in settler courts, environmentalists, representatives of industry, or the pubic. And, as Nadasdy (2005a) points out in his critique of the debate over Indigenous ecological nobility, there are political consequences for Indigenous people when they are judged by Euro-Canadian standards that often do not apply.

> First Nation people's beliefs and practices do not fit anywhere on the environmentalist spectrum, and any effort to pigeonhole them in this way has serious political

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[111] For a detailed examination of the idea of authenticity as related to Indigenous people, see Raibmon 2005.
[112] See Nadasdy 2005 for a summary of and response to the debate over Indigenous ecological nobility.

> consequences for them. Those who do categorize First Nation people in this way, regardless of their intentions, end up viewing Indigenous people either as rapacious despoilers of the environment, as sad failures unable to live up to the ideals of ecological nobility, or as inauthentic manipulators, cynically and opportunistically deploying environmentalist rhetoric (that they know to be false) for their own political gain. In fact, they are none of these things. They are simply people with a complex set of beliefs, practices, and values that defy standard Euro–North American schemes of categorization. To be sure, they sometimes make use of environmentalist rhetoric, because it confers on them a degree of legitimacy and power in certain political contexts. But in my experience, they seldom do so cynically; more often they genuinely believe that their own practices are more environmentally benign than those of the dominant Euro–North American society. (Nadasdy 2005a, 322)

Dallas Smith's comment, and Nadasdy's points above, show the complexity of maintaining credibility in First Nations' ongoing fight to engage and use their rights to level the playing field, overcome colonialism and its impacts, and regain the power to govern their territories.

In addition to the comments above about strategically using Aboriginal rights, decision-makers for First Nations also noted how it has been by winning court cases that First Nations have gained the ability to use the rights and the power that flows from them. Ross Wilson talks about Aboriginal rights as a 'stick' that can be used if First Nations are not getting results through negotiations. He also points out that this stick has only been available in the past fifteen to twenty years because of precedent-setting court cases.

> Well if you asked me this question 15 or 20 years ago, I'd be hard-pressed to tell you how. But today it's, it's like having that stick. Those precedent cases have now given us that stick to say, you know, I mean you use it as a threat in the beginning and if you're not getting your way because of the title and rights you have, you then use it like a stick, meaning you go to court, meaning you look at a mediation process. It doesn't always have to be litigation. So if you can negotiate, with the title and rights in your pocket, that's how it affects my work. (Ross Wilson, 2012)

FN2 also talks about the increasing power that Aboriginal rights have given First Nations with consecutive court cases.

> Well, largely because they, how the federal and provincial governments are required to consider and address them has changed in the common law. The courts have lent further specification to how Crown governments have to consider and address them. That has provided First Nations and my work more power…That happened after *Delgamuukw*. That happened after the first and second *Haida* decision. That happened after *Taku*. (FN2, 2012)

In this answer, FN2 succinctly explains how the courts have required Crown governments to consider and address Aboriginal rights, which has provided First Nations with power in their relationship with BC—Aboriginal rights are leveling the playing field. When I asked BC decision-makers how Aboriginal rights affect their work, it was clear that Aboriginal rights, and their undefined nature, also drive their work. This in itself is an indication of the power that First Nations have gained through strategically using their Aboriginal rights. Put simply by BC3 (2012): "So, literally, the assertion of rights at minimum and the existence of rights if they meet the tests, affect every aspect of resource management." Some of the interviewees who work for MARR explain how undefined Aboriginal rights actually *create* their work. As explained by BC12, they are the crux of and set the stage for all the work they do.

> Well it's an interesting question, I mean, our work is all about trying to reconcile the Crown and Aboriginal rights and in a lot of cases, most of the circumstances that we work in, those rights are not defined specifically…I mean that is what sets the stage for all the work that we do, is the fact that they're undefined rights and whether that's through a consultation process where we have to provide advice around how to ensure that we're not infringing upon potential defined treaty rights or claims or whether it's trying to work it out in an agreement, it is the crux of what we do. (BC12, 2013)

Similarly, BC9 talks about Aboriginal rights as being 'integral to all of my work' and 'the raison d'être of my job'. BC9 also credits them as 'the point of friction', with disparate interpretations driving the conflict between First Nations and BC.

> Both the frame of Aboriginal rights and particularly the meaning of those as it's been articulated by the courts over the years has a central significance to what I do because it is both the source of the obligations and the raison d'être for of my job. It's also the point of friction and quite often the disparate interpretations of those meanings drives some of the conflict. So, what Aboriginal rights mean to the Crown and to First Nations and how they are interpreted, the lens through which they are viewed, the imperatives of the Crown relative to those rights, and the imperatives of the First Nations relative to those rights, differences of view on that, it creates the need for people like me to go in and sort it out. So it's integral to all of my work. (BC9, 2012)

Aboriginal rights are also front and centre for statutory decision-makers, but they see them more as a challenge or a risk. In response to the question, "How do Aboriginal rights affect your work?", BC11 responded:

> Significantly. Very significantly. It's probably one of our biggest challenges, risks, with any of our decisions. It's, my feeling is that each decision is subject to, you know, challenge by a First Nation, whether it's a legal challenge or, you know, a challenge in their opinion. When it's a legal challenge, it provides an opportunity to further clarify the Crown's obligations outlined in the Constitution. So I'm looking at my bookshelf, I bet you half of it is court decisions. Legal decisions that have been instrumental in framing our consultation policy. So yeah, it's very prominent in everything we do. Without it our authorization process would be fairly straightforward, seamless, it could be [laughter] automated almost. (BC11, 2013)

The fact that BC land and resource decision-makers view Aboriginal rights as central to their job is reflective of the systemic change that has taken place in BC since *Delgamuukw*. Through engaging in litigation, First Nations have created a 'seat at the table' and forced the provincial government and its employees to change the way they relate to First Nations and make decisions about the land and resources.

In asking the questions about Aboriginal rights, I found some differences in the way that Indigenous and non-Indigenous interviewees learned about rights, but more striking differences in how decision-makers for First Nations and for BC talk about rights in relation to their work. Those who work for First Nations tended to emphasize how rights have to be used strategically to achieve goals, whereas those who work for BC tended to emphasize differing and changing interpretations of rights and the conflict they produce between the parties. I suggest that these different assessments of Aboriginal rights point to how they affect the power of each party. Aboriginal rights have caused BC to lose some of its monopoly on power with respect to making decisions about land and resources. For First Nations, Aboriginal rights are the reentry point to the territorial governance from which they were dispossessed by Crown governments. It follows that those who work for First Nations focus on their power and use and those who work for BC focus on the uncertainty of interpretation and conflict they produce.

5.4 New and Improved Relationships

I explored current relationships between First Nations and BC with the decision-makers, asking questions like: how would you characterize the current relationship between First Nations and BC; would you say the relationship has changed a lot in the last ten years; and what is your evidence for thinking that the relationship has (or has not) changed? For the most part, decision-makers feel the relationship between BC and First Nations has changed a lot and improved in the last ten to fifteen years, but it is uneven (depending on the First Nation involved) and still has a long way to go. Evidence cited by decision-makers for their

claim that the relationship has improved include: treaty and non-treaty agreements; joint or shared decision-making; revenue-sharing; the view (by the province) that First Nations are governments instead of stakeholders; and a more mature and respectful relationship. All of this evidence supports the contention that there has been real change in the power relations between the parties. Concerns were expressed, however, that 'social indicators' for First Nation communities have not necessarily changed as much as the relationship has. Some of the specific concerns that were mentioned were health indicators, extreme poverty, and high suicide rates. Concerns were also raised about disparity between First Nations in their relationships with the province—for some nations, not much has changed, whereas for others, there has been a complete transformation.

When asked how they would characterize the current relationship, interviewees would often give a strong summary statement, follow it with an exploration of the nuances of the relationship, and end with a slightly different angle on the relationship. The pattern suggests that interviewees engaged with the question and the subject, a situation that made the interviews very rewarding for me as a researcher. BC2's answer was one of the more succinct ones.

> That's a good question. I mean I think we've come a long way, right? You look at it, in the last five years we've come a tremendous way, but I don't think it will be fully, considering we've got this hundred year, or a hundred and fifty year history since, and even longer, since the white man made first contact with First Nations. I think we've made tremendous progress in the last ten years, but it might not be solved in our lifetime. (BC2, 2012)

S/he begins with the summary that we've come a tremendous way in the last five to ten years, but also suggests that 'it' might not be solved in our lifetime. Similarly, BC6 says that

there has been real and substantive change, but that we will not see ‘any big change’ until we have been on the path for another decade.

> I think BC, like to give BC credit, the New Relationship commitment, the Transformative Change commitment, and its long-standing commitment to treaty, are substantive. And real. And they are delivering some results. And I think you don't appreciate how big that story is until you take a look at it from, like those newspaper clippings [from the 1990s compared with today], that idea. So it is on a path that I think will likely last for the next decade before we see any big change. (BC6, 2012)

Ross Wilson followed the same pattern of starting somewhere and working to a different place, but in the reverse direction. He begins with a less optimistic summary and works to a more optimistic one.

> Tenuous at best. Now if you again asked that question five years ago, I would have said they were just playing bureaucracy games with us. There were initiatives that we were signing on to that they were signing on to that they never implemented because they never processed that agreement down the line. Well, today it's a little different. There are still challenges because they still think that, outside of the stick that we're wielding, they can manage us. And we are not saying that we want to manage them, we're saying that we want a level playing field so that we can both manage, so that whatever activity is sustainable. So it's a lot better. Again it depends on what room you're in. If you're talking about the treaty rooms, you would say that the province isn't even at the table on some files. But when you look at the stuff we're doing with [Coastal First Nations], I know they're calling them interim measures to treaty, we're progressing on a lot of fronts now. It's exciting in Indian world right now. (Ross Wilson, 2012)

Ross Wilson begins with the summary that the relationship is ‘tenuous at best’, but after consideration, says that it is ‘a lot better’ and ‘an exciting time’. Also noteworthy is his point that First Nations want a level playing field so that both parties can work toward sustainability. Art Sterritt is unequivocal: there has been massive change and the relationship, at least with Coastal First Nations, has been ‘pretty phenomenal’ for the last decade.

> The last decade, the relationship with British Columbia has been, with Coastal First Nations has been pretty phenomenal. The most protection, the most sustainable action probably in the history of the coast that's ever been taken has been in the last decade. There's never been a time like that. When any standing government, whether it was the New Democratic Party or the Socreds or the Liberals or whoever they would be, there's never been a government that did the kinds of things with First Nations that Gordon Campbell did. Things have changed a little bit since Gordon's been gone. You know things haven't progressed quite as well, but there's still that foundation and a realization by people that you have to work with First Nations if you are going to do business in BC. So this has been a massive, massive change in the way things happen in the province. (Art Sterritt, 2013)

BC12 is more cautious, summing up the relationships between BC and regional First Nations organizations as 'reasonably mature' and respectful 'for the most part'.

> Well it's varied obviously, depending on which of the 203 First Nations communities you talk to. But I think from a, from a provincial perspective, and you know if we were to look at some of the First Nations organizations that represent them at a more provincial level, I would say it's, for the most part it's a respectful relationship. It's matured to the point where, for the most part we can sit down and even though we have very divergent views about what the end may look like, we can sit down respectfully and speak about those and work together in a positive way on initiatives to solve those. So in that regard I'd say it's a reasonably mature relationship, with a clear understanding on where we are apart on issues. I think in the last ten years the province has taken some fairly progressive initiatives at a policy level to show that we want to make some progress on issues. That isn't to say that we're necessarily in agreement or that it's enough. (BC12, 2013)

Above, BC12 describes how, alongside the initiatives that the parties are working on together, the nature of the relationship between First Nations and BC has changed. Similarly, Spaeder (2005) points out how the establishment of co-management institutions leads to changes in the nature of relationships between Indigenous communities and state agencies.

> What is observed in these cases is not simply the establishment of new institutions but rather a remarkable transformation in the nature of the relationship between Indigenous communities and state structures for resource control...co-management can be seen as the principle means by which Indigenous actors have sought to renegotiate their relationship with the state. (Spaeder 2005, p 174-5)

BC12 makes a couple of other points that I will return to later: the character of the relationship varies considerably depending on the First Nation and relationships with larger First Nations organizations (e.g., regional organizations) are particularly respectful.

5.4.1 Evidence for Improved Relationships

Decision-makers give various types of evidence for their claims that the relationship between BC and First Nations has improved. In the quotes above, some of the evidence given is: progressive policy initiatives on the part of BC (e.g., New Relationship, Transformative Change Accord, and treaty process); differences between news coverage today versus in the 1990s; implemented agreements; BC's realization that First Nations' support is essential for moving forward; and a respectful relationship with an understanding of where views diverge. Other decision-makers also listed policy initiatives and agreements as evidence of improved relations, including reconciliation protocols, land use plans, strategic engagement agreements, and shared-decision making. Decision-makers on both sides felt that revenue-sharing agreements and economic opportunities for First Nations were signs of a better relationship. In this comprehensive answer, BC4 lists revenue-sharing and economic opportunities, in addition to various agreements and other types of engagement.

> You know we've got more funding than we ever have to provide to First Nations to support engagement, development, growth, prosperity, through non-treaty agreements. We've actually successfully concluded modern treaties and are working with First Nations on how to speed up and improve that process. Right? We've got some success stories there and like I said with the forest industry, particularly, we've got First Nations that are now holding significant valuable tenures, rights to harvest trees. And, we've got others that are sharing revenues—I think we've got over 106 First Nations, we're sharing around $30 million of revenue a year, forestry revenue. We're sharing mineral tax revenue with a couple of First Nations through those [Economic and

> Community Development Agreements]. Signing Strategic Engagement Agreements with First Nations who are willing to work with the province and come together as a collective to streamline the consultation process and provide them with capacity. So just by the pure numbers, from an economic point of view, right, in terms of number of agreements, amount of revenue sharing, amount of, level of engagement at these strategic higher-level decisions. You know, we've got the example of the Haida reconciliation, where the Haida is, alongside the Chief Forester, setting the AAC or the annual amount to be harvested in their traditional territory a year. That's huge. (BC4, 2012)

For the most part, BC4 relies on an 'economic point of view' to explain how the relationship between First Nations and BC has changed, using indicators such as funding to support development, growth, and prosperity. S/he also talks about First Nations' involvement in strategic higher level decisions as a significant indicator of a better relationship. As noted by Mabee and Hoberg (2006), the level of decision-making authority actually afforded to First Nation partners is the criterion most often used by scholars when assessing power relations in co-management regimes (Mabee and Hoberg 2006). It is also a criterion used by Indigenous leaders, and was certainly top of mind at the Hul'qumi'num Treaty Group in the early 2000s (when I worked there). There are also indications of continuing power imbalance in BC4's response. S/he begins by pointing out the funding *provided* First Nations to engage with BC, signaling an unbalanced situation that allows BC to dictate the terms of engagement. This is later reinforced when s/he points out that BC provides capacity through Strategic Engagement Agreements to First Nations 'who are willing to work with the province' and who form regional groups 'to streamline the consultation process'.

Several interviewees felt that the fact that BC engages First Nations *as governments* is evidence of an improved relationship, as in the following quote by BC12.

> Yeah, well I think fundamental to it is recognition that First Nations have legitimate governments and that we need to deal with them as a government. And we have in a lot of cases, you know, developed agreements with them around defining what that means. We have a government-to-government relationship, so, you know, to put it bluntly. When, if you look back on lands and resource management issues and initiatives like land use planning back in the '90s or whenever we started those processes, they were often dealt with the same way as other stakeholders or interest groups were at those tables. So clearly we're in a much more respectful relationship and engage with them as governments, that's a huge step. (BC12, 2013)

Indeed, this policy change, of BC treating First Nations as governments rather than stakeholders, is significant and related to various other policy changes, such as developing government-to-government planning processes separate from regular stakeholder processes and sharing resource revenues with First Nations. In describing the government-to-government model of Indigenous-state relations, Barry (2012, 214) states that "government-to-government…has provided an official short-hand for the Province to describe its changing responsibilities towards Indigenous people."

More specifically, some of the interviewees highlight particular aspects of this government-to-government relationship. Art Sterritt highlights First Nation leaders' access to the highest levels of the BC Government, recalling the first meeting between the Tsimshian chiefs and a provincial Minister in 1990, and comparing it to the open door that they now have with ministers and deputy ministers.

> Provincially you know, I can remember as president of the Tsimshian Tribal Council in 1990, the Tsimshian, all their chiefs, we had our first ever meeting with the minister of the Crown in Victoria. That's the first time we'd ever met before and now, we could, Coastal First Nations, if any of our people want to meet with the deputy minister or minister, it doesn't matter what department it is provincially, we could probably do that within a week or two. So we have direct access to the highest level of government whenever we need it. We can always open that door. We actually have protocols in place that say that we can do that…I've been at it now for thirty, forty years and it used

> to be a really big thing if a minister ever showed up. Now we have ministers come to our board meeting every three months. We have ministers and deputies show up. Premiers have been to our meetings. We have premiers in waiting come to our board meetings. They recognize that the relationship that they need is with First Nations. (Art Sterritt, 2013)

In her study of the evolution of government-to-government relations between the Nanwakolas Council and BC during the Central Coast Land and Resource Management Planning process, Barry (2012, 220) describes two major institutional changes associated with government-to-government planning:

> …an emphasis on developing a long-term governance arrangement through the signing of multiple strategic land use agreements, rather than a single strategic land use plan, and a recognition of the need to attend to the professional and political aspects of the [government-to-government relationship] through the development of a multi-level institutional structure.

The multi-level institutional structure that Barry refers to has become part of government-to-government relationships, at least between First Nation regional groups and the province. I would suggest that, with the term 'multi-level institutional structure', Barry is referring to the protocols that Art Sterritt talks about, which provide Coastal First Nations 'direct access to the highest levels of government whenever we need it'. In the next quote, BC8 (2012) suggests that this new structure makes for a better relationship between BC and First Nations by creating a place and a process for engaging and addressing issues.

> We have a forum for dealing with, like a forum and a structure for addressing issues. In that sense, it is [a better relationship]. There's a place to bring things. You don't have to write letters to the minister to get a government's attention. And there tend, because there's an agreed upon process, for engagement, you tend not to have lawyers back and forth. I mean you will on some projects, but it tends to be more that you have an agreed to process that you follow for engagement. So it's more clear for both of the parties and I think it's a better relationship as a result. (BC8, 2012)

Art Sterritt's point that BC politicians and bureaucrats recognize that the relationship they need is with First Nations is also reflected in Barry's suggestion in the quote above that there is an emphasis on developing long-term governance arrangements. This point is echoed by other decision-makers for both sides, and similar comments are made regarding industry recognizing this necessity as well.

Further evidence of an improved relationship, as indicated by FN2 (2012), is "an ongoing improvement in the knowledge of provincial bureaucrats." Art Sterritt also remarks that bureaucrats have been educated and recognize that the relationship has to be government-to-government, but sometimes new 'political masters' need to be educated.

> They're a lot of people out there, still that are, still fairly paternalistic. What you find though is that a lot of the deputies, a lot of the technical people at the government level, have been around long enough now, they've been educated, to recognize that it really does have to be a government-to-government relationship. Political masters change all the time and every once in a while you have to re-educate and it's like re-educating Joe Oliver and Stephen Harper and Peter Kent, you know these people, they come out with this paternalistic attitude that some how they're in charge of us and what they say is going to be the way it is. Well, we generally educate them. (Art Sterritt, 2013)

All of this evidence cited for improved relationships, points to a shift in power relations between First Nations and the provincial government. Governance structures and decision-making processes have changed, as have the understandings and attitudes of provincial bureaucrats. It could be argued that there has been a paradigm shift on the part of the provincial government. Describing the changes abstractly and devoid of subjects with agency does not provide much information about why power relations shifted. Why, after so many years of refusing to engage with First Nations *as governments*, did the province finally change? I will suggest that this is not a case of 'empowerment' to the extent that an

increasing degree of governance power has not been granted to First Nations from above in some benevolent gesture. In contrast, First Nations have *taken* power by using a repertoire of strategies to create situations that compel BC to yield power and rethink how it works with First Nations.

First Nations' most effective strategy has been to use the courts to develop case law around Aboriginal rights. This point reflects decision-makers' comments about how Aboriginal rights affect their work, but some decision-makers also commented directly on the importance of the courts in shifting power and changing provincial policy. Although I did not have a standard interview question about what drove BC to change its policy and engage in new and improved relationships, the subject came up in some of the interviews. Both First Nation and BC decision-makers brought up a range of forces, with court cases most frequently cited as the reason the BC government has changed. Other drivers that were mentioned were social policy issues, the 2002 referendum on the treaty process, economic uncertainty, an emerging labour shortage, and environmentalist power. FN7 (2012) put it succinctly in this comment: "That's the only reason why the province is here dealing with us, is because of the court cases." In the next quote, FN8 explains how settler governments were forced by court opinions to come up with different public policy. S/he also describes how First Nations asserted their rights through language choice and how settler governments resisted using that language, but have since yielded.

> I mean for years the courts more clearly defined rights and how to interpret rights than public policy ever did. In fact, public policy was in some ways following the court opinions. I mean you had governments who, when we started working, they wouldn't even allow the word 'First Nation government' to be used in any agreement. You know, you had to call them band councils. You had situations where, where you even

> have it to some degree today, 'government' would not be even in the vocabulary. The word 'government', a First Nation government was not in the vocabulary. All these words were really developed by First Nations as assertion statements, and court judgments began to come in that basically gave First Nations this stronger comfort that that right existed and got more and more recognized by governments. In some ways governments were forced to come up with what the case laws showed them. (FN8, 2012)

FN8 describes how First Nations have been able to strategically use language within negotiations to change the way that settler governments view them, and how they have been able to use the courts to reinforce those views and change public policy.

BC4 specifically points to the *Haida* decision as a significant driver of policy change. Before Haida, s/he explains, the BC government only consulted on (lower level) operational decisions, but Haida made BC 'stand up and change its behaviour' and begin to consult with First Nations *as governments* on high level strategic decisions.

> Well I think with the *Haida* decision there was a dramatic change in that we were operating under the understanding that, unless you did something on the ground, to change the land and resources and availability of those, like actually harvesting a tree or building a road, that there wasn't a need to consult. So we took the view, I think the province took the view, that at that higher level, before we replaced an existing tenure or issued a new one, that we really didn't have to consult the First Nations. It was more at the operational level, where the rubber hits the road and we actually change the landscape. With the *Haida* decision, that flipped totally completely around, right, and really made the province stand up and change its behavior in terms of consulting on large strategic engagements. We did it I think before on land-use planning, you know invited First Nations to the table as a stakeholder in the process, right? With that decision it was clear that this was our obligation, the Crown's obligation, to consult at a much higher level than we were in the past. It shifted them at the table, whether it was land-use planning or renewal of tenures or whatever, the setting of an AAC, of the management unit on the rate of harvest for an area, then it shifted from a stakeholder to a government where we needed to consult on their potential rights and title. (BC4, 2012)

From BC4's perspective, it was the *Haida* decision that forced the provincial policy change from regarding First Nations as stakeholders to regarding them as governments, which has resulted in multi-level structures of co-governance.

Other reasons were also given as to why the province changed its policy relating to First Nations. Two interviewees, one from each side, highlighted the 2002 referendum on the BC treaty process. BC3 (2012) stated that "The results of that [referendum] process, while really having very little to do with law, had a tremendous impact on the Liberal government's policy environment around their responses to First Nations' issues." Art Sterritt also points to the referendum as changing the whole relationship between First Nations and BC.

> What they did, the big mistake they made, though, is they pushed Gordon Campbell and the Liberals to hold a referendum and that referendum was intended to stop the treaty process in BC. They said, 'Let's do a referendum on it. We're sure the people of BC will vote to stop and just forget about the Indians. Let's just marginalize them. We'll assimilate them and we'll do whatever we want.' Well, Gordon Campbell went ahead with the referendum, but they lost it. And that changed the whole relationship. That demonstrated to that government that they had to work with First Nations, not just because First Nations had rights, but because the general population recognized that that was a necessary thing to do as well and that that relationship had to be reconciled. So that's the road that Coastal First Nations has been on for the last decade is that reconciliation. And the fact that the provincial government held that referendum set the table for that reconciliation. And I think if the Reform Party looked back on it now they would most likely rather just sat around and not done a heck of a lot, but they really set the table for what we've done. And the federal government is doing the same thing as we speak. They've got these reformers like Joe Oliver and them coming out and trying to marginalize First Nations by declaring us funded by foreign radicals and all kinds of other things. And the reality was that just gave us all the ammunition we needed to marginalize them. So every time they try that they find out that not only do British Columbians disagree with them, but so do Canadians. (Art Sterritt, 2013)

Art Sterritt describes how the BC public's response to the referendum on the treaty process made it clear to the provincial government that the general population supports settling

treaties and reconciling relationships with First Nations. Similarly, in the next quote, BC5 suggests that there are legal reasons why BC engages First Nations, but there is also a 'social license reason' for consulting with them. S/he points to the united and vocal opposition to the proposed Enbridge Northern Gateway pipeline as evidence for what happens when First Nations are not engaged.

> Oh, very much so. I mean we would have, in the land-use planning world, we would have NOT considered, even in the Clayoquot days, a requirement for First Nations to, you know to consult with them on land-use decisions. And now, 20 years later or whatever it is, we would not consider making a land-use decision unless we had consulted with them. That's for really two reasons. There is the legal technical reason which we are exploring, but there's also a pragmatic social license, in my view social license, reason for doing it. And that's probably more significant, particularly in these areas of controversial land-use, than anything else. You only need to look at Enbridge and see where things are going based on First Nations not being engaged or being involved in that proposal. (BC5, 2012)

These decision-makers' descriptions of the drivers of change within Indigenous-state relations in BC point to the central importance of First Nations' advancing their interests in the courts, backed up by public support for reconciling relationships.

Much of the evidence given by decision-makers to support a claim that the relationship between First Nations and BC has improved points to the leveling of the playing field—First Nations gaining more power and opportunities in territorial governance. Government-to-government relationships, shared decision-making, resource revenue-sharing, and treaty and non-treaty agreements are all a part of this leveling. It is also clear, as pointed out by BC3 (2012), that the playing field is not yet level: "You know, there's a changing environment about how we relate and a leveling of the playing field in terms of power structures, somewhat. I certainly wouldn't want to characterize that as fifty-fifty or anything like that,

but, you know." The BC government is still the government in power, making laws and regulations, and, for the most part, defining the terms on which First Nations can engage in decision-making, revenue-sharing, and other agreements with BC. First Nations have the power to challenge those terms, through the courts and direct action, and they continue to exercise that power.

5.4.2 Unevenly Improved Relations

Almost all of the BC decision-makers answered the question, "How would you characterize the current relationship between First Nations and the BC government?" with a statement about how it varies between First Nations. On the First Nation side, a couple of the interviewees pointed out this discrepancy, a couple stressed that they were only speaking about their nation's relationship with BC, and one suggested that it depended on the BC department or ministry. Decision-makers differed somewhat in their perspectives on why relationships between BC and different First Nations vary. Those who work for BC generally felt it depended on characteristics of the First Nation. Those who work for First Nations pointed out that BC engages in better relationships with First Nations only when required by a variety of circumstances.

Some of the reasons cited for uneven relationships were the approach of the First Nation (e.g., litigious versus collaborative), personal relationships between individual staff on each side, the leadership and capacity of the First Nation, the location of the First Nation, whether the nation is part of a regional group or not, and whether the government has been forced into

an agreement. In this quote from BC11, s/he compares ‘litigious’ and ‘proactive’ nations and their approach to relating with the BC government.

> It varies. By nation. Some are very litigious, where others are very proactive and see the benefits of engaging and working side by side with government. Really good examples of both within this region, actually. There's really good examples…Litigious: Lax Kwalaams, Tsimshian Nation. They respond to most of our consultation engagements through lawyers with threats of court, legal action, and requests for funding and the like. Others, I would say Kitselas and Kitsumkalem, same Tsimshian Nation, totally different. They want to work out, you know, economic arrangements that benefit both parties, but they do it in a very collaborative way as opposed to confrontation…Others are where they go out and seek initiatives on their own and they ask for our assistance. As opposed to us always asking something from them. That's the upper echelon of positive relationship. Where they want to engage with us, as opposed to us wanting to engage with them. Yeah, Kaska probably would fall into that realm. (BC11, 2013)

In an answer to a different question, BC5 talks about the consultation relationship as the fallback for First Nations who take a sovereigntist role and do not want to engage with BC in a shared decision-making relationship.

> Yeah I think that the consultation and accommodation model will always be there because there will always be First Nations that for one reason or another don't get along with government or don't want to engage with government or don't, have taken a very sovereigntist role. And yet the province has a continuing need to move forward. So that consultation and accommodation default will always be there. (BC5, 2012)

BC3 also suggests that the consultation model needs to be there for those nations that do not want to engage in reconciliation protocols and strategic engagement agreements.

> Well we use both models and I’m going to say both largely because we’ve got one that’s pretty, the kind of the consultation as required by common law versus the, you know, sort of shared decision-making process. They should be made in accordance with the wishes of the parties. I’m not sure that there’s a best way. And I say that because there are First Nations that don’t want to sit down and get engaged with us in a reconciliation protocol or a strategic engagement agreement. That’s why we don’t have

> one with them. In which case the appropriate way to do it is through consultation, right? (BC3, 2012)

These three answers by BC decision-makers paint the picture of the BC government as being open to engaging with any First Nation that wants to work 'side by side' with them. For reasons that are not given, some 'litigious' First Nations are *choosing* not to work with BC. This portrayal casts these First Nations as the unreasonable and uncooperative parties and BC as reasonable and cooperative. My guess, though I did not interview First Nation decision-makers from nations that do not have a reconciliation protocol with BC, is that the nations that have not signed reconciliation protocols or strategic engagement agreements do not agree with BC government-imposed terms of those agreements. Given that the relationship is supposed to be government-to-government and power is supposed to be shared, a less biased interpretation might be that BC has unreasonably dictated the terms of the agreements and chosen to be uncooperative and not work with First Nations that do not agree with BC's terms. As described by Woolford (2004, 135) in the context of treaty negotiations: "The power imbalances that are present—the differing levels of economic and symbolic capital possessed by each of the parties—create conditions whereby government visions of affirmative repair are able to assert themselves as rational, as common-sense, as doxic." By affirmative repair, Woolford is referring to reparations aimed at upholding the *status quo*, such as government providing First Nations with economic opportunities within the current provincial economy. In BC11's quote above, those nations that want to work out economic arrangements with government are 'proactive', whereas those that want to contest the terms of engagement are confrontational and litigious. And in BC3's response, the form the relationship takes should be based on the 'wishes' of the parties. I suggest that it is not the

‘wish’ of any First Nation to govern their territory through a consultation relationship, and First Nations would *choose* a different relationship if given power to determine the conditions of that relationship.

In the next quote, BC9 describes the causes for unevenness in relationships as complex and cites personal relationships and a First Nation’s politics and governance structures as factors that impact whether the relationship between a First Nation and BC is good or bad.

> It's tough to give a global answer to that. There are places where it's great. There are places where it's terrible. And the causal factors behind either of those—and there are places where it's mediocre, right? Where it could go either way. And the causal factors that influence where the relationships sit on that spectrum are so, so complex. All the way down to personalities. Personal relationships between individuals within the provincial apparatus and individuals within the First Nation. You know, community or otherwise, leaders who are able to mediate and moderate that interaction in some way. You know to support a good relationship…I mean there's so many factors, the readiness in terms of the First Nation's own internal politics and governance structures and so forth to be able to engage the Crown in a coherent way and be able to advance some of their interests. (BC9, 2012)

BC9’s comment that First Nations need to be ready and able to engage the Crown in ‘a coherent way’ is noteworthy. I would suggest that rather than the issue being one of coherency in advancing interests, it is one of First Nations either not having the same interests as BC or not wanting to engage on BC’s terms. Even if it is an issue with ‘coherency’, or logical consistency, *per se*, the onus is being placed on First Nations to make their concerns coherent to BC, as opposed to BC attempting to understand the First Nations’ interests. Logical consistency depends on the logic being applied, which depends on one’s worldview.

Some of the First Nation decision-makers pointed out that BC is selective about the First Nations with whom it engages in better relationships. FN8 suggests that because of particular circumstances—environmental campaigns and an unfolding land use planning process—BC was forced into engaging in a better relationship with her/his group.

> I don't think other groups got nearly involved to the degree that we have got. Partly because we, geographically, we were in a position that issues had to be solved and therefore the Great Bear Rainforest, the fight in the woods, all those issues manifested itself in an agenda that had to be dealt with by government. And therefore that created, that gave us unique opportunities as well. Whereas other First Nations' land use plans had been completed and those types of things. So I think we were strategically located, the nature of the agenda fell into an opportunity time for us. Timing. I think that's the nature of why we got into the rooms on issues where others may have not got into the same room. (FN8, 2012)

Similarly, Dallas Smith talks about working to keep his group in a priority position for maintaining one of the limited better relationships with BC.

> One of the things that we learned in working with government was, the province doesn't need to work with 203 nations. They needed to try to build policy that worked for 203, but they only needed to work with a handful to be able to keep their photo ops and all that sort of thing and so we've managed to keep ourselves in the front of that trough. (Dallas Smith, 2012)

Unlike the suggestions by BC decision-makers that BC wants to engage with any First Nation that is willing or able to present its interests coherently, these First Nation decision-makers suggest that in order to engage in a meaningful way with BC, the First Nation has to strategically take advantage of or create situations that the province has to address. This concurs with the findings of Mulrennan and Scott (2005, 208): "Our own and other cases suggest that when Indigenous people manage to threaten the interests of central governments, or of other actors who have high priority with central governments, it is more likely that the

political ‘will’ to genuinely co-manage will be forthcoming.” This is reflective of the situation in BC, in which First Nations have had and continue to have to use a variety of engagement strategies to put their agenda on the provincial (and federal) government’s agenda. BC9 reinforces the perspective by suggesting there needs to be a ‘galvanizing force’ to create a better relationship.

> I think my experience has been there needs to be a galvanizing force that drives the focus in the interaction or in the relationship. In my experience, an example of that that I've been involved with, there was a, there were major government interests or court cases or commitments leveraged by the First Nations that forced focus at the table. I think if you, I think the relationship can flounder, not always, but it can flounder in the absence of having some sort of force that is driving it forward. And you can create those things, for example putting deadlines upon yourselves to get something done in a certain period of time. Or they can be created for you. (BC9, 2012)

Below, Dallas Smith describes how First Nations can use these situations in which the government is compelled to improve relations to create better conditions for the relationship from the perspective of First Nations.

> And so the province came to the fifteen nations and said we need to do this land-use planning. *Delgamuukw*'s in place, we know you need to be at the table. We're not overjoyed about it. I mean that was the reading we got from them. They basically came and said, ‘We'll give you some money, you've got to come to this table because *Delgamuukw* says you need to be there.’ And we said, ‘Well, *Delgamuukw* also says you need to recognize our Aboriginal rights and title.’ So we had this big six-month back-and-forth with the province about, okay, well if we are going to engage, these are going to be the terms that we’re going to engage by. (Dallas Smith, 2012)

Spaeder (2005) describes the evolution of co-management regimes for caribou and brown bear in Western Alaska as ‘co-management from below’. His point is that, in contrast to literature focusing how states have appropriated decentralized resource management by using co-management structures (especially in the developing world), these cases show how

Indigenous groups can use co-management to acquire joint management rights despite substantial barriers erected by the state. He suggests that "Formal agreements often imply that state-level managers took the lead in developing these management regimes, when in fact, responsibility for initiating regime formation belongs to local communities" (Spaeder 2005, 175). As Dallas Smith describes above, First Nations used the leverage provided by the decision in *Delgamuukw* (which was the result of First Nations using a different engagement strategy to create power) to ensure that they engaged with BC on their terms (or at least some of them). Both Spaeder and Dallas Smith describe situations in which First Nations were not *em*powered, but rather *took* power.

Decision-makers' perspectives on why some relationships are better than others suggest that both First Nations and BC have power to affect the quality of the relationship, but that there is a limit to the number of 'better relationships' in which BC is willing or able to engage. This limit means that there may be competition between nations for these better relationships and that First Nations have to act strategically to access them, for example through litigating or forming alliances with other nations or industry. For those nations that do not have a better relationship, it may be that they have not had the circumstances or resources to push BC to engage with them, or that they are unwilling to make compromises that BC may demand in order to engage.

5.4.3 Still Colonial Relationships

As mentioned earlier, after exploring whether they felt the relationship between BC and First Nations had improved, I asked some interviewees if they felt the relationship was 'still

colonial'. There were a variety of reactions to this question, some of which were described earlier. Even if ultimately they felt the relationship is still colonial, some non-Indigenous interviewees said it is not as colonial as it was: "Yes, but probably less so than it was 20 years ago" (BC3, 2012). References to paternalism were used by both Indigenous and non-Indigenous interviewees to answer the question in either the negative or the affirmative. "No, I don't think so. Paternalistic in a lot of ways, so I mean it probably has elements still of a colonial kind of approach, but no. I don't think so" (BC8, 2012). And "Yeah, I think so. The government's still very paternalistic" (FN7, 2012). Indigenous interviewees generally responded to the question in the affirmative, sometimes immediately, sometimes after thought.

For those interviewees who really engaged with the question, they grappled with what would make the relationship colonial or not, what the criteria might be. Some highlighted the degree of power-sharing, both as evidence that it is moving away from colonialism and as evidence that in the end, it is still colonial. BC3 suggested that, to some degree, there has been a 'leveling of the playing field', as evidenced by joint decision-making frameworks and dispute resolution processes that go beyond the province simply asserting itself.

> Beyond that, I also think that there's a growing recognition politically and culturally of the need for recognition and the need for reconciliation of those, of that colonialism. And I think we're also starting, from my perspective actually, to see some transfer of some of the institutional cultures of the various First Nations into our institutions. You know, there's a changing environment about how we relate and a leveling of the playing field in terms of power structures, somewhat. I certainly wouldn't want to characterize that as 50-50 or anything like that, but, you know. For example, we now have a joint decision-making framework for implementation of ecosystem-based management in the north and central coast that attempts, at least, to allow the province and First Nations governments to come to consensus on how we're going to make decisions and what decisions are, and also dispute resolution mechanisms that don't

> rely on the province simply asserting itself. So that from my perspective starts to look beyond colonialism and more of a level playing field or collaborative environment. Quite different than how things were when I started in this business. (BC3, 2012)

Dallas Smith highlighted the same criterion—the province simply asserting itself—as evidence that the relationship is still colonial.

> When push comes to shove, it is. It's funny we've been part of so many press conferences and things with the province where we've been supportive and been on the same page, but it's only because they are decisions we've agreed on. The decisions that we haven't agreed on, they've said, 'Well this is our policy, you can't fetter the decision-making power of the minister.' And that's as colonial as it gets. It's, 'We are the British, we are right, and we're going to do it this way. Thank you.' (Dallas Smith, 2012)

In a similar way, but in the context of the BC Treaty Process, Woolford (2004, 121) explains how federal and provincial mandates prevent non-Indigenous treaty negotiators from engaging in "a truly dialogical process of seeking mutual understanding." By 'honestly' putting forward limits on the process, non-Indigenous governments create a situation in which First Nations' demands seem unrealistic.

> In effect, given the fact that the non-Aboriginal governments are the parties who control the resources to be distributed in treaty-making, these mandated positions aspire to the status of preconditions that will lay the parameters for reasonable discussion in a fashion that is unilaterally imposed rather than cooperatively agreed upon. (Woolford 2004, 122).

He points out that processes are susceptible to the use of symbolic violence by the dominant party. Nadasdy (2005, 218) makes a related point about how dominant parties make sure that problems are characterized so that solutions fit within the existing political order: "Thus, the range of possible solutions to development 'problems' is constrained by the 'development' problematic, which is itself the product of existing political and economic relations." These

two points are related to Dallas Smith's point above: when the provincial government relies on its own policy of not fettering the minister to block an agreement with First Nations, it is 'as colonial as it gets'. Following on these three arguments, it is evident that colonial power and relations are the taken for granted baseline by non-Indigenous governments. Indigenous governments, though aware of this bias, are often not able to effectively question the baseline because, as Woolford points out, it is the provincial government that ultimately has the power and resources to redistribute.

