PRACTICES OF SOVEREIGNTY: NEGOTIATED AGREEMENTS, JURISDICTION, 
AND WELL-BEING FOR HEILTSUK NATION

by

Margaret Low

B.Sc., The University of Guelph, 2008
M.A., The University of Victoria, 2012

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The following individuals certify that they have read, and recommend to the Faculty of Graduate and Postdoctoral Studies for acceptance, the dissertation entitled:

Practices of Sovereignty: Negotiated Agreements, Jurisdiction and Well-being for Heiltsuk Nation

submitted by Margaret Low in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Resource Management and Environmental Studies

Examinining Committee:

Theresa Satterfield
Supervisor

Robin Gregory
Supervisory Committee Member

Karena Shaw
Supervisory Committee Member

Sheryl Lightfoot
University Examiner

Leila Harris
University Examiner

Additional Supervisory Committee Members:

Rima Wilkes
Supervisory Committee Member
Abstract

Indigenous peoples would strongly deny the Crown ever possessed the power to extinguish their political rights at any point in history. On this view, the Canadian governments do not grant sovereignty to Indigenous peoples. Rather, sovereignty is their inherent right, which flows from ways of knowing and social and political systems that existed long before the arrival of European colonists. I have focused this dissertation on demonstrating the multiple ways in which Heiltsuk Nation practice sovereignty over their territory. Heiltsuk Territory spans 35,553 square kilometres of lands and waters and is located on the central coast of what is now known as British Columbia, Canada. My analysis focuses on practices of Indigenous sovereignty being expressed outside – though supported by – the courts, and specifically in the negotiation and implementation of “reconciliation agreements” between Heiltsuk Nation and the Province of British Columbia and the Government of Canada. Using qualitative data gathered through 2 years of ethnographic fieldwork, my dissertation traces the implications of negotiated agreements between Heiltsuk Nation and the federal and provincial governments, and finds these agreements have enabled new practices of sovereignty, assertions of jurisdiction, new conceptions of Indigenous well-being, and Indigenous-led efforts of reconciliation.

Chapter 2 focuses on the implementation of the 2009 Coastal First Nations Reconciliation Protocol (2009 RPA) to explore how, through day-to-day political interactions, this agreement is operating as a mechanism that works to unsettle long-standing assumptions of Crown sovereignty. Chapter 3 documents the “on the ground” tensions arising from overlapping claims of jurisdictional authority in Heiltsuk territory, beginning from the inception of Coastal First Nations – a unique political alliance of several Nations – to the Land and Resource Management process (LRMP) in the early 2000s, through to the government-to-government process developed in response to the increasing legal authority of First Nations at the time. Chapter 4 critically engages colonial conceptions of “well-being” by focusing on the current wellbeing policies being implemented in coastal BC, and specifically in Heiltsuk territory.
Chapter 5 illustrates efforts of Heiltsuk Nation to negotiate one of the first “reconciliation framework agreements” between an Indigenous nation and the Government of Canada.
Lay Summary

This dissertation aims to map out “the work” of sovereignty by Heiltsuk Nation through negotiated agreements with the Province of British Columbia currently being implemented on the landbase, as well as through the Hailcístut: Framework Agreement for Reconciliation with the Government of Canada. I evaluate to what extent the implementation of these negotiated agreements are unsettling long held practices of Crown sovereignty, including the idea that all Canadian territory (outside of private property) is “Crown land”, and the notion that provincial and federal governments have final jurisdiction over all such lands and waters. I found these agreements have enabled new practices of Indigenous sovereignty, assertions of inherent jurisdictional authority, new conceptions of Indigenous well-being, and Indigenous-led efforts of reconciliation. The trajectory of the work seems to be towards Heiltsuk having ultimate decision-making power over their territory.
Preface

This research will be disseminated to staff at the Heiltsuk Integrated Resource Management Department (HIRMD) in Bella Bella, BC. I will most likely present my findings to the HIRMD Board of Directors, Heiltsuk Tribal Council and the Hemas Council. I also intend to publish Chapter 2, 3, 4 in academic journals, and work with HIRMD staff to pursue a co-authored paper based on the exploratory analysis of Chapter 5. Chapter 5 currently gleans insights about what a Heiltsuk-driven reconciliation process looks like, though these claims will have the most impact if told by those involved in the process. This project was supported by: SSHRC #767-2013-2350, Wikwemikong Board of Education, UBC Public Scholars, Faculty of Science, Aboriginal Bridge Funding and the Institute for Resources, Environment and Sustainability (IRES).
# Table of Contents

Abstract ............................................................................................................................... iii  
Lay Summary .................................................................................................................... v  
Preface .............................................................................................................................. vi  
Table of Contents ............................................................................................................. vii  
List of Figures .................................................................................................................. xi  
List of Abbreviations ....................................................................................................... xii  
Glossary ............................................................................................................................ xiii  
Acknowledgements .......................................................................................................... xv  
Dedication ......................................................................................................................... xvii

## Chapter 1: Introduction ................................................................................................. 1

1.1 The Practice of Sovereignty ....................................................................................... 5  
1.2 Heiltsuk Nation .......................................................................................................... 11  
1.3 Overview of Research Methods and Approach ....................................................... 16  
1.4 Chapter Overview ....................................................................................................... 21  
1.5 Purpose and Contribution of Dissertation ............................................................... 24  
1.6 Notes on Terminology ............................................................................................... 25

## Chapter 2: Reconciliation Protocol Agreements and Heiltsuk Nation: Realizing Indigenous Sovereignty? .............................................................................................................. 27

2.1 Court Cases, Comprehensive Land Claims and the BC Treaty Process .................. 29  
2.2 Reframing Sovereignty ............................................................................................... 35  
2.3 Reconciliation Agreements ......................................................................................... 41  
2.4 Coastal First Nations Reconciliation Protocol, 2009 and 2016 ............................... 45
2.5 Heiltsuk Nation, Kitasoo/Xia’Xais and the Reconciliation Protocol Agreement

2.5.1 Realizing Sovereignty

2.5.2 Reframing Sovereignty?

2.5.3 Challenges of the 2009 Coastal First Nations Reconciliation Protocol Agreement

2.5.4 Conclusion

Chapter 3: The Coastal First Nations Reconciliation Protocol Agreement and Heiltsuk Nation: Aspirations of Jurisdictional Authority

3.1 Sovereignty as Jurisdiction

3.2 Duty to Consult and Accommodate

3.3 The 2009 Coastal First Nations Reconciliation Protocol Agreement

3.3.1 Land and Resource Management Tables and Coastal First Nations

3.3.2 Government-to-Government: From ‘stakeholder’ to decision-maker?

3.3.3 Rethinking Jurisdictional Obligations: Strategic Land Use Planning Agreements and Land and Resource Forum (2006-2008)

3.4 ‘Upping the ante’: Jurisdiction and The Coastal First Nations Reconciliation Protocol

3.4.1 Competing Assertions of Sovereignty

3.5 The Engagement Framework: Disruption of Unilateral Decision Making and so Jurisdiction Itself?

3.5.1 Frustrations of the Engagement Framework

3.6 Heiltsuk Nation and the Engagement Framework

3.7 Challenges to Jurisdictional Authority

3.8 Conclusion
Chapter 4: On the Emerging Nature and Logic of Indigenous Well-Being for Heiltsuk Nation

4.1 Colonialism and Well-Being

4.2 Indigenous Well-being

4.3 Human Well-being in the Great Bear Rainforest

4.4 Human Well-Being in Heiltsuk Territory

4.5 Being Well As Heiltsuk

4.6 Conclusion

Chapter 5: “To turn things around and make things rights again”: Reconciliation Efforts in Heiltsuk Territory

5.1 ‘Reconciliation in the Canadian Context’

5.2 Reconciliation and Heiltsuk Nation

5.2.1 The Heiltsuk Title and Rights Strategy and Declaration

5.2.2 Haïlcistut: Framework Agreement for Reconciliation between Heiltsuk Nation and the Government of Canada

5.3 Heiltsuk-driven Reconciliation Process and Outcomes

5.4 Reconciliation: with Community Support and Without Treaty

5.5 Reconciliation of Crown Sovereignty with Heiltsuk Title and Rights (or ‘Out from under the Indian Act’)

5.6 Challenges to the Reconciliation Process

5.7 Conclusion

Chapter 6: Conclusion

References
Appendices................................................................................................................................. 232

Appendix A Table of Negotiated Agreements................................................................. 247

Appendix B List of Interview Questions............................................................................. 251
List of Figures

Figure 1.0 Heiltsuk Occupation of DFO Office .........................................................22

Figure 1.1 Map of Heiltsuk Territory........................................................................31

Figure 1.2 The “Royal Visit” ..................................................................................34
List of Abbreviations

ABSAs – Atmospheric Benefit Sharing Agreements
BC – British Columbia
BCCA – British Columbia Court of Appeal
BCSC - British Columbia Supreme Court
CFN – Coastal First Nations
DFO – Fisheries and Oceans Canada (formerly Department of Fisheries and Oceans)
EBM – Ecosystem Based Monitoring
G2G – government-to-government
GBR – Great Bear Rainforest
FLNRO – Ministry of Forest, Lands and Natural Resource Operations
HIRMD – Heiltsuk Integrated Resource Management Department
HTC – Heiltsuk Tribal Council
RCAP – Royal Commission on Aboriginal Peoples
SCC – Supreme Court of Canada
SLUPAs – Strategic Land Use Planning Agreements
TRC – Truth and Reconciliation Commission
Glossary

Aboriginal peoples – A term used to refer to First Nations, Inuit or Metis people in Canada. It was used officially in the repatriation of the Constitution Act, 1982, and is the most common official term used in Canada. I try to use this word only in a legal context, or when I am referring to official language within legislation or policy.