Nadasdy (2005, 218) summarizes discourse-based critiques of participatory models of development in order to apply them to the co-management context in Canada: "The practices and complex institutional structures of the 'development industry' are not neutral, but instead constrain thought and action in significant ways, and end up reinforcing existing political and economic inequalities." I would argue that in the case of new relationships in BC, that the practices and institutional structures are also not neutral, and similarly constrain thought and action, but that existing political and economic inequalities are not simply being reinforced. Significant inequality continues to exist, to be sure, but conditions are changing and First Nations are gaining political and economic power. I do not want to overstate the change that is happening—there is plenty of room for criticism, and as evidenced in Dallas Smith's comments above, existing political inequalities *are* reinforced. But I also want to suggest that, since *Delgamuukw*, and even more after *Haida*, some First Nations have gained power in new relationships with BC. Shared decision-making frameworks and revenue-sharing agreements, despite their limitations, are two examples of shifts that are returning political and economic power to First Nations in the area of territorial governance.

FN8 explained that when the province relies on existing legislation (e.g., asserting itself) as a reason for not acting, it is colonialism and evidence of a colonial attitude, but that First Nations also need to clearly codify their laws and regulations to demonstrate their power.

> It's evolving again, I mean there was a time when people just, in their own mind, could not fathom, in their own mind, that jurisdiction and authority did not flow down from their government responsibility, the constitutional responsibility of the province to govern. So you know, First Nations outline First Nations' laws and customs and regulations and things like that. They would just say, we can't do that because the legislation says this, and therefore that kind of power of government which is really colonialism, I think still exists. I think it exists in part because of the colonial attitude. I think it also exists though, is that if anything, we have not clearly, as clearly codified First Nations laws and regulations either, that can demonstrate that we understand our government-like powers in First Nations and can pair that with governments there, and we've never had that tested in court either. So I think it's evolved. (FN8, 2012)

The suggestion that there is a need to 'codify' laws and regulations, presumably in a way that is coherent to settler governments, is reminiscent of critiques of co-management that point out how Indigenous societies have to adopt colonial ways in order to engage, actually extending the power of the state farther into Indigenous society (e.g., Nadasdy 2003). Similar to FN8, FN6 suggested that, although the relationship is definitely still colonial and the province has to change its attitude, there is an onus on First Nations to act more like governments.

> Yes. Absolutely. And I think First Nations call ourselves governments but I don't think we act as governments. I still think we really look to the province and the feds and even looking at things like the watchmen program to say, 'Yeah, we don't have the authority.' Well who says we don't have the authority? We've always lived here, we've always had the responsibility as stewards in the territory, which we have been monitoring. We also have traditional laws that we have to follow and all of the traditional stories. They always say, 'Well, we don't kill something for fun, you do it for food'…So the tradition on the bear hunt, what happens when we go forward and we say, we as Coastal First Nations, we oppose the bear hunt. Trophy hunting is not going

> to happen on our territory. And the government comes forward and says, 'Well, it's based on sound science.' And that's the end of the discussion. And that's the way it is. And I just think that…two things have to happen. The province really has to understand First Nations a bit better and hopefully be a bit more respectful, and First Nations really have to actually act like governments and start pushing for things and not just say something and not deliver on it. (FN6, 2012)

BC9 spent a long time working through the answer to the question of whether the relationship is still colonial and what it might take for it to be postcolonial. Here is a small part of BC9's answer to the question.

> I think the fact that we still live with the institutions of colonialism. I see the reserve system, the *Indian Act* and so forth, I mean that's the obvious answer. If we still live with those and First Nations are still forced to live with those on a day-to-day basis, I can't give you a straight answer and say no, we are definitely postcolonial. But I think that truth is attenuated by a genuine interest on the part of many people who are agents of the state when you really boil down to it, who disagree with or have fundamental problems with those constructs…Yeah, I mean, I guess the short answer [to what would make it not colonial] is the resolution of treaties that set out a common understanding of the relationship between the First Nation and the settler state. I mean I think that is, at least in a legal sense, that to me would be a postcolonial, or I mean moving past quote unquote colonial relationships. (BC9, 2012)

BC9 begins by suggesting that if the institutions of colonialism still exist, then the relationship is still colonial. S/he concludes with the idea that it would be a postcolonial relationship after the resolution of treaties that set out a common understanding of the relationship. Finding a common understanding of the relationship, whether through resolution of treaty or not, seems to be a solution to the problem of colonialism in many interviewees' minds. I will explore many more specific examples of how interviewees saw developing that understanding in Chapter 7, but for now, I will give a couple of examples of how some of the Indigenous interviewees described the need for First Nations to consent to the form of the relationship between BC and First Nations. FN11 expresses doubts about

whether we can repair the current relationship and suggests we may need to start a new one on new terms.

> Decolonization is a really difficult abstract concept for sure, and I'm not sure how we can repair the existing relationship in a meaningful way or whether we would need to start a new relationship on new terms. I don't know if the history that is informing the relationship that we have now is something that we can actually effectively work through. (FN11, 2013)

FN7 points out that First Nations have not agreed to the relationships with Canada or BC and that we have to find a way of co-existing to which First Nations agree.

> It was never, even in the treaty process, about removing people from here. It was about finding out how we can share and coexist. And you know, that's really the premise for everything right now that we're doing is, because we're not, we've got people living across the way from us, we've got license holders, and you know, people moving through our territory on a regular basis. It's not about taking away, taking that away, it's about coexisting. You know in a way that we agree to. Because we've never agreed to any of this. (FN7, 2012)

By many interviewees' criteria, then, the relationship between First Nations and BC is still colonial. A common criterion used by decision-makers was the degree of power-sharing in the relationship. Some also felt that a decolonized or postcolonial relationship would be one that developed on terms to which First Nations agree. As long as power imbalances remain and First Nations have not 'freely' agreed to the relationship, then, the relationship will still be colonial. Within the context of territorial governance, the provincial government will continue to be able to use its greater power to influence both the range of options that seem reasonable in a given decision-making context and the decisions that are made in the process.

We can also evaluate whether the relationship, as described by interviewees, is still colonial using the criteria for decolonizing territorial governance set out in Chapter 3.

1) The first criterion is settler governments acknowledging and apologizing for past and current colonial practices. The reactions of non-Indigenous interviewees to my questions about colonialism, reactions often reflective of 'imperialist amnesia', suggest that non-Indigenous bureaucrats have a way to go in acknowledging colonial relations and practices.

2) There has been progress on the second criterion, creating a government-to-government relationship of mutual respect. As pointed out by the interviewees, however, power is not shared 50-50 and relationships vary greatly between nations. In almost all cases, the provincial government retains ultimate authority.

3) There has also been progress on the third criterion, creating relationships of mutual respect between the politicians, bureaucrats, and operational staff of Indigenous and non-Indigenous governments who are involved in land and resource governance. The multi-level governance structures and First Nations' access to provincial politicians and bureaucrats at the highest levels are indicators of this progress. Comments about how provincial bureaucrats have become more knowledgeable and have changed how they think about First Nations also indicate relationships are more respectful.

4) The fourth criterion is settler governments observing title and rights over each nation's entire territory. The province is engaging in new relationships and agreements outside of the

treaty process on the basis of undefined rights and title (for the most part). Although provincial decision-makers may be making determinations about how deeply to engage with First Nations based on assessments of 'strength of claim', for the most part they are implicitly observing title and rights over each nation's territory.

5) The fifth criterion is settler governments supporting the continuation of local Indigenous laws and governance institutions. Although in this criterion I mean 'support' in the broadest sense and not necessarily economic support, it could be argued that revenue-sharing agreements are one way that settler governments are supporting Indigenous governance institutions. First Nations are certainly funding their governance institutions through revenue from these agreements. I would argue, however, that revenue-sharing is not government support, as resource revenues are coming from Indigenous lands and resources. Suggestions that the province views First Nations as 'legitimate' governments and that there is some transfer of Indigenous institutional cultures into BC institutions could be indicative of support for Indigenous governance institutions.

6) The sixth criterion is co-creation of new systems of co-governance over areas or resources that First Nations have agreed to share with non-Indigenous people. New relationships, including new systems of co-governance, are being negotiated and First Nations, as described by interviewees, are able to influence the terms of these co-governance arrangements to some degree. There are still significant power imbalances within relationships, and disparity between relationships, which could make the use of 'co-' in 'co-create', or 'co-governance' for that matter, misleading. And there is no evidence that First Nations have 'agreed' to share

the areas over which co-governance is being negotiated, though Indigenous interviewees did suggest that they want to negotiate new terms of co-existence.

7) The seventh criterion is Indigenous governments collecting resource revenues from their entire territories and sharing resource revenues with settler governments in areas where they have agreed to share with non-Indigenous people. Although clearly this statement does not describe the situation in BC, the reverse statement would mostly characterize current conditions. BC is collecting resource revenues from Indigenous territories and sharing them in particular areas. This is an improvement over the situation that existed before revenue-sharing agreements, but there is a long way to go to correct power imbalances and inconsistencies.

8) In the interview material I explore in this chapter, there was nothing noteworthy on the subject of the last criterion: settler governments compensating Indigenous peoples for lost land, resources, and opportunities. Arguably, compensation is a topic more related to 'reconciliation' than relationships *per se*.

This quick overview of progress on decolonizing territorial governance draws mainly from the interview quotes presented in this chapter. A fuller assessment is made at the end of the dissertation drawing on all of the sources used in this dissertation.

5.5 Conclusion

As described by the decision-makers I interviewed, colonial policies disenfranchised Indigenous peoples of their lands, resources, and governance systems, and discriminated against them in emerging economies (among other things). Colonial governments created a system in which they controlled Indigenous lands, resources, and people, a system that caused great harm to Indigenous peoples. These facts cause discomfort to many settlers, who sometimes cleanse the distasteful parts from their understandings of colonialism or deny a knowledge of colonialism altogether. But if we are to transcend colonial attitudes and transform the relationships between Indigenous and non-Indigenous peoples and governments, we need to acknowledge the truth about colonialism, past and present.

First Nations have been fighting the disenfranchisement and discrimination since it began, using whatever means they could within the colonizers' authoritarian system. This often meant adopting the language, concepts, and practices of the colonizers. Interviewees felt that, since the decision in *Delgamuukw* and even more since *Haida*, relationships between First Nations and the BC Government have improved considerably. First Nations used the courts to gain recognition from the province that they continue to have Aboriginal rights and title, and then strategically used those rights to regain power to govern their territories. The province has had to yield power: governance structures, decision-making processes, and the knowledge and attitudes of bureaucrats have had to change.

Decision-makers talk about a leveling of the playing field, but they also point out that BC still has the majority of the power. The province falls back on colonial policies, takes current

political and economic realities as baselines, and uses symbolic violence to dictate what is reasonable when negotiating agreements. First Nations continue to have to fight for the power to govern in all of the various sites of engagement, which sometimes requires playing the province's game. Nadasdy (2003) argues that First Nations in the North of Canada have had to restructure their societies in dramatic ways in order to engage with settler governments in land claims negotiations and co-management arrangements. He also argues that, in order to gain power, First Nation people have had to frame their arguments in the language of the colonizing state, which is not necessarily appropriate in Indigenous contexts (Nadasdy 2012). This leads to a devaluing of Indigenous forms of socio-political organization and transforms First Nations societies in radical and unintended ways. He highlights the challenge First Nations have in convincing governments of their capacity to govern: "the only permissible evidence of this capacity is the ability to establish and run a European-style territorially ordered government" (Nadasdy 2012, 529).

Nadasdy's arguments ring true in BC as well. First Nations have had to create new positions and departments within their governments to engage with settler governments. People are hired to frame arguments (myself included), and arguments are framed using the concepts and language of settler governments. And all of these actions have repercussions for First Nation people, communities, and governments. I would argue, however, that this has been happening, at least in BC, since the beginning of the colonial project. It is not a new problem that has arisen in the face of the treaty process, consultation, or other new relationships. These are just the latest sites of engagement in which First Nation people use their skills to resist colonialism and create and take advantage of opportunities to regain the power to

govern their ‘territories’ and practice their ‘rights’. I would argue, as many of the interviewees did, that without doing this, systemic change would not have happened. Without adopting some of the systems and language of the colonizers in order to resist them, First Nations would not have regained the power they have. That is not to say that it is right, or fair, or that more effort should not be put into decolonizing settlers and their governments.

Within the context of colonialism, no change in First Nation socio-political organization can be seen as being freely chosen. Whether imposed through the *Indian Act* or strategically adopted to resist or overcome colonial relations, these changes have been forced on Indigenous people by virtue of the fact that the colonial relationship was forced on them. The changes are, to varying degrees, a reflection of colonialism. But it is also hard to suggest that Indigenous peoples have been powerless within the process. In spite of the persistent effects of colonialism, First Nation leaders continue to work both within and against the colonial system to regain power to govern and make positive changes in their communities. Through the interviews it is clear that they are cognizant of the insidious nature of the colonial legacy. How we think about the changes that First Nations have undergone, whether they were forced or ‘chose’ them within constraints imposed on them, depends on the baseline we choose for analysis. If we start with the baseline of contact, the changes they have made (or been forced to make) in the last couple of decades in order to engage with BC may seem rather insignificant. If we start from the baseline of *Calder* (1973) or *Delgamuukw* (1997), the bureaucracies they have built and continue to build and the conceptual shifts that have taken place may seem dramatic.

Although there are academics who deconstruct various sites of engagement to show that colonial and assimilative pressures are at play within them, it would be naïve to think otherwise. These critiques are valuable, particularly for pointing out to non-Indigenous people the traps into which they can fall. The Indigenous people who are involved, I would argue, and it is supported by my interviews, are aware of the traps and work within and around them. Power has been wrested from colonial governments by Indigenous people who have engaged in these strategies. Have there been concessions and compromises made? Sure. Power is not going to be yielded in a single decolonizing act. Rather, it is being yielded because First Nations are strategically using sites of engagement to fight for Indigenous goals.

When asked about the impacts of colonialism on Aboriginal peoples, BC9 suggested that beyond the 'glib answers' of disease, dispossession of land, and the reserve system, the main impact was that First Nations had and continue to have to find methods to engage the colonial state and advocate their interests in a colonial context.

> Well I think the impacts were total, they were absolute, and the fact that there continues to be, I mean, you look at this week and the Idle No More thing and all. That there continues to be a movement and a passion and a hunger and a dedication to drive things forward, to continue to force a reckoning of unsolved or unanswered questions is, is significant. And it's pretty profound that that continues to exist in light of the impacts that have occurred, the effects of colonialism on Aboriginal peoples. Canada's history is shameful, there is no, there's no way to evade that…I mean in terms of the main impacts? I think the forced reckoning, and I mean this is my own perspective, the forced reckoning of how to engage the colonial state is probably the most significant impact I can think of that continues to articulate itself. There were lots of specific impacts, the sort of glib answers are smallpox and dispossession of land and the reserve system and so forth, but from a functional, from a relational perspective, going forward, I think it's the forced reckoning of First Nations on how to advocate their interests and their views and their positions in the context of the colonial state and finding the methods to do that. I think that, that is the place where the greatest change

> probably has had to occur and continues to occur and play out over time. The others are facts. What I'm talking about is the dynamic. (BC9, 2012)

In this answer, BC9 focuses on the impacts 'from a relational perspective'—the challenge First Nations have in compelling colonial governments to engage in relationships with them to 'force a reckoning'. Dallas Smith talks about the inefficiency of having to play games to compel the government to engage.

> … we do have tools at our disposal. I mean there is civil disobedience and protesting and things like that. And the relationship we've built with marketplaces and things like that. We do know how to play those games if we need to. But really it's not an efficient use of our time and capacity. I mean if push comes to shove and we're not getting anywhere, we are prepared to play those games, but you know, fear is a very powerful motivator, but it's not very efficient. That's something we've learned over the years. (Dallas Smith, 2012)

And finally, Art Sterritt reflects that First Nations have to 'wrestle for it everyday', and that, in order to meet their goals, they need to develop relationships with people and use rights and title to help other people achieve their goals.

> We recognized that if we didn't get off our butts and do it ourselves nobody was going to come along and say 'Oh, you've got rights and title, we'll give you this.' That's not the way it works. You've got to get out there and wrestle for it everyday. Otherwise it goes away. So rights and title are something that First Nations have and in order to grow that you have to nurture it and part of that is developing relationships with people. The other thing is using rights and title to help other people achieve what they need to achieve. (Art Sterritt, 2013)

Chapter 6: Eyes and Ears on the Coast

> As First Nations we govern our ancestral traditional territories and safeguard the health of our ecosystems. We are the Guardians and Watchmen of our territories. We are men and women carrying forward the work of our ancestors to manage and respect our lands and waters through our traditional laws to ensure a vibrant future for generations to come. We work with our neighbouring Nations to create a united and collective presence within our territories. From the Central Coast to the North Coast and Haida Gwaii, we are working together to monitor, protect and restore the cultural and natural resources in our territories. (Vision statement of the Coastal Guardian Watchmen Network)

Indigenous peoples in coastal BC have been governing their territories and managing their resources since time immemorial. Colonial systems of governance disrupted or forced underground many of these systems of governance, but they have endured both in oral history and in practice. With current changes in the legal and political environment in BC—the uncertainty surrounding title and governance power shifting toward First Nations—opportunities are increasing for First Nations to just assert their authority in governing their territories and managing their resources. They can engage with the province to govern, for example through consultation or shared decision-making, or they can simply go ahead and govern. In some cases, their governance activities may go under the radar of or be supported by the province, and in other cases, like the bear hunting ban declaration, the province can express their displeasure with the asserted authority. Further, the province may choose to escalate the situation and enforce—use force—to assert their laws and regulations, leading to arrests and court cases. Sometimes those court cases result in judgments that advance Aboriginal law, and sometimes they do not.

This chapter focuses on the case of Coastal First Nations' Regional Monitoring System[113] (RMS), a set of tools developed and used by stewardship staff of several First Nations on the North and Central Coasts of BC to monitor ecological and cultural values in their territories. The RMS is an Indigenous approach to territorial governance that does not require First Nations to engage with settler governments in state-defined processes like consultation and co-management. First Nations and their stewardship staff are collecting data for their own resource planning, management, and decision-making purposes, and can choose whether and under what conditions they want to work with other governments. First Nation stewardship programs, sometimes called guardian and/or watchmen programs, have risen from a foundation of Aboriginal rights and title, and the RMS is a strategy being used to, among other things, assert those rights and title. The visions of guardian watchmen groups make reference to this foundation. The Metlakatla vision reads, in part: "Metlakatla people are guided by respect for our people and land based on aboriginal rights and title so that we can assert appropriate control and jurisdiction over Metlakatla traditional territory."[114] The summary statement of the Haisla Guardian Watchmen states: "Our aboriginal rights and title have existed since time immemorial—the right to make decisions on how the land and its resources are used and the responsibility to steward the land and resources on behalf of this and future generations."[115]

Guardian watchmen programs are part of the bigger picture of coastal First Nations asserting their sovereignty and continuing to steward and govern their territories in the face of assumed

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[113]The Regional Monitoring Strategy was renamed the Regional Monitoring System in 2012. I will refer to it as the Regional Monitoring System, but the old name will be kept in quotes.
[114] http://coastalguardianwatchmen.ca/nation/metlakatla
[115] http://coastalguardianwatchmen.ca/nation/haisla

settler government authority. It is a contested and negotiated balance of power that continues to unfold. As I will describe, the RMS is a strategy being used to shift that balance of power in interesting and unique ways, by allowing nations to collect, own, analyse, and use data that no one else has in a place that captures the interest of many, including industry, environmentalists, government agencies, and academics. It is a case of Indigenous people integrating science into their system of governance and beginning to think of data as currency.

Literature on resource management and Indigenous peoples can be grouped into several categories. Articles on Indigenous resource governance *per se*—and not co-management—tend to focus on the practices of a particular Indigenous group, often with respect to a specific resource, historically and/or contemporarily, and generally assess whether they are conservationist or not (e.g., Gottesfeld 1994, Hunn et al. 2003, Parlee et al. 2006, Johnsen 2009, Menzies 2010). Within the broad category of co-management literature, research often considers the incorporation of Indigenous (or other local) peoples, their input, or their knowledge into existing state-driven management systems. This can be within what I would describe as a consultation type framework (e.g., Lewis and Sheppard 2005) or a co-management framework (e.g., Ens et al. 2012, Nadasdy 1999 and 2005). Much of the co-management and community-based resource management literature does not specifically focus on management with Indigenous peoples, but rather management with local people in general. This literature often does not address the critical component of ultimate authority or decision-making power (e.g., Berkes 2010).

Power and authority are prominent themes in the Indigenous-state co-management literature, however, particularly in ethnographic accounts (e.g., Nadasdy 2005, Spaeder 2005). There are a few articles that look at power relations in co-management in a BC context (e.g., Mabee and Hoberg 2006, Goetz 2005, Jones et al. 2010). In his survey of Aboriginal forestry in Canada, Wyatt (2008) describes a continuum of possibilities for First Nations' involvement, including exclusion from, participation in, consultation about, co-management, and 'Aboriginal forestry', in which the interests of First Nations are dominant and they are able to ensure their interests are respected. This characterization of the Indigenous end of the resource management spectrum retains more of a co-management flavour than I would include, but begins to visualize Indigenous forestry in a way that gives First Nations ultimate authority.

There is little research that examines Indigenous resource management (as opposed to co-management) as an assertion of territorial governance in a decolonizing context, though examples do exist. Kennett et al. (2004) describe how Indigenous communities in northern Australia are adapting to environmental challenges by balancing traditional and new knowledge frameworks in resource management. Natcher and Davis (2007) look at how lands and resources are being managed in the Yukon after land claims settlements, highlighting successes of revitalizing traditional forms of stewardship and drawing attention to the difficulties of applying Indigenous cultural ideals into management processes derived from non-Indigenous values and principles. Although Heaslip (2008) purportedly considers how monitoring might be implemented in light of Aboriginal rights and title and the New Relationship between BC and First Nations, she begins with the premise that

Kwakwaka'wakw monitoring approaches need to be integrated with scientific approaches in a co-management context and does not question who has ultimate authority in decision-making.

There is also a literature that looks at the use of TEK in resource management (e.g., Bohensky and Maru 2011, Berkes 2008, Menzies 2006). In his review of the literature on TEK and co-management in Canada, Houde (2007) identifies six 'faces' of TEK and the particular challenges and opportunities that they pose to co-management. Challenges he identified include control over Indigenous knowledge, non-Indigenous lack of trust in that data, incompatible values, dissimilar worldviews, assimilation, and time conflicts between spending time on the land and participating in co-management. Opportunities include more robust ecological management decisions, more timely knowledge of environmental change, and involvement of a diversity of perspectives, systems, institutions, and experience for dealing with uncertainty and change. Nadasdy (1999) highlights how power relations can lead to Indigenous knowledge simply being seen as a new form of knowledge to integrate into existing state-controlled resource management systems, serving to concentrate rather devolve state governance power.

Finally, there are articles that look at the applications of particular tools, particularly mapping, in Indigenous management contexts. Chapin et al. (2005) review the literature on Indigenous mapping and conclude that there are a set of issues that require more examination. They ask a series of questions related to data ownership and use, conflicts between neighbours, unintended internal community consequences, weak representation of

women, impacts on Indigenous knowledge, and whether mapping empowers or marginalizes Indigenous peoples.

An underlying issue in all of this scholarship on Indigenous peoples and resource management is power and control. Who is doing the 'incorporating' of input and 'integrating' of knowledge, and for what purposes are the tools being used? One way that Indigenous peoples can be involved in resource management without being subject to some of the problems of co-management is for them to assert Indigenous governance over their territories and resources. In that way, they are taking power and deciding when and how to incorporate input, integrate knowledge, and use mapping and other tools. Although Nadasdy (1999) critiques some Indigenous resource management for mimicking state-led bureaucratic management, his suggested solution to the problem of co-management is devolution of control over land and resources to Indigenous communities, who can enlist and direct scientists (at their discretion) to deal with larger regional or global issues and comparisons. On the Central and North Coasts of BC, First Nations are asserting their authority to govern their territories, enlisting the assistance of science and scientists to meet their goals, and developing tools like the RMS to collect the data they require to manage resources, make decisions, and gain more power.

6.1 The Context

British Columbia's Central and North Coasts and Haida Gwaii are the unceded territory of over a dozen First Nations.[116] The area stretches along the BC coast from the top of Vancouver Island to the Alaska border (see Figure 1). These First Nations have lived in and looked after this area for thousands of years. As expressed in the Land Use Plan of the Kitasoo/Xai'xais Nation:

> We have always had a land and resource plan for our lands and oceans and the creatures they harbour. It lives in our heritage, in our oral history and in our everyday decisions as to where we collect our food, and where we fish and harvest our trees. Our vision for our land and resources is based on respect and the best definition of the term "sustainable." To us this means the wealth of the forests, fish, wildlife and the complexity of all life will be here forever. It also means that we will be here forever. (Coastal First Nations Turning Point Initiative, undated)

The impacts of colonialism and industrial resource extraction on coastal First Nation communities and territories since the mid-nineteenth century have been significant. First Nations were systematically dispossessed of their land and resources and their systems of governance were banned or otherwise interfered with by colonial governments. Resources were taken from their territories and few or no economic benefits accrued to the communities. In many instances, Aboriginal people were legally or financially excluded from participating in commercial resource harvesting, such as logging and fishing. Populations of some resources (e.g., eulachon and abalone) have been depleted to a point where First Nations cannot even access them for their own food. This dispossession and exploitation has

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[116] http://www.coastalfirstnations.ca/about; accessed May 31, 2012. The number of nations depends on the area included. There are 27 nations who have claimed territory in the 'Great Bear Rainforest' and have signed land use planning agreements with the BC Government, but not all of those nations are on the coast and some are on Vancouver Island.

caused lasting economic, environmental, social, and cultural damage to First Nation communities on the coast.

There continue to be significant barriers for First Nation communities and members to economic development and employment in resource sectors and there continue to be significant environmental concerns on the coast. Despite having resource-rich territories, coastal First Nation communities generally have weak economies and suffer high levels of unemployment. Some of the environmental issues that coastal First Nation communities are concerned about are: the risk of oil spills from proposed tanker traffic; commercial and sport fishing impacts on species harvested by the communities; diminished populations of crab, eulachon, and abalone; bear hunting; logging impacts to streams; impacts of climate change; depleted supplies of ceremonial cedar; pollution from recreational and commercial boats; tourism impacts on cultural sites; and lack of compliance with and enforcement of existing rules and regulations.[117]

The BC Government initiated a land and resource planning process on the Central Coast in 1996 (covering an area of 4.8 million hectares), in the midst of a strong markets campaign by environmentalists to turn international buyers away from BC forest products. Environmental groups were focusing on the Central and North Coasts of BC, an area they dubbed the Great Bear Rainforest. They claim it is the largest intact area of, and one quarter of the remaining, coastal temperate rainforest on the planet (6.4 million hectares)[118]. Environmental groups' successes in the marketplace forced industry to recognize that they needed to approach the

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[117] http://coastalguardianwatchmen.ca/threats; accessed June 6, 2012.
[118] http://www.sierraclub.bc.ca/our-work/gbr; accessed June 1, 2012.

conflict differently and they began to negotiate directly with environmental groups. The two sides reached an agreement and began to work together in the planning process, though the relationship remained strained, with groups leaving and returning to the alliance at various times. In 2002, the provincial government began Land and Resource Management Planning processes for the North Coast and Haida Gwaii.

At the same time, First Nations on the Central and North Coasts were realizing that they would be more powerful if they worked together to achieve their goals. In 2000, the Wuikinuxv, Heiltsuk, Kitasoo/Xai'xais, Nuxalk, Gitga'at, Haisla, Metlakatla, and Haida Nations formed an alliance called Coastal First Nations[119], bringing a united voice to and strengthening their collective position in negotiations with the provincial government and stakeholders. Figure 6.1 shows the location of these communities on a map of the region. Coastal First Nations was set up to support member First Nations to develop: land and marine use plans that provide ecosystem-based management over their territories and special protection for specific areas; economic opportunities in the areas of forestry, fisheries, renewable energy, carbon credits and tourism within an ecosystem-based management framework; a management framework for shared decision making over the lands, waters, and resources within their territories; and new short- and long-term capacity building approaches for sustainable development initiatives.[120] Since 2000, two other groups of nations in the area have formed for similar purposes. The North Coast-Skeena First Nations Stewardship Society, which represents six nations on the North Coast and lower Skeena River, was

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[119] Coastal First Nations was originally called Coastal First Nations – Turning Point Initiative and is now called Coastal First Nations – Great Bear Initiative. I refer to them in this document as 'Coastal First Nations', as opposed to 'coastal First Nations', which I use more generally to refer to nations on the coast.
[120] http://www.coastalfirstnations.ca/programs; accessed May 31, 2012.

established in 2005 and the Nanwakolas Council, which represents eight nations on northern Vancouver Island and the south Central Coast, formed in 2007.

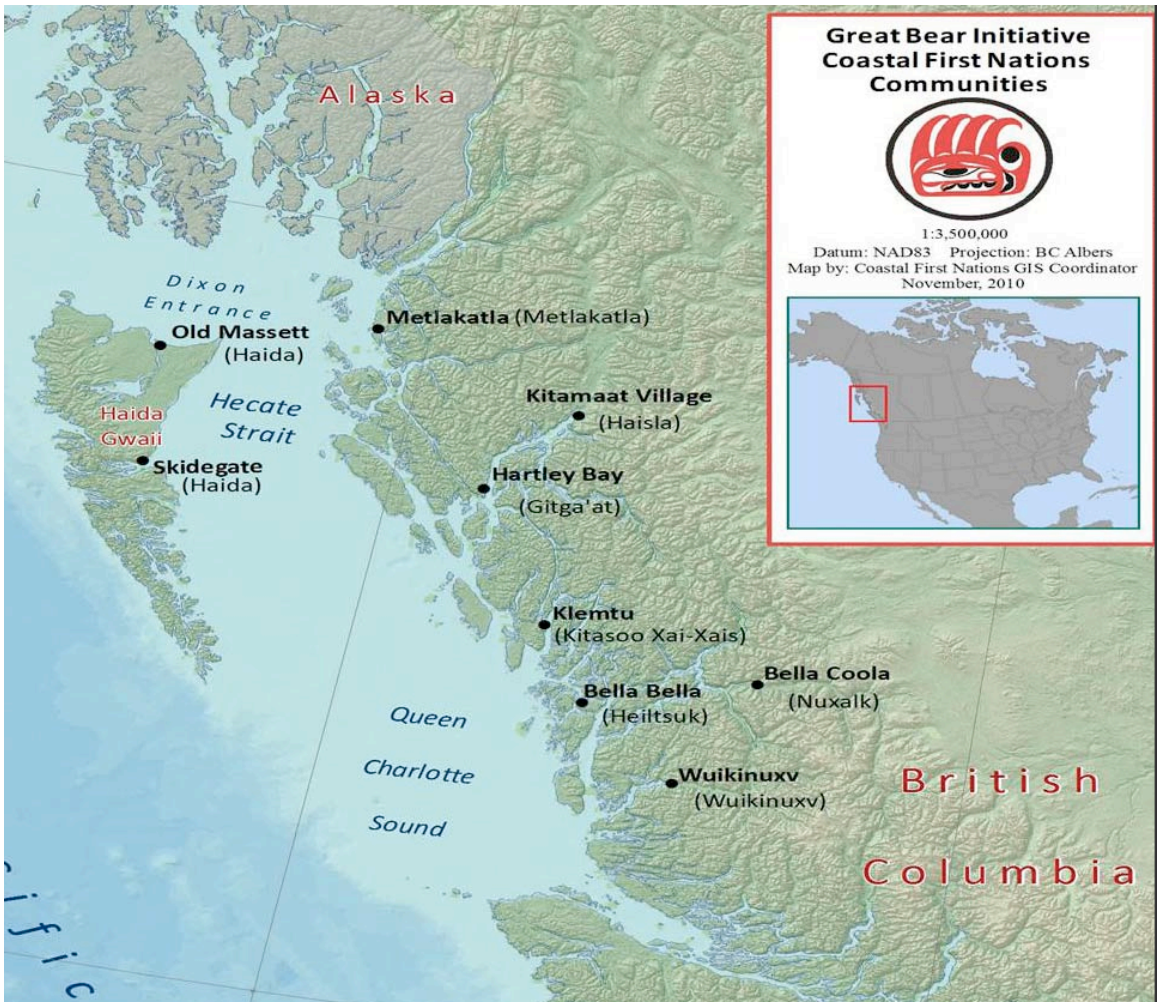

Figure 6.1 Map of Coastal First Nations Member Communities

(Map courtesy of Coastal First Nations – Great Bear Initiative) [121]

[121] Haisla left Coastal First Nations at the end of 2012.

While environmentalists, industry, municipal governments, and other stakeholders battled it out at the provincial government's Land and Resource Management Planning tables, First Nations on the coast were developing their own land use plans for their territories. In 2003, stakeholders at the provincial table reached consensus and submitted a final report and recommendations to the government. These recommendations and First Nations' land use plans informed the government-to-government negotiations between First Nations and the provincial government. In 2006, the Coast Land Use Decision[122] was announced and the provincial government signed Land and Resource Protocol Agreements with the regional groups of First Nations and Strategic Land Use Planning Agreements with individual Central and North Coast First Nations.[123] Agreements were signed with additional First Nations in later years.[124] These agreements returned authority to First Nations to govern their territories alongside government and committed First Nations and the province to protect one third of the region (1.92 million hectares) from logging and other industrial development and manage the remaining land base using ecosystem-based management.

Ecosystem-based management is defined in the land use agreements between the province and First Nations as "…an adaptive, systemic approach to managing human activities…that seeks to ensure the co-existence of healthy, fully functioning ecosystems and human communities." This means that, in addition to creating protected areas and developing more sustainable logging practices, the agreements also focus on creating healthy First Nation

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[122] http://www2.news.gov.bc.ca/news_releases_2005-2009/2006AL0002-000066.htm; accessed June 1, 2012.
[123] Gitga'at, Gitxaala, Haisla, Heiltsuk, Homalco, Kitasoo/Xai'xais, Kitselas, Kitsumkalum, Metlakatla, and Wuikinuxv
[124] Lax Kw'alaams and Nuxalk, for example

communities, in large part through supporting economic development opportunities. Funds were committed by the federal government ($30 million), provincial government ($30 million), and private foundations ($60 million) and in 2007, Coast Opportunity Funds was created, consisting of a Conservation Fund and an Economic Development Fund. The Conservation Fund is a permanent endowment of $56 million, from which income is earned to support First Nation capacity building in the areas of researching, monitoring, managing, protecting, restoring, and interpreting species and ecosystems. The $58 million Economic Development Fund is directly used to support community-based employment opportunities that are consistent with conservation.

In addition to the land use planning undertaken to support their participation in the government-to-government negotiations, many First Nations on the coast are developing integrated marine use plans. The federal government, which claims jurisdiction over the marine environment, passed an *Oceans Act* in 1996 and released an Oceans Strategy in 2002. The intent of the legislation and policy is to modernize oceans management. In 2002, they also signed an agreement with Coastal First Nations to develop a marine use planning process, which was agreed to in principle in 2005.[125] Since 2005, First Nations on the coast have been working together on marine planning in the Pacific North Coast Integrated Management Area, one of the federal government's Large Ocean Management Areas.

Coastal First Nations has continued to be a powerful force on the coast—negotiating protocol agreements, coordinating land and marine planning, facilitating implementation of plans,

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[125] Coastal First Nations Turning Point Initiative 2008.

supporting the development of economic opportunities, and building stewardship capacity in communities—and has shaped Indigenous-state relations in BC. Alongside their focus on higher level planning and negotiations, First Nations on the coast have been building their stewardship programs. These programs take different forms in each community, but in general, they employ resource practitioners who research, monitor, protect, and restore important cultural and ecological values in their territories and assist with the management of fisheries, forests, and/or protected areas. It is at the level of these practitioners and their stewardship offices that implementation of land use and marine plans is taking place.

In 2005, a group of these resource practitioners met in Port Hardy to determine strategies for developing and expanding the role of stewardship programs and ensuring sustainable resource management. One of the main priorities they identified was the establishment of a formal network "to facilitate ongoing dialogue, cooperation, and learning between communities."[126] The umbrella term 'guardian watchmen' was adopted for the resource practitioners and the Coastal Guardian Watchmen Network (CGWN) was created. Similar to the Coastal First Nations alliance at the political level, the CGWN is an alliance at the technical level. Since 2009, it has been overseen by Coastal First Nations. The Network's vision contains the following goals: monitoring commercial and recreational activities on the North and Central Coast; gathering data on the ecological health and wellbeing of their territories; compiling and sharing data in order to inform decision-making; having the authority to carry out compliance and enforcement; creating a strong presence throughout their territories so that resource users regularly encounter and interact with them; having

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[126] http://coastalguardianwatchmen.ca/history; accessed June 6, 2012.

access to secure funding to support ongoing year-round guardian watchmen programs; playing an active role in community outreach and education regarding the protection of their cultural and natural resources; and working with the federal and provincial governments (through management agreements that respect the title and rights of First Nations) to ensure coordinated and robust monitoring and enforcement throughout their territories. [127] In 2012, the Coastal Guardian Watchmen Network transformed into the Coastal Stewardship Network, to broaden support to member nations' stewardship directors and managers, in addition to technicians. The Network hosts monthly conference calls, holds annual conferences, works directly with communities to support their programs, develops training programs, creates outreach tools (e.g., video, flag, uniforms, brochures), facilitates learning exchanges, and builds relationships with government agencies, non-governmental organizations, universities, and philanthropic foundations. A major project of the Network has been the coordination of natural and cultural resource monitoring efforts by coastal guardian watchmen.

6.2 The Regional Monitoring System

When telling the story of why the RMS was developed, Claire Hutton, the coordinator of the Network from its inception, recounts the type of comments she had been hearing from guardian watchmen: we're sick of collecting data and we don't know where it goes; we want to know more about what's happening in our territory; we want to be in control of our own data; what did you say they're doing in that other community; and it would make sense to

[127] http://coastalguardianwatchmen.ca/guardian-watchmen-vision; accessed May 31, 2012.

work together and monitor stuff in the same way for things that we're all concerned about.[128] I was hired by the CGWN in 2009 to develop the RMS, and I continue to work for Coastal First Nations supporting member nations' stewardship staff. The methods used to develop the RMS and explore its meaning are described in Appendix D. Although it would be a 'distraction' from my PhD, the project of developing the RMS was compelling for many reasons. From a personal perspective, it allowed me to return to working for First Nations, directly applying my knowledge and skills to achieve their goals. This was a welcome change from my internal struggles with justifying academic research about Indigenous peoples that had been initiated from outside of their communities. It was also exciting from a broader perspective because it was (and continues to be) a time of opportunity and change for the nations on the Central and North Coasts of BC.

The goals of the RMS are to: develop a standardized approach to monitoring priority issues at the regional scale; provide tools for communities to collect, store, and retrieve data; compile and compare coast-wide data for use by communities; and empower communities to use the information in planning and decision-making. The issues being monitored reflect priority concerns expressed by communities regarding damage to cultural sites, over-fishing and over-use of resources, declining populations of fish and wildlife, and the inadequate presence and response of enforcement agencies. Priority issues were chosen because they are relatively easy to monitor, not sufficiently monitored by others, and provide data that are useful and relevant at a regional scale. Over the long term, coordinated monitoring efforts will mean that First Nations will have stronger relationships with resource users, an

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[128] Claire Hutton, personal communication, 2010

enforcement presence in the region, and a solid baseline of data for planning, management, and decision-making.

The RMS provides standard methods for collecting data on: sightings of wildlife, boats, and crab and prawn traps; activities of tourists; impacts to cultural and ecological sites; suspicious activities; visits to sport fishing lodges; stream habitat and water quality; and returning salmon and eulachon spawners in streams. The system has proven nimble and is also currently being used to monitor tsunami debris from the Japanese earthquake and bear hunting activities following the hunting ban. Guardian watchmen can collect the data using a set of field cards and/or a customized handheld mobile device called a CoastTracker.[129] A secure online data management system was developed on Drupal (an open source content management platform) to store the data from all of the nations, but each First Nation controls access to its own information. Data collected through the RMS are used for Indigenous territorial governance: to inform First Nations' land and marine use plan implementation, fisheries and wildlife management, and tourism and economic development. They can also be used to engage with settler governments, for example in consultation, co-management, negotiations, and litigation.

Opportunities to share data on particular indicators with settler government agencies have been built into the RMS, by ensuring that the RMS data fields overlap with those collected by the agency. For example, sightings of cetaceans (whales, dolphins, and porpoises) can be shared with the BC Cetacean Sightings Network (a partnership of the Vancouver Aquarium

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[129] The CoastTracker was developed by the CGWN in 2011 using CyberTracker software on rugged handheld computers with built in GPS and cameras (Trimble Nomad 900GLC and Nautiz X7).

and Fisheries and Oceans Canada); information on enforcement incidents can be shared with other enforcement agencies; RMS spawning salmon data can be exported and shared with Fisheries and Oceans Canada; and cultural and ecological site visit data can be used to fulfill co-management reporting requirements with BC Parks. Guardian watchmen felt that having standardized data would be useful should they choose to collaborate with these agencies.

The RMS has been used for three complete field seasons, the first with only field cards and the second and third with a combination of field cards and the CoastTracker. Table 6.1 shows the number of monitoring patrols and data of various types recorded by guardian watchmen using the RMS in each year. Data have been used by nations in various ways, for example: as evidence in the federal Joint Review Panel[130] hearings into the Enbridge Northern Gateway pipeline; to successfully negotiate with Fisheries and Oceans Canada (DFO) for both permanent and seasonal crab fishing closures in specific areas; and to assess economic opportunities within their territories.

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[130] The Joint Review panel is an independent body, mandated by the federal Minister of the Environment and the National Energy Board to assess the environmental effects of the proposed pipeline and review the application under both the *Canadian Environmental Assessment Act* and the *National Energy Board Act*.

Type of data	2010	2011	2012	Total
Patrols	201	324	414	939
Wildlife sightings	342	453	262	1057
Boat sightings	216	718	553	1487
Approached tourists	24	65	15	104
Prawn and crap trap sightings	45	144	238	427
Cultural and ecological site visits	28	22	28	78
Suspicious activities	8	9	7	24
Lodge visits	1	4	10	15
Salmon spawner survey[131]	n/a	n/a	118	118

Table 6.1 Amount and Type of Data Collected Using RMS from 2010 to 2012

6.3 Asserting Their Rightful Authority

> We derive our authority and jurisdiction from our traditional laws to manage and safeguard the lands and waters of our territories for the health of future generations. (CGWN vision)

It is clear from the CGWN vision that guardian watchmen see the foundation of their programs in the sovereignty of their nations—one of their main purposes is to assert their nations' authority to manage their territories. Guardian watchmen speak directly about the importance of their work based on an obligation to their ancestors and a connection to the land.

> I'm proud to be First Nations and to be looking after the territory that we got there. And each one of us are proud of that, to have a territory that we value. It is precious to each and every one of us. The ancestors that passed on, they were there before we were born. We have to continue to go back to that, the area that they picked for us to live. Look after everything, not just the land, but the sea…You know, I take it serious. I don't take it like it's just a job. It's a serious thing, looking after your territory. (Clark Robinson, Kitasoo/Xia'xais Nation, 2010)

[131] Spawner surveys were added to the RMS in 2012, so no data exist for 2010-11.

A priority for guardian watchmen is to have a strong presence in their territories—to be the eyes and ears on the land and sea. It is important for them to be seen as a legitimate authority. The RMS has given guardian watchmen a specific reason to patrol their territories and a structured activity to do while they are out there. They feel it has focused their work and given them legitimacy in the eyes of their communities, government agencies, and users of their territories. The following quote is a response to the question 'Why is the RMS important?': "We are also kind of showing to the, I don't know, public or government that we're organized. We have an organized front. So they can't say 'You don't know what you're doing'" (Guardian Watchman 3, 2010).

By collecting data, guardian watchmen are providing their nations with information that is necessary to make decisions and provide leverage in negotiations. They know that standardized, accurate, and carefully documented evidence will be most valuable as evidence in negotiations, court cases, and environmental assessment hearings. Michael Reid (Heiltsuk Nation, 2012) points out how, by collecting data on historic Heiltsuk clam gardens, his nation has evidence of site-specific use throughout its territory: "One of the things that we're going to be continuing to do is the collection of clam garden data. That goes back to our title and rights. It shows that we didn't just use the territories around our communities, we had large areas of use in our whole territories."

Frank Brown (Heiltsuk Nation, 2012) highlights how, by using the RMS, First Nations can increase their power relative to settler governments by collecting a greater volume of more

robust data at a time when settler government agencies are collecting very little data: “Our leadership needs solid information. From what I can see, other governments have skimpy information. It puts us in an advantageous position in government-to-government negotiations.” Similarly, Ernest Tallio (Nuxalk Nation, 2010) suggests that by having data, First Nations are in a powerful position with respect to other governments who might want that data. “The most significant change that I've seen really is just being able to collect information and have it...It's kind of our information and if DFO wants that, they have to come and see us.” Guardian watchmen talk about data as currency.

Guardian Watchmen understand the power of creating a unified visual presence and asked the CGWN to create a flag and uniform that guardian watchmen up and down the coast could use. The flag, shown in Figure 6.2, was designed and guardian watchmen having been flying it on their boats since 2009. Uniforms, shown in Figure 6.3, were introduced in 2011. Guardian watchmen take pride in being guardian watchmen, being a part of the Network, flying the flag, wearing their uniforms, and representing their nations. They feel the flag and uniforms have changed their experience interacting with the users of their territories.

Figure 6.2 Coastal Guardian Watchmen Network Flag

(Photo courtesy of Claire Hutton)

This guardian watchman explains how the uniforms have changed the way that visitors to the territories treat them.

> Before the uniforms, ten years ago, when I was a watchman during the fisheries opening, people on pleasure boats couldn't care less if we were there or not. Once the uniforms came in, it made a big difference with the respect they give us now. Big changes over the years. (Clark Robinson, Kitasoo/Xai'xais Nation, 2012)

Figure 6.3 Guardian Watchmen in Uniform

(Photo courtesy of Sandra Thomson)

Guardian watchmen also feel that their presence in their territories has impacted how their territories are being used, reducing illegal activities—activities prohibited either by the provincial or federal government or by their own First Nation.

> The presence alone of the watchmen is huge. I remember when I started guiding back in 2000, and I remember I would see dead bears. You would see, whether someone had shot them on the shoreline…But just the presence alone, let them know everyone is watching out there, it's been huge. (Doug Neasloss, Kitasoo/Xai'xais Nation, 2012)

Central Coast First Nations' opposition to the trophy hunting of bears has been a galvanizing force for nations working together and asserting their own laws in the face of the provincial government's permission of the hunt. Doug Neasloss specifically points out how Kitasoo/Xai'xais is asserting its authority to govern its territory despite settler governments' laws. He suggests that First Nations need to be more vocal in letting users of their territories know how they should conduct themselves while they are there.

> We have a position, regardless of what the provincial and federal laws are up there. We have our own position in terms of hunting on the coast. So if we see hunters, we ask them to leave…I think we need to be a bit more vocal about the bear hunt and keep the pressure on so that hunting forums and the rest of the world knows our position and they know how to conduct themselves in our territories. (Doug Neasloss, Kitasoo/Xai'xais Nation, 2012)

The member nations of Coastal First Nations are asserting their right to govern in many different ways and at all levels within their governments. Guardian watchmen are patrolling their territories and collecting data using the RMS to document their effort and what they see and hear in their territories. These Indigenous governance activities and the data generated provide legitimacy in the eyes of others and power with respect to settler governments.

6.4 Working Together to Build Power

> This regional network also informs all user groups, whether they're lodges or transient traffic, that there is a navy of guardian watchmen. It doesn't matter where you're going, you're going to run into them. So that they have to keep aware that they've got to follow the rules and regulations of the territories. (Ross Wilson, Heiltsuk Nation, 2010)

Another strong theme that comes through when guardian watchmen speak is the importance of the nations working together, whether it is for reasons of strategy and cohesive strength, efficiency, peer-to-peer learning, or friendship. The RMS has been a focus that has brought guardian watchmen together, physically at meetings related to its development and evaluation, and figuratively, in coordinating their monitoring. Michael Reid explained how much has changed since the creation of the CGWN.

> In 2005, I had no idea who was in Kitasoo or Bella Coola…We all have overlap areas and for the most part we didn't do any monitoring in those areas, we didn't strategize together. We were operating in silos. Now when we have issues, we all work together…There will be issues that face all our nations and it is really important that we all stay connected…The issues we face are issues we all face. (Michael Reid, Heiltsuk Nation, 2012)

Kyle Clifton describes how, when guardian watchmen from different nations create relationships, they are able to coordinate their efforts in monitoring suspicious activities across the region.

> The other thing that I see is really important is being able to share with your neighbors. Like I remember a couple years ago, I asked Wally about the boat that he had trouble with, the crab boat. And I wouldn't have had the contact with Wally if we hadn't come to meetings like this before. And it was the boat that he has had trouble with, so we needed to keep an eye on them right away. (Kyle Clifton, Gitga'at Nation, 2010)

In addition to letting each other know about suspicious boats that may be crossing between territories, Jennifer Walkus suggests that guardian watchmen from neighbouring nations coordinate to monitor shared portions of their territories more efficiently. “I think the other thing with coordinating would be the overlap areas. Who's going to be in which area when. That way we're not all doubling up on overlap areas. We don't have two of us in this area and nobody over in the other area” (Jennifer Walkus, Wuikinuxv Nation, 2012).

A major barrier to many First Nations in their negotiations with BC is overlapping areas of territories. The problematic nature of overlap areas has been constructed by colonialism generally, and the BC treaty process specifically. The *Indian Act* was imposed on First Nations, forcing them to adopt an Indian Band governance structure. The type of group registered as an Indian Band varies across BC and includes families, tribes, and groups of related tribes. Groups of related tribes matches what many currently think of as a ‘First Nation’. In effect, the imposed governance structure has created nations within nations. Also, in the past (and today), parts of territories were used and governed differently for different activities—some areas were exclusively used by particular groups within nations and others were shared within a group of related tribes. Intermarriage meant that neighbouring nations had areas that both nations used.

For purposes of negotiating with governments, whether within the BC Treaty process or outside it, First Nations have to claim a particular ‘traditional territory’ that has lines drawn around it on a map. Using the colonial idea of territory, based on a private property model, this should be easy to do. It does not, however, represent how First Nations own and use

territory. The result has been serious divisions between nations because of 'overlap areas' and their treatment by governments. In *Delgamuukw*, the Supreme Court defined Aboriginal title in terms of "the right to exclusive use and occupation of land." Although the court recognized that two or more Aboriginal groups may have occupied the same territory, which would permit a finding of joint occupancy, the court's requirement for exclusivity can be used against First Nations by governments. Interestingly, in *Delgamuukw*, it was an alteration to how the First Nations in the case were claiming their territories that led the judge to order a new trial.[132]

Because the title claims of First Nations are weaker in overlap areas, they in turn weaken a nation's position in consultation, negotiations, and litigation with governments. The BC government has also strategically used overlap areas to steer outcomes of consultation, by selectively working with nations that are more agreeable to or have less capacity to oppose proposed developments. Alliances of nations who negotiate with the BC Government, such as Coastal First Nations, strengthen their positions by effectively making overlap areas moot. As with any alliance, members have to feel that they are benefitting more from being in the alliance than by leaving. This is dynamic and alliances are constantly threatened by nations that want to leave, have left, or never joined.

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[132]In *Delgamuukw v. BC*, the Gitxsan and Wet'suwet'en hereditary chiefs originally brought 51 claims by individual houses, which, on appeal, were amalgamated into two collective claims, one for each nation. The judge found that since there was not an amendment to the pleadings in the case, the respondents (Her Majesty the Queen in Right of the Province of BC and The Attorney General of Canada) suffered prejudice.

One CGWN member sees a unique opportunity for Guardian Watchmen to work through overlap issues because of their focus on the practical and not the political. The frustration felt by members was apparent by their applause at the end of this comment.

> We're in a unique position here, where the politics don't really matter when you're talking about the operational level and you know, let's be bold. Let's tackle some of those elephants in the room that our politicians aren't willing to look at. Let's look at collaboration over the overlap areas. Let's look at cooperating with our neighbors on areas our politicians don't want to touch because it's almost like political suicide for these guys. Let's look at it on the ground. Let's come up with joint patrols and do things that are bold. Let's produce results that our leadership can see that are tangible and that they don't necessarily want to do. We're in a perfect position to do it. As operational staff there is little risk of us doing some of those things. (Guardian Watchman 2, 2012)

In addition to working together as nations, guardian watchmen have built and are continuing to build strong relationships with non-Indigenous groups—including provincial and federal government agencies, non-governmental organizations, universities, and users of their territories—and Indigenous groups from other countries. The RMS has functioned both as a focus of alliances and as a source of legitimacy in building the relationships.

Guardian Watchmen see the benefits of collaboration with other agencies—learning from each other, working toward common goals, and building legitimacy for themselves—and have been working to set up joint patrols.

> And we'd also like to continue to work with BC Parks…We've done a bunch of joint patrols, trail building projects in the last couple of years and would like to continue that. We've done one patrol with DFO so far. And would like to continue that and get to know other government agencies over the next five years and this coming season. (Ernest Tallio, Nuxalk Nation, 2012)

Over the years, different groups have been invited to CGWN meetings and gatherings, where they exchange information with guardian watchmen about their work and explore opportunities for collaboration. When BC Parks operational staff were invited to the Network gathering in 2010, both sides were suspicious and interactions were awkward. Two years later, relationships between guardian watchmen and BC Parks staff are strong and Parks staff attending the gathering are treated like Network members. When the BC Parks boat broke down during the 2011 field season, the Nuxalk Guardian Watchmen came to their rescue. At the gathering, a BC Parks employee thanked the Nuxalk Guardian Watchmen for their assistance.

> I would just like to thank Ernie and the Nuxalk Guardian Watchmen for supporting BC Parks last summer. Our vessel broke down. We wouldn't have been able to conduct some projects and other work we had in the area last year if it wasn't for Ernie and John. They helped us and I'd like to thank you guys for that. I'm looking forward to this year as well. (Steven Hodgson, 2012)

BC Parks employees have expressed interest in using the RMS for their own monitoring, as it is a more formal and comprehensive system than they use. They have also used RMS data collected by guardian watchmen.

> So what I'm proud of, is the data collection, or the data entering in itself. It's very, like I mentioned earlier, it's worked really well for us because we work a lot with BC Parks, and BC Parks was up recently. They've been controlling the permits and the tenures in our area and they're actually asking us, because we're out every day, if we see the odd boat that's not supposed to be there. So, with the data that's entered into the system, they've actually been, BC Parks has been using it already. (Vern Brown, Kitasoo/Xai'xais Nation, 2010)

There are also signs that relationships with DFO, which have generally been strained, are improving and some guardian watchmen credit the legitimacy and quantified patrol information created by the RMS as helping.

> It's opening up new windows with these different organizations that just don't feel that they have the adequate funding to do this stuff. And it's also helping them point out to their powers that be that because you guys are cutting funding to us that these guys are kind of picking up our slack…And so they're looking at increasing the number of days that they're going to be spending down in our territory…It's also helping repair a lot of the broken relationships between the Wuikinuvx and DFO. Because there's a lot of, there's a lot of hate on our end towards DFO because we don't feel that they do enough, a good enough job when we report something, that it's not being taken care of, but now whenever we're reporting something, they're actually giving it a serious look into. They're taking things a little more seriously that we are doing. (Jason Surgent, Wuikinuxv Nation, 2010)

Compliance and enforcement staff from the BC Ministry of Natural Resource Operations and Ministry of Environment were invited to the CGWN annual gathering in 2012. The visit was disappointing to the guardian watchmen—they felt that the government employees were defensive, disrespectful, and did not understand their work and their connection to their territories. One of the BC Parks staff who had attended two previous gatherings reminded the group how the relationship between guardian watchmen and BC Parks had evolved over the years. He felt that there was hope for the relationship with the other agencies to get stronger. This quote from Steven Hodgson (2012) sums up his experience of working together with the guardian watchmen in the longer term: “You guys are just such a powerful group of people. I am so awe-inspired by your presence. Your authority is more than anything passed down by any government agency.”

In addition to government agencies, guardian watchmen work with and are strongly supported by non-governmental organizations at the local, regional and international level. With local organizations, they work together on projects—for example stopping the trophy hunt of bears and biological research—doing joint patrols and collaborating on data collection. They receive funding and logistical support from regional and international organizations for many aspects of their work, including the development of the RMS. First Nations also partner with academics on a wide variety of projects—some initiated by the nations and some initiated by academics. Guardian watchmen participate in and benefit from many of these projects. Doug Neasloss describes two of the relationships that the Kitasoo/Xaixais have, one with a university and the other with a local organization.

> We’re also going to do, we also want to look at tourism impact on bears. Obviously we want to make sure that we are having minimal impact when we’re out there and we have some researchers right now. We've developed a relationship with some people from the University of Cumbria over in London. So they're going to send over two researchers to work with us. We also have a relationship with Raincoast Conservation Society in Shearwater and they're going to do all the testing for us, the fur analysis. And right now they're out there setting up 30 remote cameras. (Doug Neasloss, Kitasoo/Xai’xais Nation, 2012)

Michael Reid describes some of the relationships the Heiltsuk have with researchers in academia.

> With the [infectious salmon anemia] scare last year, we took the initiative of getting some samples. We discussed with the University of PEI, with Fred Kibenge. Fortunately the tests came back negative. We're doing the tests again this year with Morgan and Will [from Simon Fraser University]. We've been working with the young lady from SFU and we've been developing an abalone harvest management plan. (Michael Reid, Heiltsuk Nation, 2012)

As touched on earlier with respect to creating a unified presence, guardian watchmen are working hard to build relationships with users of their territories. As part of the RMS, they approach tourist boats and visit sport fishing lodges to collect data on who uses their territories and how. They may also approach people they feel are not using their territories appropriately, depending on their analysis of the safety of the situation. In these cases, their purpose is to make a connection, build a relationship, educate, and establish authority.

The RMS and Guardian Watchmen have also benefitted from a relationship with an Indigenous alliance in Australia. Rod Kennett, the director of the Saltwater Country Management Program with the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) attended the 2010 CGWN annual gathering. The work of the CGWN and NAILSMA are, as he said, "disturbingly similar", and there is a lot of overlap between the RMS and the monitoring work of Aboriginal rangers in northern Australia. At the gathering, he showed us one of their I-Trackers, handheld computers they use for data collection, and the enthusiasm they generated in the guardian watchmen led to the development of the CoastTracker. In 2011 and 2012, representatives of the CGWN travelled to northern Australia to participate in NAILSMA's I-Tracker research forum and visit groups of Aboriginal rangers. Some reflections from participants show how powerful these international alliances can be. Ross Wilson was struck both by how far the CGWN has come and how much farther it can go. "I realized that we (CGWN) are on the fast track in how much progress we have made and have a lot to learn from NAILSMA who have been doing this type of work for longer and with far more resources" (Ross Wilson, Heiltsuk Nation,

2011). Richard Brown was impressed and inspired by how Indigenous groups in northern Australia having taken control of their lands and seas.

> What I am bringing back with me is that our Watchmen need to strengthen our relationship with the government. I loved the culture and how they have taken control of their lands and seas, now it is time we take control of our lands and seas and build our own government systems. (Richard Brown, Gitga'at Nation, 2011)

6.5 Building Capacity, Building Nations

> People monitor protected areas all over the world. What is unique here is that it is a nation-building exercise. (Funding organization staff person, 2012)

The recognition of Aboriginal title in *Delgamuukw* started a process whereby First Nations have been able to re-assert increasing authority over the land and sea, whether through consultation on decisions or government-to-government negotiations on land and marine planning and decision-making. In order to fulfill these responsibilities, First Nations on the coast have been involved in rapid capacity building at many levels. A major focus has been on building stewardship capacity through guardian watchmen programs.

The CGWN and now the Coastal Stewardship Network have been instrumental in providing support to coastal First Nations looking to build stewardship capacity. In addition to providing ongoing training on various topics, they developed two guardian watchmen training programs, one with Northwest Community College that was delivered in 2009 and 2010 and one with Vancouver Island University to be delivered in 2013 and 2014. Network staff also visit communities as requested to meet with stewardship staff and assist with strategic and work planning, accessing funding, and planning field seasons. Another role of

the network is to coordinate opportunities for staff from different nations to collaborate, through conference calls, meetings, and the annual gathering. As described by this guardian watchmen, participants enjoy and find value in the annual gatherings. “You know our Guardian, it's his third day. So what better way to introduce him to what's happening around the coast than here? It's a great learning environment” (David Leask, Metlakatla Nation, 2012).

Guardian watchmen programs build skills in their staff in a wide variety of areas, including boat operation and maintenance, research and monitoring, outreach and education, and compliance and enforcement. When guardian watchmen reflect on their successes, they often speak about situations of intergenerational learning. As part of the RMS, guardian watchmen monitor cultural and ecological sites. In order to learn about these sites or seek permission to visit them, they spend time with elders, either in town or out in the territory.

> We were able to take out some of our elders and community members to learn about some cultural sites and ecological sites that we hadn't known about before...This coming year we're looking forward to taking more elders out to learn more about our cultural sites and our territory. (Ernest Tallio, Nuxalk Nation, 2012)

Because they realize the importance of getting youth interested in careers in stewardship, some nations are starting to hire high school students to work with guardian watchmen in the summer. In the long term, this may mean that First Nations can hire biologists from their own communities rather than hiring non-Indigenous consultants.

> The second year that we had [a guardian watchmen program], we had a strong mandate from the community and from the watchmen themselves that they felt it was really important to reach out to the youth. So we started a junior guardian watchmen program and hired two youth from the community to spend the two months of summer

> patrolling with our individuals, learning the job, helping with the data, and getting a really fundamental understanding of the jobs. Needless to say, they're very excited to come back this year. One of the young gentleman that was with us has always had and continues to have a desire to become a fisheries officer. So the experience last year just reinforced that. But now he's even starting to think a little bit bigger than a fisheries officer, he's thinking about a fisheries biologist, so it's encouraging to see that growth in a young man. (Conrad Browne, Gwa'sala Naxwada'xw Nations, 2012)

Different nations have developed their stewardship programs in different ways. Often they had a fisheries department and have added other departments or programs when the need arose and funding was available. The growing responsibilities of consultation, land and marine planning, and monitoring their territories have meant that nations often have several different groups working on stewardship. Coordination of these various departments and programs has not always been easy. Many nations are now transitioning to a model where all of the stewardship functions are being integrated into one office. In some nations, the RMS has served as a tool to focus capacity building and bring together different departments that may not have been working together previously. In addition to their guardian watchmen, the Kitasoo/Xai'xais have other staff collecting RMS data, including those who work on dive fisheries, tourism, and aquaculture.

> In our marine use plan, it says that we really want to establish our watchmen programs. So there's a number of ways we can do that. So we tried to use other avenues to data collection and eyes and ears on the water. So what we did is, we increased our tourism operations over the last number years. So I started the business back in 2000, there was only two of us that started. And now, this year, we're probably going to have a staff of about twenty. We're going to have seven boats out on the water. So that means we're going to have seven different boats collecting all of this data. (Doug Neasloss, Kitasoo/Xai'xais Nation, 2012)

In order to assert their authority by patrolling their territories and collecting data, guardian watchmen programs have to have equipment. A large part of building their capacity is

funding the purchase, maintenance, and operation of boats that are suitable for patrolling long distances in remote regions with unpredictable weather and rough seas. They also purchase research equipment and some nations are building emergency cabins in their territories.

Through building guardian watchmen programs, First Nations on the coast are building capacity that spills out into many other aspects of their nation. As explained by Michael Reid (Heiltsuk Nation, 2012), "We keep trying to separate the guardian watchmen from other things, but it's like ecosystem. The guardian watchmen play a larger role in all of the communities. Guardian watchmen are a part of marine use planning, of all sorts of things." Frank Brown (Heiltsuk Nation, 2012) describes how guardian watchmen programs can lead to stronger nations: "Our foundation will become stronger. We need to slot young people in so they can assume their responsibilities, speak with confidence, fully understand the opportunities, and know how to leverage our title and rights, our unceded title and rights."

6.6 Shifting Power with Science

As described in Chapter 3, much of the literature on TEK addresses questions around the integration of Indigenous knowledge into resource management systems that have been premised on ecological science. The integration of Indigenous and scientific knowledge in resource management, like co-management, is controversial because of issues of power. It is almost invariably non-Indigenous resource managers and/or decision-makers who are attempting to integrate and/or use the Indigenous knowledge within non-Indigenous management systems. Critics have suggested that offering science in support of Indigenous

priorities could be a way forward, but there are few examples described in the literature. Those that I found are from northern Australia, one of which involves the rangers in NAILSMA (Kennett et al. 2004, Grice et al. 2012). The development of the RMS is a Canadian example of Indigenous peoples using science in the management of their resources and territories. I think of it as a case of the 'reverse integration' of Indigenous and scientific knowledge, where science is being integrated into Indigenous knowledge and practices.

Two documents specific to coastal BC describe how First Nations are integrating science with their Indigenous knowledge systems. In *Staying the Course, Staying Alive*, Frank and Kathy Brown summarize seven fundamental truths related to biodiversity, sustainability, and stewardship distilled from interviews with three elders regarded as 'keepers of the knowledge' for their Central and North Coast nations. The fundamental truths are: creation, connection to nature, respect, knowledge, stewardship, sharing, and adapting to change. These truths continue to guide coastal First Nations in their governance of their territories.

> The fundamental truths in this report are what we know to be true about the forces and cycles of nature. These truths have guided and sustained us as Heiltsuk, Kwakwaka'wakw and Haida people in our coastal homelands since time immemorial. And now more than ever – given the current state of our marine and terrestrial ecosystems – we must heed the wisdom of these truths – wisdom acquired through more than 10,000 years of living on, caring for and respecting the land and water. (Brown and Brown 2009, 6)

In their introduction to the fundamental truth 'adapting to change', Brown and Brown talk about how science can be used within coastal First Nations' Indigenous system of knowledge and governance.

> We are committed to Gwilas "upholding the laws of our ancestors". This is a stewardship model based on a social responsibility to our members. Change is accelerating and, as we cannot stop it, we must continue to adapt while staying true to our core values. We must use the best of western science with due consideration for those resources that we are charged with watching over. (Brown and Brown 2009, 68)

In *Into the Deep Blue* (Coastal First Nations, undated), a document describing Coastal First Nations' marine ecosystem-based management, scientific principles and management are explicitly linked to Indigenous ones.

> [Ecosystem-based management] expresses modern recognition of the need to consider ecosystems when managing for resource use – First Nations have known this for millennia. We have been and are again at the forefront of ecosystem-based land and sea resource management in our traditional territories (Coastal First Nations Turning Point Initiative, no date).

The document also relates scientific principles to First Nations' ethics and values, as shown in Table 6.2.

First Nations' Ethics & Values	Scientific Principles
Respect and Responsibility	• Precautionary Approach • Inclusive and Participatory
Balance and Interconnectedness	• Long-term Sustainable Use • Integrated Management
Intergenerational Knowledge	• Adaptive Management • Best Information
Giving and Receiving	• Equitable Sharing

Table 6.2 Relationships Between First Nations' Ethics/Values and Scientific Principles

The development and use of the RMS is a concrete example of how First Nations on the coast are integrating science into their stewardship and governance of their territories. They know science is both practical—it has value as knowledge—and politically strategic—it enhances their power, authority, and legitimacy. This is clear in the materials produced for non-Indigenous audiences and in how guardian watchmen talk about the RMS.

Following on Nadasdy's (2005) argument that participation in bureaucratic resource management processes forces Indigenous people to talk, think, and act in ways sanctioned by the state, it could be argued that coastal First Nations' use of science is an extension of empire causing them to abandon their Indigenous knowledge systems. While I do not think this argument is without substance, I do think that the nations on the coast have more agency, and the situation is more complex, than this explanation allows.

There is a possibility that coastal First Nations have been made pawns of 'big conservation' or that they have been co-opted by government and others into the hegemony of science. Through their development of land use and marine plans, First Nations have made their inquiry and presentation of objectives conform to bureaucratic and scientific structures. A difference, however, is that usually in a co-management context, the rules and structures are defined by the state, which has more power, and the Indigenous nation has to work within the structure and against the unequal power. On the North and Central Coasts, however, many First Nations have chosen to use science to meet their own objectives, to give them power within the context of *Indigenous* management and government-to-government negotiations. The power of the governments is unequal, to be sure, but the degree of agency of First

Nations is considerable. In some instances, for example on the marine planning side, First Nations are leading the way. With the RMS, coastal First Nations are collecting a significant amount of data in regions where other governments have large gaps in data.

The land use planning processes on the Central and North Coasts and Haida Gwaii began as government-led initiatives to which First Nations were invited to participate as stakeholders, along with municipal governments, industry, environmental groups, and others. First Nations transformed the process, however, by rejecting the role cast for them, forcing the government to consider them as equals in a government-to-government process, embracing a scientific approach to creating their own land use plans with which to negotiate, requiring the government to allow non-commercial Indigenous use of resources in conservation areas, and ensuring there be a financial component to the imposition of state-legislated conservation areas (even though these areas also met their own goals).

The stewardship staff that I work with are both politically savvy and analytically pragmatic. They seek knowledge to answer ecological and resource management questions and meet political objectives. They know that both Indigenous knowledge and knowledge derived from science are valuable for their ends and use each as necessary to meet their goals. The RMS was an initiative of First Nations, it addresses issues that are priorities for First Nations, contains data collected by First Nations, and is used by First Nations. Though the methods and tools may seem 'scientific' (e.g., transects, field books, and online data management systems), both Indigenous and scientific knowledge are drawn on to collect and use the data. When managers and guardian watchmen talk about their stewardship work and the RMS,

politics are an integral part of the discussion. The use of 'science' has not depoliticized their work, but rather continually politicizes it. This is particularly poignant when they characterize data as currency (a medium of exchange) or a source of legitimacy within their relations of power with the state.

When considering whether the use of science within management processes is coercive and disempowering, it is important to think about whose ends are being met. Are the data being used to meet government objectives or community objectives? In the case of the RMS, data are being used to oppose government objectives (e.g., Enbridge pipeline), challenge the state's role in enforcement, inform community-based plans (e.g., site level forest or conservancy planning), and assert control over territories (e.g., ban on trophy hunting). There is also a question of whether it is possible, in the context of the North and Central Coasts of BC, to treat either Indigenous knowledge or science as mutually exclusive entities. The two systems of knowledge have been in intimate contact on the coast since the mid-nineteenth century, and knowledge holders from each system have adopted and adapted knowledge from the other system since that time. Whether the subtle (and not so subtle) reaches of empire are continuing to extend into First Nations communities on the coast is not in question: they are. But the interesting questions have more to do with how First Nations on the coast are choosing to take control of processes and use the tools of empire to regain control and continue to assume the responsibility of taking care of their territories.

I do not wish to paint too rosy a picture of Indigenous-state relations in the Great Bear Rainforest. Indigenous leaders struggle to regain control of their territories, constantly

choosing between and balancing strategies of assertion, negotiation, litigation, agreements with industry and non-governmental organizations, and participation in consultation. They must participate in many of these processes on others' terms or in order to fund work that is critical to their communities' futures. The playing field is uneven. The stakes are high. Many of these communities have high levels of unemployment and pressing social concerns. I am not suggesting that 'government-to-government' is as egalitarian as it sounds nor that First Nations can always choose to engage on their own terms. What I am suggesting is that within this context, First Nations do have agency and are making decisions to use the tools that will achieve their goals. Sometimes that means asserting their rights and sometimes that means compromising or participating in co-management. Sometimes it means resisting money designed to reduce opposition and sometimes it means accepting it. Sometimes it means making agreements with NGOs or industry and sometimes it means going it alone. Whatever it means, First Nations are exercising their power in regaining governance of their territories.

6.7 Challenges and Future Opportunities

As First Nations on the coast continue to assert their authority to govern their territories, the opportunities for guardian watchmen grow. Many challenges have been overcome in the development of the programs, and new challenges are being met as nations build their stewardship capacity. The question of whether the RMS will continue to serve guardian watchmen as nations develop their resource management functions and departments is unanswered. With nations being pulled in so many directions, one challenge will be to sustain nations' enthusiasm and commitment to the RMS for long enough to build solid data for analysis and decision-making. Guardian watchmen and their managers see many *potential*

uses of the RMS data, but they also need to see the data being used to continue spending time and money on collecting them.

One of the current focuses of the Coastal Stewardship Network is ensuring that First Nation resource managers know the data exist and can access them easily and in a format that works for them. The Network has examined the idea of producing 'State of the Territory' and 'State of the Coast' reports that would compile and analyze data for use by nations and potentially others. It requires waiting for data to be collected over a period of a few years, however, for the analyses to be instructive. Also, the regional analyses requires that all of the nation agree to share data. There are justifiable concerns by some nations about sharing site-specific data with other nations and/or the public.

From the beginning, a major challenge with developing the RMS has been balancing the desire of some nations to collect scientifically rigorous and technical data with the need to keep the data collection methods within the capacity of all of the nations' guardian watchmen programs. This has affected the indicators and methods chosen for the RMS. It has also meant that some of the nations with more capacity have continued to develop their own research and monitoring programs and put less effort into the RMS. As nations continue to develop their stewardship capacity at different rates, this will likely continue to be a challenge. During the first few years, the added benefits of the RMS, such as building capacity, collaborating with other nations and groups, and developing legitimacy, have made it valuable. As these functions are met through nations building their individual stewardship

capacity, the explicit goal of the RMS—standardization of methods for compiling and comparing regional data—will have to be realized to keep it relevant.

Funding guardian watchmen programs, and their participation in the RMS, has been a consistent challenge for stewardship managers. When asked about their challenges, managers often talk about the problem of training staff, only being able to provide them seasonal work, and losing them to full time jobs elsewhere. Many guardian watchmen programs were set up using Coast Opportunity Funds, the $120 million pot of money that was a part of the Coast Land Use Decision described earlier. As First Nations build capacity to monitor their territories, respond to referrals, and develop their relationships with businesses, however, they are looking to revenue from these interactions to fund their guardian watchmen. This manager describes how her/his nation is using the Coast Opportunity Funds to initiate the guardian watchmen program, but hoping to supplement that through creating agreements or contracts with others and charging user fees.

> There's kind of a three year plan that's been put together considering several different sources of funding, one being the base funding—Coast Funds—to start up the program, or initiative, to supply the base funding and then look for other funding and how you use other contracts or agreements to fill in to the guardian watchmen…until other opportunities come along with agreements, whether it's with tourism, whether it's with sport fish lodges or something like that, where user fees are coming in. That's the goal in the future, but until that happens it's very piece-mealing together sources of funding to keep the guardian watchmen employed for nine months… (Guardian Watchman 3, 2010)

Doug Neasloss explains how his nation charges a fee to operators in its territory and uses the collected funds to support its guardian watchmen program.

> And our community, any company that works in our territory, we charge a fee…About ten years ago, we said listen, if you guys want to operate here, you give us a fee of $10 per person per day and that money goes straight back into the watchmen program. So ideally we want every company working in our territory to pay us a fee and it doesn't matter if it's tourism operations, sport fishery, hopefully later down the road it will include other operations such as forestry, commercial fishermen. Our community shouldn't be the only ones paying these management fees. (Doug Neasloss, Kitasoo/Xai'xais Nation, 2012)

NAILSMA, the Australian 'watchmen' group, has developed a fee-for-service relationship in which they collect data and share it with government agencies, for example the Australian Quarantine Service. With the development of the spawning salmon survey in the RMS, the guardian watchmen are following a similar model, in which they collect spawning salmon data under contract to DFO, retain those data in the RMS, and export the data to share with DFO.

Options for expanding the RMS have been discussed at meetings, including monitoring more issues, using it for marine use plan implementation, and involving more nations and/or agencies. Other nations that are not a part of Coastal First Nations see the value of belonging to the Network and using the RMS and have expressed interest in joining or setting up similar organizations in other regions. Employees of provincial and federal environmental agencies also see the value of the RMS and collaboration in a time when they are focused on the New Relationship and their budgets are shrinking rapidly. They are keenly aware and admit in our meetings with them that they do not have the resources to effectively meet their mandates without collaborating with others. Another focus of the Network, due to clear direction from members, has been to explore legal options for increasing guardian

watchmen's authority in their territories. Strategies on this front are being developed in collaboration with the Environmental Law Centre at the University of Victoria.

The meaning and value of the RMS is different for different First Nation stewardship staff. To the guardian watchmen, participating in the RMS gives them a structure and focus for their work and proves their legitimacy to others. They collaborate with watchmen from other nations, supporting each other to coordinate and improve their monitoring. The training they receive and experience they gain using the RMS builds both technical skills and knowledge of their territories. To the directors and managers, the RMS is intricately tied to the governance of their territories—implementing land use and marine plans, responding to referrals, managing fisheries, monitoring conservancies, planning economic development for their communities, or opposing unwanted development by others. The data it produces are important for developing plans and advising decision-makers.

6.8 Conclusion

The RMS is an example of regionally coordinated Indigenous territorial governance. In the context of reconciliation and/or decolonization, it is a tool First Nations are using to assert and strengthen authority, increase legitimacy, build relationships and capacity, and shift power with science. This is a case of Indigenous governance and not-co-governance, but it exists within an overarching co-governance framework, infused with a colonial legacy. Even as First Nations are patrolling their territories, doing research, monitoring, outreach, and education, and considering a more formal compliance and enforcement role, each of these activities is a site of engagement with non-Indigenous people and their governments. And

whether they are creating their own land and marine plans, conducting bear or crab research, or choosing what to monitor, each of these activities is structured, at least in part, by non-Indigenous conceptual frameworks. This does not mean, however, that First Nations are not strategically using non-Indigenous advisors, their conceptual frameworks (e.g., science), and the resulting data to meet their goals, guided by Indigenous laws, knowledge, and values. The Central Coast nations' ban on the trophy hunting of bears is an example of how First Nations are asserting their own laws in the face of opposing settler laws and drawing on the power they have developed through alliances with other nations, scientific bear research, increased capacity and legitimacy, and coordinated territorial patrolling and monitoring.

In his review of interdisciplinary progress on the devolution of governance in resource management, Berkes (2010) evaluates some experiences with decentralization, leading him to focus on and explore a model of adaptive co-management. His perspective is that resource governance is too complex for any one group to undertake, local people should be involved in decisions that affect their lives, and thus local groups need to be brought into the policy and decision-making process. Although he is not specifically addressing devolution with respect to Indigenous peoples, he does not consider the issue of ultimate authority in devolution; his focus is on sharing power. I will not weigh in on whether resource management is too complex for any one group, but will agree with Berkes that local people need to be involved in decisions that affect their lives. In situations of settler colonialism, I will argue that Indigenous peoples do not need to be *brought into* policy and decision-making processes, but need to be in charge of them, with either sole jurisdiction or truly shared jurisdiction. This means that if resource management is too complex for one group to

undertake, Indigenous people need to be in charge of bringing settler governments, people, and knowledge into *their* policy and decision-making processes.

This research could be seen as adding to literature that points out the ongoing colonial situation that First Nations are in, where adopting non-Indigenous concepts and practices makes them more legitimate. Focusing on this aspect of the RMS, however, denies the agency of First Nation stewardship staff and ignores: the strategic ways they are engaging science; the ongoing strength of Indigenous concepts; the ways that Indigenous knowledge and authority are permeating non-Indigenous people, bureaucrats, and governments; and the changes that have been made in how non-Indigenous people think about Indigenous peoples and colonialism.

The RMS is also serving as a model for Indigenous communities far beyond the Great Bear Rainforest—there has been interest expressed from other nations in BC, Canada, and around the world. Guardian watchmen programs in general, and the RMS specifically, are an example of what reconciling and decolonizing can look like on the ground and at sea.