Aboriginal rights – Rights an aboriginal people hold because of their sovereignty prior to the assertion of sovereignty by Britain, France, or Canada. These rights encompass “all aspects of their culture, including land, traditions and survival” (Olthuis et al., 2012, p.8). According to the courts, these rights are held communally by the members of an Aboriginal group, and do not belong to any one person.

First Nations – A more specific term than Aboriginal or Indigenous, as it refers to groups of people official known as Indians under the Indian Act, and do not include Inuit or Metis people. I use this term and the term ‘Nation’ interchangeably when I am referring to a specific group, such as Heiltsuk Nation.

Government – to – Government (G2G) – Formal bilateral discussions and negotiations that take place between First Nations governments (or their representatives) and provincial and federal governments in Canada.
**Section 35 (1) of the Canadian Constitution** – guarantees the Treaty and Aboriginal rights of the Aboriginal peoples of Canada.

**Self-determination** - Much broader than ‘self-government’ in that it deals with a Nation breaking free from domination and closely tied to historical struggles for decolonization whereby “a people” struggles to break its relations with a more powerful group to establish its own society based on its own vision, rules, and relationships” (Eisenberg, 2014, p. 297).

**Treaty rights** – Generally refers to the promises which were made when the treaties were signed between the Crown and First Nations. In general, First Nation view the treaties as creating nation-to-nation relationships. Crown governments, on the other hand, argue that under a treaty, Aboriginal title was exchanges for small reserves and small treaty payments (Olthuis et al., 2012).
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Chapter 1: Introduction

Heiltsuk Territory spans 35,553 square kilometres of lands and waters (HTC, 2015) and is located on the central coast of what is now known as British Columbia, Canada. The main reserve of Bella Bella is located on Campbell Island, and is accessible by boat and air year round. Today, Heiltsuk people continue to identify as being from one or more of five tribal groups: ’Wúyalitxv, ’Wuíl’itxv, ’Yísdáitxv, ’Qvúqva’yátítxv, ’Xiís. Heiltsuk have an inalienable relationship with their territory which they have defended over time, adapting to change as needed (HTC, 2015). Heiltsuk also have a long and proud history of exercising their rights to access and manage resources in their territory. In *R v Gladstone* (1996), the Supreme Court of Canada specifically affirmed the rights of Heiltsuk Nation to harvest Pacific herring spawn for food, social, ceremonial and economic purposes within the boundaries of their territorial waters (Gauvreau et al. 2017). By way of example, in the spring of 2015, the Department of Fisheries and Oceans (DFO) opened Heiltsuk territory to the commercial herring fishery despite Heiltsuk opposition. Heiltsuk demonstrated their conviction to protect their herring rights when they occupied the federal agency’s office on Denny Island for several days (see Figure 1.0 below). As a result of this resistance, Heiltsuk negotiated a joint management agreement with DFO for the herring fishery in 2016 and in 2017.¹

On January 28th, 2017, the *Hailcistut: Framework Agreement for Reconciliation* was signed in Bella Bella, BC, by Marilyn Slett, Chief Councillor of Heiltsuk Nation and the

¹ On March 1, 2018, Fisheries and Oceans Canada (DFO) announced it had agreed to suspend the commercial herring roe fishery on the central coast (including Heiltsuk territory) for 2018 after the Heiltsuk has been “unable to reach a shared understanding of stock health” that would allow both a commercial and Heiltsuk fishery to proceed. See article *Of Roe, Rights and Reconciliation* by Ian Gill (2018) in Hakai magazine for details of the 2017 and 2018 herring management plan developed by Heiltsuk Nation and Fisheries and Oceans Canada.
Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs. This agreement set a framework for how the Heiltsuk Nation and the Government of Canada would enter into a reconciliation process together to negotiate a new government-to-government relationship. The agreement “establishes a shared vision, principles and objectives, and identifies negotiating priorities most important to Heiltsuk, including housing, infrastructure, community safety and prevention of violence against women, fish and marine resources, self-government, and a recognition of Heiltsuk’s Aboriginal rights and title.” In language from Heiltsuk Nation: “Through this Heiltsuk driven [reconciliation] process, we will continue to progress with the intent of governing beyond the Indian Act, reconstituting ourselves as a self-governing people, and strive towards managing wealth instead of poverty” (HIRMD, 2018a).

On June 21st, 2018, in Prince Rupert, BC, Marilyn Slett, Chief Councillor of Heiltsuk Nation and President of Coastal First Nations, and Prime Minister Justin Trudeau announced the Reconciliation Framework Agreement for Bioregional Oceans Management and Protection. This agreement, between the Government of Canada and 14 central and north coast First Nations, means the signatory governments have agreed to “coordinate ongoing efforts in the management and conservation of oceans, including marine spatial planning and developing a network of marine protected areas” (Coast Funds, 2018a). They have also reiterated their commitment to work together to improve waterway management, increase emergency preparedness and boost the response capacity of local First Nations (Coast Funds, 2018a). At the press conference for the Reconciliation Framework Agreement for Bioregional Oceans Management and Protection, Marilyn Slett, Chief Councillor of Heiltsuk Nation explained:

This agreement must support our [First Nations’] efforts towards self-determination and decision-making in how best to manage and protect our territorial lands and waters...
The Agreement gives Canada a historic opportunity to develop a true nation-to-nation approach on ocean protection with the Nations [involved] and peoples who have called the coast home for millennia. What does a nation-to-nation relationship really mean? For us, we understand it to mean that as a First Nation and those who have an intimate relationship with the ocean are those charged with responding to the threats in our waters. It means Nations start building capacity within our communities. We want to be leading those efforts on land and at sea as governments responsible for the future of our communities and traditional territories. This [agreement] is truly an encouraging step towards realizing our vision of ocean and marine protection in our waters. Canada must remain committed to meaningful reconciliation.

Marilyn Slett’s words in this address indicate that First Nations on BC’s coast know well they are self-determining, sovereign Nations who have occupied these lands and waters long before the arrival of Europeans. Thus, they are the caretakers of the land and waters with the responsibility to protect them. In addition, they are Nations with political systems capable of and responsible for governing and promoting the well-being of their communities. As a sovereign Nation, Heiltsuk is open to a relationship with the Crown based on mutual respect and recognition. Meaningful reconciliation is only possible (i.e. Heiltsuk Nation will only commit to a reconciliation process) if Canada realizes these terms, namely, Heiltsuk title, rights, and self-government (HIRMD, 2018). In the Chief Councillor’s words: Reconciliation between First Nations and Canada must be robust and courageous enough to embrace all of this.

These acts (noted above) and myriad others of asserted authority and sovereignty signify First Nations’ efforts, on the north and central coast of British Columbia, to regain control over the land, waters and resources in their traditional territories not just through the courts, but also
through negotiated agreements with the Crown. Agreements such as those described above also situate this as a central historical moment for Indigenous-state relations, and constitute an emerging blueprint for how Indigenous nations and the Crown may choose to move towards renewing a ‘nation-to-nation’ relationship.

This dissertation tells the story of how one Indigenous nation, Heiltsuk Nation, have persistently upheld their jurisdictional authority over their territory over time and, in particular, how they continue to do so today. Even though the Canadian Crown has rarely recognized this Heiltsuk authority, Heiltsuk Nation are now asserting their jurisdictional authority over Heiltsuk territory in ways that the Crown can no longer ignore. This dissertation presents a case study in how sovereignty is being expressed not just in theory and declaration, not just in written policy, but, crucially, in Indigenous practices of sovereignty. I find that such practices now include, and also extend beyond, negotiated agreements with both the provincial and federal Crown. Qualitative data gathered through 2 years of ethnographic fieldwork with Heiltsuk Nation is interpreted in the light of both theory and policy, with a specific focus on negotiated agreements, including the 2009 Coastal First Nations Reconciliation Protocol Agreement, the 2016 Amending Agreement, The Great Bear Land Use Order, and the Hailcisstut: Framework Agreement for Reconciliation between Heiltsuk Nation and the Government of Canada. I argue that, on the whole, these types of agreements represent a new and positive direction in

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2 The 2009 Coastal First Nations Reconciliation Protocol, the 2016 Amending Agreement and the Great Bear Land Use Order, along with several other agreements (e.g. the Strategic Land Use Planning Agreements and Atmospheric Benefits Sharing Agreements) encompass what are also known to as “Great Bear Rainforest agreements” (Curran, 2017). As Curran (2017, pg.18) explains, “These elements, agreed to over fifteen-year time frame and codified in different document, make up the evolving GBR agreements. Premised on ecosystem protection they provide a detailed example of an ongoing negotiated reconciliation process in the context of continued, yet circumscribed, colonial management.”
Indigenous-state relations in Canada, facilitating Indigenous practices of sovereignty and the exercise of Indigenous jurisdiction. Yet their study currently constitutes a significant gap in the research literature.

Figure 1.0. In March 2015, members of Heiltsuk Nation occupy the offices of the Department of Fisheries and Oceans for four days on Denny Island, BC. (my photo, printed with permission)

1.1 The Practice of Sovereignty

The colonial claims often associated with conceptions of sovereignty presuppose that states, and states alone, exercise ultimate authority over a territory (Shaw, 2008). While these claims are significantly challenged by the encounter between Indigenous peoples and the legal and political institutions of Canada (Webber, 2016), and while absolute sovereignty is in fact a myth (Alfred, 2005a; Shaw, 2008; Kotaska, 2013), the Canadian Crown continues to operate on
the assumption of its “ultimate authority” over all territory in Canada. Alfred (2005b, p. 33) puts it as follows: “Fair and just instances of interaction between indigenous and non-indigenous peoples are legion; yet mythic narratives and legal understandings of state sovereignty in North America have consciously obscured justice in the service of the colonial project.” Similarly, Borrows (2002) notes that 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. Yet, despite sovereignty status as a colonial construct, theorists have redefined sovereignty in various ways that are meaningful to Indigenous peoples (Barker, 2005).

Most, if not all, Indigenous nations in Canada consider themselves to be sovereign, and Indigenous peoples would strongly deny that the Crown ever possessed power to extinguish their political rights at any point in history (Alfred, 2005; Asch, 2014). On this view, Indigenous peoples do not need to become sovereign, as their sovereignty flows directly from their inherent rights of Indigenous nationhood. Put differently, the Crown does not grant sovereignty to Indigenous peoples; rather it is their inherent right as Indigenous peoples with their own forms of governance and ways of knowing that existed before the arrival of European colonists (Turner, 2013). Furthermore, Indigenous peoples constitute political and legal orders that exercise lawmaker authority over their territory and people (Curran, 2017; Macklem and Sanderson, 2016).

Turner (2013, p.108) points out that there is a crucial limitation to appealing to “Section 35(1) rights” as the basis of Indigenous sovereignty. It is that these rights can only exist by recognition of the Crown, requiring the reconciliation of Aboriginal systems of law with the unilateral assertion of Canadian sovereignty:
...this assertion of Canadian sovereignty, embedded in its “Canadian and legal constitutional structure” has shown itself time and time again to be hostile to Aboriginal understandings of nationhood. Aboriginal ways of knowing – their philosophies simply do not measure up to the Western European philosophical traditions.

This is to say, from the Crown’s perspective, and from within its systems of law and governance, Indigenous traditions have not been legitimated, and Aboriginal rights can only exist to the extent that they do not meaningfully challenge the sovereignty of the Crown. Asch (2014) turns this view of sovereignty on its head, arguing “it is the question of how the Crown gained sovereignty that requires reconciliation with the pre-existence of Indigenous societies and not the other way around” (pg. 11).

Simpson (2014, p. 16) is highly skeptical that Indigenous peoples can progress as sovereign nations from within settler-colonial systems, under conditions of abandonment “on lands reserved for Indigenous people’s ‘use and benefit’ with regulations on how [to] use that land, who gets it, what the terms of that use are.” These conditions simply do not lend themselves to Indigenous nations being a sovereign political order with authority over their territories and people. Simpson’s telling of the Mohawks of Khnawa:ke, and their insistence on maintaining their Haudenosaunee governance system therefore starts with the Mohawk’s refusal of these conditions. She (2014, p.11) explains refusal as “the requirement of having one’s political sovereignty acknowledged and upheld, and raises the question of legitimacy for those who are usually in the position of recognizing: what is their authority to do so? Where does it come from? Who are they to do so?” In her words, “…Indigenous sovereignties and Indigenous political order prevail within and apart from settler governance” (p.10). Starting from this assumption, Simpson articulates the concept of “nested sovereignty”, the idea that “sovereignty
may exist within sovereignty. One sovereignty does not negate the other, but they necessarily stand in terrific tension and pose serious jurisdictional and normative challenges to each other” (p.10).

Webber (2016) helpfully distinguishes between four distinct meanings of sovereignty, and similarly shows how normative and jurisdictional conflicts between Indigenous peoples and the Crown can be tolerated, if not embraced outright, in negotiated agreements. He agrees that the notion of sovereignty most relevant to Indigenous struggles for self-government is “the idea that law and the associated governmental rights originate from within the particular people’s own traditions,” having their own “autochtonous origin...[and] legitimacy” that is “not the result of a grant of authority from any other entity” (p. 81).

I find Webber’s argument very compelling and, as you will see, relevant to the Heiltsuk experience. Yet I do agree with Simpson (2011), who notes that Indigenous sovereignty must be pursued by building Indigenous alternatives while also seeking Crown recognition. Context matters, and what Heiltsuk Nation have managed to achieve is still rare among First Nations, especially when we broaden our horizon to include all of Canada. The Heiltsuk have had some key court rulings in their favour, and it is clear that, in this sense, the courts have acted as effective leverage for Indigenous nations who wish to affirm their Indigenous rights and assert title over their territories. The implications of these cases, and others like them, form an important part of the story I would like to tell. Therefore I am certainly not arguing that legal strategies (or the pursuit of Crown recognition more broadly) should be abandoned by Indigenous nations. I emphatically agree with Wilson (2018, p. 8), that Indigenous peoples can and should use “multiple state and non-state strategies to assert their sovereignty.” Nevertheless, what primarily interests me are the ways in which sovereignty is ‘at work’ and expressed by
Indigenous nations, with or without state recognition, and often independently of state institutions. As Simpson (2014) demonstrates with the concept of “nested sovereignty”, attention to practices of Indigenous sovereignty “on the ground” is much needed across scholarship of Indigenous governance, environmental studies and related disciplines.

My dissertation thus aims to document practices of sovereignty by Heiltsuk Nation, and evaluate to what extent they are unsettling long held practices of Crown sovereignty, including the very idea that all Canadian territory (outside of private property) is “Crown land”, and the notion that provincial and federal governments have jurisdiction over all such lands and waters. To better articulate what I mean by “practices of sovereignty”, and how these practices may be unsettling Crown sovereignty, allow me to draw on a personal experience from my time in Heiltsuk territory. I was present when Heiltsuk occupied the office building of Fisheries and Ocean’s Canada (DFO) on Denny Island for four days in March 2015, in order to demonstrate their determination to protect one of their primary marine resources, Pacific herring.

The peaceful occupation of the DFO offices began when a delegation of Heiltsuk members and supporters, led by Heiltsuk youth and women, chartered a boat to travel from Bella Bella to the DFO office building to Denny Island. The purpose of this trip was for Heiltsuk Nation to hand deliver an official eviction notice to the DFO staff on duty that day. The eviction notice read: “Due to Lack of Respect for Heiltsuk Gvilas [Heiltsuk laws], You are Hereby Given a Notice of Eviction from the Heiltsuk Nation.”

The Eviction Notice was not just for staff, it was intended for the entire DFO department. In effect, it instructed DFO to pack up and leave Heiltsuk territory. This action, though seemingly minor, was significant because it called out the DFO, as an agency of the Crown, for trespassing on Heiltsuk land and waters. This action implied DFO were only visitors on Heiltsuk
territory, and as far as Heiltsuk were concerned, DFO had no jurisdictional authority. DFO were no longer welcome to operate on Heiltsuk lands and waters, because they had violated Heiltsuk law.

While this action may have begun as symbolic, Heiltsuk quickly signaled their seriousness when a small group of Heiltsuk members and their allies (of which I was one), peacefully occupied a meeting room on the second floor of the DFO office building. Later that day, this protest escalated further when two Heiltsuk leaders, Chief Councillor Marilyn Slett and HIRMD Director, Kelly Brown, decided to occupy the first floor of the DFO Office and demand an audience with DFO decision-makers. Of primary concern to Heiltsuk Nation were the low stocks of Pacific herring spawning in their territorial waters (Gauvreau et al., 2017). Despite Heiltsuk’s persistent calls to limit catch allocations, DFO had opened Heiltsuk waters to the commercial herring fishery. Heiltsuk Nations was opposed to this decision because, in part, it threatened the availability of the herring stocks that are crucial to their diet, livelihoods and culture.