Chapter 7: Reconciliation 'At the End of the Day'

> That was some of the shortcomings of the [recognition and reconciliation] legislation that they tried to push through with the Leadership Council and the Summit tables a couple years back, was they tried to do everything in this huge huge piece that was going to fit for 203 nations that sort of got developed between four people in a room. Whereas we've taken something that works for nine nations and it's being applied to sort of 40, 50 nations and realizing that that has a lot more realism for both sides. That has a lot more attractiveness for both sides. It has a lot more efficiencies built in from both sides. And we've just taken an incremental approach, shovel by shovel, has gotten us farther than the big combine of the treaty process has been trying to do for years. So what we've really learned, bite-sized pieces is the way to go. And I think that's the only path to reconciliation. Because the government is so vast, all the decisions that they make, all the governance, all the policy, is so huge that you can't do it in one bite. You sort of got to take a bite, look at the next piece, take another bite, look at the next piece. And that's really the path to reconciliation, is standing up and saying, okay we can go forward based on this governance model collectively, acknowledging our Aboriginal rights and title and the right to the Crown. We can go forward based on that. And to me that's reconciliation at the end of the day. (Dallas Smith, 2012)

> However, if we can build a strong enough relationship over a decade, or two or even three, at the end of the day there's probably a very good likelihood that First Nations will say, 'Hey look, we are part of the economy, we want to stay there, and the only way that we can actually guarantee it in perpetuity is by putting it into a treaty.' So you reconcile in the immediate term, and what this used to be called in the BC Treaty Commission process was interim measures. So you work it out, and you give First Nations an opportunity to try it on for size. It's like taking a car for a test drive. Where you find out if, you know, if you're buying a used car, and you find out after going about, taking it on a test run, that it's going to die, than you go and look at another car. And so that's what First Nations are going to have to look at in terms of reconciling their relationship with Canada and British Columbia. (Art Sterritt, 2013)

These quotes from the leaders of two large First Nation alliances on the coast of BC summarize the general feeling of the decision-makers I spoke to about reconciliation. First, reconciliation is an incremental and on-going process, not a goal. And second, they focused on reconciliation as co-governance, not treaty settlement (as currently defined or at the moment). These two ideas can be related to the two components of reconciliation in settler colonialism—reconciling Indigenous-state relations and reconciling competing claims to title

and rights—in the following way. By reconciling Indigenous-state relations through developing an ongoing process of co-governance, the need to reconcile competing claims to land and resources may be eliminated.

From the beginning of the BC treaty process in the early 1990s until recently, the main focus of reconciliation in BC was completing treaties. The treaty process was the formal venue for negotiating Indigenous-state relations and competing claims to rights and title. First Nations and the provincial government, however, had very different ideas, not only about the matters being negotiated, but also about treaties themselves. Treaties were seen by BC as 'full and final' settlements that reconciled competing claims and created economic and political certainty. First Nations saw them as a way to regain governance power over their territory by establishing a new relationship with settler governments that needed continuing attention and renewal.

> For [most First Nations], reconciliation is an ongoing activity, a continuous process of cross-cultural dialogue over time, between the partners over matters of their shared concern. Individual treaties are made within this broader process of discussion and they are implemented, enacted, and periodically reviewed and repolished as things change and unanticipated consequences emerge. That is, the treaty process never ends. The process is the relationship of democratic and constitutional governance between First Nations, the federal government and the provincial government in which they make treaties, review, dispute, amend, resolve and renew over time. (Tully 2001, 13)

Although this difference in understanding about the nature of reconciliation may be one of the deepest differences between the parties in the treaty process (Tully 2001), the decision-makers I interviewed were bridging this divide outside the treaty process. There has been a realization by many BC decision-makers that reconciliation, whether through treaty or not (e.g., co-governance), is an on-going process and that 'certainty' is a myth.

In my interviews, I asked decision-makers for First Nations and BC several questions about reconciliation, such as: What do you think the goals of reconciliation should be? What are the barriers to reconciliation? What does the process of reconciliation need to involve? What are some specific ways to reconcile the legal conflict between Aboriginal title and the Crown's asserted sovereignty? I also asked some of them about their thoughts on certainty. Decision-makers on both sides now see a need to focus on: building the relationship and trust between the parties; closing socio-economic gaps and creating sustainable economies for First Nations; co-governing with a common vision; and building capacity. FN2 describes what s/he sees as the requirements for the process of reconciliation:

> Progress toward joint decision-making on lands and resources. Progress towards more equitable distribution of economic benefits. Progress towards more equitable allocation of, I'll call it public service, but basically delivery of government services. And progress towards First Nations internal governance management capacity. (FN2, 2012)

Interviewees see the need for an incremental approach to reconciliation, addressing the concerns about finality and closure that the term 'reconciliation' suggests. Many were uncertain about the necessity for or content of treaties in the future, but by gradually increasing authority, building capacity, and trying different models in the interim, they felt First Nations may be in a better position to negotiate and implement treaties should they want them in the future. Co-governance models allow for First Nations to retain title to their entire territory; to date, treaties in BC have required First Nations relinquishing title to a majority of their territories.

I begin the chapter by sharing some of the interviewees' thoughts about treaties and certainty, thoughts that inform their idea that reconciliation needs to be an incremental and ongoing process. I then present and analyse the four main components of reconciliation described by the First Nation and provincial decision-makers whom I interviewed. With regard to the first component, building relationships and trust, interviewees described how trust is built through personal relationships that develop at multiple bureaucratic and political levels by both sides working together over time. The multilevel relationships and structures ensure that both strategic and practical issues can be addressed. The second component, closing socio-economic gaps and creating sustainable economies, was highlighted by many interviewees and is arguably a *part* of reconciliation, but cannot eclipse other fundamental components of decolonization. The third component, co-governance with a common vision, can be an important part of resolving dual title if power imbalances are addressed and ultimate authority is shared. The fourth component, building capacity, is important for both the province and First Nations, but First Nations continue to bear the burden of learning and using Euro-Canadian systems and have to overcome the effects of colonialism on internal governance processes and structures. Because all of these four components are long term and complex processes, there is further support for the idea that reconciliation should be an incremental and ongoing process.

7.1 Thoughts about Treaties and Certainty

In its relations with First Nations, the provincial government is fundamentally concerned with achieving certainty on the landscape: resolving the issue of its uncertain title to the land. This is important, it claims, for ensuring a climate that will promote economic development

in the province. Investors and industry need confidence that their business will not be disrupted by First Nations' claims (Blackburn 2005). For example, the first statement at the Ministry of Aboriginal Relations and Reconciliation website's section on 'treaties and other negotiations' is: "The Ministry of Aboriginal Relations and Reconciliation negotiates treaties to create economic certainty over Crown land and resources and to improve the lives of First Nations."[133] 'Certainty' is ubiquitous in the provincial government's press releases and promotional materials relating to its relationships with First Nations. Exploring the concept of certainty has also been central in research relating to Indigenous-state relations in BC (e.g., Stevenson 2001, Woolford 2005, Blackburn 2005, Barry 2012).

Neither certainty nor treaties were specific themes in my interviews, but both concepts came up in the context of other questions. I did add a question about certainty, however, after I had interviewed about half of the decision-makers (on either side).

7.1.1 The Power of Certainty and Uncertainty

The decision-makers I interviewed, whether they worked for BC or for First Nations, confirmed the importance of certainty in Indigenous-state relations in BC. As described by FN3, Aboriginal rights are what provide First Nations with certainty.

> Well, Aboriginal rights are the unceded title to the land and the sea and the resources within them. They are the thing that gives us the certainty because the body of case law recognizes our unceded title and we're attempting to reconcile the duality of title between the Crown and Coastal First Nations. (FN3, 2012)

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[133] MARR; "Treaties and Other Negotiations," http://www.gov.bc.ca/arr/treaty/default.html, accessed March 31, 2013

And Aboriginal rights are what provide First Nations with the power to create uncertainty for the provincial government and push it to change the way it relates with First Nations. In describing the impact of First Nations protesting logging, BC7 said: “permits were taking anywhere from, you know, you could get a turnaround in sixty days, but there were permits, two years, ten years for a cutting permit. That doesn't generate stability. It doesn't generate any kind of investment. Who wants to invest there?” (BC7, 2012) In the following quote, BC5 surmises that the province does not really care what happens on the land, but it does care if First Nations become an impediment to economic development.

> I think the government, you know and I'm speaking off the top of my head, I think the government at the most fundamental sense doesn't care [about the vision for the land]. What they want is economic development and prosperity for all. So if First Nations become an impediment to that, they care a lot. If it doesn't, you know, if it goes along smoothly, they probably don't care. (BC5, 2012)

Art Sterritt explained how Coastal First Nations, with the ability to upset the regional economy, and by gaining the support of all of the stakeholders in the region, were able to convince the provincial government to sign a government-to-government protocol in 2001.

> When that was all done, we drafted up an agreement with British Columbia, for presentation to British Columbia, and we went to Victoria with the support of everybody in the region in 2001 and signed the first ever government-to-government protocol in the history of British Columbia. So we had gone from doing nothing, through the treaty process, despite the courts, *Delgamuukw* and all of these other court cases had said that we had rights, that we had the right to self government, self determination, we were not able to affect that as individual First Nations or even as a joint group, but we were able to do that by bringing all of the other players into the room and affecting different...basically what the foundation of that was the economy. We had the ability to upset the economy in the region and that's really what caught their attention. (Art Sterritt, 2013)

FN8 describes how the economic uncertainty created by First Nations drove former Premier Gordon Campbell to change his approach to relationships with First Nations.

> I think [Gordon Campbell] also saw that, just on the economic side, that the First Nations issue has created such uncertainty in the business community that I think he also saw that there had to be a need to come at that differently. You know, that the adversarial way of coming at those issues, even by themselves didn't find solutions. So I don't think it was all motivated by just social enlightenment, and also I think it was motivated by an economic reality of how to do business in BC. (FN8, 2012)

In addition to First Nations' effect on certainty for business in the province, interviewees also talked about how First Nations' support for—or at least lack of opposition to—decisions or projects created social license for the government and industry. With respect to industry, BC10 (2013) states: "Well, in my discussions with bands on different projects, I've told them all that if they are ever inclined to endorse a project, it means huge benefits to the people trying to promote that project. You know, if a band signs on as endorsing a project and wanting it to go ahead, it really helps out." BC5 talks about how important First Nation support is to making decisions long-lasting and successful in the public's view.

> Well it's just that if you're working in, like I've worked in very controversial areas of land use, particularly around old growth forests and logging and whatnot, and really the sort of credibility, and I wouldn't define that, but the credibility or social license of the people actually occupying the land or being seen as inherently involved with the land, in those decisions is critical to the success of those decisions in the public. And you could also, I think, extend that in in a different way to sort of local communities. But it's important for a, for a decision around land to be long-lasting or successful if you have the local people, and in case the First Nation people, support of it and agreeing to it. (BC5, 2012)

Thus, First Nations have the power to either create economic uncertainty for or provide legitimacy to the province and industry. This power is what has led the provincial government to seek certainty, initially through treaties and later through its New Relationship

and non-treaty agreements. There has been much critique of the provincial (and federal) government's focus on certainty, and in particular, its earlier preferred method for achieving it—extinguishing or modifying Aboriginal title (and other rights) through treaty. First Nations involved in the treaty process and groups representing Indigenous peoples have protested settler governments' insistence on 'certainty provisions'. A booklet accessible at the Union of BC Indian Chiefs website describes how the Crown is trying to sever Indigenous peoples' connection to the land, or Aboriginal title, through the treaty process.

> The Crown's willingness to negotiate land claims requires a promise on the part of Indigenous Peoples that they will not fully practice their rights. Canada's negotiating stance is: "We will recognize your rights, but only if you first tell us how you will exercise them, and only if you promise that your rights will not interfere with our interests." This is certainty. Canada's sovereignty or ownership of Land and resources is not challenged, Canada does not have to "prove" its title. Indigenous Peoples do not get an equal promise that Canada will tell us how they will practice their rights, or that their rights will not interfere with our interests. Quite the opposite. [134]

As described by Stevenson (2001), Indigenous peoples and the Crown have diametrically opposed views of certainty in treaty negotiations. The approach of some First Nations has been to try to create a new relationship that "will continue to breathe life and richness into existing rights so that these can survive and unfold in their full splendor", whereas the Crown's approach has been to require the surrender or extinguishment of Indigenous rights (Stevenson 2001, 114). As Stevenson points out, Indigenous peoples find it hard to accept extinguishment because it leaves their fate uncertain—they have to trade their certain rights for a treaty that may not serve their needs over time. Given that Indigenous people were here first and have title, the treaty process requires them to give up their rights so that other British

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[134] UBCIC; "Certainty: Canada's Struggle to Extinguish Aboriginal Title", http://www.ubcic.bc.ca/Resources/certainty.htm#axzz2P8hp6Ulx, accessed March 31, 2013.

Columbian residents can have guaranteed rights. They are again shouldering the burden of BC's history of colonialism (Stevenson 2001).

The BC Treaty Commission suggests that, despite settler governments realizing they need to move beyond the extinguishment model, there still needs to be work at treaty tables to close the gap in visions on the certainty issue. The Commission defines certainty in a treaty as meaning that:

> the ownership and the rights, responsibilities and authorities of all parties are clear and predictable. The process for reviewing and amending the treaty must also be fair and predictable. In all types of negotiations, certainty can be achieved without finality. The challenge is to develop predictable procedures for dealing with issues without extinguishing or impairing those aboriginal rights not specifically dealt with in a treaty.[135]

Notably, the Tla'amin Final Agreement, signed in 2011, still contains certainty provisions stating that the agreement exhaustively sets out and modifies Tla'amin Aboriginal rights.[136]

7.1.2 You Only Sign a Treaty to Give Up Land

The First Nation decision-makers I interviewed clearly viewed the current treaty process as flawed and inappropriate for reaching their goals. As described by FN6, why would a First Nation sign a treaty to give up land if its members can currently hunt and fish in 100% of their territory?

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[135] BC Treaty Commission; "Aboriginal Rights: Certainty", http://www.bctreaty.net/files/issues_rights.php, accessed March 31, 2013.
[136] Tla'amin Final Agreement, General Provisions; http://www.gov.bc.ca/arr/firstnation/sliammon/down/tliammon_final_agreement_2011.pdf, accessed March 31, 2013.

> At the end of the day, I don't see my community signing a treaty because you only sign a treaty to give up land. And they come with a predetermined package on treaty, and fisheries is not even on the table. You know, that was enough for us to walk away from it. So we actually just shut our department down, or put it in abeyance for now until that formula changes. I see treaties working for business down in Vancouver, you know, if you have a valuable land base and all those things, but right now I can hunt and fish in a hundred percent of my territory. (FN6, 2012)

Art Sterritt felt that reconciliation protocols are a way to reconcile dual claims to title without First Nations having to give up their title.

> Well, I think, the treaty process in British Columbia is broken right now. More on the federal side than on the provincial side. Coastal First Nations, again another first, we signed in 2009 the first ever reconciliation agreement with British Columbia…So that was a way to try to reconcile the fact that the Crown title exists and Aboriginal title exists and so we don't see ourselves as kind of selling our title in turn for something. (Art Sterritt, 2013)

As explained by FN2, First Nations can either negotiate for sole jurisdiction over approximately 8% of their territory within the treaty process or they can negotiate for joint jurisdiction over their whole territory outside the treaty process.

> To put it pragmatically, you could negotiate for treaty where you do have outright ownership and authority over lands, but typically that ends up being about eight percent of your original territory land base. And so to me it makes more sense to go for joint recognition of title and joint management of the whole territory rather than outright ownership of eight percent of it. (FN2, 2012)

FN3 points out that, in addition to First Nations having to give up most of their territory, the type of tenure after treaty is not as secure.

> My view is that there is, that we're better off not extinguishing our title under the BCTC process. Under the treaty process, there is an extinguishment clause. The type of tenure that we would have wouldn't be as solid or as strong as the Native Americans, where they're sovereign over their land. It would be a fee simple type of the tenure.

> Why would we give up 94 percent of our traditional territory and have a type of tenure that isn't secure in perpetuity? (FN3, 2012)

Art Sterritt also suggested that the BC treaty process has been successful at keeping First Nations quiet for twenty years. The process has been prescribed by settler governments, First Nation leaders have been tied up trying to negotiate, and the federal government has not given their negotiators mandates to settle the treaties.

> So then you end up with *Delgamuukw* and they come along and so then they say, 'Okay we'll negotiate with all of you because we realize we're going to have to get on with it.' And then they don't put mandates in there, but what you ended up with is the BC Treaty Commission process, so the process is a prescription, the process tells you what to do and the federal government over here doesn't add any mandates to any of their negotiators, you're actually doing nothing. And you've had this amazing twenty year period where First Nations in British Columbia haven't said a hell of a lot. They've just, their leaders have been there burrowing away trying to negotiate something and the light has not gone on. The light went on for Coastal First Nations a decade ago. And we said to hell with this. We're going nowhere here. So we are going to do something different. (Art Sterritt, 2013)

7.1.3 Certainty is a Myth

> Well I'd say first, certainty is a myth. And it's a popular myth, but it's a myth. I mean it's an absolute term. Something is certain or it's not. You can't be more or less certain about something, right? You can't be a little bit pregnant. You know, so I think it's a myth. I think when you unpack that, it's about, it's about predictability. And so I think what the government, government and frankly the private sector, and First Nations themselves, want is actually predictability. And I think you can design institutions, processes, deliberative processes, and deliberative structures and so forth, to provide for that. (BC9, 2012)

For many reasons, certainty is a myth. As pointed out by Blackburn (2005), we live in an era of uncertainty, of which the uncertainty caused by Aboriginal rights is but a minor part. She argues that: uncertainty is intrinsic to capitalism; certainty for capital and governments is privileged over certainty for people in structurally disadvantaged positions; and a focus on

Aboriginal rights as the source of uncertainty masks these contradictions. Stevenson (2001) also highlights the fact that the certainty that businesses are trying to secure depends on a whole range of other factors, including commodity prices, currency fluctuations, international trade agreements, environmental issues, species populations, economies in other places, and labour issues. Along the same lines, FN11 suggests that people need to recognize that the discomfort of uncertainty is normal and acceptable.

> You can't give certainty. And there's, at the risk of sounding really dismissive, it's asinine to ask for something you know you're not going to get. There's actually just no way to give the kind of certainty that they are requiring to be comfortable with what they are doing. And recognizing that the discomfort is normal and natural and something that you can put up with. That needs to happen for all this to be successful. (FN11, 2013)

Similarly, BC9 points out that the move to an adaptive management model in resource management is an acceptance of the fallacy of certainty. S/he suggests that we apply the principles behind the concept of adaptive management to First Nation-Crown relationships instead of looking for perfect clarity.

> The world is inherently complex, like certainty. We've come to accept certainty is sort of a fallacy because we've moved to an adaptive management model in resource development. Right? Adaptive management is now the operating model for all resource development. So apply that to a relational context, apply adaptive management, the principle of adaptive management to relationships between the Crown and First Nations, and then try to understand certainty in the context of that. And if you look at it that way, you'd be in a lot better shape than if you're looking for perfect clarity on everything that's unresolved. (BC9, 2012)

In his account of the development of the concept of adaptive management, Nadasdy (2007) describes how new ideas in ecology led to a realization that linked social-environmental systems are fundamentally uncertain, making it extremely difficult to predict the

consequences of a particular action. Adaptive management regimes are meant to be flexible and able to adapt to changing conditions, and managers are meant to monitor and learn from the effects of their actions. Applying similar reasoning to the relationship between First Nations and BC, as suggested by BC9, would indicate that the relationship should be flexible and allow for adaptation over time and that the parties should reflect on and learn from experience. This is suggestive of an on-going and dynamic process of reconciliation, rather than a 'full and final' treaty. Stevenson (2001, 121) states that "Treaties are not property law contracts, they are constitutional documents outlining the relationships between the parties. While there is a need for certainty, there is a greater need to be flexible in order to allow the relationship to grow and evolve over time."

The idea that there will be certainty after treaty is also a myth, whether the treaty is based on extinguishing Aboriginal rights or not. As explained by Stevenson (2001), the fundamental assumption that extinguishment of Aboriginal rights results in certainty should be questioned. He points to case law that has required consultation after extinguishment or treaty, and to the question of whether extinguishment provisions would be consistent with the Crown's fiduciary responsibility to Aboriginal peoples. The decision-makers I interviewed also described post-treaty uncertainties and the ongoing responsibilities of the province in considering First Nations' interests after a treaty has been signed. BC8 describes the uncertainty caused by differing interpretations of sections of the Nisga'a treaty.

> Up here we're dealing with the Nisga'a treaty and there's all sorts of very ambiguous language in that treaty and differences in how the Nisga'a interpret it and how BC interprets certain sections around environmental assessment and consultation and then and so we're just ongoing dealing with that stuff and it's created huge uncertainties for industry and for government agencies. (BC8, 2012)

Similarly with the Maa-nulth treaty, BC5 points out how the Maa-nulth nations continue to have rights off of treaty settlement land and questions how the province is going to administer the lands and make decisions that do not impact their treaty rights.

> Well, yeah, I mean the confusing thing about the Maa-nulth treaty is that it's not just, this is our land this is your land. They retain rights off of treaty settlement land. So how is it that you're going to administer those? And how is it that you're going to develop relationships or understandings so that when the Crown takes decisions on the lands outside treaty settlement lands that they are not impacting those rights? (BC5, 2012)

Dallas Smith explains how currently, nations are negotiating treaties to gain jurisdiction over a small portion of their territory, but they will be able to continue to participate in shared decision-making processes negotiated outside the treaty process.

> There's two of our nations that do have imminent treaties, that are near AIP or in AIP and have been initialed…Through the treaty process they'll get their own lands, their exclusive jurisdiction lands, but the other 90 percent of their territory that they're not going to get in the treaty process will be managed through the joint collective process we've developed at Nanwakolas. So they'll still have a say in all of their territory, just they'll only have a direct say over their exclusive treaty lands. (Dallas Smith, 2012)

Given that political and economic certainty is a provincial goal, whether achievable or not, decision-makers for the province grappled with what to do in the face of uncertainty. BC12 (2013) suggested a focus on managing uncertainty: “Well, there is no such thing as certainty. Does that answer your question?…So, another way to put it: how do we manage uncertainty, what's the best way to manage uncertainty?” Several interviewees talked about focusing on clear processes to achieve certainty, while others talked about the importance of building and maintaining relationships. BC8 suggests that it is industry that is still talking about certainty

and that the province could address industry's desire for certainty by providing it with more clarity around the consultation process.

> …but we'll never get certainty through a treaty. Treaty is just a new game, a new process for reconciliation. Like it moves reconciliation into another step I guess, but it's, it's not an end. So I don't think treaties or agreements bring absolute, bring the kind of absolute certainty that maybe a lot of people thought was their intent like ten years ago. It doesn't provide that, but I think nowadays, right now when I hear 'certainty', it's usually the term is coming from, often from industry that want to see more certainty. And I think, in terms of that, we in government can do a better job of providing consistent messages to industry around, for example, what First Nation to consult with and how they need, what they need to do, and what their role is versus government's role, and certainty around process for that. But I don't think we're going to have certainty in the sense that we thought about it ten years ago, that you just negotiate a treaty and then everything's spelled out and you just follow the terms of the treaty and there's no, and everything's certain. (BC8, 2012)

In the following response, BC11 talks about how the government can have more certainty about the outcome of a decision by having procedural certainty. When a strategic engagement agreement is in place, s/he feels, the parties can follow the process within the agreement 'to a tee' and feel they have met their consultation obligation.

> Are you talking certainty of process? Certainty of outcome of a decision? [JK: Well, I'm talking about certainty in the sense that, you know, BC talks about, the government talks about wanting certainty and industry talks about wanting certainty.] That's in the outcome then. Then, yeah it definitely does. It moves us quite a bit along the way. So in a non-engagement kind of strategic engagement kind of framework, or when we don't have those, we're still left with the question, in a consultation policy environment, did we get it right? Did we adequately address or identify the rights and title of that First Nation? Did they respond with in the scope of *Haida*, *Taku*, *Delgamuukw*, their obligation in a consultation environment? There's just so many things at play there, it's, there's areas where either party can get it wrong and subject themselves to scrutiny in a legal context or constitutional context. But in a SEA, a lot of that's been clarified and it's yet another thing that a party can go back on and say, 'Well we've addressed that in this strategic manner and we followed that to the tee. We met our consultation obligation'—if you're talking the province—'the duty of the Crown to consult and we did it in this kind of framework that we basically agreed to do. We're good.' It's giving certainty to that outcome about what we would normally do in a consultation, non-SEA

> model…it really clarifies how we will do it so that both parties know how to do it. (BC11, 2013)

It is this type of procedural certainty that the province is trying to gain through its negotiation of government-to-government agreements, like reconciliation protocols and strategic engagement agreements. In her exploration of the development of government-to-government relationships through the Central Coast Land and Resource Management Planning Process, Barry (2012) describes how a focus on achieving 'certainty' became a way for the Nanwakolas Council to build synergies with the province. The province wanted certainty on the landscape and Nanwakolas wanted certainty of their role in governance. Both parties were able to address their concerns with certainty through the development of a government-to-government planning model.

Clearer processes, however, do not always lead to greater certainty. There are ongoing disputes between the province and First Nations about how shared decision-making agreements are being implemented. Other decision-makers highlighted the importance of relationship-building between the province and First Nations, pre- and post-treaty. It is not the agreements that create the certainty, but a commitment to the relationship.

> I mean what we have learned from places where we do have treaties is that it doesn't end even once those rights are defined and we understand what they are. There's the need for maintaining that relationship between our government and theirs, just like there is between municipalities and provincial governments, provincial governments and federal governments. So it's an on-going relationship and you know that work will always be there for us. (BC12, 2013)

> That's exactly what we're finding with Nisga'a is that, whether it's interpretation issues around what's in the treaty or whether it's just they're our neighbors and we need to work together and we have joint responsibilities. There's work there, if you don't put the time and effort into it. There's also in any agreement, there's commitments for the

> province and there's commitments for the First Nations as those agreements are implemented. And living up to those commitments and doing your end of it is all part of obviously a successful relationship and successfully implementing what it is. (BC12, 2013)

Woolford (2005, 163) suggests that treaties may require reopened negotiations at some point because "No document, no matter how many legal experts are employed, can overcome all of the vagaries of textual interpretation and societal change."

The following two decision-makers for BC worried that the province has not yet recognized the need to put resources and effort into post-treaty relationships or into implementing treaties.

> Yeah. I mean really sit down and get real serious about how are we going to continue the relationship in a post-treaty environment? Because treaties have moved from a from a very discrete certainty model to kind of an ongoing relationship model. But I don't think the, you know, the kind of, what would you call it, the momentum in government has shifted the same way. (BC5, 2012)

> I would say ideally it's a different relationship [post-treaty], where we understand what each of our obligations are, or we have agreed to it under the terms of an agreement. And it should be a lot more of a positive and collaborative sort of relationship. I think in reality, we haven't put the right emphasis on implementation and the importance of what our commitments are. I think that there's a view in government and just generally in British Columbia that once you've negotiated an agreement and that a treaty is in place that you're done. And that's reflected in the resources that are made available and the emphasis that we put on implementing something like Nisga'a. (BC12, 2013)

In the next quote, the First Nation decision-maker points out that there will never be certainty because First Nations will continue to leverage their rights to protect their environment and access resources.

> There's never certainty. I mean certainty is just the wrong objective to think you're going to get. I don't care where you got treaties, where you got that, First Nations will

> want to protect their environment, and they'll want access to resources. They use the leverage of rights and title to basically play that card. The courts make it very clear that your obligations to consult and accommodate does not give a veto power. But watch us on Enbridge, like an example. I mean if the political will is such, so no one is going to guarantee certainty. The certainty really gets done when industry begins to realize that there is another landlord there with rights and title. And let's build those relationships up. And over time there will be a body of agreements and understandings that will set out the relationship between industry and that, there will be some First Nations who will want more and that conflict will exist. And at times governments will make decisions that essentially those First Nations won't like, but if the other First Nations all signed agreements around them, that has a certain kind of acceptability, then those First Nations will be on the outside. Governments in the end will make those decisions that override that, under their rules and things like that. But I think the new reality is you just got to sit down with First Nations and build those relationships and hopefully over time that those relationships become mature and managed that both sides get good opportunities out of that. That's the world of certainty. Even if you settle a treaty, you're not going to get any more certainty than you do now. (FN8, 2012)

FN8 feels that certainty is achieved by industry realizing that 'there is another landlord' and it has to build relationships with First Nations. Mature relationships and mutual opportunities are the world of certainty. Woolford (2005, 173) describes a similar type of certainty, "a more difficult certainty – a certainty that develops over the course of a relationship between groups willing to question their own foundational truths."

7.1.4 You'll Never Reach the End

These ideas about certainty are really ideas about reconciliation. They reinforce the idea that reconciliation is concerned with building relationships and that it is an ongoing, incremental, and dynamic process with no end.

> The Supreme Court is really smart. Governments have consistently, by their own sort of political logic, have talked about reconciliation as being a place. And the courts have consistently talked about reconciliation as being a process. I think even most recently, when you look at the *Little Salmon* case that came out of the Yukon, they were really clear, it was black-and-white, and if you haven't taken a look at that, it's a good read. Because they basically have laid it out and said yeah, absolutely. If you have modern

> treaties, that is good. But don't think you're done. Those things are good because they clarify, they give structure and form to our relationship, but they're not the end. You'll never reach the end. And I have as little patience for the idea that treaty will somehow solve the problem as I have for, on the other side, First Nations saying just give us our land back and everything will be fine. Because we are all here to stay. Establishing the modes and institutions and structures that allow us to coexist in thoughtful, respectful, beneficiary ways. (BC9, 2012)

BC9 claims that treaties are good for clarifying and giving form to relationships, but they are not the end because reconciliation is a process, not a place. In the next passage, BC5 points out the challenges for both First Nations and the provincial government of moving from a treaty negotiation mindset to an implementation mindset.

> One is that I think it's going to be more of a challenge than people are recognizing. And the reason for that is, is that, you know, First Nations, at least out there have been negotiating that treaty for twenty years. So shifting them from a negotiating mindset to an actual implementation mindset—the negotiations are over—is going to be quite a challenge for them I think. Their second challenge is they are pretty much, you know, done now and they've got to look within for the capacity to deliver some of this stuff. And I really question whether they have that capacity. So they're going to be busy with a whole bunch of things that have nothing to do with land and resource management. So it becomes an issue of when can they put some attention onto it? Because you know, they're trying to sort out things like membership and education and a whole bunch of that sort of social stuff that's probably going to be a priority to them. And the second thing that worries me, more on the government side, I was at the Maa-nulth effective date party. And the governments, even at the political level, were signaling, you know, 'Here's your treaty, you're free, off you go.' And the First Nations were saying, 'Well this is just the start of a relationship, this is just the start of the next phase, this is just where we're beginning.' And governments, I know governments, want to move on, right? We've done that treaty, we're now moving to the next one. But there is going to need to be a lot of effort and a lot of work to make the Maa-nulth treaty actually effective. And there's very little appreciation of what that's going to involve in terms of government energy. The current difficulties they're having with the Nisga'a, I'm convinced they're because people didn't focus on that relationship ten years ago. (BC5, 2012)

In addition to shifting their mindsets, both sides need to build capacity to implement the treaty and make it effective. Post-treaty, First Nations have the challenge of rapidly taking on

a whole set of governance responsibilities that they have been prohibited from engaging in since colonization. Fulfilling these responsibilities requires a large staff with diverse skills. On the government side, there need to be staff and resources committed to implementing the treaty and maintaining a post-treaty relationship.

In the following two quotes, the First Nation decision-makers describe how, by engaging in various new relationships and agreements with the province outside of the treaty process, their nations are able to develop governance structures and capacity incrementally.

> There are some people who really want the treaty to be the place to make it work and that's fine, I don't disagree. There's a number of different ways to do it. We're doing it more incrementally right now, but our mandate isn't to do treaty, so we're doing it more incrementally. Which, from my perspective, I don't mind as well because I'd rather have some of these governance issues and capacity questions in play as they take over the resources, rather than you know the histories of getting the resources first, like Alaska and that, they spent all the money and then everybody else spends it...I've seen lots of places where First Nations got a lot of money and had a lot of problems with it, both social problems and management problems. And what we're doing is doing the incrementality of it here and I think it's finding a way, it builds the kinds of strategies and governance and then as you take over those industries and resources, you've got more background experience how to manage those. But I'm not saying, one is not better than the other. Those are the two different boxes that we have and we use them differently. (FN8, 2012)

> And that was one of the, you are asking what was one of the turnarounds for us as nations to decide to work together in governance, was Premier Campbell actually looked at me one day and says, 'What are you going to do? I'll sign any treaty you want. What are you going to do with it?' He says, 'You've told me about the lack of capacity, you have the lack of this, you have the lack of that.' He says, 'If I sign that treaty, we're just wasting each other's time because you don't have the capacity to implement it.' And so that was something that really dawned on me. He said that to me in 2005 and that was when we started to push for the clearinghouse that we finally got in 2007. Because we need that capacity. We need a foundation of capacity and support that is inherent, that is an institution, that a treaty can be built on top of, a framework can go on top of that because there is a solid foundation there. But we're trying to build this forty story high-rise on top of unstable ground and it's never just never going to work. It's just going to keep falling on itself. And that's something that we've seen from some of the other treaties. That was one of the lessons that the Nisga'as gave us when

> we first started getting involved in the land-use planning, was make sure you figure it all out now because you don't get a second kick at it. You know, they've learned some pretty hard lessons. (Dallas Smith, 2012)

BC9 describes how the provincial government has also changed its approach to looking at how to build relationships and resolve issues outside the treaty process. As s/he says, if we are all here to stay, 'why wouldn't we do something in the interim?'

> I think it has changed and what you've seen is an interest or a willingness on the part of the provincial government to, to bridge the gap I guess in a non-treaty context. And for the longest time treaty was the only deal in town. And once you did a treaty, then we would live within the bounds of that treaty and talk to each other that way. And I think the provincial government has realized that in certain circumstances, treaties simply won't be settled. Not in this generation or in ten generations hence. So there's been a shift I think in thinking to, we are all—. If you look at that new relationship document, it's actually a quote from *Delgamuukw*, 'we are all here to stay'. If you accept that as a fundamental truth, then why wouldn't we do something in the interim? Why are we waiting for ourselves to pass a benchmark that we may never pass in order to build relationships, resolve issues, find ways to engage one another in what ideally are respectful, thoughtful, proactive, progressive ways. I think that interest, while sometimes it is one voice in a choir of voices around resource development and public interests and conflicts of the day, I think that voice around why aren't we, what's the good reason we shouldn't be moving this thing forward? I think that level of thinking is really one that has shifted. (BC9, 2012)

BC12 describes reconciliation as a journey and non-treaty agreements, and treaties for that matter, as steps along the reconciliation path.

> Not every First Nation is in the treaty process or think, thinks it's the answer. You know, so there's other ways, is it full reconciliation? I don't know, but it's, you know. And it is, reconciliation itself is a journey and we are going to continue to take steps along it. Is there necessarily an end point where you can say, even when you've got treaties, and we talked about that earlier, the treaty isn't necessarily going to be exactly right and it requires a lot of effort to implement it, so in a sense, in essence, you're still working on your reconciliation journey. So a little bit of a side-bar there, but my view is, there's a whole bunch of other non-treaty agreement type things that we're doing that are steps along that reconciliation path. Whether those are revenue sharing agreements or just simple process agreements around how we consult. (BC12, 2013)

Woolford (2005) suggests that the project of certainty is not new in BC, as many of the injustices imposed on First Nations through colonialism were attempts at securing certain access to lands and resources. Through their use of direct action and the courts, however, First Nations have been able to disrupt the certainty that colonial governments thought they had secured. They are now engaging new strategies to regain certainty. Woolford (2005, 144) describes the modern form of the project of certainty as seeking "to secure legal, economic, and political security in a manner consistent with the established institutions of the dominant society, and without relying on the colonial tools of domination and coerced assimilation." He argues that the model of certainty prevailing in the treaty process represents the professed needs of non-Indigenous business and government and not a mutual understanding of non-Indigenous and Indigenous certainty needs.

Many First Nations have not engaged in or have turned away from the treaty process for a variety of reasons. Differing conceptions of the purpose of treaties, post-treaty relationships, certainty, and the fate of Aboriginal rights have made negotiations frustrating. Because of significant imbalances in power, non-Indigenous governments have been able to unfairly influence the terms of negotiations and the content of final agreements. Because of the lack of progress at treaty tables, both the province and First Nations are increasingly focusing on developing formal relationships before or outside final treaty agreements using policy tools such as government-to-government agreements, reconciliation protocols, interim measures, and incremental treaty agreements. With these other options available, many First Nations do not see the benefit of treaties that require them to give up their land.

The provincial decision-makers that are engaged in these new relationships outside of the treaty process have realized that the kind of legal, economic, and political certainty that the province conceptualized in the past is a myth. Based on decision-makers' thoughts about certainty expressed in my interviews, I would argue that the prevailing model of certainty outside the treaty process at this time is one that focuses on retaining Aboriginal rights, clarifying governance processes, and building relationships, a model more in line with many First Nations' certainty goals. Whether these new relationships will roll into a treaty at the end of the day is unknown, but in the meantime, they are pushing forward the process of reconciliation in a way that does not require comprehensive detailing of rights and responsibilities nor commitment to a particular relationship for all time. These engagements are allowing First Nations, and the BC government, to build more mature relationships and test-drive governance arrangements before deciding to 'settle', or deciding whether 'settlement' is appropriate at all.

7.2 Building Relationships and Trust

Reconciliation is about building relationships and trust. This is clear from the interviews and from the literature. Returning to Crocker's (2003) description of conceptions of reconciliation, there are thinner conceptions like peaceful co-existence and thicker conceptions that involve forgiveness, mutual healing, and a shared comprehensive vision. In the middle are respectful relationships in which both sides listen to each other and look for compromises. Short (2008) suggests that simple co-existence might be the best form of reconciliation for settler colonialism because of fears about the effects of power imbalances in the other two. Woolford's (2005) critique of both the thinner (or minimal) and thicker (or

maximal) conceptions is that they erroneously seek to find a full and final reconciliation, a definite end. He suggests, instead, an ongoing engagement with the other party in a living relationship that involves sharing and cooperation, but not a melding into bland sameness.

In their consideration of reconciliation, and in their responses to other questions, decision-makers talked about the importance of relationships: redefining them, creating them at various levels, making them productive, allowing for innovation, putting differences aside, and building trust. And they talked about how relationships evolve over time. FN4 suggests that the institutions and norms of the relationship are more important than particular solutions being proposed to the problems of the day.

> And arguably the relationships, if you are going to have a permanent relationship, if you are permanently together on the same land base, which I would argue is the case in Canada and with First Nations, then arguably, the institutions and the norms of that relationship are probably more important than the answers that are being brought forward at any particular time. (FN4, 2012)

FN11 says that reconciliation cannot be overprescribed at the beginning, that the course of the relationship needs to be plotted together.

> I mean, ideally, [reconciliation] would start at least with the recognition that we need to redefine that relationship…I think it's something that you can't over prescribe from the beginning of the process. That the most important first step would be to recognize that it does need to happen and then to plot out the course of that partnership together. (FN11, 2013)

This idea of recognizing the relationship needs to be redefined and plotting the course together is reminiscent of the idea of a nation-to-nation (or in this case government-to-government) relationship of mutual respect. It suggests the parties should try to re-start on

equal footing, as recommended by Tully (2001) and Woolford (2005). FN11 also talks explicitly about the complicated and delicate process of getting to a place of equal footing.

> When you are participating in something for the greater good, or the common goal, or the common process, or whatever it is, that does require that you're, not necessarily subjugating yourself to the other partner of course, which is why this current relationship isn't working, but that you are surrendering something to be on equal terms. You don't have necessarily that strategic advantage that made you feel safe before. And if you're not willing to be vulnerable at the outset of the process like this, which I think, for lots of complicated reasons, lots of people and agencies aren't willing to be, then it's going to be difficult to make a meaningful change. (FN11, 2013)

One of the ways that the vulnerability is overcome, as described later by interviewees, is by developing personal relationships between representatives on each side. In the following response, BC9 points out the importance of developing respectful relationships at all levels, between individuals, communities, and governments. S/he argues that ideally reconciliation is a 'continued articulation' in which the relationship builds upon itself and grows and evolves over time.

> I think the goals of reconciliation are to, they should be to establish the modes and means and structures to be able to, at various levels, be they between First Nations governments and Crown governments, be they between communities, be they between individuals, and reconciliation is played out in all of those places, establishing the means for those relations to be deviated, managed, articulated in a way that is respectful, is thoughtful, is productive, and constructive, leads to the resolution of issues or problems when they arise, in a constructive, creative way, in a non-adversarial… I think if we can do that, that to me is reconciliation because then reconciliation becomes the act, the acting of those things, the exercise of those means, rather than the solving of problem after problem. It becomes a continued articulation, ideally kind of building upon itself and growing and evolving over time of the relationship. (BC9, 2012)

BC9 (2012) also points out that 'relationship' is not a big grandiose thing, but rather it happens in all of the interactions between representatives of the province and a First Nation:

"You know some people think of relationship as being this grandiose thing that happens through treaties. No, relationship happens in every single conversation and interaction that anybody in government has with a First Nation."

In the following answer to my question, 'What about the title issue?', BC8 refers to changes in case law regarding Aboriginal title from the BC Supreme Court decision in *Tsilhqot'in*—which envisioned title across large areas of a First Nation's territory—to the BC Court of Appeal decision, which suggested title was more site-specific. These changes in the case law have pushed First Nations and the provincial government farther apart in terms of their views on title. S/he suggests that the appropriate way to reconcile competing claims to title, then, is not through the courts, but rather through a trust-based relationship involving shared decision-making and revenue-sharing.

> That's one that it needs to be resolved through negotiations and if it, it's a tricky one because of the case law again, and the most recent case law that's sort of has it pin-pointed to you know, specific sites and stuff and First Nations pretty still entrenched in the idea of territorial title. So I think it's not going to be resolved through the courts and it's not appropriately resolved through the courts. And so, again, it's this, the needing to resolve it through a trust-based relationship where you negotiate how shared decision making over the territory would work and how revenue sharing would work and it's part of the bigger package around how we just relate to each other. (BC8, 2012)

All of these ideas about relationships highlight the importance of reconciling incrementally. These decision-makers do not see reconciliation as a grandiose thing that happens through treaties or something to be decided by the courts. They see it is happening by building relationships between people at all levels, within and outside government.

7.2.1 Personal Relationships Build Trust

Many of the people I interviewed talked about the importance of building trust in relationships. They described how the trust that was developed in personal relationships between representatives of each side led to new relationships between the governments. To begin, though, I will present some comments about why there is mistrust in the first place. FN11 describes how First Nations are distrustful because of colonialism and government agencies are distrustful because they find First Nations unpredictable and do not understand First Nations' strong ties to their rights, title, and identity.

> There is a very long abusive colonial history that makes us really cautious about trusting in a relationship like this for sure. And I think that the climate of the relationship to date because of that colonial history has been really contentious. There's been a lot of mistrust. It's been a pretty ugly relationship in a lot of ways and it's been, I think that the government agencies we work with probably feel like we're a threat as well. That we are not predictable, that we're very passionately tied to our rights and title and identity. And I think that's a connection that they don't understand. That's a different motivation for doing our work. So I think that there's not a high level of trust. (FN11, 2013)

Goetz (2005, 256) points out that, in negotiating new relationships, First Nations and settler governments "must contend with a firmly entrenched legacy of suspicion and distrust." She posits that First Nations are suspicious of settler governments' capacity to negotiate in good faith and truly share power, and settler governments doubt First Nations' capacity to make sound decisions and limit their claims against the state. She suggests that confidence must be built before a serious restructuring of the relationship can occur and that interim measures agreements, such as the one in Clayoquot Sound, can help to build that confidence. This also seems to be the case with many of the new relationship agreements described by the interviewees.

BC8 feels that case law gets in the way of trust, making First Nations wary about sharing information for fear it will be used against them by the provincial government. S/he feels that the reluctance to share information hampers forward-looking discussions.

> That's where the case law muddies things because it's all based on the past and past uses of the land and I think First Nations need to be able to articulate what their vision for the future is that includes what kind of contemporary uses and traditional uses they continue to want to put the land to, but in a forward-looking sense, articulate that without fear of government turning that around on them, using case law to say, 'Well you don't have rights here, or whatever...' There just seems to be so much unwillingness to share information openly between government and First Nations around use of the land because of that legal backdrop and the fear that they'll be somehow weakening their claim for title or rights if they give up that information. So there needs to be some sort of game change to be able to allow for that forward looking, true-visioning kind of discussion without this Supreme Court of Canada kind of fear looming underneath the surface of everything. (BC8, 2012)

In the next response, BC7 shares her/his perspective that there needs to be an environment that will tolerate failure in order to be innovative. S/he fears that the relationship may not be solid enough to survive the failure of a particular initiative.

> It's okay to fail. And we need to be able to respect that some of it might fail. But we can't walk away because that's the time and the space required. And that's one of my fears, is the failure may, it may only be one failure and everybody will go poof. And I can tell you, we will fail at certain aspects. But that's, we've got to dust off and say 'We failed. We shouldn't do that again. Back to here and let's move forward.' But it will be interesting whether it can happen because I've seen it where one failure can break, you know it's not a bunch of sticks on the camel's back, it's like a two by four. And if it breaks, we can't fix it. So, we'll see though. (BC7, 2012)

In the next series of quotes, decision-makers describe how building *personal* relationships between provincial and First Nation representatives at various levels creates trust and allows for more creative solutions to problems. Dallas Smith details how, once a personal

relationship is built, there is a comfort and it is easier to explain a tightly-held position to that person. The personal connection creates a situation in which people actually want to understand each other.

> I think that's one of the breakthroughs we were able to make with the province was we were actually able to relation-build with individuals. I mean the treaty process was trying to build relationships between institutions. But you couldn't do that without the people having that relationship first… Then you're able to have different discussions. You know, you're able to feel comfortable to share things. Well, I've met you and part of your home life, we talked about family things, and let me tell you why I'm so hard about this position. (Dallas Smith, 2012)

He goes on to explain how, over time, the provincial bureaucrats that Nanawakolas developed personal relationships with during the land-use planning process moved up in the bureaucracy and were then in positions where they could change government policy. Because they had personal relationships with people at Nanwakolas, the provincial bureaucrats would ask for their perspective on new policy ideas. This also happened with politicians. In this next quote, Dallas Smith describes a personal relationship he built with a particular politician that led to opportunities to build innovative new institutional relationships.

> Our people didn't vote, so we weren't a big enough lobby group to be able to really get in. I mean you could meet a Cabinet minister, but he would be surrounded by six, seven aides. Whereas, as I built this relationship with Stan Hagan, I was having dinner with four or five of them a night. You know, and you just don't get that kind of access. You know you get invited to a golfing weekend. You're golfing with six or seven different Cabinet ministers over the two days. Five hours each day with three of them. You know, you just get that interaction and that time and they realize that I'm just as much of a moron as they are. They get in that comfort level, 'Okay Smith, we've been talking some talk, we want to change some policy...' [So I said,] 'Why don't you give me a few bucks and I'll do some analysis for you? We'll come back with something that's going to work.' And we came back with the clearinghouse pilot project. You know, and then we came back with this [government-to-government] engagement agreement. And then we came back with the reconciliation protocol. (Dallas Smith, 2012)

Below, FN8 also points out how it is important to have a place, at some level of interaction between the two governments, where there are not adversarial relationships and people can talk honestly about solutions. In this example, FN8 describes that honest interaction happening at the management level.

> So you need to be able to have a management team who can facilitate that kind of dialogue of problem-solving without strong adversarial relationships that essentially make that dialogue and problem-solving almost impossible, you know. I always say, it's not my job to get mad at bureaucrats and government. It's up to the leaders and that. My role is to facilitate those understandings and warn governments to say, 'I don't think you're going to get there.' You know, Enbridge, we were, I said a long time ago, 'You're not going to get there. You're not going to buy us off. That's not going to happen.' (FN8, 2012)

Similarly, FN11 describes how relationship-building is also happening at the operational level, where staff are building trust and realizing common goals.

> I think it's a process that needs to happen at a lot of different levels and I think our relationship to government looks different at different levels too. So the relationship that we have as individuals working on the ground with, for example, BC Parks representatives that are working in our area. Those are real human relationships, where we're building trust with individuals, and building a working relationship based on that trust, and you know with the common goals that we identify in conversation and in common work. And I absolutely see progress on that front. (FN11, 2013)

S/he continues by invoking the hope that the progress on the ground and at the grassroots level will filter up and cause the institutions to change.

7.2.2 Putting Aside Differences and Finding Solutions

Several of the provincial decision-makers talked about the importance of putting aside differences and finding solutions, or 'agreeing to disagree and then move forward.' In the following quote, for example, BC3 explains that, while there are unresolved issues around

ownership and the existence of rights and title, they have been able to put that issue aside and work out arrangements in which First Nations can gain increased access and control over resources.

> And I need to be very cautious here, because I don't want to give you the impression that the Crown agrees. You know, while we have recognized the existence of rights and title in law, we don't always agree with the First Nation about the application of that and where it exists and all of that. There's still lots of unresolved issues around the ownership and the existence of those rights. But in the meantime, we've been able to get some good accommodations and have been able to move the conversation forward. You know, putting that issue aside, we've been able to work out arrangements where they can continue to manage or start gaining increased access and control over those resources, despite the ongoing disagreement about who actually owned them in the first place. We've found some ways of agreeing to disagree and then move forward. (BC3, 2012)

Similarly, BC7 describes how s/he chooses not to talk about title, which is 'top of mind' for the Haida, but instead focuses on what s/he can do now, within the constructs of the law.

> Title is always top of mind for the Haida. It doesn't matter about all the protocols and stuff. Title is still in their Constitution. Title is where they will head towards at some point. In the work that I do, I choose not to talk about title. Because it's a no-win for me. It's just, it will, I can't choose that. That will be a ten year court case. You guys have at it, go have fun. What can I do now? That's what I focus on. And what can I do within the constructs of law because I'm, I work for the province, I have a legal obligation, I have to live up to that legal obligation. But how can I do it in the most appropriate way for not just the Haida communities, but the communities for the islands? (BC7, 2012)

This highlights a potential problem that may arise if reconciliation focuses only on relationship building, particularly at mid- and lower levels of government. If solutions have to be found within the constraints of provincial law, the potential for 'transformative' solutions (Woolford 2004), or decolonizing, may be lost. Without the authority or mandate to change the *status quo*, only 'affirmative' reparations become possible. As described earlier,

Woolford (2004, 118) distinguishes between transformative and affirmative repair, depending on whether the outcome is meant to "substantially alter societal pattern of economic production and cultural valuation." BC7 seems aware that reconciliation may also have to include an examination of the bigger issue at some point, as s/he recognizes that the Haida will continue to assert their title. In this next quote by BC7, however, a different inference could be made.

> And I know law is the answer. It's some form of legal remedy, but I just find that so much can be done without lawyers, because as soon as use throw a lawyer in the room, everybody clams up. My best conversations, whether it's with anybody, is over a cup of coffee and there's no lawyers around. And there's nothing wrong with lawyers, nothing wrong with lawyers. But it just ends up being, that's where it's just all positions. And to find new ways to do things, you really have to say, 'What about that?' And not have somebody say, 'No, we can't do that.' (BC7, 2012)

Here, BC7 suggests that more innovative, and potentially transformative, ideas can be found in informal settings, when there are not lawyers around to suggest otherwise. Together, the comments might suggest, as was indicated by interviewees in the previous section, that there has to be open and honest conversation at various levels to get past differences and find innovative solutions, both within and outside the constructs of provincial law.

In the next quote, BC9 also emphasizes a need to look beyond disagreements about title to find what can be agreed upon. S/he realizes that the Crown needs to be creative to address First Nations' interests, and that this is inherently difficult for a bureaucracy.

> You can keep that view that it's your land and you want it back and the provincial Crown will probably disagree with it, and that's fine, and then the question becomes what to do with that disagreement? You've got to park it, right? What can you actually agree on? And the ability to make that leap is I think one of the key factors that affects overall progress in moving relationships forward. The ability of the Crown to come to

> the table with some creativity to actually address the First Nation's interests is equally at play. And there are, bureaucracies crave standardization. They need it, bureaucracies loathe complexity, they love standardization, routine, clarity, and simplicity. And those are not hallmarks of the Crown-First Nation relationship. And so there's this tension between what is, you know the bureaucratic tendencies of government and the inherent complexity of the Crown-First Nation relationship. (BC9, 2012)

Dallas Smith explains how Nanwakolas learned, with some insight from government officials, to bring the solution to the table when they had a problem.

> It was just, it was always, we learned to bring solutions to the table. Every time we had a problem, we never even went to government until we had the solution. There was no point in going and saying, you guys fucked us over again, blah blah blah blah. It was, you fucked us over again, this is how you did it, this is how we can undo it, and this is how we can mutually go forward on this. (Dallas Smith, 2012)

He also explained how the multilevel institutional structure, also described by Barry (2012), works to make sure that issues get addressed at the right level.

> Because in the old days, we just went to the minister and he'd say, don't worry, I'll fix it for you and then nothing would ever happen. Whereas now, we bring things through, kind of first the low level technicians, then the bureaucrats, and then the politicians. And that's actually entrenched in our agreements with the province, is this three-tiered system. So now issues, if they don't get worked out here, they mutually agree on what the outstanding problem is, it goes to this table. If these guys can't solve it, then the chiefs and the ministers get brought in. And it's been very robust. (Dallas Smith, 2012)

Nadasdy (2007) describes the failure of a co-management board in the Yukon, pointing out its inability to deal with the issues that lie at the heart of Indigenous peoples' concerns about land and resources, such as political and economic inequality. "The problem is that the equitable treatment of marginalized peoples is simply not a management issue…it is a political issue" (Nadasdy 2007, 223). As pointed out by Dallas Smith and others, in the broader co-governance approach of some government-to-government relationships in BC

today, there are avenues to deal with issues at all levels (e.g., operational, technical, legal, and political), so that progress at one level is not hamstrung by inattention at another.

The quotes presented earlier in this section raise concerns that the differences that are being 'parked' may be those that are more transformative or decolonizing in nature—potentially First Nations' priorities—and the ones that are be solved are the province's priorities related to economic development and certainty. Indeed, the decision-makers emphasized putting aside the title and rights concerns. This is a real concern, one that is also pointed out by Woolford (2004, 111-112), for example with the comment that "the project of historical repair is often circumscribed by the pragmatics of the present." Although I do not mean to minimize this concern, I do want to make two points. First, as Dallas Smith points out above, they have had more success getting issues addressed with the three-tiered system than they had before going straight to the minister. And second, it seems to be that, through many small acts of reconciliation, larger acts of decolonization are occurring.

7.3 Closing Gaps and Creating Sustainable Economies

In addition to building relationships, a second aspect of reconciliation that was stressed in the interviews was that of 'closing the gaps' between Indigenous and non-Indigenous communities. Interviewees used a variety of terms and highlighted different 'gaps', but for the most part they were talking about creating economic opportunities and improving the social indicators in First Nation communities, bringing both in line with those of non-Indigenous communities in Canada. Some of the BC decision-makers referred directly to the Transformative Change Accord, an agreement reached in November 2005 between the

governments of BC and Canada and the Leadership Council, which represented First Nations of BC. In it, "First Ministers and Aboriginal Leaders committed to strengthening relationships on a government-to-government basis, and on focusing efforts to close the gap in the areas of education, health, housing and economic opportunities."[137]

In this response to my question about the goals of reconciliation, BC3 (2012) suggested that, 'at the end of the day', reconciliation is about making sure that First Nation communities have the same standards of and access to economic benefits and services.

> I think we've got, you know, the reconciliation ultimately should seek to ensure that the standards that Canadians have around economic benefits and services and things are at least the same. So we're talking there about closing the gap in employment outcomes, economic outcomes, um, healthcare outcomes, educational outcomes, etc. You know, I think if you were to look at the Transformative Change Accord and the New Relationship principles, I think a lot of those things were very well identified, rather than me trying to recall what they said from complete… But at the end of the day it's really a leveling of the playing field, right? It's about making sure that all of the things that Canadians have access to, that First Nations communities also have access to. You know, to the extent that that's possible in sometimes very remote with, you know, limited opportunities. (BC3, 2012)

As the disparity between the communities has been caused by the dispossession of Indigenous land and resources and the systemic discrimination imposed on Indigenous peoples by the colonial system, 'closing the gap' is arguably a part of reconciliation. As we saw in Chapter 5, several of the First Nation decision-makers pointed out how exclusion from the economy as it was developing in BC after European settlement was seen as part of the injustice done to First Nations. A focus on the problem of contemporary disadvantage (closing the gap), however, can obscure the historical injustices and root problems of

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[137] Transformative Change Accord, http://www.gov.bc.ca/arr/social/down/transformative_change_accord.pdf, accessed April 5, 2013.

colonization and dispossession. This is a situation of focusing on the present and/or future at the expense of the past and can lead to problems of affirmative repair. If we are to address the injustices of colonization and not just discrimination, reconciliation needs to go beyond distributive justice and include transformative justice, or decolonization. Indigenous claims are not just for rights to *any* fair share of Canadian resources, but to a particularized share, one that must be understood against the backdrop of the denial of their sovereign status, the dispossession of their lands, and the attempted destruction of their cultural practices (Ivison et al. 2000, 10).

No one can argue with the importance of improving social and economic conditions in First Nation communities. The statistics are alarming and the disparity between Indigenous and non-Indigenous communities is disgraceful. The disparity is caused by a variety of complicated and not-so-complicated historical and contemporary factors. First and foremost, Indigenous land and resources were taken to build settler societies and economies. Other colonial policies and the *Indian Act* have contributed to the disparity. In the not-so-complicated realm, per capita funding to First Nations for local programs and services in 2010 was less than half that for Canadian citizens.[138] In addition, as highlighted by the Canadian Centre for Policy Alternatives (2013, 77), the "funding is treated as 'discretionary' without legal protections, resulting in unpredictable funding, instability, and the inability to engage in long term planning." Dallas Smith talked about how, in developing new relationships with the province, sometimes he second-guesses the direction Nanwakolas is

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[138] Canadian Centre for Policy Alternatives, Alternative Federal Budget 2013, http://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2013/03/AFB2013_MainDocument.pdf, accessed April 4, 2013

going. What propels him forward is the hope that is being built in the communities and the belief that, through economic development and by gaining control of social programs through internally generated income, they can make the communities better places to live.

> Are we doing the right thing, are we going to get to where we need to achieve for our communities, and if we don't, is it because we got tumbled into this process? Like, did we bring the province there or did they bring us here? And so we have those gut check moments at times…At the end of the day you've got to do what you feel is right for your communities and just sort of keep going and you can't really second-guess yourself when you're developing capacity and just, hope. There's a different hope in each of these communities now that they are actually going to do something that's going to make their communities better places to live. The reality that we have to deal with is while we are figuring this out, and it can take days, weeks, months, whatever it takes, each segment of time that it's taking, we're losing in the communities. I mean we've still got the highest suicide rates, we've still got all these social epidemic issues, and we think that own source revenue is going to be one of the only cures to fixing those. We've seen Department of Indian Affairs programming just fall completely short of the line of acceptability for what needs to be done in our communities. And we sort of said in 2003, 2004, we can't wait for someone to do it for us. We need to do it. (Dallas Smith, 2012)

In a similar (but different) way, two decision-makers for BC also felt that the gap could be closed by First Nations regaining jurisdiction and access to land and resources. This was phrased problematically by both however. In the first case, BC5 suggested that the goals of reconciliation are first, to find a common vision on the land and second, to figure out how First Nations are going to contribute to the ongoing management and economic success of operations on the land. S/he continued, below, by saying:

> And then the third aspect really is, is how do you work with First Nations to reconcile their, sort of, social and cultural, or, yeah, their social cohesion as communities. I have been in most if not all communities on the coast here and there's dramatic differences in the way they, in the benefits they have, and their quality of life than there is in comparable non-Aboriginal communities…Well, you know, their social and human well-being. That needs to be focused on. It's my belief you focus on that through giving them some, a place on the land and giving them some role on the land and some ability

> to reap some of the benefits of the land. Which is maybe a little different than you might get from others I don't know. (BC5, 2012)

It is not unusual for non-Indigenous people to talk about reconciliation in terms of 'giving' things to First Nations. This construction, however, entirely ignores the legal reality of Aboriginal title and the history of colonialism that led to the contemporary situation. It suggests that settler governments are being charitable and helping First Nations, when in reality it is First Nations' land and resources, illegally acquired, that are being reallocated. Similarly, in response to my question about evidence that the relationship between First Nations and BC has improved, BC12 proposed that it is a significant step that the provincial government is 'willing to share' in resources based on undefined Aboriginal rights.

> So we're willing to share in those resources based on our understanding that underlying it is those rights to the resources that aren't yet defined that Aboriginal communities have. So that's a very significant step and then building those agreements so that those benefits can go back to their communities and start to close some of the socio-economic gaps that we see in those communities whether it's around education or just facilities that they have in those communities. (BC12, 2013)

7.3.1 Becoming Economic Drivers

Some of the decision-makers for First Nations suggested that regaining access to and control of the economy was an important goal of reconciliation. On the same subject, but in answer to a different question, a few BC decision-makers used First Nation participation in the economy as indicators of improved relationships between BC and First Nations. FN7 says that the goals of reconciliation are ultimately to have access to a fair share of the resources in their territory, become major players in the economy in the region, and be economically self-sustaining.

> We'll never get back to the way it was. No, because we've got so many people with tenures here already that are benefiting from the resources in our territory. There's so many businesses and different areas and ultimately we want to be able to have a fair share in that. And it's going to take time to get there. You know, so, you can never be one hundred percent happy with what you have already, but ultimately we want to be able to be the major players in economy on the central coast. Because this is our land. That's the approach we take. You know, we have title to the land. The province says they have title, so it's going to take a bit of time for us to get to that point. Whether we can do that through these offside negotiations, outside a treaty process or not, I don't know. The treaty process is flawed, that's why we're not there. And so we've done more between 2001 and now than we ever got done in the treaty process. And for our [stewardship] office here, it's being paid out of different funds now. We've arranged through Coast Opportunity Funds and through our carbon credit agreement. So I mean there's, we're running the office at, it runs over a million dollars and we wouldn't have this if it wasn't for negotiating those two different agreements. But I think ultimately we want to sustain ourselves and we want to be self-sustaining. You know, and not be dependent on that money. And maybe put some of that money somewhere else in the community. And so we're looking to set up some sort of a system here that could do some of that. But ultimately it's access to resources. You know, and not, I'm always thinking about the *Delgamuukw* decision. You know the fact is, let's face it we're all here to stay. And so, but I mean, we're here, too. I mean, you know, and we're not just talking about the existing stakeholders in our territory. We're talking about the people that live here and that's us. And so I think, at the end of the day we want to be able to fit into this whole economy and be able to make it on our own. And not to be dependent on government for handouts. Right now we are. We're very dependent. (FN7, 2012)

S/he also points out that, by negotiating agreements outside the treaty process, they have been able to fund a stewardship office. FN8's answer to the question about the goals of reconciliation is very similar to FN7's, pointing to greater control of lands and resources (e.g., a 50% share) in order to create economic well-being and self-sufficient governments. S/he also highlights that First Nations want greater control of resources to create environmental sustainability.

> Now, part of that goal is, from our side, is to get greater control over the lands and resources both from an environmental point of view for environmental sustainability but also for the economic tools. It creates economic well-being. But that's wider than a government goal, that's really a self-sufficiency kind of goal for a First Nation. Saying

> we've got to have control, like it's not a question, we're saying that resource has to be fifty-fifty. (FN8, 2012)

In responding to my question about how the relationship between First Nations and BC is changing, BC12 pointed out that the relationship is better because First Nations are directly benefitting from resource development on *their* territories (this acknowledgment of Indigenous title is noteworthy given the 'willing to share' comment by BC12 above).

> I think on the positive side though, you know we are showing some progress around shifting the game so that First Nations communities are more directly benefiting from the resources that are coming off their territory and those, you know, so they start to support projects and those benefits go back into their communities, the jobs go into their communities. So that's important in a in a pre-settlement context. (BC12, 2013)

BC4 gave concrete examples of First Nations that s/he felt are 'thriving' because of particular economic development opportunities that have opened up, in part because of the new relationship and/or treaties: Squamish (tree farm license), Lil'wat (Olympics), Tsawwassen (malls), Huu-ay-aht (forestry), and Okanagan (wineries). S/he suggests that they have gone from being 'reliant on government handouts' to 'real economic drivers'.

> So they've gone from a place of dependence and reliant upon government handouts to being real economic drivers and I see already happening a real shift in, for those that are situated in resource rich areas, that they are going to be, if not already, full partners and thriving businesses and communities. For those that are the outliers in remote areas, or small that don't have a lot of infrastructure and that kind of thing, it is still a lot of work to be done. (BC4, 2012)

Whether some First Nations are now 'thriving' or not is not a question I will address. Clearly, there is a long way to go before First Nation communities have similar socio-economic conditions, or a comparable 'standard of living', to non-Indigenous communities. My concern here is about how 'closing the gap' relates to reconciliation. Earlier, I suggested that

reducing social and economic disparity between Indigenous and non-Indigenous communities was necessary—indeed it is a human rights issue—but insufficient for reconciliation. First Nations are owed more than a lack of discrimination.

In their analysis of Indigenous-state relations, several scholars emphasize problems associated with processes whereby reconciliation, or solving the 'Indian problem', focuses on Indigenous peoples gaining a larger role in mainstream economies. Cliff Atleo, Jr.(2009) suggests that economic development has come to dominate the discourse of Indigenous community resurgence because: 1) the 'Indian problem' is framed in context of colonial assumptions about Indigenous primitivism and Western progress, which leads to a solution of addressing 'gaps'; and 2) Indigenous ways of life have been decimated, putting Indigenous people in the position of having to choose between starvation and compromising their principles to feed their families. He also points out that using the term 'gap' implies an agreement on universal norms of community development, and a focus on 'gap reduction' marks a shift away from respect for distinct societies. He criticizes the contemporary economic development agenda of many Indigenous leaders and suggests revitalizing communities in a manner more consistent with Indigenous principles and worldviews.

Woolford (2005, 154) argues that settler governments are employing neoliberal[139] techniques of governance to move away from the *Indian Act* and govern First Nations at a distance,

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[139] "Neoliberalism broadly refers to the political project of economic liberalism that attempts to increase economic prosperity through elevating the role of the market and the private individual over that of the central state" (Peck and Tickell 2003; Dumenil and Levy 2005; Lapavistsas 2005; and Hull 2006 in Memon and Kirk 2011).

enabling individuals to "govern themselves through their own freedom, encouraging them to make decisions conducive to the logic of neoliberal economic rationalism and to construct themselves as responsible economic actors." Certainly, there is evidence to support the argument that there is a class of First Nation leaders who "serve as relays between the mainstream economy and Aboriginal communities, promoting the entrepreneurial spirit of market capitalism" (Woolford 2005, 155). But I would suggest that First Nation leaders are caught between a rock and a hard place. To realize the transformative goal of regaining governance power, First Nations need access to funding. This can be in the form of transfer payments from settler governments, resource rents from external resource development (e.g., as in current revenue-sharing agreements), or internal economic development. In the case of transfer payments, settler governments retain too much control over the amount and use of the money, which has led to the current conditions on reserves today. With both resource rents and economic development, Indigenous leaders can be criticized as selling out, or buying in to the 'spirit of market capitalism'.

Without 'own source revenue', how are First Nations to fund the processes of rebuilding their nations, engaging the state to regain governance power, developing culturally appropriate economies, and regaining control of social programs in their communities? Drawing on the work of Nancy Fraser, Woolford (2004) distinguishes between affirmative and transformative redistribution strategies for addressing socio-economic injustice. Affirmative redistribution strategies attempt to correct inequality without challenging the social relations that led to the inequality, whereas transformative strategies attempt a deep restructuring of the societal patterns of economic production. "Affirmative reparation

provides a 'surface reallocation' of material goods and opportunities to participate in the mainstream economy" (Woolford 2004, 136). Using these concepts, how are First Nation leaders to achieve transformative goals without also engaging in processes of affirmative repair?

What are some ways out of this conceptual conundrum? One way is to see increased engagement with the mainstream economy as *part of* reconciliation, but not reconciliation in itself. Another is to see it as part of a process of transforming the mainstream economy. Leanne Simpson also highlights how the pressing problem of poverty in First Nation communities leads to differing views about strategies to realize transformative goals.

> Ultimately we're not talking about a getting a bigger piece of the pie—as Winona LaDuke says—we're talking about a different pie. People within the Idle No More movement who are talking about Indigenous nationhood are talking about a massive transformation, a massive decolonization. A resurgence of Indigenous political thought that is very, very much land-based and very, very much tied to that intimate and close relationship to the land, which to me means a revitalization of sustainable local Indigenous economies that benefit local people. So I think there's a pretty broad agreement around that, but there are a lot of different views around strategy because we have tremendous poverty in our communities. (Simpson in Klein 2013)

If engagement with the mainstream economy is seen as part of the process of transformation, it leaves open the concern that, as First Nations become more dependent on revenue from the mainstream economy, they may be less inclined to transform it.

From some of the comments by First Nation decision-makers, becoming economic drivers is an important part of reconciliation, if not the ultimate one. In the case of new relationships is BC, however, First Nations are negotiating more than economic opportunities. They have

forced the provincial government to relinquish governance power and to share some of the resource revenues collected from Indigenous lands. There is a long way to go before it could be considered a 'fair' sharing of power or revenue or a reconciled relationship, but First Nations are not allowing access to economic opportunities to be sufficient reparation for the injustices done.

7.3.2 Creating Sustainable Economies

Some of the First Nation decision-makers qualified that the economic development they would engage in or support had to be done in line with their values, in a sustainable way. This suggests that they are not simply learning to act like 'responsible economic actors', but also challenging the norms of the mainstream economy. In the following quote, FN3 describes how the resource management approach of Coastal First Nations is based on a traditional value about making sure you do not take everything; you leave something for the next time and the next person.

> The goals of reconciliation between the Crown and Aboriginal people is to create certainty for the parties around the development of resources. Actually the sustainable development of resources. We subscribe as Coastal First Nations to an ecosystem-based management approach to development. And if the Coastal First Nations didn't intervene and step up to the plate ten years ago with regards to the logging activities along the coast, it would've all been clear-cut. And so I think that, you know, what we've brought to the table, based on our core values or our fundamental truths, is that commitment to making sure that there is something there for future generations. And the language that is used is conservation and sustainable development, but it goes back to a traditional value and an ethic about making sure that you don't take everything. That you leave something for the next time and the next person. And so I think that's the goal because it's unfortunate that, whether you're dealing with forestry or fisheries issues, there is the economic pressures that come to bear. And a lot of times those economic pressures trump conservation. And because of our unceded title, we've been able to put the brakes on a lot of this basically bankrupting the natural capital. And another big example of that is the fight we're having now with oil and gas and what's happening with the Enbridge pipeline. You know, we're not opposed to development,

> but what we want to see is sustainable development and a conservation-based approach to development. And that risks be mitigated and that there be accountability. And so that's really about stewardship and that's not a short term commitment. That's a long-term commitment that transcends the establishment of both Canada and British Columbia. And so I think that the values, the conservation values if we want to call it that, the ethics that First Nations have as a principle could inform the responsibility of contemporary governments. And there wouldn't have been a hope in hell if it wasn't for the First Nations unceded titled to ensure that things are done in a more sustainable way because the corporate animal is running wild. (FN3, 2012)

FN3 asserts that the ethics of First Nations, their conservation values, along with their unceded title, can ensure that industry and settler governments also do things in a more sustainable way. In this answer to my question about the goals of reconciliation, Art Sterritt suggests that First Nations need to be integrated into the economy (from which they have been excluded) and that one way to do that is to integrate younger people into the new economy. He also explains how First Nations are taking their traditional economies and moving them into more contemporary economies in a sustainable way.

> Well, you're never going to, never going to be able to move the economic agenda forward unless you, unless First Nations are completely integrated into the economy. Now there are some amongst us who, who would like to perhaps revert back towards a more traditional economy. And that's fine. But there are the majority of First Nations who have just as much aptitude for the new economy as any other sector of society, and we've been excluded from that. And so what we need to do over the next while is to integrate our younger people into that new economy so whether it be oil and gas or technology or a new way of managing the forests or the fisheries or whatever, that all needs to be there. So what we need is to be able to take the traditional economy and marry that with a new way of doing things. So for example in the ocean, which is where the coastal people have most of their equity and their knowledge, is in the ocean, we have created a shellfish industry that never existed before. But a lot of what they know is going to allow them to do that properly so they don't need to make that massive transition to something that they know nothing about. They know the ocean, they know the species, they know how to interact with them, they know how to work. So they can take these new ideas and develop them. The same thing is true with carbon credits. Our people have been stewards of the land forever. So for us to be able to take carbon credits and monetize that, so that you can pay people to go out there and continue to manage the forest in the way that they've done it for thousands of years. That is, those are ways that you take people and you move them from the traditional

> economy into a more contemporary economy and you balance that according to what each of those economies are able to sustain. So you make it sustainable. It has to be done only according to what can be taken from the natural environment. (Art Sterritt, 2013)

In the next quote, Art Sterritt describes how Coastal First Nations is pushing for the liquefied natural gas industry to be powered by renewable energy. That way, when non-renewable natural gas is exhausted, there will be renewable energy developed to take its place.

> It has to be done only according to what can be taken from the natural environment. We all know that, you know, and whether we're doing non-renewables, whether you're doing LNG or oil, you need to do that in a way that respects the natural capital that comes out of the region. So you need to, for example, Coastal First Nations has done a renewable energy plan for all of our region, but in order to put that industry in place, we need to take the resources that are coming out of LNG and the financial resources and help develop that renewable industry. If we don't do that, when these non-renewables die, we'll be back where we started. We'll have nothing. And that's why Coastal First Nations are so earnest about pushing the LNG industry and others to creating a renewable industry. Because you have to take the natural capital that exists within your region in order to create an economy. You can't take the capital that takes out of somebody else's region and is non-renewable and try and use that to create a sustainable economy. It doesn't work that way. It's never worked that way. And so we're trying to kind of go back to the way it was, in many ways, but doing it in a more contemporary sense. You have to move forward. (Art Sterritt, 2013)

With their increasing role in resource governance over the past two decades, First Nations are changing the way that resource management decisions are being made in BC. They are not just 'getting a bigger piece of the pie', but are trying to change the pie. It is not for me to judge the strategies being used to create change, whether they are changing the *status quo* enough, or if the changes are in line with Indigenous values. These are, of course, matters for First Nation members to decide. In the words of Leanne Simpson:

> If Canada is not interested in dismantling the system that forces poverty onto Indigenous peoples, then I'm not sure Canadians, who directly benefit from Indigenous

> poverty, get to judge the decisions Indigenous peoples make, particularly when very few alternatives are present. (Simpson in Klein 2013)

7.4 Co-Governing with a Common Vision

As explained earlier, many First Nations have either not engaged in or have turned away from the BC treaty process as a means of regaining governance over their land and resources. Many of the First Nation decision-makers with whom I spoke argued that you only sign a treaty to give up land and wondered why a First Nation would choose sole jurisdiction over a very small portion of its territory instead of co-jurisdiction over its whole territory. Decision-makers from both sides remarked on how, post-treaty, First Nations are also retaining a role in decision-making off treaty settlement lands (although it is a limited role to date). Co-governance, then, is seen as *a* way, and perhaps *the* way, to reconcile competing claims to land and resources. As described by BC9, the title issue becomes a 'moot point' if First Nations and the province develop consensus-based land and resource decision-making processes.

> Well, I think ultimately, the underlying vision of treaty, whether you agree with the models articulated in treaty or not, is to find a resolution on [the legal conflict between title]. And for better or worse, there's a your-land-our-land model, which many smart people have sat down and looked at and decided that's the way it's going to work. I know that equivalently many smart people have said there are other ways to do it. Whose land it is? I think the argument over whose land it is is as acute as it is because the First Nations parties feel disenfranchised from the discourse over the use of it. So yeah, I think in terms of the title issue about whose land it is, I mean *de facto* it's sort of a moot point if you've got ways of reaching, ways of at least trying to reach consensus on what should happen on it. (BC9, 2012)

Co-governance is an umbrella term that can include all sorts of different decision-making arrangements. In BC, a distinction is made (and often confused) between *joint* decision-making (or true shared decision-making), in which ultimate authority is shared, and *shared*

decision-making, in which First Nations have an advisory role and the province retains ultimate authority. To date, joint decision-making at the provincial level only exists in Haida Gwaii. As we have seen, co-governance as it is unfolding in BC often involves the development of a multilevel institutional structure, whereby there are bilateral groups that work together at operational/technical, management, senior bureaucratic, and political levels. The aim is to ensure that there are places to address issues that develop at different scales, including site-specific, strategic planning, legislation and policy, and political.

In the interviews, decision-makers talked a lot about co-governance and it came up in the context of many different questions. In addition to broadly suggesting that reconciliation could be achieved through co-governance, interviewees brought up specific concerns with co-governance and potential solutions to overcome challenges. I will present these grouped into two areas: 1) ultimate authority and efficiency of governance processes; and 2) common visions and interface issues.

7.4.1 Ultimate Authority and Efficiency of Governance Processes

Ultimate authority is an aspect of co-governance that is difficult, both theoretically and practically. Interviewees described and expressed opinions on current instances of shared and joint decision-making between the province and First Nations. BC7 described how it is difficult to work in shared decision-making situations if you believe strongly in your party's authority and do not believe that the other party has authority. S/he summed it up by saying: "Somehow we have to find a way that you can have two authorities, they can work together, and it's not a bad thing" (BC7, 2012). FN7 expressed disappointment that her/his nation's

reconciliation protocol did not include decision-making authority, but pointed out that it is progress toward developing a relationship with the province and toward getting jurisdiction.

> The reconciliation protocol agreement was early work towards shared decision-making mechanisms and we're not really where we want to be. I mean we would love to be able to, you know, have the authority, the jurisdiction to make decisions. And so we weren't able to accomplish that this round, but I think that, by having a shared decision making mechanism in place for referrals as an example, coming into our territory here, it makes it a little more onerous on ourselves and the province, you know, to have that relationship. And so it's getting there, I mean we are early in the engagement framework…Of course, we want jurisdiction. Yeah, you know, we want to move towards that direction, even co-management where we might have some sort of a decision-maker here along with the province making a decision. You know, together, rather than right now, basically the minister having the final authority to approve something. (FN7, 2012)

As described by BC7, shared decision-making looks at how governance can be shared without having to change provincial legislation related to statutory decisions and decision-makers.

> And the interesting thing about joint is that legislation is changed to make joint operational. Shared decision-making was based on, what could we do internal of changing legislation? And there's a lot you can do. And one of the things was, within the consultation framework, paper consultation is one approach, but dialogue is so much better. So it was the idea of integrating or working together real-time, with Haida and the province in the office, through each natural resource application. And the Solutions Table is where the two groups come together as one and find solutions to the complex issues around natural resource management. (BC7, 2012)

To clarify, in Haida Gwaii, there are some decisions that are made using a shared decision-making model, and some that are made using a joint decision-making model. Above, BC7 is describing how, even within the shared model, solutions to resource management issues are found when both sides work together in a system that allows for dialogue. S/he continues: “If we have our teams come up to a consensus-based operational solution and options, and both

sides get the same package…It should be, for all intents and purposes, a walk in the park" (BC7, 2012).

In BC3's opinion, although the province currently has decision-making authority (in most cases), it does not currently have ultimate authority because the First Nation can seek a court injunction or other remedy.

> The way that it's articulated is that the ultimate authority will be made in the basis in law of the parties. So for example, if I had to issue a cutting permit and the First Nation didn't agree, you know, just to pick a case in point, the Province may take a look at the fact pattern that's come through consultation or the collaborative model. They may have, you know the parties may have agreed to disagree, at which point we may issue the cutting permit and the First Nation may seek a court injunction, right? So, no, I'm not convinced in all cases that it gives the Province the ultimate authority because there's still dispute resolution mechanisms that can be brought to bear: civil disobedience, you know, court injunction, legal review, political change. All of those, we've got to be careful in assuming that the Province always carries the trump card in these instances. It doesn't. We may behave as if we do. [laughs] That's different. (BC3, 2012)

Indeed, it is this power to protest provincial decisions that has allowed First Nations to drive a wedge into the province's ultimate authority, but the fact that they have to *react* to the province's decisions and use the courts of the colonial system to protest, suggests all too fully where decision-making authority resides. If the parties really had equal power within a system such as this, it should not concern the province if the roles were reversed. This, clearly is not the case.