While Marilyn and Kelly remained in the DFO office, a large crowd of Heiltsuk members and their allies stayed outside the office building for 4 days. I was one of those allies. I witnessed Heiltsuk mothers, fathers, grandmothers, grandfathers, children, men, elders, and allies support each other and their leaders occupying the DFO office. On day 2, a decision maker from DFO flew to Denny Island to negotiate an end to the occupation. This negotiation resulted in Heiltsuk waters being closed to a commercial herring fishery for the 2015 season. Even more important was the commitment made by both DFO and Heiltsuk Nation to negotiate a “joint herring management plan” for the 2016 herring season.

This was a profound experience for me. It occurred within two weeks of moving to Bella Bella to begin my ethnographic research, and it clearly demonstrated how Heiltsuk can and do
assert their Indigenous sovereignty. While Heiltsuk Nation had not convinced DFO to leave their territory for good, Heiltsuk had forced DFO to act differently and engage in substantial negotiations with a First Nation that addressed jurisdictional matters. Through this experience I began to truly understand that Heiltsuk Nation holds inherent jurisdiction and governing authority over their territories and (rightfully) consider themselves owners and caretakers of their homelands. Furthermore, Heiltsuk will continue to exercise their inherent jurisdiction to manage their resources according to their laws and governance systems. My overall research question became: How is Heiltsuk Nation asserting their sovereignty, and what are the implications, for the provincial and federal governments? Do these practices of sovereignty matter for Indigenous-state relations moving forward? If so, how?

1.2 Heiltsuk Nation

We feel we own the whole of this country, every bit of it, and we ought to have something to say about it...We own it all. We will never change our mind in that respect, and after we are dead, our children will hold the same ideas. It does not matter how long the Government takes to determine this question, we will remain the same in our ideas about this matter... (Bob Anderson addressing the McKenna-McBride Commission, August 13, 1913 at Bella Bella, British Columbia: Royal Commission on Indian Affairs for the Province of British Columbia, Bella Coola Agency Transcript).

Heiltsuk Nation often uses the quote above in interactions with the Crown and the public. For example, it is found on the cover of the Heiltsuk Title and Rights Strategy: Implementing a Reconciliation Agenda, in the Heiltsuk Land Use Plan, and as part of a new reconciliation mural commissioned by the Heiltsuk Integrated Resource Management Department (HIRMD) in
Spring 2018. Bob Anderson’s quote reflects the fact that Heiltsuk Nation has not sold, ceded or surrendered any of their title or rights or relinquished their inherent right of self-governance to anyone including Canada, British Columbia or any other First Nation. Heiltsuk Nation has occupied their territories since time immemorial, and have never waived their rights to the lands and marine areas of their territories, nor their duty to look after them (HTC, 2015).

In October 2015, Heiltsuk Nation released the Heiltsuk Title and Rights Strategy: Implementing a Reconciliation Agenda (the Strategy), which draws on the convictions of Bob Anderson (see quote above). In the Strategy, Heiltsuk reference “reconciliation” because they realize that “First Nations, the Crown and non-Aboriginal society are here to stay and it is in everyone’s best interest to find a new way forward” (HTC, p. 4). Moving forward, this Strategy sets out a way for Heiltsuk to “assume greater jurisdictional power over all matters related to [their] People, lands and resources” (HTC, 2015, p.4). That is, the Heiltsuk government has a mandate from their community to exercise maximum control over their territory. The Declaration of Heiltsuk Title and Rights accompanies the Strategy and contains the following statements to clearly articulate the origin of Heiltsuk title and rights:

*We are the Heiltsuk people, descendants of ancestors who exercised sovereign authority and ownership over our land and waters for thousands of years. Today, we reaffirm the continued existence of Heiltsuk title, and our right as a Nation to exercise jurisdiction and management authority, and to derive economic benefits from the lands, waters and resources within our territory.*

Fundamental to the Strategy is that the assertion of Heiltsuk title and rights draws on their pre-existing system of governance, laws and culture:
The source of Heiltsuk title flows from our historic ownership, occupation, stewardship, use and control of our territory. Our title predates and survives the assertion of European sovereignty. Each generation is taught the history of our lineage and how it connects our People to ownership and responsibilities related to our territory.

Figure 1.1. A map of Heiltsuk territory (Heiltsuk Land Use Plan, Living Document)
Heiltsuk people practice a system of governance based on hereditary chieftainship that has continued from pre-1846 through to present day. The ancestral names of the *Hemas* (hereditary chiefs), and their immediate and extended families, affirm the title and rights to the lands, waters and the resources within their territories (HTC, 2015). The *Hemas* and their families witness and affirm their title and rights as part of the events that comprise what is known as the feasting and potlatching complex (Harkin, 1997). The potlatch is a complex institution that is fundamental to the Heiltsuk social and political system (Hardin, 1997; Gauvreau et al., 2017). Traditional names, rank and/or hereditary privileges are claimed at the potlatch through dances, speeches and the distribution of property to those involved in the potlatch in general and as sanctioning witnesses (Hardin, 1996).

The overarching system that applies to Heiltsuk territory, and all people within the territory, is Heiltsuk’s "*Gvi’ilás*. *Gvi’ilás* is “a complex and comprehensive system that embodies values, beliefs, teachings, principles, practices and consequences” (HTC, 2017, p.7). Put another way, *Gvi’ilás* is the governing authority over all matters related to Heiltsuk lands and people. Based on *Gvi’ilás*, the Heiltsuk are the responsible stewards of the land (HTC, 2005). The laws and nature of *Gvi’ilás* are discussed and lived both formally (through resource management and the Potlatch), cited formally as oral history, and informally by Heiltsuk people today (spoken about amongst friends and colleagues) (Gauvreau et al., 2017; Housty et al. 2014).

In the past, resource ownership throughout Heiltsuk territory was regulated through the laws of *7áxvái* (pronounced “lah-hay). *7áxvái* translates as the “power” or “authority” Heiltsuk people derive from their ownership of and connection to the land (HTC, 2005). *7áxvái*, coupled with *Gvi’ilás*, refers to the inherent authority and rights held by the Hemas (hereditary chiefs) within their territory (HTC, 2005). This “inherent authority” is derived from their millennia-old
land tenure system comprised of access, title, and stewardship rights and responsibilities associated with family-owned harvesting locations (Gauvreau, et al., 2017).

Heiltsuk have maintained authority over their territory through their hereditary governance system. Heiltsuk inherent rights (described above) are exercised today. For example, the current system of elected “Chief and council” (an imposed colonial governance model through the Indian Act) works in collaboration with the Hemas council (hereditary chiefs) to make decisions about Heiltsuk territory (HTC, 2015). Another poignant example of Heiltsuk exercising their inherent rights occurred during the “royal visit” of Prince William and Princesses Kate to Heiltsuk territory in October 2016. In the photo below (Figure 1.2.), the man responsible for speaking for the head chief of the Heiltsuk Nation, Waúyala, is welcoming representatives of “the Crown” (Prince William), and representatives from the federal and provincial governments of Canada to Heiltsuk Territory. This address is taking place in the presence of other hereditary chiefs and women of high ranking, along with community members, visitors and media to bear witness to this historic exchange. Waúyala reiterates the sentiments of Bob Anderson (mentioned above) in that Heiltsuk have held firm in their convictions of their authority and jurisdiction of their lands and waters. Waúyala is welcoming the Crown to Heiltsuk territory while affirming Heiltsuk sovereignty. The photo below illuminates the authority of Heiltsuk’s hereditary governance system in practice, and is one of many examples of the desire and right of Heiltsuk Nation to uphold their jurisdictional authority over their territories.
1.3 Overview of Research Methods and Approach

This dissertation is informed by ethnographic fieldwork (Creswell, 2013; Cerwonka and Malkki, 2007) that I conducted between October 2013 and May 2018. During this period, I lived in Bella Bella for a total of 1.5 years and worked for the Heiltsuk Integrated Resource Management Department (HIRMD) as the Communications Coordinator. My first visit to Bella Bella was in August of 2009, as part of a two-week solo visit to the “Great Bear Rainforest.” I was completing my Master’s degree in Environmental Studies at the University of Victoria and strongly felt I needed to experience the place about which I was conducting research. In 2013, I returned to Bella Bella to explore possible opportunities to work with Heiltsuk Nation as part of
my PhD work pertaining to the implementation of the “Great Bear Rainforest Agreements.” I approached the HIRMD Research Department to inquire if their organization had research questions in need of investigation. HIRMD responded by asking me to examine the successes and failures of the implementation of the commitments contained within the 2009 Coastal First Nations Reconciliation Protocol Agreement (also referred to as the 2009 RPA) signed between Coastal First Nations and the Province of British Columbia. Thus, the design of this research project was strongly collaborative in that the overall motivation for an analysis for the 2009 RPA was driven by questions from the HIRMD Stewardship Director and HIRMD Board. Their concern then was the implications of signing a reconciliation agreement with the Province. Toward that end, my research questions, ethnographic design and subsequent interviewee list was devised with the assistance of the HIRMD Director and other HIRMD staff. I completed the HIRMD research protocol before my formal research began in March 2015. My initial research objectives were as follows:

1) Evaluate the implementation of the 2009 RPA; focusing on the commitments that have been successfully implemented or are making significant process towards implementation, including the Carbon Offset Sharing Agreement and Forest tenure agreements.