As described by BC7, the joint decision-making model developed in Haida Gwaii required legislative change to enact, which s/he describes as a positive step toward reconciliation.

> This joint process goes that one step further…This changed legislation and that kind of ramped it up a little bit…[The joint process] is legislatively bound to work. So that's the little bit of the difference there. And I give the provincial government and the Haida very much kudos to do that. That was outside, for a government to change their legislation to make something different. (BC7, 2012)

How do you solve the problem of who has ultimate authority in systems of co-governance? As explained by FN2, the system needs to be devised so that neither party has a veto power because then no decisions will be made.

> They had a bunch of First Nation and provincial lawyers drafting documents and dreaming up ideas of how it would work. I mean they stumbled up against the same problem, you can't have either, you can't have a situation where either party can just stop stuff, because then nothing will happen. And so somehow you need to create mechanisms whereby, you know either there is an arbitration or mediation or facilitated dispute resolution process or you empower some other entity to make the decision in the case of the impasse. And then just establish criteria by which they make those decisions that you both agree to. (FN2, 2012)

Instead, it has to be a system that is designed to work by consensus, but that also has a mechanism built in to break impasses.

> Well no, not a veto power. You know the Haida reconciliation legislation doesn't provide the Haida with a veto power. What it provides is a requirement to achieve consensus and then an independent arbitrator, not arbitrator, but someone who can make an independent decision if consensus can't be reached. Right, because a veto power is potentially so inefficient that nothing happens. So, whatever that, the impasse breaker mechanism is, as long as that's been mutually agreed to then you've got something that works. (FN2, 2012)

The Haida system was explained to me by FN8.

> Haida still has a statutory decision-maker for operational decisions. What Haida did was transfer some of the decisions that were in legislation for the minister and moved it and put it into a management council of two Haida, two province, and a chair selected by the two parties. And so the annual allowable cut, which was always done and approved by the minister, or legal objectives for land use plans approved by the minister, then now legislatively it's in a management council. So there's authority

> previously vested by legislation in the minister now put into a management council, but the Ministry of Forests still looks at a stewardship plan, the statutory decision-maker still has to do a decision on that. Haida, then, can input into that statutory, but they can't meet with the statutory decision-maker on it. (FN8, 2012)

Despite the progress made by the Haida, some of the comments of BC decision-makers highlight ongoing issues with BC seeing itself as the ultimate, and unbiased, decision-making authority. BC6 describes the province's logic behind shared decision-making models.

> So basically the way that government looks at it is, 'Okay guys, you get some shared decision-making with us, but what you also do is specify which decisions are important to you and which ones we can drop.' So you go for a, we go for about a 25 percent volume reduction. So stop with the small stuff and focus on the big stuff. In exchange for defined timelines and funding. (BC6, 2012)

The framing of this comment suggests that the province is *giving* something to First Nations and is in control of the terms of the agreement. This seems less like sharing power and reconciling relationships and more like a transaction: we'll give you some funding and you'll give us less hassle. In the next quote, BC11 describes how shared decision-making: 1) maintains the autonomy of each government around its *perceived* authority, 2) acknowledges the *Crown's* jurisdiction, 3) does not fetter the provincial decision-maker, and 4) allows the parties to agree to disagree.

> Well we call it shared decision-making where, like, I guess in the Haida there is an example of joint decision making. But shared decision-making maintains the autonomy each government has around their perceived authority. Shared decision-making we try to harmonize our decisions, we try to get to that common place, but that acknowledges the Crown's jurisdiction in making decisions. As a statutory decision-maker, I cannot be fettered, but I draw heavily on the input of the First Nation in a shared decision context. In hopes of finding a workable arrangement at the end of the day. If it's in, if it's counter to the province's mandate, policy, you know, legislation and I'm bound for a decision, then I cannot be fettered and then as such, I will make my decision, they will make theirs, and we agree to disagree. (BC11, 2013)

Put together, however, these four aspects of shared decision-making mean that little has changed. The parties may each perceive they have authority and agree to disagree, but the provincial decision stands. As described in a discussion paper prepared for a November 2008 All Chiefs' Forum[140], First Nations are confronted by provincial assertions that existing *status quo* consultation processes are shared decision-making consistent with the New Relationship vision, when in fact, the New Relationship was supposed to change the *status quo*. It suggests that there is a systematic effort by the provincial government to simply re-name the *status quo*.

In this response to a question about whether joint decision-making might be possible in the future, BC2 posits that the province should retain ultimate authority because provincial decision-makers are 'as unbiased as possible' and without them, there would not be any decisions made. "I still think you still need some kind of unbiased decision-maker, or someone who can be as unbiased as possible to make decisions. Because if you don't, you're just going to end up with paralysis. So, I don't see that changing in the long term" (BC2, 2012). By definition, neither side is unbiased. To a provincial representative who sees First Nations as just one interest among many stakeholders, the provincial decision-maker may be 'as unbiased as possible'. In the context of a government-to-government relationship, however, it is more appropriate for the parties to pick someone they both see as being particularly unbiased to make an independent decision in the case that consensus cannot be achieved, as in the case of the Haida model.

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[140] Discussion Paper: Shared Decision Making; http://www.fns.bc.ca/pdf/Doc3SDMDiscussionPaperFinal.pdf, accessed April 8, 2013.

Some decision-makers expressed concern about the complexity and efficiency of the co-governance systems that are being developed. BC12 questions whether multiple regulatory regimes with different levels of government involved are affordable.

> When I stand right back and look at it, I really truly do question the sustainability of these complex governance systems that we're potentially moving towards. You know, when you really think about what…our nation could look like in fifty or sixty years, that many different levels of government, can we do that? Can we sustain that? I don't know…and you know, we can't afford to have multiple regulatory regimes on the land. There's a cost to that. Right? As an example. So, you know, what does that look like for BC? You follow through the path that we're on and is it one that we can sustain? I don't know. (BC12, 2013)

BC11 highlights concerns with the efficiency and effectiveness of government-to-government processes and suggests that a positive relationship is important, but so is getting permits in place and decisions made.

> Reconciliation should be, I'd like to see the past, we've learned from it, but it not dictate our future. It seems we're still in that period where trust is huge and you know a lot of First Nations fear us…We're finding a better way, the Transformative Change Accord is really government's mandate to find that better way…but still we're dealing with the past in most of our dealings. I would like to see reconciliation put us on a playing field where it is truly a government-to-government relationship that benefits are brought to both sides...in an efficient and effective manner. Because you can say that, but if it's an arduous process to get permits in place or get decisions made on the ground, it doesn't help anybody. You can say you have a positive relationship but effectively it's not being well delivered. That's where [strategic engagement agreements] come into play, where treaties come into play. Try to clarify that relationship in a contractual standard practice. (BC11, 2013)

S/he suggests that contractual agreements that clarify the relationship help to ensure that there are still services delivered. Another idea for how to increase efficiency, reduce workload, and deal with the disparity in human resources between a the provincial

bureaucracy and First Nations, as pointed out by BC7, is by reducing the number of points of engagement.

> The Crown's got 30,000 employees, you know, from soup to nuts kind of, or all over. The [First Nations] have a fairly small contingent of the same people burying themselves all the time. In every committee, it's the same people. That's why another goal is one management unit for all protected areas, not multiple boards that the same people all sit on. One C&E group. One integrated team for natural resource permitting. So, stop, do away with these multiple groups, multiple letters, multiple organizations, because no First Nation is ever going to be able to actually—. We can, but we'll bury them. We bury them in paper now. (BC7, 2012)]

In addition to integrated teams, BC5 highlights the idea of multilevel structures and suggests that having joint decision-making processes at different levels can address concerns about efficiency. S/he describes how agreement can be reached at one scale about how to use the land, but differences can still exist at a different scale. Having multilevel structures allows for issues to be addressed at all of the different levels.

> Well I think that that probably depends a lot on scale. So at a small scale or a large area, for example, we agree on the Central Coast what the use of the lands are as it relates to whether we should set it aside or maintain it for resource development. So there's no argument there. When it comes down to an individual piece of land, whether we're going to log it or not log it, or do this or do that, that doesn't exist. By and large. So I think at the sort of strategic planning scale, that's improving. But at the site-specific scale, it's very difficult. So that's why I think you need to develop sort of processes of joint decision-making if you will to get past that point. Because you will never get a planning process in place at the scale that you need to deal with those kinds of issues. (BC5, 2012)

FN8 corroborates BC5's suggestion that, for the most part, the province and First Nations have agreed on higher level issues through land use planning, but that there is still disagreement at the site-specific scale.

> Yeah, I think most of our people will say the decisions of how the lands will be used to a great extent has been settled. There are elements of further work to be done, particularly on the Central Coast and North Coast around land use plans, what is called landscape reserve areas and you know, protected area planning, that work still needs to be the next step of the defining that. But I think most of the First Nations generally were pleased with the land use planning. (FN8, 2012)

Ultimately, as suggested by Dallas Smith (2012), "The goal of reconciliation should really be just a governance model that works. Whether you want to say you used a treaty process to get there or processes like we develop to get there, really reconciliation is about everybody saying, 'Okay this works and we can go forward based on this.'" In response to my question about how to resolve the legal conflict between Aboriginal title and the Crown's asserted sovereignty, Dallas Smith suggested: "I think at the end of the day you sort of use that as the test. That's how you stand up and see if it's working. If it acknowledges both and works with both, but still is a system that has stuff going through it. It has input in and output out at the end of the day."

7.4.2 Common Visions and Interface Issues

Many of the decision-makers I spoke with felt that the difficulties related to reconciliation could be resolved if the province and First Nations aligned their goals and had a common vision on the land. A common vision could also solve some of the problems associated with ultimate authority and efficiency of co-governance systems. Common visions, however, raise concerns about coercion and assimilation in situations of settler colonialism (Short 2008). If a common vision is required, there is an opportunity for the more powerful group to exert pressure on the less powerful group to conform, using both direct pressure and symbolic violence.

BC9 suggests that the relationship is advanced most when the legal conversation is put aside and the parties focus on their overlapping interests related to land stewardship or 'doing right by each other'.

> That said, I find that in a lot of circumstances the most fruitful outcomes that actually advance the relationship are ones where the legalistic conversation around the construct of those rights has been put aside and we don't talk about the rights, we talk about the land or about stewardship or about doing right by each other and the legalistic construct is there, it's always there in the background, but you're actually able to find the overlapping interests outside of that space or parallel to that space. (BC9, 2012)

In answer to my question about the goals of reconciliation, BC5 felt that a common vision on the land was an important goal.

> Because I'm in the resource management field, it comes down to, first of all, a common vision on the land. What's our common vision for the land? And do we have a common vision? And if we do have a common vision, then that's an important step in reconciliation. And then it becomes how, given that, how do the First Nations actually contribute to the ongoing management and economic success of operations that go on the land or happen on the land. (BC5, 2012)

When I asked specifically about resolving the legal conflict between titles, BC5 described how joint decision-making and a common vision on the land make the title question unimportant.

> Yeah, it sounds like I'm a one trick pony here. But I think a lot of that can be resolved by having common visions on the land because then who cares who owns it? You both agree you're going to use it for this purpose. And then maybe all you are arguing about is benefit flows or something. And you know another one is working, in terms of title, very crisply and succinctly around consultation obligations so that maybe you're sitting down in a joint way to make decisions on that land. So that therefore doesn't really matter who owns it if you're both jointly making a decision. Some of those kinds of techniques, and then consultation goes away and you don't have to debate who owns it and that sort of thing. (BC5, 2012)

Several decision-makers pointed out that land use planning is important in achieving the common vision on the land. BC8 felt that collaborative land use planning is a prerequisite to successful shared decision-making.

> I think part of the issue has been that government seems to be not doing land use planning anymore and land use planning in conjunction with First Nations is, I think, a key prerequisite to have a good engagement, to inform a good shared decision-making process around land and resources. Without that in place that's developed jointly, I think it's really hard not to just keep ending up in loggerheads. (BC8, 2012)

BC7 (2012) stressed the importance of having 'like objectives' when working together: "And if you're looking towards like objectives, you're bound to find answers. If you're not, you're always going to find walls." When I asked why there might be 'like objectives' in some places in BC and not others, BC7 pointed to higher level joint planning processes.

> Well I think a lot of the like objectives come from the higher planning approaches, such as the Haida and the province did the joint land-use planning process together. The fallout of that was a joint approach to developing the land-use orders, which developed the [ecosystem-based management] regime. Those kinds of higher things start really framing how the Solutions Table is even going to be able to deal with the natural resource applications. So it really provides a great foundation and they were done jointly. (BC7, 2012)

S/he suggests that the higher level plans frame how decisions are made and focus the work of the resource managers from both sides who sit together at the Solutions Table, the committee of managers from both sides that works together to consider land and resource applications and make recommendations to their respective decision-makers. If the two sides are going to be working together in joint processes, a common vision makes the work more efficient and effective. BC12, who was concerned about the affordability of multiple regulatory regimes,

felt that building trust in the relationship could lead to working together in one regulatory regime that is reflective of First Nations' values and rights.

> Yeah I mean, at the end of the day, we've got to get to a point in our relationship where there is trust and you know, so I'm sort of reflecting on what I was saying earlier in that you can't afford to have multiple processes or different governments doing the same thing. So how do we get to that point where we can agree upon one regulatory regime for instance, that is reflective of First Nations' values, their rights, if they're defined, protects them if they are treaty rights, and so I think that's ultimately where we need to get to, is you know a trustful relationship where we can work together as one government, not multiple governments. Or if there is multiple governments how do you use the same processes. (BC12, 2013)

Many decision-makers saw the importance of aligned goals or a common vision on the land, but what about concerns that Indigenous people will be forced to conform their visions to those of non-Indigenous people and their governments? FN11 (2013) put the onus on settler governments to change their approach to be more in line with the long-term and holistic way of thinking of First Nation communities: "What needs to change first is the government needs to have a recognition that that way of thinking, that holistic way of thinking, and that long-term way of thinking, needs to be the approach to the process if it's going to be successful in First Nations communities." BC6 also felt that reconciliation would require the Crown to acknowledge differences in worldviews and change its approach to resource management to be more conservationist.

> So, in order for, in my view, reconciliation to occur, government and the public would need to be able to acknowledge the different ways that we look at the land and its resources and manage them very differently. A lot more conservationist approach to natural resource extraction. And I don't see BC going there anytime soon with its economy reliant almost entirely on natural resource extraction. So, we talk about wonderful reconciliation opportunities and all that good stuff that's happening, revenue sharing and shared decision-making, and all these agreements that are going on out there, yet for it to actually occur would mean that BC changes its approach to its economic drivers. (BC6, 2012)

Notably, BC6 was not optimistic about the change occurring soon because s/he felt BC's economy is almost entirely reliant on natural resource extraction.

Working together does require a common vision, or at least common goals or objectives, depending upon the scale at which the work is being done. Finding a common vision will likely require compromise, as it is generally seen as 'fair' for each side to move together in places where goals diverge. This presents problems in the case of reconciling colonial relations. First, it suggests that the parties share equal blame for the events that led to the need for reconciliation, which is based on a false notion of moral equivalency (Alfred 2005). Second, compromise between unequal parties favours the dominant party (Dorrell 2009). This brings us to the 'we're all here to stay' conundrum of reconciling settler colonialism: for First Nations to regain governance over their entire territories, foregoing the your-land-our-land model and its inherent problems, some form of co-governance is required. Co-governance has its own problems, including unequal parties working together and finding a common vision. The conundrum will not be solved theoretically, as supported by the idea that reconciliation should be incremental and allow for different models to be tried and altered as necessary.

Creating common visions is one aspect of working together in co-governance that can bring up issues related to power when working together. Working together also requires each side to (try to) understand the other's worldviews and governance systems and engage with them to a greater or lesser degree, depending on the model of co-governance. This raises questions

of knowledge integration, translation, and capacity. Pointing to the success of Coastal First Nations in including a conservation-based approach in land use plans, FN3 suggested that territorial co-governance requires using the best of Western science, but being guided by First Nations' core values.

> I think our people have demonstrated they, that there is a commitment to a sustainable and a conservation-based approach by pushing, like for example, for protection of salmon bearing streams, and buffer zones, tied into land-use plans. And so really it's about—it sounds so simple—but really, taking the best of what Western science has to offer and then being guided by those core values that have sustained our people. And so that has to be taught and shared within our community for our younger people, but also in reconciling with the rest of British Columbia and its agents, you know, government ministries. And I think we've been pretty effective to date and we just need to build on that success. The success of the leadership of the Coastal First Nations, who basically people didn't probably give much consideration to it, like the big corporations. But we were able to leverage and get the Crown to recognize the logic in our views. (FN3, 2012)

In answering a question about First Nations' capacity, BC9 talked about the importance of First Nations being able to interface with the regulatory regime of the government in a constructive way. S/he explained that in a consultation relationship, if a First Nation can bring forward information in a way that is recognizable and understandable to the decision-maker, the decision-maker is more able to make decisions that will serve the First Nation's interests. I then asked if that was a constraint on the consultative model as compared to a shared decision-making model. BC9 answered with the following comments.

> I think the same principle would apply to a shared decision-making model in that, if it's a collaborative, deliberative process, under a shared decision-making model, the First Nation still needs to be able to bring forward its interests in a recognizable way, where the Crown can look at that and say, 'Aha, I get it, it's about X.' And, you know, that's reciprocal, I mean the Crown has to be able to bring information to the table that can be articulated to the elders in a way that says it's about moose, or it's about the ritual bathing pool or it's about this, and this is what could happen to it. Right? And not get into the population models and calibration of data packages or whatever. Like I think

> that capacity to translate between those two worldviews in a way that ultimately as little is lost as possible and as much is understood as possible is really key. And I think there's ways you can do that and to design ways to do that to facilitate the conversation and that translation. (BC9, 2012)

Power imbalances and their impact on visions, goals and objectives, knowledge integration and translation, and capacity bring us back to the critiques of co-management well established in that literature. Mulrennan and Scott (2005, 207) state that: "To warrant the term, 'co-management' should respond as much to Indigenous tenure, knowledge and management practices as to state-organized bureaucracy." Nadasdy (2005) argues, however, that it is the institutional structures and practices of the state that dominate and First Nations have to organize and express themselves in ways that are compatible with government bureaucracies. As can be seen from the interview responses, it is true in the case of emerging co-governance in BC that provincial structures and processes dominate. First Nations are developing bureaucratic structures that parallel provincial ones and use the language of Western science-based resource management to present rationale for their decisions. Nadasdy (2005) also argues that, in order to participate in co-management processes, First Nations in the North have to accept implicitly a set of Euro-Canadian values and assumptions about the nature of land and animals.

In the case of BC, there may be more room for First Nations to retain their values and assumptions as they engage in emerging co-governance processes for at least three reasons. First, because government-to-government processes are multilevel and First Nations have access to bureaucrats and politicians at the highest levels, they are not constrained to engaging with the province at a resource management level. Nadasdy suggests that co-

management processes are seen as technical problems that do not require changing existing state practices and structures.

> The need to integrate co-management processes with existing institutional structures of state management has led to a tendency to view co-management processes as a series of technical problems…rather than as a real *alternative* to the existing structures and practices of state management. This view effectively obscures the political and ethical dimensions of co-management. (Nadasdy 2005, 216)

The multilevel structures being developed in BC, though arguably requiring First Nations to change more than the province, *are* altering provincial structures and practices. They also ensure that the political dimensions of co-governance are not obscured. Where progress cannot be made at a technical level, it can be raised to a senior bureaucratic or political level. For example, in a case where agreement cannot be made because First Nation and provincial resource managers are basing their arguments on different types of knowledge or values, the issue can be elevated to a political level, where it becomes an issue of rights. Indeed rights are still expressed in the language of the state, but the issues do not need to remain technical.

Second, what is being fought for by First Nations in BC, and being won to an increasing degree, is a decision-making role, not specifically a resource management role or a role for Indigenous knowledge. This theoretically leaves the task of 'knowledge integration'—or choosing which knowledge to use and how to use it—to Indigenous people engaged in making territorial governance decisions. I will not suggest that there is not strong pressure for First Nations to think and express themselves using Euro-Canadian values and assumptions and this is clear from the interviews as well. But this is not new; First Nations have been making decisions about how to incorporate European knowledge into their decision-making

from the first days of contact and they will continue to do so. Also, as Kofinas (2005) points out, there is evidence that the direction of change in co-governance systems is two-way, with each party adopting some of the others' approach and both Indigenous and non-Indigenous approaches being incorporated into governance processes. He argues that framing the systems as separate does not account for the complexity of the systems in practice.

> While the framing of 'Indigenous systems' and 'state systems' is helpful as a heuristic in the development of theory, it is inadequate in accounting for complexity and diversity of current *in vivo* cases. What is needed in the development of a theory of co-management is to move beyond typologies and towards an understanding of the mechanisms of change resulting from the interactions of individuals and groups. (Kofinas 2005, 181-2)

I would suggest that in the BC case, Indigenous and non-Indigenous knowledges, worldviews, systems of governance, and strategies of engagement have continuously informed each other from the beginning of First Nation-Crown relations. Decolonizing governance cannot remove the effects of colonialism, but it can create a space for Indigenous people to make their own decisions and decide how they want to make them. It does not necessarily follow that Indigenous knowledge is or will be used in territorial governance, but the structure exists for it to be used and there are no explicit rules about what knowledge is or is not used. Further ethnographic research into what knowledge is used, by whom, and why, within emerging co-governance structures would be an interesting avenue for further research.

Third, much of the co-management literature looks at co-management in isolation, not as part of a repertoire of engagement strategies used by Indigenous peoples. In BC, First Nations have been using a variety of strategies to fight for their rights and regain governance of their

territories over the past 150 years or so. Co-management, and indeed co-governance, is just one of those strategies. If First Nations are not achieving their goals through co-governance, they will continue to use other avenues to ensure that they achieve those goals.

My suggestions are more in line with the conclusions of Goetz (2005), who examined an interim measures agreement between Nuu-chah-nulth First Nations and the province in Clayoquot Sound and found that a wide range of higher level issues are being addressed through co-management.

> As Nuu-chah-nulth consistently pointed out, co-management as negotiated in the [interim measures agreement] acts as a catalyst for addressing a spectrum of socio-cultural, political, and legal issues that are significant in their own right, beyond the managerial challenge of contested resources, yet firmly enmeshed in those processes. (Goetz 2005, 250)

She suggests that the experience in Clayoquot Sound is different from experiences in other parts of Canada, where co-management has been used to co-opt First Nations, secure settler government sovereignty, and/or exclude First Nations from governance. Goetz also points out that co-management arrangements negotiated outside the treaty process provide a way for First Nations to exercise their Aboriginal rights without having to reach an agreement with the province on the definition and content of those rights or rely on state-sanctioned definitions. Following Kulchyski (1994), she argues that Aboriginal rights negotiations should be fluid and focus on gaining a means to practice Aboriginal rights, rather than on conceptualizing or fixing them in text.

In the case of BC, a variety of co-governance arrangements are emerging as means for First Nations to regain increased power in territorial governance in the absence of treaties. These arrangements differ in the degree of authority First Nations have, and in most cases, the province retains ultimate authority. The agreements are seen as part of an incremental process of reconciliation, one that allows for relationships to be built, common goals and visions to be realized, governance processes to evolve, and First Nations to gain more power over time. Whether they lead to treaties or not, co-governance arrangements are allowing First Nations to regain power over their territories and exercise their Aboriginal rights, while keeping negotiations fluid and avoiding defining or fixing those rights in text.

7.5 Building Capacity

The vision of reconciliation that has emerged from the interviews includes improved relationships between the Crown and First Nations, greater economic opportunities for First Nations, and territorial co-governance. Both the province and First Nations are having to build capacity in order to improve relationships and undertake territorial co-governance. Arguably, First Nations are also having to build capacity in order to take advantage of greater economic opportunities. 'Capacity' refers to the resources necessary to undertake activities, whether they are financial or human, which are obviously related. There are also different aspects of both finances and staff that impact their actual ability to build capacity for an organization, for example the duration of funding or the knowledge and skills of the staff.

In the interviews, there were references, particularly by BC decision-makers, to BC's lack of capacity to effectively relate with First Nations. This was evident, for example, in

interviewees' comments about how relationships between the province and First Nations are uneven across nations, presented in Chapters 5. It also came up when interviewees talked about the resources that the province is allocating to post-treaty relationships. In response to my question about the current relationship between First Nations and BC, Dallas Smith suggested that the province does not have enough capacity to engage all of the First Nations that want to engage with them.

> With all the cutbacks that have happened within the provincial government over the last six, seven years, they actually don't have the capacity to deal with all the First Nations communities that want to try to deal with them proactively now. So that's, that's sort of a good problem from a First Nations government's point of view. It's unfortunate that they don't have the capacity now that our guys have picked up their game to be able to engage them, but it's growing. It's growing in the right direction. (Dallas Smith, 2012)

One of the challenges for the provincial government is the number of First Nations with which they have to work and potentially develop government-to-government relationships. BC10 described how, in some places, there are multiple First Nations that have to be consulted for a particular project.

> The big thing that comes into play, it's not, it's not a problem up here so much, but when you get into the central and lower part of the province where you get multiple bands wanting, asserting their traditional rights over a territory. It's in the Kamloops Area, I think Highland Valley Copper's got thirteen...[laughter] so you can imagine what that's like to try and administer. (BC10, 2013)

From this comment, it is clear why the province is trying to negotiate strategic engagement agreements or reconciliation protocols with groups of nations and reduce the number of relationships in which it is engaged. BC11 described the difficulties for provincial staff that are arising because the terms of strategic engagement agreements are different depending on

the First Nation. S/he contrasted this with the consistency that the consultation policy framework gave the province. In the following quote, BC11 explains how the Ministry of Aboriginal Relations and Reconciliation is trying to standardize the agreements to a few different models.

> In MARR they're talking about one, two, or three different models that the First Nation can pick from. Obviously we want to make sure that we're meeting the needs of the First Nation, so if they have a need that is more aligned with model three as opposed to model one, then yeah, definitely, we'll go there. But they've got to recognize that we're limited in our capacity to continually change agreements, and again we want to make sure that we are living up to our end of the bargain and that consistency will drive us to a limited number of options. And another thing we haven't really done well is when we negotiate, we don't really limit the scope of what we are going to engage that First Nation on. Things like how we send out engagement letters and how we document those engagements, really we want to dictate. Because every First Nation will have slight differences, they'll have different systems, where government has one. And we're the common link between all those First Nation agreements, we shouldn't subject our ability to control that aspect of our business when we negotiate with a First Nation. It, if an interest is added or different than something else, then we can add it to our engagement record, but they should all look and feel the same so that our staff at an administrative level of our organization, it's fairly seamless for them. If it changes wildly they have to learn each one differently, it becomes quite problematic, and that's been one of my challenges over the last little while is getting that consistency. (BC11, 2013)

There are some interesting tensions revealed in these statements. First, BC11 points out that First Nations have to recognize the limits of the *province's* capacity to negotiate and live up to agreements. Second, the strong desire of the provincial government to retain control is apparent when s/he talks about wanting to dictate the terms of engagement, maintain the province's ability to control aspects of its business, and make engagement seamless for provincial staff. This does not suggest a strong focus on 'meeting the needs of the First Nation'.

In the context of describing how the relationship between First Nations and BC could improve, FN2 described how complicated the provincial bureaucracy is and how hard it is for provincial staff to achieve the outcomes they want.

> Oh no it's the engagement side. It's you know provincial or federal governments are very very complicated beasts and like I said even their own people find it very difficult and complex to achieve the outcomes they want. Whatever their motivations. And so to expect, you know, doesn't matter if it's a First Nation or a lobby organization or an interest-based organization or some other level of government, it's as or more complicated. Then so that regardless of whether, certainly having Aboriginal rights in your pocket gives you leverage but you're still end up playing the same games as the ministerial bureaucrat or municipal representative or industry representative or anybody else. Because the internal processes for trying to achieve outcomes in large bureaucracies are the same. And you know I just, perhaps the most useful thing First Nations could do is just have, situate some of their own people in senior positions inside provincial and federal governments and then bring them home. (FN2, 2012)

S/he suggested that, by working inside the provincial (or federal) government, Indigenous people could learn how the bureaucracy works in order to figure out how to achieve outcomes for their First Nation. S/he pointed out that it is important to know what stories to tell people to get what you want or how to make things a priority for staff. “Well yeah, you know, a friend of mine long ago told me if you want something from the provincial government, the first thing you ask whatever bureaucrat you're talking to is, what do you need to make this work?” (FN2, 2012)

Certainly there are challenges for the province, but when you compare the capacity of the province to the capacity of First Nations in purportedly government-to-government relationships, the province clearly has dramatically more financial and human resource capacity. It does not follow that their staff necessarily have the skills required to engage effectively in government-to-government relationships with First Nations that do not take

provincial governance structures and Western science for granted. While it would have been interesting to explore what sort of education and training would be useful for provincial employees to engage more effectively with First Nations in co-governance, it was not a question I asked directly nor did it come up in the interviews.

Not surprisingly given the difference in resourcing of the province and First Nations, First Nations' capacity came up more in interviews than did BC's capacity. I also directly asked interviewees about the areas of land and resource governance in which they felt First Nations needed to build capacity. Interviewees' thoughts about capacity were wide-ranging, including concerns about: governance generally (e.g., representation, accountability, direction, and stability); funding; effective governance structures; limits because of the size of most First Nations; education and technical skills; and long term and meaningful employment.

Nadasdy (2012) suggests that, in the context of Canadian self-government negotiations, 'capacity building' has come to mean First Nations establishing and running a Euro-Canadian style government. Following Irlbacher-Fox (2009), he states:

> This same paternalistic subtext is evident in by now taken-for-granted calls in the Canadian self-government discourse for First Nations to "build capacity," a euphemism for Euro-Canadian-style training that will enable them to serve as the bureaucratic functionaries increasingly required by land claim and self-government agreements—as if they had not had the "capacity" to govern themselves before the arrival of Euro-Canadians. (Nadasdy 2012, 529)

He points out the irony that "the only way [Yukon First Nation] negotiators could convince federal negotiators that they were politically mature enough to handle 'self-government' was to agree to the establishment of a socio-political system that was not their own" (Nadasdy

2012, 529). Although some of the discussion of capacity building in my interviews did centre on building bureaucracies to mirror the province's and educating Indigenous people to function within the province's land and resource management paradigm, much of it did not. A good deal of the discussion was figuring out how to address and reverse legacies of colonialism.

7.5.1 Internal Governance

Some of the concerns that were raised about internal First Nation governance were related to effects of the colonial imposition of elected band councils with two-year terms. From the perspective of interviewees, this has created a variety of problems, including issues related to representation (e.g., who is a legitimate representative of a community), stability, accountability, and separation of powers. First Nations in BC have retained their own systems of governance to varying degrees in the face of over a century of *Indian Act* imposed band councils. In some communities, there are divisions between the hereditary leadership and the elected band council and differences in opinion about who should make decisions and how they should interact. With respect to creating relationships with the provincial government and engaging in territorial co-governance, representation can be an issue when the community has not clearly delineated roles and responsibilities for each governance structure. In this comment, BC8 highlighted this problem from the province's perspective.

> Governance, just internal governance, in particular how to, and this is a governance legacy, this whole, up here especially, with just the disconnect between the hereditary leadership and the elected band leadership creating huge huge problems and it's just really, where it explodes we have no ability to even engage with anybody. It's just so, it's so essential to find governance kind of models that integrate hereditary and elected systems in ways so that there's a clear body with whom government can interact and know that they're dealing with the right representatives of the First Nation. (BC8, 2012)

BC12 suggests that there may also be issues of representation when there is a small group of highly educated leaders or consultants that works with the province, but does not necessarily reflect the views of First Nation community members.

> You know I think it all comes back to governance. And the abilities for a band or through a tribal council or whatever the structures are that we are working with, the ability for them to, as elected officials, to represent their communities properly. What we see a lot of is very small elite groups of representatives and often there are hired guns as well, consultants, whether they are lawyers or resource managers, and those folks are the ones that we work with, and they're highly educated and you know, have very clear views of what needs to be achieved. Often there's a disconnect between what that very small elite group that is representing the First Nation is saying and what you would hear if you went into that community and talked to the people on the street and people that live there. So that's a huge issue. And you can make progress at a table with those folks, or not, but often we can't and then that community ratification process is often where things will fall down. (BC12, 2013)

Kofinas (2005) examines the dynamics of legitimacy in power sharing through a study of caribou co-management in the Yukon. He suggests that there is potential in co-management for the rise of an incipient elite and oligarchic decision-making, in which First Nation co-management board members could lose touch with their constituents and be co-opted by the conventions of state management. Communication between those involved in co-governance and their constituent communities is clearly of vital importance. In his assessment of a particular situation of co-management, Kofinas found that co-management board members on both sides (First Nation and state agency) faced an array of dilemmas that differed depending on their affiliations. In the Yukon case, Kofinas (2005, 190) did "not find the emergence of a co-management oligarchy. Instead, [he] observed committed individuals, translating the needs of the greater collective with an insider's appreciation of the problems."

Dallas Smith raised the importance of communication between regional alliances and chiefs and councilors in each community, as well as communication with community members. He also highlighted the problem that two-year band council terms can create instability of leadership. It is hard, Smith noted, to work toward long term regional goals and processes when the leadership of individual First Nations is constantly changing. He felt it was important to ensure that not only are the chiefs supportive, but their councils and ideally their communities are also supportive of the direction that Nanwakolas is taking.

> Because we go through elections an average of every two years between most of our communities. So that kind of turnover in a six-seven year process that you've developed, you're dealing with a lot of faces. And that's been one of the challenges of staying successful is making sure that, not only is the chief of each community comfortable with what you're doing and why you're doing it, you have to have their councilors who support them on board, too, because they can get the chief out pretty quick if they're not happy. So that's one of the things that we have to monitor on at least a quarterly basis is just, okay, how understanding is the rest of our communities about what we're doing? The chiefs who represent their community at our board are very there, they have all the faith in the world in the system that we've developed, but just making sure that there is some inclusivity. (Dallas Smith, 2012)

Another problem with *Indian Act* imposed band councils, FN8 suggests, is that there is no separation of powers and no way to ensure accountability other than to vote the chief and council out. The system does not provide other avenues for addressing issues, leading to reduced stability.

> We all experience weak governments, that's a huge crisis of colonialism. Africa, Indigenous communities, is the whole structure of governance, you know, we ask our chiefs and councils to be both the legislative, executive, and what I call judicial branch, where in [Euro-Canadian] society, judicially the right of the individual against the state gets protected by a series of freedom of information, ombudspersons, you know, electoral laws, all those sort of things. Although we have a fairly integrated executive, legislative function, we still have a legislative function that critiques laws and that and then you have a government function through Cabinet. Well, the First Nation, it's all with the chief and council. They do everything. If you're pissed off at them, the only

> way you can go after them, is go after them! You can't go to the ombudsperson, you can't go to all these bodies. So I think there's a flaw, there's huge structural problems of governance. (FN8, 2012)

A major problem of capacity for First Nation governments is funding, and this, too, is a legacy of colonialism. As was explained by some of the First Nation decision-makers, Indigenous peoples were dispossessed of their lands and resources and barred from participating in the industrial resource-based economy, leaving them with no avenues for generating 'own source' revenue or employment. As such, they were (and are) dependent on federal funding or 'government handouts'. Because this funding was (and is) program-based—short term, unstable, and with conditions that are externally imposed, First Nations have not had the autonomy to create their own governance structures or engage in long term planning. Now that they have been able to access some revenue from their resources by negotiating revenue-sharing arrangements with the provincial government, they are beginning to have more autonomy over their governance. As explained by FN4, revenue-sharing provides the institutional stability necessary to engage in relationships settler governments.

> So, I would say a medium-term goal is to find ways around revenue-sharing that would allow the First Nations to be a viable sustainable government where they have some institutional stability to engage long-term with…the other governments, which would be the feds and the province in terms of constitutional jurisdiction. Because if you don't have that, then where does it come from? You can't do it on a grants basis, on a year-to-year basis. (FN4, 2012)

Art Sterritt pointed out how colonial governments have marginalized First Nations by prescribing how funds have to be used and suggested that by creating their own funds, First Nations can use that money, learn from their mistakes, and build capacity in their own way.

> The difference that's happened with Coastal First Nations is we've been creating our own funds. Coast Opportunity Fund, that's our fund. We design it. Government doesn't tell us how to spend it. So their prescriptions are set aside. And the same thing is true with carbon credits. There are no prescriptions that come with that. We'll make our own bloody mistakes and we'll learn our own bloody lessons…And that's really what they've tried to do to a lot of our people. They've marginalized us by prescribing exactly how we're supposed to do something. (Art Sterritt, 2013)

In a similar argument, Woolford (2004) suggests that the symbolic violence of affirmative reparations is employed when settler governments provide First Nations with pre-treaty funding to explore or develop post-treaty governance plans, including how they will undertake resource management.

> While these considerations seem on the surface to be practical preparations for post-treaty economic participation, they also represent an attempt to immerse the First Nation in the consuming logic of the modern economy, encouraging the First Nation to position itself in a manner amenable to this economic order rather than as an alternative to it. (Woolford 2004, p 136)

Whether it is described as paternalism or symbolic violence, settler governments prescribing conditions of funding and/or coercing First Nations to develop particular kinds of governance can be considered an extension of colonialism. A solution, identified by Art Sterritt and others, is to find ways of developing internal governance capacity without government funding programs, whether it is through revenue-sharing agreements that do not have strings attached or 'own source' revenue. FN8 points out that, with long term self-sustaining funding, First Nations can build stable governance institutions with consistent policies and procedures.

> Governments generally, historically have funded programs. That's how governments operate. So you fund a program, give the money out to First Nations, but when the program stops, guess what? It's all gone. Our argument is, no, you've got to create a

> legacy here, called a stewardship office or you've got to create a legacy called a development corporation. You need self-sustaining funds. So that you can operate like a government and over time there should be rules and policies and procedures that, as the leadership changes, the bureaucracy knows the rules and that, so they can create continuum and support and advice to the other ones. So, I mean, institutions matter. (FN8, 2012)

FN2 outlines more specifically some of the territorial governance structures and functions that are being developed in First Nations on the coast.

> Let's start at the top and work down. Some of the nations I work for are putting in place some new and improved governance structures. And some of them might be under the umbrella of the elected leadership or under the umbrella of the hereditary leadership or some combination thereof. Under that umbrella, some of the First Nations that I work for are developing their own, if not laws, certainly their own policies, either in the form of direct policy statements or planning documents. Under that umbrella, they're developing their own management public service, stewardship offices, land and resource offices, with senior managers and operational staff and strategic plans and operating budgets and all that kind stuff. Underneath that umbrella, they might actually be doing real management operations, like doing field inventories, you know, typically with a focus on cultural heritage or archaeology, but others are doing more than that. Wildlife or marine species inventories or habitat inventories. And some of them are using the combination of all of the above to engage with other governments to actually manage. (FN2, 2012)

FN2 lists developing policy statements, planning documents, and strategic plans as some of the governance activities in which First Nations are engaging. Similarly, FN8 highlighted the importance of clear positions and strategic plans. S/he argued that, if First Nations have a strategic plan for achieving their goals, they can let go of the little fights because they are focusing on the bigger goals.

> Good governments matter. Institutions matter. And then, what I call strategic thinking matters so much in these institutions. You know, if they are only reactive, which is easy to get into. But if you're out doing a strategic plan and saying we're going to take over these resources, we're going to buy out these companies, we're going to do that over a ten year period, here's how we're going to do it. Instead of fighting with those companies every year when a permit comes out, you have a broader strategic plan of where you want to go and you work towards that and you let go of the Monday

> morning stuff, because you've got a Wednesday morning agenda that's going to make all the difference. So that's really what we've got to do, you know. (FN8, 2012)

BC9 also highlighted the importance of community-supported strategic planning in giving First Nation leaders clear direction in engaging with the province. S/he feels that with that community direction, Indigenous leaders will be able to be more creative in resolving issues and feel confident they will have the backing of their community.

> Internally, the ability to articulate through internal deliberative processes, clear positions that are relatively stable, that, based on some transparent principles that are supported roughly by consensus. I think the idea, you know, lots of First Nations are involving themselves in strategic planning. I think that is sort of a part of it, being able to articulate what you want and where you're going and have the support of the First Nation communities in that. So that First Nations leaders, negotiators, politicians, representatives, can clearly articulate back to their communities how they are acting upon the interests of the community. I think a lot of First Nation representatives I've engaged, well not a lot of them, but some of them, struggle greatly with feeling exposed because they don't know where their community is going to land on a particular question or issue. And as a result, that has a stifling effect on creativity. It has a stifling effect on the ability to sort of just let the sleeping, let the sacred cows lie in terms of the whose land it is question and so forth, and be able to come to the table and resolve an issue and be able to go back to the community and say look, we haven't solved everything but we have solved this and this is what we've gotten out of it and this is how it aligns with what you've told us is important to you. (BC9, 2012)

Many interviewees talked about the importance of First Nations developing internal governance capacity, whether directed toward increasing self-governance or taking a larger share of power in contemporary territorial governance. For the most part, the lack of capacity was or can be attributed to the ongoing destructive effects of colonially imposed governance and disenfranchisement from the right to govern their territories.

7.5.2 Regional Groups and Economies of Scale

Many interviewees brought up governance or capacity issues relating to the size of First Nations, the constitution of First Nations (e.g., Indian bands versus Indigenous nations), and shared or overlapping territories, many of which can be related to colonially imposed governance structures. First, the small size of many First Nations in BC limits their ability to create or sustain government services. FN8 (2012) explained how, because of economies of scale, larger populations are required to run an education or regional health system. BC12 pointed out that it does not make sense and is extremely costly to reproduce all of the functions in each small community, suggesting that a solution might be for First Nations to aggregate to find more efficient and effective ways of governing resource rights and developing relationships with the Crown.

> When I start to look at the whole issue of how many levels of government and you know how small a community can sustain its own government. Right, some of these communities are a few hundred or less, right? You know and here they are, trying to have their own views about land and resource management, how they deliver social services, health care, education, does that make sense? Right? Does it make sense to have not only an elected government for that few people but also all the supporting infrastructure, bureaucracy that you need to do it right? It's a huge capacity issue, right? And so to do it right, the costs are exorbitant in some cases. [JK: So what do you think the solution is?] Well this is probably where I would say things that would offend a lot of people. I think at some level there has to be, at some point there has to be some aggregation, in a way that still respects the culture—may be unique—but allows them and us to find a more efficient way to exercise the rights that relate more specifically to the land. When you start to look at, drill down into these things, the rights around say hunting and fishing, trapping and you know title, those aren't things that vary that much from one nation to the other. You know how they did it or how they set rules around it. Like the cultural practices may be slightly different from a historic perspective. But even those would need to be brought forward into a more modern context anyways. But if you accept that premise then, would there not be the ability to sort of aggregate and try to find more efficient ways or more effective ways of developing that relationship with the Crown? (BC12, 2013)

Dallas Smith gave a specific example of how, by working together as a group, the Nanwakolas nations are able to keep costs down.

> And that's one of the other blessings at Nanwakolas is we've been able to drive that cost down. We've actually chased a few consultants out of our member communities, saying okay, we've got someone who can perform that role on behalf of these nine different nations and you don't need to be billing them $800 a day to perform what our person's doing. We're paying them a good healthy wage, 45 or 50 thousand a year, but they're doing it on behalf of the handful of nations, so the savings have really started to become visible from the administration point of view in the communities. (Dallas Smith, 2012)

In addition to efficiency and economies of scale, First Nations achieve other goals by working together. Larger groups of nations have more power, can access people at higher levels of the provincial government, and have been able to affect policy. As explained by Art Sterritt, when Coastal First Nations came together, they felt that, as a group, they had a better chance of affecting government policy.

> But our initial thoughts in coming together were that despite the fact that we have all these court cases, whether they be *Gladstone* or *Sparrow* or *Haida* and *Taku River Tlingit*, nobody was going to breathe any life into the rights we'd won in the courts except ourselves. And so, when we first came together as individual First Nations none of us were having any success at the treaty table. None whatsoever. It was just really, just racking up debt and not accomplishing anything. We came together, we figured that as a group we might have the ability to perhaps convince the provincial government to change some policies that were affecting the way we live, whether they were in places that people would log or mine or whether they slaughtered bears in places we didn't want them to do. Whatever it happened to be, it was our expectation that we would have an impact on policy making. (Art Sterritt, 2013)

By working together in regional groups, First Nations also internalize any issues that result from overlapping territories. Dallas Smith (2012) used the analogy of apportioning a pie to explain how regional groups can deal internally with issues between nations: “I think you're going to see more regional groupings like the ones we've developed, saying, ‘Okay we will

take this pie, and we will decide how to cut it. That's fine, you put this plan on the table for us? We will take it. And it's not up to you how we cut it up.'"

Overlapping territories, which result from a variety of factors presented earlier, result in First Nations having weaker claims to Aboriginal title and therefore less negotiating power from the perspective of the provincial government. The province is reluctant to negotiate agreements with First Nations in areas where there are multiple claims. When First Nations form regional alliances, then, they gain power not only because they have larger numbers, but also because the province does not have to worry about issues that may arise from overlapping territories. This is explained by BC5.

> So it's a bunch of stuff around capacity, but I do think that one of the real secrets and real successes would be to deal amongst themselves, this is the second point, with their overlaps in terms of jurisdiction. And I think that's holding them back in the strongest possible way. Because of the fact that, at least on the coast here, only one First Nation that I know of that is really clear where their land is and that nobody else challenges their role on that land. And they've been very successful as a consequence. (BC5, 2012)

BC5 relays the well-known secret of Haida's negotiating success—because they do not have overlapping territory concerns, they have a very strong title case which they can fall back on if they are not satisfied with the results of negotiations. FN7 describes how overlapping territory concerns have limited her/his nation's ability to negotiate for governance power.

> Since the Haida have that hammer they're able to accomplish more. That would be something that we would love to be able to have, but because we have tribal area claims and aren't able to come to agreement on where our territory tribal areas are with our neighbors, then it doesn't give us as strong a hammer and so it's more difficult for us to negotiate with the province on certain responsibilities that we can take over and go in there and push hard. (FN7, 2012)

There are strong arguments for First Nations to work together in regional groups, but there are also reasons why some nations choose not to. For the province, it is clearly easier to deal with a small number of regional groups that have more capacity than it is to deal with over 200 First Nations that have less capacity. BC6 described how the province is providing capacity funding to regional groups through strategic engagement agreements in order to address the inability of individual nations to manage the flood of referrals from the province.

> We did this analysis once where we tried to figure out how many referral letters we send, the province sends to First Nations in any given year. It's huge, right? There's some that might get 50, that's probably the minimum. But there's others that get, you know, 8000 referrals a year. And each one of those referrals causes them to go do some research, it could be hiring a biologist, to just understanding their own interests, so a very deep amount of work involved with each one of those. So how do they engage with that much volume coming at them with one chief, a couple counselors, and maybe one or two people on staff? With the myriad of social problems. So human capacity problems driven by the social issues and then the scale and then the volume. And the way the province has been trying to get at that is through these strategic engagement agreements, where capacity funding is provided on an annual basis to operate a referral management system for a number of different bands within the same nation. (BC6, 2012)

As explained more explicitly by FN4, however, the province has been pushing First Nations to form groups by only negotiating substantive change with the coalitions.

> So that's why the province has tried to push the nations into these coalitions. And many of the nations oppose that. Rights and title and the legal authority sits at the individual nation level. There is no question about that. So the province has the continual problem…of how do you structure problems and give incentives to nations to stay in these coalitions when, at any moment, any nation can walk away. And the legal authority still sits, it sits with them. It never sits with the coalition. In a sense, the coalition is a delegated agency. And it only serves there at the pleasure of the principles, the individual nations. So the province actually had a fairly sophisticated program…to engage if you wish, to move substantive change only with the coalitions for a number of reasons…And if you don't engage collectively, you run the problem of how do you manage roughly 200 different nations with overlapping territories. FN4

It is one thing for First Nations to choose to form regional groups in order to see benefits in terms of increased capacity due to economies of scale or reduced conflict with neighbours; it is another for the province to refuse to engage meaningfully with First Nations that do not choose to work in a regional group. In this case, the provincial government is using its ill-gotten power to dictate the conditions of the supposedly government-to-government relationship with a First Nation.

Dallas Smith shared another tactic he thinks the provincial government is going to use to address concerns with overlapping territories.

> In the next little while, I think you'll see a little bit of the policy change just because of overlaps and things like that. The province just doesn't want to see themselves in court. I think they're going to basically acknowledge everybody's right and title too much. And I think, part of me thinks that that's a bit of a ploy by the colonization side to have us fight with each other. So they're going to say we acknowledge all your rights and title. You tell us who's right when it comes to that decision. And that's fair. They're certainly doing what we've asked them to do. But at the same time we need to show that political discipline and leadership within our communities to work together and just make sure that that's not a flawed process. We can make that process work, but we collectively have to go into it with open eyes to make sure that, again, I'm not trumping my neighbor by saying my title is worth more than his title. All of our title is valuable. And we need to be able to manage it accordingly with that, and not fall in to those pitfalls from the province. But I think that will be the province's sort of last fight at Aboriginal rights and title is acknowledging everybody else's. It will sort of be like reverse psychology, is what I see them leaning towards. (Dallas Smith, 2012)

Although he suggested that their motivation may not be wholly virtuous, Dallas Smith pointed out that First Nations have asked the province to stay out of issues around overlapping territories and it would be wise for them to acknowledge everyone's title and let First Nations work it out. He hopes that First Nations can show the political leadership and discipline to work it out together.

7.5.3 People and Jobs

Natcher and Davis (2007) explain how increased territorial responsibility after the settlement of land claims in the Yukon has created problems for First Nations because of the skills necessary for contemporary resource management. They list some of the knowledge and skills that are necessary: intimate knowledge of the land, organizational skills, skills in dealing with government or market agencies, knowledge of government regulations, knowledge of environmental policies, and technical and scientific literacy. They also point out the difficulty of developing those skills in demographically small First Nation communities. The decision-makers I spoke with also talked about the necessity of education and skills training for First Nation members to engage in government-to-government relations and undertake increased territorial governance.

Several decision-makers highlighted the importance of First Nations being able to provide long term, stable, and meaningful employment in order to give people the assurance that, once they have finished university or a training program, they will be able to come home to a job. As pointed out by BC4, program funding from the province has not been successful in providing training and meaningful employment.

> And I know that programs have come and gone. We've provided equipment, GIS equipment. But unless you actually get to the heart of training and providing meaningful employment to First Nations, that equipment can then just sit there and become a bit of a coffee table. And you can say that you've provided some support for capacity, but it hasn't gotten to the root cause, right? You need to provide that ongoing support and training for a position. And jobs are so important, right? So I think First Nations would be more inclined to get into a field of education if they could see some jobs at the end of it, right? So, I think there is much much more to be done. (BC4, 2012)

Art Sterritt describes how, because First Nations have had to rely on program funding from settler governments in the past, they have not been able to provide secure employment to their employees. Now that First Nations have options for stable funding that they control, they can create permanent jobs and give people the confidence to get further education or training.

> The first way that we've done it is to be able to provide the financial capacity for people to do that. Once people realize that these are permanent jobs, they're going to be there forever and if they go off and get more contemporary training that there will be jobs for them. Then they'll go out there and create that capacity themselves. But they've never had the confidence. First Nations governments have not had the ability to continue to deliver on the opportunity and that's what you're seeing going on in Ottawa right now. Is people saying we need to have a long term relationship, not one that just says well, we'll give you a job for a little while and then we'll withdraw the program unless you do what we tell you. (Art Sterritt, 2013)

Art Sterritt also pointed out that capacity can be defined in different ways and it may need to involve contemporary training or it may not.

> Yeah, I mean we need capacity in all areas. You know there's no doubt that capacity isn't, it can't really be defined. I mean each First Nation has their own way of doing things and you can govern in a particular way that you may need contemporary training, you may not. But certainly capacity can be translated in a number of ways. (Art Sterritt, 2013)

FN11 emphasized the importance of building and maintaining a relationship with place. S/he describes how it has to begin at a young age, instilling cultural values and creating a place-based identity that makes people want to take care of their home place. S/he suggested that combining that relationship to place with new skills, training, and experience later on can help people to take care of that place more effectively.

> I think that it really needs to start from the youngest generation and build upward. We've seen, I think, really huge measurable success in starting with young people and instilling those cultural and natural stewardship values and helping them to understand their very place-based, culturally-informed identity as [specific First Nation] people. When you build that in a young person, you're giving them, you're helping them to invest in a relationship with place and when they feel like they have a sense of ownership over it, they want to take care of it, and they understand their relationship to it. And if you can help them maintain that throughout their lives and help them to create opportunities to gain new skills and experience and training that will help them do it more effectively, that's a really a worthwhile investment to make. (FN11, 2013)

FN11 also stressed the importance of having jobs waiting for youth when they get home from university.

> And you know, we're seeing, I think, far more students graduating from high school, going away, pursuing post-secondary education, completing their programs and moving back into the community. We have a responsibility in the community to help create the jobs and opportunities that will make it worthwhile for them to come home. So it's a really long term investment that really starts with kids in elementary school, helping them to build those inter-generational learning models and those really strong [specific First Nation] values. Giving them educational opportunities and supporting them all the way through university and then making sure that there's something waiting for them on the other end when they get back to the community. (FN11, 2013)

In addition to educating young people, Ross Wilson and Dallas Smith argued that First Nation leadership also has to be educated. Ross Wilson underscored the importance of the negotiations and decisions in which Indigenous leadership is engaged.

> You have to have educated people. You have a lot of governments that elect people that have absolutely no education. They're walking into very very very critical and historic rooms and they're sitting on behalf of your band. So when you don't have that criteria or standard, there's going to be a lot of suffering for a long time. (Ross Wilson, 2012)

Dallas Smith specified reading comprehension levels as a particular barrier to making informed decisions.

> And then to see our leadership now start to develop, where we have kids coming home with Masters degrees, PhD's, coming home saying, hey, I learned a thing or two, how can I help?...What can we do? So, to see that transition finally start to happen is nice. Because we were quite worried when we first started working together and trying to build strategies, and goals, and objectives. The reading comprehension level in our leadership became very apparent. That it was just not high enough. That people weren't understanding how information flowed and so they weren't making informed decisions. (Dallas Smith, 2012)

FN3 highlighted the importance of First Nations having communications infrastructure and skills when engaging in shared decision-making. S/he pointed out that it takes time to develop capacity from within communities and suggested that now, decades after they regained a resource management role through the Boldt decision in Washington state, Native American communities have developed the capacity to negotiate on equal footing with the state.

> So if you're moving forward with shared decision-making, the ability to communicate. So asking the question about infrastructure related to government-to-government communications: your hardware, your software, your capacity, your IT capacity, GIS capacity, those types of technical pieces. And then there's the human resource side, the capacity there. And it has to come from within our communities, so that's going to take time. But I think that if we look at the Native American communities, like in Washington state in a post-Boldt environment. After 50 years, you know they've got great biological capacity, with biologists. They are on an even footing with the state of Washington when negotiating biomass allocation and resource allocation. (FN3, 2012)

Several people brought up the issue of non-Indigenous people working for First Nations, particularly in technical positions and during a transition period, while First Nations are regaining territorial governance powers. Dallas Smith, like Ross Wilson, stressed the importance of the work being done and suggested that if there is not a community member to do a job, then whoever is hired can intern one to build that capacity within the community.

> I think on the capacity side, I think one of the things that we learned when we started developing our projects and offices and things like that was, it's nice to have your own people doing it, but we didn't do things to build work programs…If people were suited for that job, let's give them an opportunity to have that job first, but let's not base it on 'I need to make work for twelve Aboriginal people doing this.' This is way too important to be race-based. We need the best people for the job, and if they're not First Nations people, the people we bring in need to be willing to train and intern First Nations people underneath them, so we actually build that capacity in our community. (Dallas Smith, 2012)

This BC decision-maker expressed distrust of non-Indigenous consultants hired by First Nations to engage with the province, suspecting them of dictating the First Nation's needs and potentially increasing conflict to bill more hours. S/he suggested that when a community member has the technical background and is paid a regular salary, negotiations go better.

> I would like to see that capacity being built within the First Nation, not hired out by the First Nation. What they're doing is they're hiring their—they call it the token white guy—that sits at the table in a consultation capacity and they really are dictating back to the First Nation what the First Nation needs. Based on what they know the First Nation's needs to be. And you know, quite often, I'm not sure if it's part of their agenda but they get paid like a lawyer does, you know billable hours, and the more conflict you can get in any kind of arrangement then the more hours you can bill again as opposed to finding a common arrangement. I'm not saying that that's happening or anything, but that is a possibility, right? Whereas a First Nation where that experience and knowledge is built into the organization, like they have individuals who have technical background in a certain field and they can expand those to all the fields, they can really speak on behalf of the First Nation. They have that connection to the First Nation interest automatically and you know, they're being paid just like every other First Nation member of that party, and I see that as a real need. And in cases where they have that built in experience it's gone a lot better. There's the token white guy with First Nations that are working really well, too. I mean they get it, they know how to find those business arrangements, but then there's others where it seems way more confrontational and a lot longer. (BC11, 2013)

BC11's concern is different from the concerns raised by Natcher and Davis (2007) with respect to non-Indigenous resource managers employed by First Nations. While BC11 worries about increased conflict between First Nations and the province being generated by

non-Indigenous consultants, Natcher and Davis highlight the potential for non-Indigenous employees to use their own ideologies, cultural frames of reference, resource management practices, and decision-making processes, with the result being an internal duplication of state administrative bureaucracies.

Dallas Smith explained how he learned both Indigenous and non-Indigenous ways of thinking by growing up and going to school in a non-Indigenous community, being the son of a hereditary chief, and making trips back to his home community. He felt that his insight into both worlds has helped him be successful at the interface between them in the new world of government-to-government relations.

> But so I grew up in White Rock, just as non-native as it could get. I went to a high school of 1500 kids. There was two natives, me and my sister. And so I grew up understanding my native culture because my father is a hereditary chief and we went home for potlatches and things like that. But growing up, it was just not a native way of thinking. And so I think that gave me a bit of the best of both worlds when I sat down in this new world where native people were negotiating with non-native people about resource management issues and principles and I could sort of see both sides a little bit more clear, which gave me a little bit of a leg-up I figure just in understanding how to mediate some of the issues that we had in between. It took me a few years to realize that I had that understanding and almost that responsibility as the son of a hereditary chief to show that leadership. (Dallas Smith, 2012)

To summarize, then, the new world of engaged government-to-government relations requires capacity building on the part of the province and First Nations. Both have increased responsibilities related to interacting with and understanding the perspectives, worldviews, governance systems, and knowledge of the other. Although there have been significant shifts in power relations, they remain very unequal and First Nations continue to bear the burden of having to learn and use Euro-Canadian language, knowledge, and governance systems in order to engage settler governments and continue to regain power. This burden, coupled with

serious impacts to Indigenous languages, knowledge, economies, and governance systems caused by colonial policies, creates a perceived and an actual need for First Nations to build capacity. In the 'new world' of government-to-government relations and territorial governance, the capacity that is being built within First Nations sometimes resembles settler bureaucracies.

Nadasdy (2003) argues that the bureaucratization forced on First Nation societies through land claims and co-management processes undermines the very social relations, practices, beliefs, and values that First Nations are hoping to preserve through the processes in the first place. Indeed, the bureaucratization First Nations undergo in order to engage with settler governments has had impacts on their societies. But I wonder what other option is available for First Nations that want to regain governance over their (entire) territories, which inevitably requires engaging with settler governments and industry? If reconciliation involves increased engagement with settler governments and industry, as interviewees suggest, (e.g., building relationships, developing economies, and co-governing) then building capacity will necessarily involve creating governance structures that mirror Euro-Canadian ones to some extent. It is important for leaders on both sides to be cognizant of the potential for symbolic violence and/or colonized thinking (as they clearly are), but alternatives are limited for First Nations in developing the capacity to operate in a contemporary territorial governance or co-governance context. First Nations have resisted assimilation and regained power by effectively engaging the state and that requires knowing about and working within the Euro-Canadian system and Western scientific paradigm. As highlighted by some interviewees, it is

also important to focus on revitalizing and engaging Indigenous governance structures, functions, and knowledge.

Natcher and Davis (2007) examine First Nation land and resource management after the settlement of land claims in the Yukon and find that settler state institutions and ideologies remain deeply embedded in the First Nation administration for a variety of reasons. They conclude with a warning to First Nations in other parts of Canada that are negotiating devolution and self-government agreements:

> Before entering into these agreements it will be imperative that First Nation leaders think critically as to whether devolution, as currently implemented in Canada, can create conditions of empowerment and autonomy for First Nation governments or merely represents the deconcentration of preexisting forms of state management and the perpetuation of values that support them. (Natcher and Davis 2007, 277)

As explained earlier, many First Nations in BC have shifted to focus on an incremental approach to reconciliation to allow them to continually revisit the agreements that are being implemented to ensure that they allow for the empowerment and autonomy they are seeking.

It can seem disheartening when one focuses on the legacies of colonialism, including continuing control by the provincial government, unequal levels of financial and human resources, and unrelenting pressure on First Nations to adopt Euro-Canadian worldviews and governance systems. There was a spirit of optimism, however, in most, if not all of the Indigenous decision-makers with whom I spoke. FN11 underscored how, through a lot of hard work in her/his community, youth have developed a stronger relationship to place and culture, which filters out into all aspects of their life and to the whole community. S/he

suggests that the fact that it has become ‘cool to be cultural’ is foundational to questions about territorial governance.

> I think a big part of it is having this generation of kids come up that's had access to more opportunities, to more of a relationship to place and to culture. I think there's been a really important shift that's happened in…terms of youth relationship to culture and how that's inspired a change in community relationship to culture. So I remember when I was really young, at potlaches there was really low youth participation and very few kids that would be there for the whole thing and participating all the way through. At some point, through a lot of really hard work through a lot of different agencies in the community, it's become cool to be cultural. I mean you cannot bring young people and teenagers to anything they don't want to do, but if you can give them a reason to want to do it, then you are set. And it's cool to be cultural, and that's just made a really huge mental shift in the community and made a whole new generation a lot more open to exploring their cultural identity and how that informs their approach to education and family and everything that they're doing in their lives. I think that might seem really indirect to the question of stewardship and rights and title but actually it's really foundational and it's changed the way the whole community is interacting with that sense of community, because…the youth really lead those movements and when they start asking their parents questions and their elders questions, and challenging and seeking information, you know, you’ve got to step up to the plate and be right there with them. (FN11, 2013)

S/he makes a distinction between the spirit of resilience that has always existed within her/his community, and the spirit of hope that has developed in the past ten years.

> And I see that as the beginning of a cultural shift, because ten years ago, I don't feel like there was the same spirit of hope in the community, or my community at least. I think that there's always been a spirit of resilience, and not always a spirit of hope. And I think that's the key shift that I've seen that really inspires my work. (FN11, 2013)

7.6 Conclusion

The views expressed by the decision-makers interviewed here both supported and contradicted themes in the literature on Indigenous-state relations and reconciliation. First, the literature generally argues that state-controlled reconciliation processes attempt to reinforce the colonial *status quo* and create certainty for settler governments and industry

(e.g., Woolford 2005, Short 2008). Arguably the provincial government continues to desire certainty on the landscape and work toward it, but provincial decision-makers acknowledge that certainty is a myth, at least as it is conceived by settler governments in the BC Treaty process. Second, some scholars argue that reconciliation ought to focus simply on peaceful coexistence and avoid models that require Indigenous nations and settler governments to engage in ongoing relationships, especially ones that require common goals and visions (e.g., Short 2008, Alfred 2005). Interviewees felt that building relationships, aligning goals, and co-governing land and resources were major components of reconciliation and the way to reconcile Aboriginal title and Crown claims to sovereignty. Third, although nation-to-nation treaties are seen as a solution to internal colonialism in the literature (e.g., RCAP 1996, Short 2008), at this moment in time, decision-makers feel that treaties are not an immediate or even an intermediate goal. Finally, a strong theme in the interviews was that reconciliation needs to contain an economic development component for First Nations, a finding that may concern those scholars who worry about affirmative reparations and the hegemony of neoliberal politics and capitalism (e.g., Woolford 2004a and 2005, Alfred 2005, Atleo 2009). Attention to the way these perspectives were presented may temper some of the fears, but also point to schisms that may exist within and between First Nation communities, and between First Nations and BC.

Similarly, the emerging co-governance relations, structures, practices, and issues in BC described by decision-makers both resemble and diverge from those described in the co-management literature. In his review of the co-management literature, Berkes (2009, 1698) suggests that the "accumulation of experience since the 1980s has led to theory development

and to an unpacking of co-management as power sharing, institution building, and trust building." Certainly, these three aspects of co-management were important themes in the interviews, with decision-makers highlighting all of them in their discussion of relationships and reconciliation. Although state institutional structures and practices do dominate co-governance in BC as in other places (e.g., Nadasdy 2005, Natcher and Davis 2007), provincial structures are also changing as a result of co-governance (Kofinas 2005). Similar to other studies in BC, higher level political issues are being addressed through co-governance (Goetz 2005), partly because of the development of multilevel co-governance relationships and structures (Barry 2012). Discussions of capacity building in the interviews tended to focus on countering the effects of colonialism, rather than the need to build bureaucracies that mirror the provincial bureaucracy (Nadasdy 2012). Still, First Nations disproportionately have to understand and use Euro-Canadian language, concepts, knowledge, and governance systems.

How does the conception of reconciliation that emerged from the interviews with decision-makers relate to the literature on reconciliation? First, there are two components to reconciliation in settler colonialism: reconciling competing claims to title and rights and reconciling Indigenous-state relations. Decision-makers indicated that reconciling relations may eliminate the need to reconcile competing claims. Two of the critiques of reconciliation in the literature are that: 1) 'reconciliation' suggests finality and closure but should be an on-going and dynamic process and 2) reconciliation processes are embedded in and perpetuate existing power imbalances. Interviewees repeatedly expressed the importance of an incremental and ongoing approach, that 'you will never reach the end'. They also stressed the

importance of shifting power in the relationship, or leveling the playing field, as explored in Chapter 5.

In his analysis of the BC treaty process, Woolford (2005) argues that because settler governments control the terms of negotiations, reparations as certainty-making prevail over reparations as justice-making and justice becomes equated with certainty. The importance interviewees placed on co-governance and trust- and relationship-building in reconciliation, and their rejection of the possibility of certainty 'on the landscape' suggest that at least the discourse outside the treaty process is different. This does not mean, however, that the agreements being signed are not an attempt to create the elusive certainty, nor that 'certainty' is not ubiquitous in provincial government press releases. Woolford concludes his analysis by suggesting that the treaty process be less restrictive and allow an open conversation about the possibility of reconciliation.

> …a radical inclusion of the Other in treaty negotiations requires that we go beyond visualizing 'full and final' certainty as a form of justice. Justice, as Derrida points out, has no fixed quantity and cannot be implemented in a full and final form. It entails, instead, as ongoing relationship that is always open to scrutiny and reassessment. In this sense, justice is uncertain. This does not mean, however, that in dealing with the past we need to launch ourselves into a future relationship that is forever at risk of collapsing because of the arbitrary and unpredictable actions of the Other; rather, certainty is built upon a foundation of trust and mutual knowing. (Woolford, 2005, 178)

It seems that First Nations and BC have been able to have a more open conversations about relationships and reconciliation outside of the treaty process and that indeed, they see the importance of building a foundation of trust in an ongoing relationship that is open to reassessment.

Aspects of reconciliation that are important in the literature but that were not mentioned by interviewees are settler governments acknowledging injustices done to Indigenous peoples, apologizing, and compensating Indigenous peoples. These components have been identified as important by First Nations but resisted by settler governments for fear of legal repercussions (Woolford 2004 and 2004a). In considering why they were not brought up in interviews, my suggestion is that because they have been resisted by settler governments for so long, they are no longer a part of what can rationally be considered, an example of symbolic violence influencing what it is possible to think. As pointed out by Woolford (2005), though, acknowledgement of the injustices of the past would help frame reconciliation processes in a way that limits settler government power and helps place the parties on equal footing.

> …non-Aboriginal governments will need to acknowledge the harm that has been visited upon First Nations peoples in British Columbia through the colonial expropriation of Aboriginal territories. An admission of historical guilt, in combination with an engagement with First Nations narratives of contact and colonialism, will serve to limit the non-Aboriginal governments' power in the treaty process and place the parties on equal footing by clarifying that it is non-Aboriginal society that owes a debt to First Nations peoples, not First Nations peoples who must appeal for "handouts" from the government. (Woolford 2005, 181)

He also suggests that an admission of guilt would serve as a foundation for building trust, but emphasizes that recognition of the past will lack meaning if not accompanied by significant forms of material redistribution.

Finally, I want to return to Crocker's (2003) thinner and thicker conceptions of reconciliation and Short's (2008) concerns about thicker conceptions of reconciliation in situations of

settler colonialism. As described by Short (2008, 21), thicker conceptions require people to share visions and "seek to create space to hear each other out, enter into a give-and-take on public policy, build on areas of common concern, and forge mutually acceptable compromises." Where power imbalances exist, shared visions and compromises favour the dominant party and can put further assimilative pressures on Indigenous peoples. Because of these fears, Short recommends reconciliation as peaceful coexistence, a thin conception of reconciliation. Two of the predominant conceptions of reconciliation advanced in the interviews, building relationships and co-governing with a common vision, fall on the thicker side of Crocker's spectrum. Personal relationships and multilevel integrated governance structures require respect, interaction, and trust. And, as pointed out by decision-makers, co-governing requires putting aside differences, focusing on solutions, and aligning goals, at least to some degree. Perhaps it shows the limits of my imagination, but I cannot see how First Nations who want to retain title to and govern activities on their entire territories can do that through peaceful coexistence rather than engaging with settler governments in relationships that require significant interaction and an aligning of at least some goals.

Alongside the perspective that reconciling requires co-governing was a strong focus on incremental change. In his quote at the beginning of the chapter, Dallas Smith described how reconciliation has to happen in small bites, with a chance to review in between. Similarly, Art Sterritt suggested that reconciliation had to allow First Nations to try particular solutions on for size, to 'test-drive' them. If the unfolding relationship or particular agreements are not benefitting First Nations and allowing them to meet their goals and needs, an incremental process provides opportunities to reconsider strategy and direction. It reduces the risk,

urgency, and uncertainty Indigenous community members feel about ‘full and final’ settlements, and allows them to influence the direction over time, as conditions change in their communities and beyond. If Indigenous peoples have held on to the knowledge that they are sovereign nations with the right to govern their lands through 150 years of colonial attempts to eliminate or assimilate them, I suggest they will be able to hold on to that vision within a co-governing relationship with the provincial government. FN7 described how, for at least one hundred years, her/his people have described their territory as a country and that they are continuing to pursue responsibility using that model.

> I think for our people it was back in 1912 with the McKenna McBride where they really had a voice that was being recorded, out of the McKenna McBride Commission. And so our people there were really strong in expressing their, the fact that this territory of ours was actually a country. And so within Canada they felt our territory was a country and that's how they expressed themselves. And so, you know, it's really about building off what our people have said over time, where we've actually really established our own desire to be able to continue fighting for that and getting more responsibility for our territory. (FN7, 2012)

In reflecting on how Indigenous peoples can achieve their reconciliation goals, Ross Wilson (2012) said: “I just think about the progress that, when the Nisga'a took their first canoe down in 1887 I think it was to where we are today. I think about, as Chief Dan [George] would say, 'Endeavor to persevere.'”

Chapter 8: Conclusion

BC has just experienced a provincial election in which the incumbent conservative BC Liberal Party won a surprise fourth majority in a race that began with, by all accounts, the social-democratic New Democratic Party placed to sweep into power. As described by the decision-makers I interviewed, both for BC and First Nations, the BC Liberals have not been focused on improving the relationship between First Nations and BC following Christy Clark's replacement of Gordon Campbell as premier. Many First Nation leaders had been biding their time, waiting for the expected change in governing party before asserting their governance goals more fully. With another four years of the BC Liberals under Christy Clark, however, new strategies for achieving results are likely being devised.

In an interview on May 15, 2013 on Vancouver's Coop Radio[141], Grand Chief Stewart Phillip of the Union of BC Indian Chiefs reacted to the election results.

> Needless to say, we're greatly disappointed. We were looking forward to a change for the better, so to speak, and clearly that did not materialize. We believe that the outcome of the BC election represents the drawing of future battle lines between the environment and resource development…As I watched the results unfold, I began to realize that we were, in all likelihood, moving toward an era of confrontation and conflict, given the fact that under Premier Clark's leadership, there was no effort to invest in any significant or genuine way in terms of building a closer relationship with the Indigenous peoples of this province. She was quite dismissive and very distant with respect to continuing the work of the so-called 'new relationship'.

In a telling comment reported in the *Vancouver Sun* on May 15, 2013, Grand Chief Phillip also stated that: "In many ways the elections in the province of British Columbia merely

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[141] http://w2radio.wordpress.com/2013/05/15/media-mornings-wed-may-15-post-bc-election-special/

represents another day at the office for the First Nations people in this province. We've had as many differences and conflicts with previous NDP governments as we have with the BC Liberal government." Taken together, these statements signal First Nations' long history of using whatever means are available at a particular time to pursue their goals of regaining their land, resources, and governance powers—their philosophy of endeavouring to persevere. An election result may change, for the moment, negotiating a new relationship to blockading development and fighting in court, but decolonization remains their goal.

In her acceptance speech, Premier Christy Clark did not specifically mention First Nations, but she spoke about British Columbians' values and vision for the province.

> …we need to pursue the values that make us strong as a province, values that include leaving this province better than we found it. Values that include making sure that we look after those who loved us the way that they looked after us. Values that include making sure that the majesty and beauty of this province is preserved. And most of all, making sure that our children are left better off than we ever were. Those are the values that bind British Columbia. This province was built by people who worked hard and people who dreamed big. From those families who have been here forever to those families that have come here just this generation, we are all united in those values that bind us together. So tonight, thanks to British Columbians, we have a strong new team to implement our bold vision for this province…to build this economy, to make sure we live in the province we all dreamed of for our children, and to make sure that our children inherit a future that we have always dreamed for them.[142]

There are many points that could be made about this passage from her speech, but the one that I want to highlight here is her implication that British Columbians—including 'those families that have been here forever' (presumably Indigenous peoples)—are bound by common values and share a unified vision for the province, a vision of building the economy.

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[142] Transcribed from a video of the speech at the Canadian Broadcasting Corporation website, http://www.cbc.ca/player/News/Canada/BC/ID/2385305642/

These comments bring to mind the fears of Indigenous people and of scholars who work on reconciliation in settler colonial contexts about shared comprehensive visions, laden with colonialist assumptions, that do not allow space for Indigenous visions to coexist (e.g., Short 2008, Woolford 2004). The contrast between the quote from Grand Chief Phillip, about battle lines, conflict, and confrontation, and Premier Clark, about unified values and visions, is striking.

I raise this most recent election to ensure, yet again, that I am not oversimplifying First Nation-BC relations, implying there is a consensus about reconciliation, or telling a story of BC's steady progress from denial of Aboriginal rights to a new relationship based on respect. This is evidently not the case, as argued throughout this dissertation. At the same time, as I also argue, there has been substantive change in the territorial governance power of First Nations and in relationships between First Nations and BC. How is the repossession of territorial governance power coming about?

I began my examination in the period after *Delgamuukw*, a judgment that was only possible because of the many events that preceded it. As outlined in Chapter 2 and Chapter 4, Indigenous peoples continually pressured settler governments to recognize their rights, using protest and petition, and adding litigation and treaty negotiation when they became available strategies. Changes in the ideology of non-Indigenous people after World War II was a factor that led to litigation becoming an available strategy and to the body of case law that preceded *Delgamuukw*. For its part, *Delgamuukw* defined Aboriginal title in a way that acknowledged Indigenous peoples' interest in the land itself, allowed for non-traditional forms of land use,

identified an economic component, and instructed settler governments to consult with Indigenous peoples on decisions taken with respect to their lands. This amplified the requirement for consultation, an engagement strategy that First Nations have been able to leverage, with assistance from favourable court decisions and perceived economic (and, in some cases, political) uncertainty, into much broader multilevel territorial co-governance structures. The legal and political climate has also made it propitious for First Nations to assert their territorial governance power, even in contravention to provincial policy.

The province has resisted pressure from First Nations, often conceding to change relationships or observe rights only when instructed by the courts. The 2000s were a time of significant change, however, when the BC Liberals, under Premier Gordon Campbell, went from opposing the Nisga'a treaty in court and holding an arguably anti-First Nation referendum on the treaty process, to working with the First Nations Leadership Council to negotiate the New Relationship in 2005 and propose recognition and reconciliation legislation in 2009. In that decade, many new and different types of relationships and agreements emerged between First Nations and BC. My interviews with decision-makers, and BC's announced policy change in 2011, show a change in focus from treaties to co-governance and/or economic agreements as means to reconciliation.

Although not a specific focus of my study, capitalism has been an overarching force in Crown-First Nation relationships in BC since the beginning of those relationships. Settlement may have been an imperative in some places in the province, but people were drawn to others by natural resources—fish, forests, and minerals. In his explanation of how colonialism

dispossessed Indigenous peoples in BC, Cole Harris (2004, 165) argues that: "the momentum to dispossess derived from the interest of capital in profit and of settlers in forging new livelihoods." That momentum continues today in the provincial government's resistance to Indigenous peoples' goals of repossessing lands and resources and still derives from the same interests. A strong argument could be made that new relationships are only being developed in BC because Indigenous interests are interfering with economic development and investment. But that brings us back to why they are interfering differently now than they were in another period, for example before *Delgamuukw*. At any particular moment in time, and in any particular place, First Nation-Crown relations are influenced by the ideology of individuals and groups, the strategies employed in legal and political arenas, and the interests of capital. Each of these is intertwined with and influences the others.

This dissertation sought to answer questions about reconciliation in places with a history of settler colonialism generally, and specifically how reconciliation is unfolding in BC. In Chapter 3, I developed a conceptual framework for assessing reconciliation processes, processes that should aim ultimately to decolonize settlers and their governments and institutions. In the context of territorial governance, decolonizing ought to include settler governments acknowledging and apologizing for past and current colonial relations and policies; creating relationships of mutual respect at all governance levels and between individuals; settler governments observing Indigenous title and rights over each nation's entire territory and supporting the continuation of local Indigenous laws and governance institutions; Indigenous and settler governments co-governing areas that First Nations have

agreed to share; First Nations collecting resource revenues; and settler governments compensating Indigenous peoples for lost lands, resources, and opportunities.

The remainder of my dissertation, Chapters 4 to 7, looked at the specific case of reconciliation in BC. In those chapters, I argued that Aboriginal rights have given First Nations negotiating power, which has changed relationships between First Nations and BC and allowed First Nations to regain a modicum of territorial governance power. First Nations are asserting their authority to govern and they are engaging in co-governance with the province. The reconciliation of Aboriginal title with Crown claims to sovereignty has been a contentious issue in the treaty process, but outside the treaty process, differences can be put aside while goals are achieved and relations are improved in ongoing and incremental processes. 'At the end of the day', the phrase so often used by those interviewed here, individuals currently involved in policy- and decision-making for First Nations and for BC understand reconciliation to entail building relationships and trust between the parties, closing socio-economic gaps and creating sustainable economies for First Nations, co-governing with a common vision, and building capacity. All of these processes are arguably occurring, in both idiosyncratic and patterned ways. Notably, relations are 'still colonial', both when assessed with the conceptual framework and when considered by many of the people whom I interviewed.

Some of the strengths of this research are that I used a variety of methods to investigate reconciliation and decolonization, making both theoretical and empirical contributions. I provided a historical and legal context for the study, surveyed literatures from various

disciplines to develop a conceptual framework for assessing reconciliation in particular contexts, analysed and integrated a wide variety of documents to examine current First Nation-BC relations, interviewed policy- and decision-makers to understand how they view relations and reconciliation, and used participant observation to understand a new system of indigenous territorial governance. My involvement in First Nation territorial governance and First Nation-BC relations over the period examined by this dissertation provided me with particular insight into the processes studied.