2) Identify the blockages or barriers to implementation of the RPA commitments; focusing on commitments that have not yet been achieved, including “increased human well-being” (as defined by the Heiltsuk) linked to economic opportunities such as tourism, conservation planning and shared decision making commitments.
3) Develop a list of recommendations based on the successes and blockages of implementation of the 2009 RPA that focus on “lessons learned” from the 2009 RPA implementation efforts.

The research began with a focus on the 2009 Coastal First Nations Reconciliation Protocol Agreement, although as my research process unfolded, the focus widened to other agreements either facilitated by the initial 2009 RPA (e.g. the 2016 Amending Agreement and the Great Bear Land Use Order) or agreements that surpassed the mandate of 2009 RPA, such as the Reconciliation Framework Agreement between Heiltsuk Nation and the Government of Canada. As such, the scope of my research objectives changed to identifying key insights into the myriad ways Heiltsuk Nation used these aforementioned agreements, or not, to uphold their inherent authority and rights over their territory, and specifically over land resources. Appendix A: Table of Negotiated Agreements (p. 247) provides a chronological list of the major agreements and policies described throughout my dissertation.

There are critically important research principals for any community based work, and particularly research conducted with or about Indigenous communities. Research has been described as a dirty word with many Indigenous communities; it can “dehumanize” Indigenous populations by a lack of accountability and reciprocity (Menzies, 2004; Smith, 1999). However, Indigenous methodologies is a growing field of study that can be characterized by: always benefiting Indigenous communities; centralizing Indigenous ways of knowing and being; principles of relationships, respect, relevance, reciprocity and responsibility (Kovach, 2009; Kovach, 2010; Smith, 1999; Smith, 2013; Wilson, 2009). As Kovach (2009) states “there is a need for research that employs a range of methodological options determined by the needs of particular Indigenous communities.” My attempt to address this need started when I asked
HIRMD what research questions would most be most beneficial to their governance goals. In addition, principles of trust, reciprocity and accountability were paramount throughout my research process. For example, I built trust with HIRMD staff and other community members by spending as much time in Bella Bella as possible, and eventually took on a part-time position for HIRMD. I was also careful to not take people’s time and knowledge for granted, and when possible, would either reciprocate people’s time with a small honorarium or gift. I hired a local community member to transcribe my interviews, and I also volunteered at the Heiltsuk Centre weekly by leading walk/run sessions with any interests residents of the community. I also take my position as an outside researcher as a privilege and consider it my responsibility (and desire) to visit Bella Bella and disseminate my findings in ways the HIRMD research department and/or the Heiltsuk Tribal Council see fit. Efforts will be made to co-author journal articles with interested HIRMD staff and community members.

Participant observation was a key method (Creswell, 2013) used in my investigation. While in Bella Bella, I attended several community meetings (Heiltsuk Tribal Council AGM, Heiltsuk Reconciliation Framework Agreement with BC and Canada), information sessions (Women’s Dialogue on the Heiltsuk Title and Rights Strategy, Coastal Guardian Watchman Conference), community events (i.e. Aboriginal Sports Day and the Children’s Cultural Celebrations), and three potlatches. In my capacity as HIRMD staff, I participated in and organized several meetings pertaining to stewardship efforts in Heiltsuk Territory, and frequently had formal and informal conversations (Kovach, 2009, p.124) with Heiltsuk government staff regarding other, broader political processes at play (i.e. reconciliation tables, forestry agreements, herring managements plans, etc.). The position I held with HIRMD allowed me to develop an understanding of unfolding events from a Heiltsuk perspective I would not have had.
otherwise. I conducted open-ended interviews with HIRMD staff who relied on the 2009 RPA regularly, and while in Vancouver I interviewed 4 staff of the organization Coastal First Nations. I also conducted 10 formal interviews with staff from HIRMD, Heiltsuk Tribal Council and the Stewardship staff from neighboring Nations to inform my understanding of the specific commitments contained within the 2009 RPA, as well as the subsequent amendments and associated legislation negotiated between Coastal First Nations and the BC government during 2014-2016. Please see Appendix B for a list of interview questions. I followed up with my interviewees on several aspects of these unfolding amendments and agreements, including questions regarding human well-being – its status and change, specifics of the Engagement Framework, and thoughts regarding the unfolding reconciliation process between Heiltsuk and the Government of Canada.

My ethnographic fieldwork was informed by the “interpretive approach to knowledge production” presented by Cerwonka and Malikki (2007, p.2). By this I mean I relied on their ideas about the interpretive process tacking between theory and empirical details to legitimize my thinking about events, conversations, and interviews unfolding in real time in Bella Bella and Vancouver. I came to appreciate the “tempo” of ethnographic research, embracing a form of knowledge production that is “characterized by rushes of, and lulls in, activity and understanding and requires constant revision of insights gained earlier” (p.5). In my case, I experienced more “rushes” of events, acts and insights pertaining to practices of Heiltsuk sovereignty, rather than “lulls”, which also informed the widening scope of my work as my research process unfolded.

I come to these interests, and concerns, as a member of the Wikwemikong First Nation in Northern Ontario, and more recently as a student of Indigenous resource management and governance practices.
1.4 Chapter Overview

The purpose of my dissertation is to illuminate practices of sovereignty through a case study with Heiltsuk Nation, and how these practices are potentially unsettling the long held status quo of Crown asserted sovereignty. Chapter 2 and 3 engage with the literature on sovereignty and jurisdiction, respectively, considering how the case of Heiltsuk Nation can help us to refine the meaning of both sovereignty (Webber, 2016) and jurisdictional authority (Pasternak, 2017) through “on the ground” accounts of such practices. Chapter 4 and 5 engage with emerging fields of study: Indigenous well-being and reconciliation, respectively, assessing the extent to which what is happening in Heiltsuk territory matches what scholars are advancing in the literature. My dissertation contributes to each of these fields by attempting to link theory with practice to showcase the strength and strategies of Indigenous nations while they assert authority over their territories and work towards renewing a ‘nation-to-nation’ relationship with the Government of Canada.

Chapter 2: Reconciliation Protocol Agreements and Heiltsuk Nation: Realizing Indigenous Sovereignty? focuses on the negotiation and implementation of the 2009 Coastal First Nations Reconciliation Protocol (2009 RPA) to explore how, through day-to-day political interactions, this agreement is operating as a mechanism that works to unsettle long-standing assumptions of Crown sovereignty. This analysis offers insights into both the successes and failures of the 2009 RPA in producing tangible benefits for Heiltsuk Nation. The key success of the 2009 Agreement was the “carbon offset program”, which provided a stable source of funding to implement the 2009 RPA (and now 2016 Amending Agreement) and support for capacity building initiatives. Furthermore, Heiltsuk Nation used the governance processes within the RPA
to build a more effective relationship with the Crown. However, Heiltsuk Nation, and several other signatory Nations, remain frustrated by constrains to their decision-making power within the Engagement Framework. Despite these frustrations – and whether or not it was the intention at the time – the 2009 RPA bolstered several subsequent agreements and initiatives that are facilitating expressions of Indigenous sovereignty. My investigation also sheds light on how representatives from Kitasoo Xai’xais Nation, a neighbor of Heiltsuk Nation, have used the RPA to assert the political authority of their hereditary governance system.

Chapter 3, Coastal First Nations Reconciliation Protocol Agreement and Heiltsuk Nation: Aspirations of Jurisdictional Authority? depicts a ‘gaining of jurisdiction' by Heiltsuk Nation beginning from the inception of Coastal First Nations – a unique political alliance of several Nations – to the Land and Resource Management process (LRMP process) in the early 2000s, through to the government-to-government process developed to appease the increasing legal authority of First Nations at the time. I then turn to the significance of Strategic Land Use Planning Agreements (SLUPAs) negotiated and signed between several individual First Nations and the Province of British Columbia in 2006 (Kotaska, 2013). The details within each Nations’ SLUPA and LRPA are important because the scope of the commitments surpassed any of the negotiations or agreements that had heretofore been realized. I then hone in on a key component of the 2009 RPA, the Engagement Framework, meant to provide Nations and the Crown with a “shared decision-making process” to effectively make resource decisions about Heiltsuk territory. This analysis highlights the tensions that arise when competing sovereignties assert jurisdictional authority over the same territory (Pasternak, 2017). While the RPA does not provide Heiltsuk with the jurisdictional authority it seeks and deserves, it does make strides in
unsettling the notion that “jurisdiction” is an object fully formed and conjoined to state sovereignty.