While I do generalize about relationships and reconciliation processes unfolding in BC, the unique circumstances of individual First Nations and the unevenness of relations between BC and different nations are themes throughout the dissertation. I do not make claims that the people I interviewed, for example, are a representative sample of policy- and decision-makers, particularly on the First Nation side. The First Nation decision-makers I interviewed work for nations that belong to regional alliances and arguably have better relationships with BC than some other nations. The understandings of reconciliation presented in this dissertation could be broadened, deepened, and potentially complicated by interviewing more people involved in First Nation-BC relationships, for example:

- people who work for different First Nations in BC, including those that have not signed reconciliation or strategic engagement agreements, those that are focusing on treaty negotiations, those that have signed treaties with the province, and those in other regions of the province;
- people working at different levels on both sides, including at the operational, technical, managerial, senior bureaucratic, and political level; and

- more employees who work for each of the relevant provincial ministries, and in different regions of the province.

I assessed the land and resource governance aspects of treaties settled through the BC treaty process, but I did not undertake a comprehensive examination of contemporary treaties in BC. Research focused on post-treaty relationships between the BC government and the Nisga'a Nation, Tsawwassen First Nation, and Maa-nulth Nations would likely yield interesting insights into understandings of reconciliation goals and processes and First Nation-Crown relationships post-treaty. I also did not systematically compare treaty and non-treaty agreements or the expressed views of decision-makers who work for First Nations with and without treaties. A comparative study may highlight more explicitly the advantages and disadvantages of treaties versus non-treaty agreements. Some of the aspects of treaties that provide advantages beyond territorial co-governance agreements negotiated outside the treaty process include: 1) release of First Nations and their members from the *Indian Act* (for the most part); 2) constitutional protection; and 3) provisions addressing such things as First Nation law-making authorities, fiscal relations, or eligibility and enrolment.

Even though the circumstances of relations and reconciliation differ for different nations and places, the findings of this research could be of interest to those engaged in or studying reconciliation in other places seeking to address legacies of settler colonialism. While the particular legal situation of Indigenous peoples in BC is most similar to those in other places where there are not treaties and that were colonized by Great Britain, the theoretical contributions, the analysis of engagement strategies, the examination of decision-makers'

views, and the case of Indigenous governance can provide insight into a broader context, including places where there are treaties and places that were colonized by powers other than Great Britain. In Canada, Indigenous-state relations in places with both historic and contemporary treaties are changing alongside those without. Comparisons between the research presented here and research in other places without treaties, and between places with and without treaties, could yield interesting conclusions.

I have focused on relations between First Nations and the provincial government. Two other sets of relations that I have mentioned, but not studied are those between First Nations and Canada and those between Indigenous and non-Indigenous people. Similar research could look at relations between First Nations and the federal government; in the context of territorial governance, an obvious relationship to study would be between First Nations and Fisheries and Oceans Canada. Also, the current federal government's sweeping changes to legislation respecting territorial governance through omnibus bills, and the reaction of First Nations through Idle No More, would provide a compelling entry point into research on the relationships between Indigenous nations and Canada.

Another interesting avenue of research would be with non-Indigenous Canadians, for example: their understandings of colonialism and Canadian history; what they understand to have gained from colonialism; their perspectives, conceptions, visions, and fears of reconciliation; their ideas about responsibility; and what they are willing to give up for reconciliation to occur. There has been research on reconciliation and non-Indigenous Australians, who seem to have engaged with reconciliation in a way that non-Indigenous

Canadians have not (e.g., Green and Sonn 2006, Halloran 2006, Hattam and Atkinson 2006, Smits 2008, Subasic and Reynolds 2009, Waitt et al. 2007). In the words of Dr. Marie Wilson, Commissioner of the Canadian Truth and Reconciliation Commission, "We must be honest about the real two solitudes in this country, that between Indigenous and non-Indigenous citizens, and commit to doing tangible things to close the divide in awareness, understanding and relationships" (Sas 2012).

In Chapter 3, I expressed ambivalence about the term 'reconciliation', deciding to reserve judgment about whether it should be abandoned or not. There are many critiques of the term, and of processes pursued in its name. Decolonization, and particularly 'decolonizing' used with an object, is more specific, pointing to what needs to happen to settlers and their governments and institutions. There is, however, a risk with discarding reconciliation and adopting decolonization that it will lead to the cooptation and weakening of 'decolonization'. Tuck and Yang (2012) argue that decolonization must bring about the repatriation of Indigenous land and life and is not a metaphor for other things we want to improve in society. Perhaps 'decolonizing' needs to be retained for very specific aspects of reconciliation, and 'reconciliation' used in a more general way. 'Reconciliation' was useful in eliciting responses from interviewees, for example, in a way that I am sure 'decolonization' would not have been. At this point in time, 'reconciliation' has a life and a story, albeit one that is changing and part of the dynamic and ongoing process to which it refers. 'Decolonization' has a different life, perhaps not as widely understood and more unsettling. It seems, then, that there is utility in both terms, depending on the situation and the goals. In either case, and especially with reconciliation, it is important that we are clear

about what we mean by the term at any particular time and in any particular context, and that the goals of Indigenous peoples are paramount and processes are not embedded in or perpetuating power inequalities.

In BC, First Nation-Crown relations have improved and First Nations are regaining governance power. The myth that settler governments could create certainty for themselves and investors through 'full and final' treaty settlements has been revealed. Many First Nations have rejected that treaty model and for those nations with treaties, post-treaty relations with BC have not been without conflict and, in some cases, litigation. There is a realization among policy- and decision-makers that reconciliation needs to be an incremental and ongoing process and that certainty is found through building good relationships. Incremental processes allow Indigenous and non-Indigenous governments to try out new relationships and take risks, knowing there are opportunities to make changes if their goals are not being met. And they allow Indigenous and non-Indigenous community members to become comfortable with change. As Ross Wilson (2012) pointed out, "I don't think [people are] afraid of big change; they're afraid of fast change." If reconciliation processes are ongoing, with possibilities for renewal, at the end of the day, there is another day.

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Appendices

Appendix A Pre-*Delgamuukw* Table of Events

This timeline shows key events related to Aboriginal rights and title, colonialism and dispossession, Indigenous resistance, and changes in territorial governance in BC pre-*Delagamuukw*. Many of the entries are taken from the Historical Timeline available on the Union of BC Indian Chiefs website at: http://www.ubcic.bc.ca/Resources/timeline.htm#axzz27z7KmMLD. Others have been added from my research.

Year	Event
1858	*British Columbia Act*. New Caledonia becomes Colony of BC
1862	Small Pox introduced into Victoria; epidemic through 1963
1867	Conveyance of Vancouver Island from HBC to the Crown
	Constitution Act s.91(24) Canada responsible for Indians and lands reserved for Indians
1870	*British North America Act* gives province control over land (s. 92)
	Timber lands begin to be leased
1871	BC enters confederation; Indians remain the responsibility of federal government; *Constitution Act* establishes authority of provincial departments and officials
	Indian people not allowed to fish commercially (to 1923)
1872	Small pox epidemic in BC
	The right to vote in BC elections withdrawn from Indian people in BC (to 1949)
1874	Petition of chiefs of the Lower Fraser expressing discontent over land settlement in BC
	BC *Land Act* lets province alienate land without regard for aboriginal title
1875	BC *Land Act* of 1874 disallowed by Canada because it disregards aboriginal title; revised
	Land is available to settlers free of charge (to 1879)
1876	First federal *Indian Act* passed; consolidates all previous legislation concerning Indians; federal proclamation excludes Indian lands and resources in BC from *Indian Act*
	Indian people excluded from voting in municipal elections
1879	Nlaka'pamux assembly at Lytton discusses Indian Land Question
	Tsimshian confiscate nets of a cannery trespassing on their land
1880	*An Act to further amend the Indian Act* prohibits Indians from assembling (to 1927)

1884	*Indian Advancement Act* introduces annual elections system
	Timber licenses introduced
	Changes to the *Indian Act* prohibit potlatching
1885	Tsimshian delegation goes to Ottawa to discuss Indian Land Question
1886	Nisga'a holding meetings on the Indian Land Question and resist surveyors
1887	Nisga'a and Tsimshian delegation travels to Victoria to discuss Indian Land Question
1888	*St. Catherine's Milling Case*—Privy Council recognizes Indian Rights to land
	BC passes first forestry legislation
	Federal policy creates Indian food fishery—Indians not allowed to fish commercially
	Skeena River uprising
	Small pox outbreak (becomes epidemic in 1889)
1890	Nisga'a form a Land Committee
	Residential schools open (Kuper Island, Kamloops, Williams Lake); some before and many after
1894	Federal regulations restrict Indian fishing devices; permission required to fish for food
1895	Department of Indian Affairs starts mandatory band elections in some parts of Canada
1898	Assembly of Beaver Indians at Ft. St. John demand a treaty
1899	Treaty 8 is concluded; adhesions continue until 1914
1906	Assembly of coastal and interior Indian people at Cowichan; delegation of BC chiefs meet with King Edward to discuss the Indian Land Question; petition by Cowichan Tribes to the King of England
1909?	Second delegation of BC chiefs to England
	Indian Rights Association formed in BC (to 1916); Interior Tribes of BC formed
1910	Declaration of the Tahltan Tribe
	Interior chiefs sign a declaration setting out their position on aboriginal title and rights
	Laurier's visit to Kamloops; chiefs' *Memorial to Sir Wilfred Laurier*; and request for treaties
1911	Interior Tribes and Sto:lo chiefs submit *Memorial to Frank Oliver*; St'at'imc release *Declaration of Lillooet Tribe*; chiefs meet with Premier to discuss title
1912	Delegation of Interior Tribes to Ottawa to discuss land with Prime Minister; Indian Rights Association petition to Prime Minister
	BC Fish and Wildlife Branch requires the registration of traplines
1913	McKenna-McBride Royal Commission is established
	Nisga'a Land Committee petition presented to British Privy Council
	Nass Indians sign declaration
	Interior Tribes statement to Prime Minister Borden
1915	Interior Tribes Assembly; Nisga'a delegation to Ottawa; Indian Rights Association statement on lands to Minister of the Interior

1916	McKenna McBride Commission Final Report published; Indian Conference statement refusing to accept McKenna-McBride Commission findings
	Allied Indian Tribes formed and Indian Rights Association dissolved
1918	Spanish Flu epidemic
1919	Statement of the Allied Indian Tribes outlining position on Indian Land Controversy; BC Indians table 20 Conditions proposed as a basis of settlement
	British Judicial Committee of the Privy Council ruling *Re: Southern Rhodesia*
1920s	BC Indian population reaches lowest point
1922	Assembly of Allied Indian Tribes of BC held in North Vancouver; Stl'Atl'Imx Tribe petition Dominion government to address aboriginal title
1923	Indians permitted to participate in commercial fishery
1924	The elective system is introduced to replace the hereditary leadership system
	Government prohibits unauthorized soliciting by Indians of outside funds
1926	Allied Tribes of BC ask Parliament to examine title in BC; petition for inquiry
	BC trapline regulations and boundaries established
1927	Special joint committee holds hearings and rejects claims of BC Allied Tribes; blames outside agitators leading to *Indian Act* revision
	Indian Act prohibits raising money or hiring lawyers to pursue land claims (to 1951); Indigenous resistance goes underground
1931	Native Brotherhood of BC formed; organizes protests on fishing, lands, taxation, social issues; official mandate to improve socio-economic conditions but unofficially seek recognition of title
1942	Indian commercial fishermen obliged to pay federal income tax
1949	Provincial legislation establishes Indian people's right to vote in provincial elections
	British Judicial Committee of the Privy Council replaced by the Supreme Court of Canada
1951	*Indian Act* revised—prohibition regarding pursuit of land claims is removed, potlatch ban lifted, most of the compulsory enfranchisement provisions lifted
1953	Prohibition against Indians pre-empting land is repealed
1960	George Manuel and Frank Calder present briefs to Joint Committee for the Review of Indian Affairs Policy demanding recognition and compensation for loss of Aboriginal title
	Federal voting rights extended to include Indian people
1961	Joint Committee recommends creation of Indian Claims Commission to settle outstanding land claims in Canada; legislation drafted but not enacted
1965	*R. vs. White and Bob* clarifies treaty and hunting rights
1969	Indian Claims Commission is established under *Inquiries Act*
	Nisga'a initiate litigation that results in 1973 *Calder* decision
	Trudeau government's White Paper asserts that aboriginal title does not exist and suggests policy

	of aggressive assimilation
	Union of BC Indian Chiefs forms to discuss White Paper
1971	Federal government formally withdraws White Paper
1973	Supreme Court of Canada decision in *Calder* recognizes that Nisga'a held title to their land before BC was established; court splits on whether Nisga'a title has been extinguished
	Federal policy changes to allow negotiation of Comprehensive and Specific Claims
1974	Nisga'a comprehensive claim accepted for negotiation by federal government
1976	Federal government adopts comprehensive land claims policy
1977	Other claims accepted for negotiation by federal government
	Mackenzie Valley Pipeline Inquiry Report issued
1979	BC Chiefs and Elders make constitutional visit to England
1980	Canada's First Nations petition Queen to recognize aboriginal rights in the Constitution
1982	*Constitution Act* recognizes existing aboriginal and treaty rights (s. 35)
1983	The last residential school closes—Christie residential school in Tofino
	Meares Island logging controversy begins; blockades in 1984, 1985, 1989, and 1993
1984	*Guerin* decision in Supreme Court of Canada affirms fiduciary responsibilities of the federal government
1990	*Sparrow* decision in Supreme Court of Canada clarifies constitutionally protected aboriginal fishing rights
	Oka standoff begins; Indigenous communities in BC erect blockades in support
	Lil'wat Nation block Duffy Lake Road to protest clearcut logging; 63 people arrested, charged and imprisoned; another blockade in 1991
	BC joins the Nisga'a and Canada in treaty negotiations
	Tri-partite BC Claims Task Force is established
1991	Canada establishes a Royal Commission on Aboriginal Peoples.
1992	BC Hydro creates Aboriginal Relations Department
	First Nations Summit and BC Treaty Commission established to implement BC Treaty Process
1993	Clayoquot Protest: blockades and arrests
1994	Interim Measures Agreement on co-management and economic opportunities signed between BC and several Nuu-chah-nulth Nations following Clayoquot protests
1995	Gustafson Lake standoff.
1996	Royal Commission on Aboriginal Peoples releases its Final Report
	Van der Peet, Gladstone, and *NTC Smokehouse* decisions in Supreme Court of Canada clarify aboriginal rights
1997	*Delgamuukw* decision in Supreme Court of Canada upholds and clarifies aboriginal title, requires consultation

Appendix B Post-*Delgamuukw* Table of Events

This timeline shows key events related to Aboriginal rights and title, colonialism and dispossession, Indigenous resistance, and changes in territorial governance in BC post-*Delagamuukw*. Events are listed in chronological order and the parties involved and strategy being used are included. Sources used for this table include: newspaper articles; press releases; and websites for the provincial government, First Nations, and Indigenous organizations. Clearly, every event is not included and no quantitative analyses were undertaken.

Year	Party (Nation/BC)	Event	Strategy
1997	Gitxsan and Wet'suwet'en	SCC decision in *Delgamuukw vs. British Columbia*	Litigation
1998	BC Official Opposition members	Gordon Campbell, Geoff Plant, and Michael de Jong challenge Nisga'a treaty in BC Supreme Court	Litigation
1998	Sechelt	Suit filed against BC for share of revenues from Crown lands where band claims title	Litigation
1999	Nisga'a, BC	Treaty ratified by BC legislature	Treaty
1999	Sechelt	AIP signed (repudiated by Sechelt leaders in 2000)	Treaty
1999	Westbank	Harvests trees without permit	Direct Action
1999	Westbank, BC	Fails to get a stop work order against Westbank logging	Litigation
2000	BC Official Opposition members	Case against Nisga'a treaty is dismissed and treaty found constitutional	Litigation
2000	Neskonlith	Protection centre established at Sun Peaks to stop resort expansion (blockade to 2001)	Direct Action
2000	Nisga'a, BC	Final Agreement becomes Canadian law	Treaty
2000	St'at'imc	Protest camp established in Cayoosh Mountains to stop proposed ski resort	Direct Action
2001	BC	Gordon Campbell elected as Premier	N/A
2001	Westbank	Self-government agreement signed with Canada (not BC)	Negotiation

2002	BC	Referendum on treaty principles; boycotted by many	Other
2002	BC	Confidential discussion paper on certainty in treaty process; abandoning 'finality' and 'extinguishment'	Treaty
2002	Haida	BCCA decision	Litigation
2002	Nisga'a, BC	Gordon Campbell visits New Aiyansh (Nisga'a)	Other
2002	Taku River Tlingit	BCCA decision	Litigation
2002	Taku Tlingit, BC	Tulsequah Chief mine approved by BC (against Taku River Tlingit wishes)	Consultation
2003	BC	Take-back of timber rights from companies, in part to award to FNs	Economic
2003	BC	Legislation allowing direct award of timber to FNs	Legislation
2003	BC	Speech from Throne includes statement of regret to FNs	Other
2003	Haida	BC's offer of 20% of Haida Gwaii to settle land claim rejected	Treaty
2003	Various	Writs filed in response to BC threatening to impose the statute of limitations on claims related to *Delgamuukw*	Litigation
2005	FN leadership	UBCIC, First Nations Summit, BC Assembly of FN form First Nations Leadership Council (FNLC)	Negotiation
2005	FNLC, BC	New Relationship Agreement	Negotiation
2005	FNLC, BC	Transformative Change Accord (federal government included)	Negotiation
2005	Haida	Blockade forestry roads (non-Haida neighbours assist)	Direct Action
2005	Haida, BC	Letter of understanding on consultation signed	Negotiation
2005	Lil'wat, Musqueam, Squamish, Tsleil-Waututh, BC	Protocol signed between Four Host Nations and the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games	Negotiation, Economic
2005	Squamish	TFL 38 purchased	Economic
2005	Tahltan	Blockade to stop Royal Dutch Shell from exploring for coalbed methane in the Sacred Headwaters	Direct Action
2006	BC	*New Relationship Trust Act* ($100 million for FN capacity building)	Legislation, Economic
2006	BC	FNs mountain pine beetle initiative ($8.9 million)	Economic
2006	BC	Charges laid against developer for disturbing native	Other

		heritage site	
2006	Lil'wat	Agreement on widening Sea to Sky Highway signed	G2G
2006	Métis Nation, BC	Métis Nation Relationship Accord signed	Negotiation
2006	Tsartlip, Songhees, BC	Desecration of Bear Mountain site sacred to Tsartlip and Songhees sanctioned	Other
2006	Various (at least 60 by 2007)	Launch and sign Unity Protocol to engage Canada and BC in negotiating principles on six key issues	Treaty
2006	Various, BC	Coast Land Use Decisions for North and Central Coasts	G2G
2006	Various, BC	Over 20 Strategic Land Use Planning Agreements (part of Coast Land Use Decision)	G2G
2007	BC	Xwě lī qwěl těl (Steven Point) appointed as Lieutenant Governor	Other
2007	Hupacasath, Nisga'a, BC	Parks Agreements signed	Co-mgmt
2007	In-SHUCK-ch, Squamish, Haida, BC	Land use agreements signed [check similarities/difs]	G2G
2007	Leidhli T'enneh	Treaty rejected by membership	Treaty
2007	Nanwakolas, BC	Nanwakolas Clearinghouse Pilot Project (to streamline consultation)	Consultation
2007	Tsawwassen	Treaty signed and ratified	Treaty
2007	Tse Keh Nay, BC	North Kemess mine rejected after environmental assessment; Tse Keh Nay congratulate panel	Other
2007	Tsilhqot'in	BCSC decision in *Tsilhqot'in v BC*	Litigation
2007	Various, BC	Ministerial order to legally establish Coast Land Use Objectives signed (part of Great Bear Rainforest deal)	G2G
2008	BC	Provincial negotiators authorized to include revenue sharing with First Nations on new mining projects	Economic
2008	BC	Clayoquot Sound recommendations and watershed plans become law thorough order under *Land Act*	Other
2008	Gitanyow	BC Supreme Court ruling that BC renewed forestry licenses without meaningful consultation or adequate accommodation	Treaty
2008	Gitga'at	Suit filed in BC Supreme Court for damages resulting from the 2006 sinking of Queen of the North ferry	Litigation
2008	Hupacasath	Judge ordered mediator be appointed after BC failed	Litigation

		to engage in meaningful consultation despite 2005 court order to do so	
2008	Kwadacha, BC	Compensation agreement for damages caused by WAC Bennett Dam ($15 million+1.6 million/year)	Negotiation, compensation
2008	Lil'wat, BC	Land use agreement signed	G2G
2008	Secwepemc	Judicial review applied for to stop transfer of timber rights; BC consulted with a different First Nation	Litigation
2008	Seton Lake, Gitwangak, Metlakatla, Lax Kw'alaams, BC	Final four cut-off claims (re: land removed from reserves) settled	Negotiation, Restitution
2008	Squamish, BC	Agreement on widening Sea to Sky highway signed	G2G
2008	Taku River Tlingit, BC	Framework agreement for land use planning signed	G2G
2008	Tla-o-qui-aht, BC	Incremental Treaty Agreements signed	Treaty
2008	Various	Common Table for treaty negotiations established	Treaty
2008	Various, BC	Regional FNs engagement centres established	Consultation
2009	'Namgis, BC	Land management agreement to help manage commercial sea kayaking	Co-mgmt
2009	BC	Recognition and reconciliation legislation proposed	Legislation
2009	Carrier Sekani Tribal Council	BCCA ruled 'massive' infringement of right to be consulted in Kemano Power Project and expansion	Litigation
2009	Haida, Coastal FNs, BC	Reconciliation Protocols signed	G2G
2009	Haida, various	Carbon offset revenue sharing	Economic
2009	Katzie	Suit filed over consultation on park boundary amendment	Litigation
2009	Klahoose, BC	Incremental Treaty Agreement signed	Treaty
2009	Ktunaxa, BC	Community Forest Agreement	Economic
2009	Kwicksutaineuk Ah-Kwa-Mish	Class action lawsuit filed against BC to address impacts of salmon farms on wild salmon	Litigation
2009	Kwicksutaineuk Ah-kwa-mish, BC	Forestry agreement singed	G2G
2009	Kwikwetlem, Nlaka'pamux, Upper Nicola, Okanagan Nation Alliance	BCCA decision struck down a BC Utilities Commission certificate required for BC Hydro to build new hydro transmission line because of lack of adequate consultation and accommodation	Litigation
2009	Lheidli T'enneh, Maa-	Treaty Related Measures on governance, wildlife, and	Treaty

	nulth, Yekooche, BC	leadership development	
2009	Maa-nulth, BC	Treaty signed and ratified	Treaty
2009	Nak'azdli, BC	Environmental approval granted to Terrane metal for Mt. Milligan gold-copper mine against Nak'azdli's wishes (McLeod Indian Band has cited support); Nak'azdli file case against province	Consultation, G2G, Litigation
2009	Nanwakolas, BC	Nanwakolas Clearinghouse pilot project expansion	Consultation
2009	Nanwakolas, Tsilhqot'in, BC	Strategic Engagement Agreements signed	G2G
2009	Okanagan	Law suit to quash high voltage power line certificate due to lack of consultation (BCSC) and cross-injunction on Brown's Creek logging	Litigation
2009	Red Bluff, BC	Economic Development Agreement	Economic
2009	Squamish, Hupacasath, Taku, Klahoose, Haida, BC	Agreements regarding independent power projects with BC Hydro and industry	Economic
2009	Stk'emlupsemc, BC	Mining and minerals consultation agreement	Consultation
2009	Tahltan	Blockade to stop hunting in territory	Direct action
2009	Tahltan, BC	Consultation agreement for proposed NW Transmission line	Consultation
2009	Treaty 8 FNs (3), BC	Agreements on collaborative planning, management, and operation of Treaty 8 lands and revenue sharing	G2G, Economic, Co-mgmt
2009	Tsawwassen, BC	Treaty implemented	Treaty
2009	Tsay Keh Dene, BC	Final agreement on damages from WAC Bennett dam	Negotiation, compensation
2009	Tse Keh Nay, BC	Protocol agreement for reclamation, remediation, and monitoring of mine sites	G2G
2009	Tsilhqot'in	Suit filed to stop Prosperity mine	Litigation
2009	Various, BC	Ecosystem-based management implementation agreement for Great Bear Rainforest, includes G2G on major decisions	G2G
2010	BC	Forest and Range (FN Woodland Licence) Statutes Act; new unique tenure	Legislation
2010	BC	Water Act modernization process ignores FN and contradicts New Relationship	Legislation

2010	BC	Officially adopts 'Salish Sea' as umbrella name for Strait of Georgia	Other
2010	BC	*Haida Gwaii Reconciliation Act*	Legislation
2010	Haida, BC	Cooperative management agreement between Taan Forest and BC Timber Sales	Co-mgmt
2010	Haida, BC	The name 'Queen Charlotte Islands' officially returned to BC; BC will change name on maps and official correspondence	Other
2010	Halalt	Blockade of road to protest issuance of water license (while awaiting litigation)	Direct Action, Litigation
2010	Kitselas, BC	Impact Benefit Agreement with BC Hydro	Economic
2010	Ktunaxa, BC	Strategic Engagement Agreement	G2G
2010	Kwicksutaineuk Ah-Kwa-Mish	Class action lawsuit on fish farms certified by BCSC; appealed	Litigation
2010	McLeod Lake, Stk'emlupsemc of Secwepemc, BC	Mining revenue-sharing agreement	Economic
2010	Okanagan	Blockade of Brown's Creek authorized by band in response to unfavourable litigation outcome	Direct action
2010	Sinixt	Logging protest camp; judge refuses injunction application by logging company	Direct Action, Litigation
2010	Tsilhqot'in, BC	Prosperity mine approved despite opposition from Tsilhqot'in	Consultation
2010	West Moberly	BCSC decision; consultation on coal mine not meaningful; unreasonable accommodation	Litigation, Consultation
2010	Wet'suwet'en	Logging blockade at Redtop; injunctions filed by both sides; BCSC ruling allowing chiefs injunction	Direct Action, Litigation
2010	Various (5), BC	Forestry Consultation and Revenue Sharing Agreements signed	Consultation, Economic
2010	Doig River, Prophet River, West Moberly, BC	Ten agreements signed to provide for collaborative planning and management of Treaty 8 lands	G2G, Economic, Co-mgmt
2011	BC	Clark announces focus on economic development instead of treaties with FNs	Economic, Treaty
2011	Dene Tha	File suit in BCSC challenging BC's decision to sell shale gas tenures; seek moratorium	Litigation

2011	Taku River Tlingit, BC	Strategic Engagement Agreement	G2G
2011	Sts'ailes, BC	MoU to create a more collaborative approach to land and resource management and develop economic opportunities	G2G
2011	Halalt	BCSC decision that BC failed to adequately consult and accommodate; actions pursuant to certificate stayed; upheld at BCCA	Litigation, consultation
2011	Maa-nulth, BC	Final agreement took effect	Treaty
2011	Nanwakolas, BC	Economic development agreement (timber, clean energy, tourism)	Economic
2011	St'at'imc, BC	Agreement between 11 bands and BC Hydro re: Bridge River system: compensation, mitigation, economic opportunities; certainty	Negotiation, Economic (compensation)
2011	Tseshaht, BC	Forestry agreement signed (FN woodland tenure, cash); settlement of earlier lack of consultation that was in litigation	Consultation, Litigation
2011	Tsilhqot'in, BC	Approves exploration permits to Taseko for Prosperity Mine; Tsilhqot'in take BC to court; Xeni Gwet'in chief turns Taseko away; Taseko and Xeni Gwet'in seek injunctions; Xeni Gwet'in succeed	Consultation, Direct Action, Litigation
2011	West Moberly	BCCA finds consultation not meaningful; Crown failed to accommodate reasonably; permits stayed	Litigation, Consultation
2011	Wet'suwet'en	Blockade pipeline construction	Direct Action
2011	Yale, BC	Final Agreement ratified, BC legislation passed	Treaty
2011	Various (62), BC	Signed Forest Consultation and Revenue Sharing Agreements	Consultation, Economic
2012	Haida, BC	First joint decision; reduce AAC	Co-mgmt
2012	Ktunaxa	Blockade Jumbo ski resort (continuing)	Direct Action
2012	Kwicksutaineuk Ah-Kwa-Mish	BCCA overturns decision to certify class action lawsuit on salmon farms; KAFN takes to SCC	Litigation
2012	Musqueam	Protest proposed condo dev't in Marpole	Direct Action
2012	Sto:lo, Kaska Dene, BC	Strategic Engagement Agreements signed	G2G
2012	Tsilhqot'in	Court overturns Xeni Gwet'in injunction; Tsilhqot'in agree to allow Taseko to run tests	Litigation
2012	Tsilhqot'in	BCCA decision in title case; upheld Tsilhqot'in	Litigation

		rights; forestry infringes; title not proved; needs to be site-specific, not territorial title	
2012	West Moberly, BC	BC's argument to take West Moberly to SCC rejected	Litigation
2012	Various (at least 22), BC	Signed Forest Consultation and Revenue Sharing Agreements	Consultation, Economic
2012	Nak'azdli, BC	Economic and Community Development Agreement to share revenue from Mt Milligan Mine	Economic
2012	Fort Nelson, BC	Oil and Gas Consultation Agreement and Economic Benefits Agreement signed	Consultation, Economic

Appendix C Interview Script

1. How long have you been working in your current position? Can you explain your current position to me—what do you do? What did you do before that?
2. How would you characterize your current responsibilities with respect to the relationship between First Nations and the BC government? How do Aboriginal rights affect your work? Was there a time when they affected your work differently?
3. When and how did you first learn about Aboriginal rights? How would you say your understanding of Aboriginal rights has changed over time? Why?
4. What would you say were the main impacts of colonialism on Aboriginal peoples from a land and resource perspective?
5. How would you characterize current relationships between First Nations and BC? Would you say the relationship has changed a lot in the last ten years? What is your evidence for thinking that the relationship has (has not) changed? Is it still colonial?
6. Reconciliation has become a common theme in BC. What do you think the goals of reconciliation should be? What are the barriers to reconciliation? What does the process of reconciliation need to involve? What progress has there been?
7. The ruling in *Delgamuukw* highlighted a legal conflict between Aboriginal title and the Crown's asserted sovereignty. What do you think are some specific ways we can reconcile the legal conflict? Who should ultimately have title?
8. There is a lot of talk about certainty in BC. What do you think we need certainty about? What would certainty look like? Are there benefits to uncertainty?
9. In what areas of land and resource governance do you think First Nations need to build capacity? BC?

10. In the future, how do you think land and resource decisions should be made in BC?
11. How do you think resource decision-making **will** take place in BC in 50 years?
12. How will increased involvement of First Nations in land and resource decision-making affect the state of natural resources (the landscape) in BC?

Appendix D Research Methods for Chapter 6

There are two sets of methods related to this chapter. First, the methods that were used to develop the RMS under contract to the Coastal Guardian Watchmen Network. I present these below, along with some reflections on Indigenous-led research. The second set of methods—those used to explore the meaning of the RMS to guardian watchmen, First Nation stewardship managers, and others for the purposes of this dissertation—are also presented below.

Development of RMS

The initial development of the RMS in late 2009 and early 2010 involved selecting the key issues, indicators, and methods; designing the field cards; developing the data management system; and getting feedback on and finalizing the RMS. In late 2010 and early 2011, the RMS was evaluated; data collection methods, field cards, and the data management system were revised; and additional cards were researched and designed. In early 2012, further additions and revisions were made to the methods, field cards, and data management system.

Issues of concern to Coastal First Nations generally, and guardian watchmen specifically, were identified for the RMS using: background documents; minutes of meetings and conferences held with guardian watchmen and Coastal First Nation communities; conference calls with guardian watchmen; interviews with resource people working for or with Coastal First Nations (see at end); and information provided by the project coordinators, Claire Hutton (Coordinator of the CGWN) and Caitlyn Vernon (Coastal Programs Campaigner for the Sierra Club of BC). All of the identified issues threaten two main values of importance to

Coastal First Nations: locally and commercially important fish and shellfish species and culturally and ecologically important sites and species.

Potential indicators and methods for monitoring related to each issue were identified based on: research being conducted by some guardian watchmen programs; interviews with resource people who work for or with Coastal First Nations, government, universities, and conservation groups (see list at end); and information from marine use planning resource people working for Coastal First Nations (see list at end). The issues to be targeted in the pilot year of the monitoring program were chosen using the following criteria: issue of high interest to communities; existing gap in knowledge related to issue; related data are relatively easy to collect and analyze (i.e., required less skill, equipment, and time); data have the ability to influence First Nation (and other) decision-making; and data are useful and relevant at a regional scale. Those that were selected ranked higher on some of the criteria and generally met additional objectives, such as asserting rights and title or creating relationships with other groups. The issues were: sport fishing; tourism and boat traffic; enforcement; populations of fishery species, specifically Dungeness crab and eulachon (in territories with runs); and populations of wildlife species, including grizzly and black bears, cetaceans, introduced species, and 'other'. The associated indicators were: wildlife sightings, visits to sport fishing lodges, boat sightings, activities of tourists, impacts to cultural and ecological sites, enforcement incidents, crab and prawn trap sightings, and spawning eulachon. Data are collected on a variety of parameters for each indicator.

Monitoring of streams and salmon populations was added in 2011 and expanded in 2012. The stream monitoring methods were developed by researching stream monitoring and other related protocols used by agencies, academics, and other groups and surveying a wide variety of people about stream monitoring on the North and Central Coast: staff and consultants at Nations, staff from DFO, and biologists from the University of BC and Simon Fraser University (see list at end). The stream indicators that were selected for the RMS are: physical characteristics of streams (width, depth, gradient, cover, substrate, morphology, canopy, and riparian area); physical water quality parameters (temperature, pH, conductivity, dissolved oxygen, stream discharge, turbidity, and colour); signs of wildlife; cultural features; numbers and status of spawning salmon; riparian setbacks and retention in areas affected by forest harvesting; and logging impacts to streams.

Data collection methods for all of the indicators are standardized and guardian watchmen can collect data using either RMS field cards or a 'CoastTracker', a customized handheld mobile device. Data from all of the nations are stored in a secure online data management system, with each nation controlling access to the information entered for its territory. Data from the field cards must be manually entered into the data management system, while data from the CoastTracker are automatically uploaded. Data from the data management system can be downloaded by authorized users as raw data or used to generate standard reports and maps on the indicators.

The CoastTracker was developed by the CGWN in 2011 using CyberTracker[143] software on rugged handheld computers with built in GPS and cameras (Trimble Nomad 900GLC and Nautiz X7). The online data management system was developed using Drupal[144], an open source content management platform. It is set up to allow each nation access to its own data for local analysis. With permission from the member nations, the Network can also compile the data for regional analyses.

Indigenous-led research

The development of the RMS was initiated by a group of First Nation stewardship practitioners who directed the coordinator of the Coastal Guardian Watchmen Network to seek funding for it. The issues being addressed by the RMS came from guardian watchmen, and they were involved in its development through participation in conference calls and workshops. They also provided feedback for its revision and expansion each year.

Through the process of my PhD, I have wrestled with my role as a non-Indigenous researcher working with Indigenous peoples. I found my role particularly troubling when I was involved in research that was not initiated by the community with which I was working. I have felt more comfortable working as an employee or consultant for First Nations than I have in collaborative research settings. Perhaps the particular settings I was working in were not 'collaborative enough', but I found that the academic realities of being a graduate student did not make for an ethically comfortable collaborative research relationship.

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[143] http://www.cybertracker.org/; accessed June 7, 2012.
[144] http://drupal.org/; accessed June 7, 2012.

My participation in the development of the RMS, however, took me back to the role I was more comfortable with before returning to academia. I was working for a group of First Nation practitioners doing what they directly asked me to do. They clearly felt it was important work because they prioritized finding funding for it and their nations are paying them to use it. That does not, however, leave me off the hook for questioning my role as a non-Indigenous consultant working for First Nations, which carries its own ethical dilemmas. Non-Indigenous consultants, employees, lawyers, and scholars working for First Nations (and government) have been criticized for being a part of an 'industry' built on Aboriginal claims. As described by Nadasdy (2005), we make our living from and have a vested interest in processes such as co-management or treaty negotiations, whether or not they meet the needs of First Nation communities. It creates a double-bind—clearly there are important goals that need to be achieved and First Nations are asking for support to achieve these goals. And, providing that support can place us in situations of dependency upon the continuance of those processes. The only solution I see is to remain alert to the roles we are playing and the processes we are supporting and continue to ask whether they can instead be filled by Indigenous people or replaced by distinctly Indigenous processes.

Exploration of the meaning of the RMS

I used ethnographic methods to explore the meaning of the RMS to guardian watchmen and First Nation stewardship managers involved in developing and using it, and others who supported its development and implementation. As the contractor responsible for developing, evaluating, modifying, and expanding the RMS, I was intimately involved with these processes over the period from October 2009 to June 2012. I continue to be involved in these

processes and in supporting nations to use the data in the RMS. I used participant observation as the main research method, keeping field notes and audio-recording and transcribing sections of meetings that were relevant to the research questions. Audio-recordings of meetings occurred in Vancouver and on the Central Coast between December 2010 and May 2012.

Resource People Interviewed for Initial RMS Development (2009-2010)

Brown, Jenny (The Nature Conservancy)
Cardinall, Dan (Coastal First Nations and Gitga'at Nation)
Darimont, Chris (Raincoast Conservation Society)
Diggon, Steve (Coastal First Nations)
Jason Dunham (Fisheries and Oceans Canada)
Ellis, Graeme (Fisheries and Oceans Canada)
Hall, Peter (Fisheries and Oceans Canada)
Heidt, Aaron (Coastal First Nations)
Hodgson, Steven (BC Parks)
Housty, William (Qqs Project Society, CoastWatch, Heiltsuk Nation)
Jacob, Wayne (Wuikinuxv Nation, Hakai Beach Institute)
Jorgenson, Larry (Qqs Project Society, CoastWatch, Heiltsuk Nation)
MacLaurin, Sandy (Fisheries and Oceans Canada)
Moody, Megan (Nuxalk Nation, Fisheries and Oceans Canada)
Mowat, Garth (BC Ministry of Environment)
Peacock, David (Fisheries and Oceans Canada)
Picard, Chris (Gitga'at Nation)
Roburn, Audrey (Rainforest Solutions Project)
Smith, Kristen (Fisheries and Oceans Canada)
Tanasichuk, Ron (Fisheries and Oceans Canada)

Coastal First Nations Marine Use Planning Resource People who participated in workshop held on January 11, 2010 in Vancouver: Steve Diggon, Cristina Soto, Maya Paul, Craig Outhet, Catherine Rigg, Aaron Heidt, Ken Cripps, Megan Moody, Chris McDougall, Jason Thomson, and Larry Greba

Resource People Interviewed for Development of Stream Monitoring Methods (2011-12)

Atlas, Will (Simon Fraser University)
Bergsma, Ian (Fisheries and Oceans Canada)
Bradford, Peter (BC Forest and Range Evaluation Program)
Braun, Doug (Simon Fraser University)
Carter, Dave (Fisheries and Oceans Canada)
Corlick, Brad (Fisheries and Oceans Canada)
Greba, Larry (Kitasoo Guardian Watchmen)
Hinch, Scott (University of British Columbia)
Hocking, Morgan (Simon Fraser University)
Housty, William (Qqs Projects Society, Heiltsuk Nation)
Hunt, Brian (University of British Columbia)
Jacob, Wayne (Wuikinuxv Fisheries)
Jacobs, Mike (Haisla Fisheries)
Moody, Megan (Nuxalk Nation)
Mortimer, Matt (Fisheries and Oceans Canada)
Mosher, Chris (BC Forest Practices Board)
Peacock, Dave (Fisheries and Oceans Canada)
Picard, Chris (Gitga'at Fisheries)
Reid, Mike (Heiltsuk Fisheries)
Reynolds, John (Simon Fraser University)
Richardson, John (University of British Columbia)
Spencer, Barb (Fisheries and Oceans Canada)
Spencer, Daryl (BC Forest Practices Board)
Tschaplinski, Peter (BC Forest and Range Evaluation Program)
Wagner, Dan (Fisheries and Oceans Canada)
Wahl, Doug (BC Forest Practices Board)
Whitehead, Laurie (Heiltsuk Integrated Resource Management Department)
Wilson, Davie (Heiltsuk Fisheries)
Wong, Kristen (Fisheries and Oceans Canada)