Chapter 4, *On the Emerging Nature and Logic of Indigenous Well-being for Heiltsuk Nation*, critically engages colonial conceptions of ‘well-being’ by focusing on the current well-being policies being implemented on the central and north coast, and specifically in Heiltsuk territory. Human well-being was introduced initially in this region when a new forestry management regime, known as ecosystem based management (EBM), was negotiated between environmentalists, industry, the BC government and several coastal First Nations in the early 2000s (Price et al., 2009; Page, 2014). The 2009 RPA, the 2016 Amending Agreement and the 2016 Great Bear Rainforest Order\(^3\) contain explicit commitments intended to achieve higher levels of human well-being. What has remained elusive, until recently, is what ‘human well-being’ means to the Indigenous communities who have called this region home for thousands of years. Furthermore, there are little to no appropriate frameworks to track or measure the well-being of Indigenous peoples (Sangha et al. 2015a, Sangha et al. 2015b) globally that include people’s connections to lands. Given this, the chapter gleans insights into the ways human well-being policies could address legacies of colonialism through a deeper exploration of Heiltsuk well-being, including ways to account for place-based values. Further, this investigation reveals that efforts to “increase human well-being” in Heiltsuk territory are part of larger expressions of Indigenous rights and sovereignty, particularly for Heiltsuk Nation.

\(^3\) The Order Preamble explains: “The Province is committed to implementing ecosystem-based management in a manner that maintains ecosystem integrity and improves human well-being concurrently. Ecosystem integrity is being maintained when adverse effects to ecological values and processes are minimal or unlikely to occur. A high level of human well-being is being achieved when the quality of life in communities is equal to or better than the Canadian average” (Ministry of Forests, Lands and Natural Resource Operations, 2016).
Chapter 5, “To Turn Things Around and Make Things Right Again”: Heiltsuk Nation and “Reconciliation”, depicts efforts of Heiltsuk Nation to negotiate one of the first “reconciliation agreements” between an Indigenous nation and the Government of Canada. Some might indeed argue that Canadian society is at a crossroads where the potential exists for Indigenous and non-Indigenous governments to progress towards a mutual and respectful nation-to-nation relationship. However, great potential to reproduce the colonial structures that have plagued Indigenous peoples for over 150 years also exists (Turner, 2013). This chapter explores strategies by Heiltsuk Nation to ensure the reconciliation process (quickly) unfolding is Heiltsuk driven (e.g. within the scope of the Heiltsuk Title and Rights strategy) and aligns with commitments outlined in the Hailcístut: Framework Agreement for Reconciliation. My analysis reveals Heiltsuk are determined to participate in this reconciliation process as the penholders and will hold the Crown accountable for immediate and tangible benefits from it.

1.5 Purpose and Contribution of Dissertation

In the aggregate, this dissertation provides insights into “the practices of sovereignty” through an investigation of: 1) the challenges posed to Indigenous nations as they assert their jurisdictional authority over their territories, and the ways these challenges are being engaged, 2) the policies, or lack thereof, used to address Indigenous well-being on the coast that remain inherently colonial, and 3) the ambitious and fast paced approaches of coastal First Nations to seek a negotiated approach to reconciliation with the Crown. More broadly, it is my hope that this dissertation contributes both empirically and theoretically to scholarship on Indigenous governance, reconciliation, and Indigenous-state relations by illuminating the persistent efforts of First Nations to practice their own sovereignty within the boundaries of Canada. In this way, this
dissertation also reveals contributions to more disciplinary work grappling with the ongoing relationship between state sovereignty and Indigenous peoples around the world, including law, resource management and political theory. I attempt to contribute to unsettling the long-standing assumption that Canadian institutions are sovereign in a manner that diminishes Indigenous sovereignty.

1.6 Notes on Terminology

I use the term “First Nation” or “Nation” when I am referring to specific Indigenous nations in BC or in other parts of Canada. I generally use the term “Indigenous” when I am referring to broader concepts or literature (e.g. Indigenous state-relations and Indigenous well-being). I use the term “Aboriginal” and “Indian” when I am referencing specific policies, legislation and laws of the provincial and federal governments. It is important to recognize the diversity of Indigenous peoples across Canada, and that the goals, desires and needs of Indigenous people most certainly differ across Canada.

I use the terms “the Crown” and “the Canadian state” interchangeably when I am referring to either the Province of British Columbia or the Government of Canada. During my time in Bella Bella, most resource management staff referred to the BC government and federal government as “the Crown.” I attempt to stay consistent with this language.

The term “reconciliation agreements” is not well defined in the literature, or in practice, as they are emerging agreements being negotiated and implemented throughout British Columbia. In BC, ‘reconciliation agreements’ began as a way for both the provincial government and First Nations governments to work together to explicitly address economic, social and ecological objectives and realized tangible benefits for Indigenous communities (Davies, 2012).
The reconciliation agreements I refer to in Chapters 2, 3 and 4 are agreements negotiated between the BC government and an individual First Nations government (e.g. the Haida Reconciliation Protocol Agreement) or between the BC government and a First Nations political organization such as Coastal First Nations. The *Hailcístut: Framework Agreement for Reconciliation* I refer to in the introduction and in more detail in Chapter 5 are a new kind of reconciliation ‘framework’ agreement between the Government of Canada and individual Indigenous nations across Canada (e.g. Heiltsuk Nation) intended to reach a vision for renewing a ‘nation-to-nation’ relationship. At the time of writing, Heiltsuk Nation is one of the first First Nations in Canada to enter into discussions with the federal government about negotiating a “reconciliation framework agreement.” The scope of such an agreement will certainly extend past that of provincial reconciliation agreements and as such, certainly warrants attention from other Nations interested in pursuing such an approach with the Crown.
Chapter 2: Reconciliation Protocol Agreements and Heiltsuk Nation:

Realizing Indigenous Sovereignty?

In 1996, the Royal Commission on Aboriginal Peoples (RCAP) specifically used the language of sovereignty and called upon all governments in Canada to recognize Indigenous peoples as one of three orders of government. According to the recommendation each order of government “operates within its own distinct sovereign sphere, as defined by the Canadian constitution, and exercises authority within spheres of jurisdiction having both overlapping and exclusive components.” In other words, it argued that section 35 of the Canadian Constitution should be interpreted as providing for the existence and practice of Indigenous sovereignty. Neither the federal nor provincial governments have implemented the recommendations contained within the RCAP, yet the concept of sovereignty remains central to debates about Indigenous-state relations in Canada (Asch, 2014; Webber, 2016). For example, in a recent Globe and Mail opinion piece, Alicia Elliot⁴, writes:

*The election of Justin Trudeau’s Liberal government was supposed to signal a new ‘nation-to-nation relationship.’ But until the country recognizes the right to self-determination and acknowledges the sovereignty of Indigenous nations, the future will be the same as the past (Globe and Mail, January 5, 2018, my emphasis).*

Indigenous peoples have long challenged the legitimacy of Canadian sovereignty and Indigenous political activism has resulted in major achievements, such as the addition of Section 35 to the Canadian Constitution, which recognizes and affirms aboriginal and treaty rights (Asch, 2014; Blackburn 2007; Tuner, 2013). Although the Constitution recognizes Indigenous rights

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⁴ Alicia Elliot is a Tuscarora writer from Six Nations, currently living in Brantford, Ontario.
and title, the definition and practice of these rights, including the right to self-determination\(^5\), is still being worked out in practice today (Macklem and Sanderson, 2016; Million, 2013).

What concerns me in this chapter is how Indigenous practices of sovereignty are being expressed in ways that pose challenges to assumed Crown sovereignty. I examine how sovereignty has and continues to unfold through the micro-level and macro-level political acts of First Nations in coastal British Columbia. I analyze the *Coastal First Nations Reconciliation Protocol* (2009 RPA) in detail, specifically in relation to Heiltsuk Nation, and argue that these agreements have the potential to unsettle the long-standing assumption that Canadian institutions are sovereign in a manner that excludes Indigenous sovereignty.\(^6\)

I first present a brief account of past attempts by the Crown to reconcile its asserted sovereignty with Indigenous assertions of sovereignty, be it through the courts, the treaty process, or the comprehensive lands claims process. After outlining the limitations of these processes, I introduce the work of Jeremy Webber – whose work I lean on throughout my analysis – because he helpfully distinguishes between four “meanings” of sovereignty and

\(^5\) In this context, I use the meaning of the self-determination outlined in the United Nations Declaration on the Rights of Indigenous Peoples: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (UN 2007, Article3, p.4). However, this declaration goes on to limit the expression of the right to self-determination with the following affirmation: “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” (UN 2007, Article 3, p.4).

\(^6\) Other scholars have certainly presented similar arguments, including Indigenous legal scholar John Borrows. In *Canada’s Canadian Constitution*, Borrows (2005) argues, “Indigenous legal traditions are a reality in Canada and should be more effectively recognized” (p.23). In *Indigeneity and Political Theory: Sovereignty and the limits of the political*, Karena Shaw (2008) forwards an argument that places practices of sovereignty at the centre of Indigenous politics and struggles in Canada. Shaw argues that crucial renegotiations of sovereignty are occurring in “on the ground” negotiations enacted by Indigenous politics, and that they must be more critically engaged.
clarifies the specific claims that are “placed at issue by the encounter between Indigenous peoples and the legal and political institutions of Canada” (Webber, 2016, p.63). His account suggests that the Indigenous demand for self-government relates, above all, to one of these conceptions of sovereignty (i.e. Sovereignty 3: “the idea that law and the associated governmental rights originate from within the particular people’s own traditions” (p. 81)). I attempt to explain this argument, reviewing the example of the Kunst’aaguu - Kunst’aayah Reconciliation Protocol, between Haida Nation and the Province of British Columbia, in the process. I then introduce the 2009 RPA, describing it and explaining the importance of each of the schedules contained within it based on insights from those involved in its negotiation and implementation. Finally, I evaluate the impact of the 2009 RPA from the perspective of Heiltsuk Nation, relating their comments to Webber’s observations about the meaning of sovereignty for Indigenous-state relations in Canada.

2.1 Court Cases, Comprehensive Land Claims and the BC Treaty Process

Indigenous peoples in Canada have, from the very beginning of colonization, vigorously defended their legal and political autonomy, repeatedly asserting their inherent right to self-government (Borrows 2005; Webber, 2016). In fact, this inherent right to self-government was the central focus of Indigenous leaders during the constitutional conferences of the 1980s, which sought to define the content of the “aboriginal and treaty rights” affirmed in section 35 of the Constitution (Webber, 2016).

Yet legal decisions concerning Aboriginal rights in Canada have not traditionally been framed in the language of Indigenous sovereignty. Rather, the dominant language has been that of property, with the courts tending to focus on the recognition of Aboriginal title to land.
(Webber, 2016). The reasons for this are colonial in their nature: in the eyes of imperial decision-makers, Indigenous peoples were simply not the kind of people who could exercise sovereignty, since their forms of social organization lacked the characteristics of states (Slattery, 1991; Borrows, 2016). While there is widespread skepticism about the validity of these colonial justifications today, Webber (2016, p. 70-71) claims:

...although the Canadian governments and courts have generally abandoned the doctrines on which the absence of Indigenous sovereignty was based – the simplest versions of the doctrine of discovery, and the belief that Indigenous societies lacked systems of law and government – they still tend to presume that Canadian institutions are sovereign in a manner that excludes Indigenous sovereignty.

That is to say, Crown sovereignty, is still taken to be an indisputable fact, which has been expressed in innumerable Supreme Court decisions.

The Delgamuukw vs British Columbia 1994 decision and the appeal are instructive in this regard, and show the limitations of pursuing arguments about Indigenous sovereignty in the courts (Shaw, 2008). In Delgamuukw, the Gitksan-Wet’suwet’en filed suit claiming ownership and jurisdiction of all of their traditional territory (approximately 58,000 square kilometres) as well as rights to self-government and compensation for lost land and resources. This case is particularly significant because the Gitksan and Wet’suwet’en set out to convince the court they were sovereign, and their sovereignty should be recognized and affirmed. This meant for the first time in Canadian history, the Crown’s sovereignty was being challenged by the recognition of Gitksan and Wet’suwet’en title to the land (Shaw, 2008).

The original Delgamuukw 1994 decision, handed down by Chief Justice McEachern, went against the Gitksan and Wet’suwet’en in almost every way. All claims of Gitksan and
Wet’suwet’en ownership and jurisdiction were dismissed and they received no provisions for the cost of the court case. Of particular note is McEachern’s unabated conviction in Crown sovereignty in his decision, stating: “After much consideration, I am driven to find that jurisdiction and sovereignty are such absolute concepts that there is no half-way house.” Shaw (2008) explains, “this line of argument renders legal strategies for the pursuit of Aboriginal title a waste of time” (p.119) because Indigenous forms of jurisdiction and sovereignty will not be recognized, even in part, by the Crown.

The appeal decision, by Chief Justice Lamer, diminished the harsher implications of the trial judge’s insistence on Crown sovereignty by recognizing the existence of Aboriginal title and articulating the tests necessary to justify it (though Gitksan and Wet’suwet’en title was not recognized at the time). While this was a significant win for Indigenous people in many respects, the Crown’s authority remained fundamentally unchallenged. Lamer’s decision is guided by the legal principle of ‘reconciliation’, reconciling the prior presence of Aboriginal communities in Canada with Canadian sovereignty over the same territory (Asch, 2014; Shaw, 2008). On this model, Indigenous rights exist only to the extent that they can be reconciled with Crown sovereignty, which is axiomatic. So while the Delgumuukw appeal acknowledges Indigenous people have legitimate claims, it can only be within the legal framework of the Canadian state (the Constitution), and the precondition to this legitimacy remains Crown sovereignty (Shaw, 2008).

Over time, however, it has become clear that the courts cannot continuously avoid questions of Indigenous sovereignty (Borrows, 2016). In 2004, in Haida Nation v British Columbia (Ministry of Forests), the court goes so far as to say that treaties “serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty” (para 20, my emphasis).
This type of qualified reference to Crown sovereignty, speaking of it as “assumed” or “asserted”, has become more common in court decisions. In *Taku River Tlingit First Nation v British Columbia*, the Court explicitly states the purpose of s. 35(1) of the Constitution Act is to facilitate the ultimate reconciliation of “prior Aboriginal occupation” with *de facto* Crown sovereignty (Asch, 2014). Webber (2016) takes these types of qualifications to signify that the Court now recognizes that “Canada’s claim to exercise legitimate authority over Indigenous peoples is impaired because Indigenous peoples have not consented to that authority” (p. 72).

Yet, the courts remain reluctant to impose their own definitive solutions to this “sovereignty” problem and instead insist these matters be given structure and interpretation ex-situ the courts; that is, through such things as negotiations. Shaw (2008) articulates the courts direction is to ‘work out’ the complexities of Aboriginal assertions of authority, jurisdiction and sovereignty through “good faith” negotiations, rather than through lengthy and expensive court cases. Several types of negotiations between the Crown and Indigenous peoples have thus taken place in the contemporary period; most notably the BC Treaty process and processes for comprehensive ‘modern’ land claims.

The 1973, *Calder et al v Attorney General of British Columbia* case (hereafter Calder 1973) ruled that Aboriginal title could exist as a legal right in British Columbia and that Aboriginal title doctrine was still relevant in all of Canada. As a result of Calder 1973, the federal government changed its approach from blatant disinterest in negotiating agreements with Indigenous peoples to a new policy wherein comprehensive land claims agreements would be negotiated for areas where Aboriginal title was unextinguished (Dalton, 2006). The comprehensive land claims process and the federal government have been widely criticized for inadequately recognizing Aboriginal title and self-government as critical components of the
agreements (Alcantara, 2007). In 1981, the purpose of the comprehensive lands 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. For example, the Inuvialuit Final Agreement (IFA) was signed on July 5, 1984 after 10 years of negotiations between the Government of Canada and the Inuvialuit. The IFA was the second signed agreement in Canada at the time and in it the Inuvialuit agreed to “give up their exclusive use of their ancestral lands in exchange for certain other guaranteed rights from the Government of Canada. These guaranteed rights come in the form of land, wildlife management and money” (Inuvialuit Regional Corporation, 2018, Inuvialuit Final Agreement, para 2.).

Federal policies of blanket and partial extinguishment of ‘Aboriginal rights and title’ have been sources of significant contention for Indigenous peoples, since such extinguishment represents a fundamental loss of political status and identity (Asch, 1997). While the government changed its approach to negotiating land claims in 1995, Asch (1997, p. 433) points out the government’s strategy 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.” (i.e., from the Crown). By this reading of the land claims process, the Crown is not interested in any discussion of Indigenous sovereignty, and further wishes to squash any attempts at using Indigenous rights as a source of political power.

One might ask why Indigenous governments decide to participate in the land claims process in the first place? Alcantara (2008, p. 353) explains Indigenous groups have a much broader conception of the process than the Crown; they want to maximize their control over their
territories, protect their traditional ways of life and practices, and protect their interests in and derive tangible benefits from economic developments. If this is the case, these desires resonate strongly with reconsidering sovereignty, or at the very least, questioning the Crown’s sovereign authority is such negotiations. In such negotiations, however, the Crown is not reconsidering its sovereignty. Rather, the Crown will only consider the negotiation of “defined” Indigenous rights that are subject to the Crown’s authority. This broader conception of a negotiating process held by Indigenous peoples (i.e. they want to be realized as a distinct form of government) was, historically, a factor in Indigenous participation in the BC treaty process.

The BC Treaty Process was created in 1993 to reconcile competing interests to the land in British Columbia and has also been well studied (Egan, 2014; Penikett, 2006; Woolford, 2004; Woolford, 2005). It too has been highly criticized and has not resulted in the resolution of outstanding title claims made by Indigenous peoples as had been originally and ostensibly intended. The process has proven to be a highly complex undertaking, requiring a great deal of patience, time and financial resources (Penikett, 2006). In her master’s thesis, Jessica Davies describes the problems of BC Treaty Process as comprised of: “inflexibility of government mandates, power inequalities, incomplete First Nations participation, the extremely slow pace and resulting increases in negotiating costs” (p 10). Additionally, Aboriginal groups occupy a much weaker position in negotiations including the often deeply compromising need to abide by western forms of knowledge, evidence, proof and discourse (Alcantara, 2007; Kotaska, 2013). Among several criticisms of the BC Treaty Process, Asch (2014) draws attention to the requirement that all parties begin with the understanding that the Crown holds sovereignty and jurisdiction on these lands, and that “settlers from post-confederation are in legitimate occupation of the lands that they already occupy” (p. 106). Alfred and Corntassel (2005, p.603)
argue the BC Treaty process has been structured not only to legitimize Settler society’s occupation of land, but to do so in a way that “accord(s) federal and provincial government legal supremacy over First Nations governments.” Beginning the modern day treaty negotiation in this way indicates that the Crown refuses to accept that any other form of sovereignty exists within the boundaries of Canada.

Nevertheless, several Indigenous governments insist upon the language of sovereignty, just as Canadian institutions use it to justify their ultimate power (Webber, 2016). In fact, Indigenous Nations are not only using western Canadian legal frameworks to advance their rights and title, they are now overcoming some of the obstacles they have encountered by deriving significant political authority and legitimacy from their own legal traditions, customs and practices (Turner, 2013). Indigenous people are beginning to insist that their relationship with the Crown be “reconceived in a manner that accords substantial respect to their normative traditions” (Webber 2016, p.66), something the processes outlined in this section have manifestly failed to do.

2.2 Reframing Sovereignty

Despite the legal acceptance of Aboriginal title and the Constitutional protection of Aboriginal rights, what has been made clear (until now) by the Crown is that Indigenous rights in Canada, including the right to self-determination\(^7\), only exist to the extent they can be reconciled with Crown sovereignty (Asch, 2014). For instance, take this well-known passage from Chief Justice Antonio Lamer in *Delgamuukw* (1997, para. 186):

\(^7\) Here I associate self-determination to encompass the ‘political’ rights of Indigenous peoples.
Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve what I stated in Van der Peet, supra, at para. 31, to be the basic purpose of s. 35(1) – ‘the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.’ Let us face it, we are all here to stay.

Asch (2014) aptly points out that contextualizing “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown” prejudices the outcomes. In this expression, it reasons that what political rights Indigenous peoples may hold, including self-determination, are subordinate to the legislative authority of the Canadian state. In actuality, the political rights of Indigenous peoples already existed at the time that Crown sovereignty was asserted, and therefore, “it is the question of how the Crown gained sovereignty that requires reconciliation with the pre-existence of Indigenous societies and not the other way around” (pg. 11). Many, if not most Indigenous peoples would strongly deny that the Crown ever possessed power to extinguish their political rights at any point in history (Alfred, 2005).

Ultimately, questions of sovereignty have not been settled by the Canadian state, and remain important to Indigenous and non-Indigenous state relations today. Webber (2016), for example, articulates why the concept of sovereignty is still very much part of state-Indigenous relations in Canada:

...at the foundation of sovereignty, lies a concern with political agency: a desire to be clear about who can make what decisions, by what means, so that people can participate effectively in their own governance, without having their social relations determined by a law over which they have no control. At bottom, questions about sovereignty are questions about self-government. Those questions can and should be given more complex answers
than they are usually given. But if one cares about self-government, one must pose questions of sovereignty.

As demonstrated above, and as is the general consensus of Indigenous peoples in Canada, self-determination and self-government are at the crux of advancing Indigenous rights and therefore so is sovereignty. However, what is less clear are the particular meanings of sovereignty relevant to Indigenous struggles of self-determination and the ways to achieve it. Jeremy Webber’s aforementioned and recent reading of sovereignty depicts four meanings as they pertain to Indigenous-state relations in Canada today. His is a comprehensive account of sovereignty, wherein he argues “that we may be observing a bracketing of the question of sovereignty, not in a way that ignores the question, but that suspends its final determination, allowing multiple assertions of sovereignty to exist in a continual, unresolved – perhaps never resolved – tension” (pg. 63). That is, because sovereignty is central to the encounters between Indigenous and non-Indigenous governments, it is perhaps useful to put aside a final decision on determining who has “supreme power.” Part of his reasoning for this is: if Canadian authorities ever acknowledge a form of Indigenous sovereignty, it is almost certain to be something other than an ultimate power of decision. I provide a brief summary of Webber’s four meanings of sovereignty below:

**Sovereignty 1**: is the most common understanding in that “it’s the ultimate authority over the existence and application of rights and obligations, the entitlement to make or unmake any right whatsoever” (pg. 77).

**Sovereignty 2**: refers to “the exclusive ability to represent a specific population and territory in international law” (p.80) and has been specifically important in the self-government debate. Webber explains: “Indigenous peoples are often said to have had international sovereignty before the coming of the colonists, a sovereignty that, in the
transactions with the new comers, was never surrendered or extinguished. Of particular importance to the negotiation context is that some Indigenous peoples seek recognition of substantial autonomous jurisdictions with respect to their peoples, their lands and relations with non-Indigenous governments. However, it is autonomous jurisdictions, not international statehood, that are more at issue” (p. 80).

Sovereignty 3: refers to the idea that law and the associated governmental rights originate from within the particular peoples own traditions. It is the most natural meaning of the “inherent right of self-government” (pg. 81).

Sovereignty 4: “presumes a need for rationalized state-like structures of authority, with mechanisms for definitive decision, so that the order can achieve the normative coherence required” (pg 86).

Webber attempts to show that, instead of first solving the issue of “ultimate authority”, it is more helpful for both parties to acknowledge the contending claims of sovereignty. Then, it may be possible to find a work around acceptable to both parties, or at the very least a solution for in the interim. A clear example of this possible workaround for two parties who assert their sovereignty over the same territory is the language contained within the Kunst’aa guu – Kunst’aayah Reconciliation Protocol⁸ between Haida Nation and the Province of British Columbia.

On Haida Gwaii, the Haida Nation and the Crown (provincial and federal) have conflicting assertions of sovereignty, title, ownership and jurisdiction. These overlapping claims

have led to significant conflict in the past (as well as today). 9 However, in the ‘WHEREAS’ section of the protocol agreement, the Haida Nation asserts that:

_Haida Gwaii is Haida lands, including waters and resources, subject to the rights, sovereignty, ownership, jurisdiction and collective Title of the Haida Nation who will manage Haida Gwaii in accordance with its laws, policies, customs and traditions._

Directly beside this assertion, the Government of British Columbia asserts that:

_Haida Gwaii is Crown land, subject to certain private rights or interests, and subject to the sovereignty of her Majesty the Queen and the legislative jurisdiction of the Parliament of Canada and the Legislature of the Province of British Columbia._

These two sentences contain extremely conflicting views over who owns the land, and therefore under whose jurisdiction it rests. This is an explicit example of Sovereignty 3 – the idea that law and the associated governmental rights originate from within the particular people’s own traditions – in that Haida Nation assert they will manage their lands under their own laws, policies, customs and traditions. However, the workaround stops short in that the Crown does not cede any of its legislative authority over Haida Gwaii to the Haida Nation. Instead, the Kunst’aa guu – Kunst’aayah Reconciliation Protocol10 acknowledges these differing views and allows both Parties to operate under their own respective authorities with respect to the implementation of the agreement commitments. The specific wording of this workaround is as follows:

9 Conflicts over logging rights and practices have occurred on Haida Gwaii for decades, often times leading to protests, and arrests of people of the Haida Nation.

10 This reconciliation protocol agreement between Haida Nation and the BC government was negotiated around the same time; it contains slightly different commitments and is an agreement strictly between the Province of British Columbia and the Council of Haida Nation.
WHEREAS the Kunst’aayah Reconciliation Protocol provides that the Haida Nation and British Columbia hold differing views with regard to sovereignty, title, ownership and jurisdiction over Haida Gwaii, under the Kunst’aayah Reconciliation Protocol the Haida Nation and British Columbia will operate under their respective authorities and jurisdictions.

The Kunst’aa guu – Kunst’aayah Reconciliation Protocol demonstrates it is possible for the Crown to not only acknowledge a competing view of sovereignty but also accept that its rival claimant to sovereignty will act according to its own conception of authority. However, though the Crown accepts this rival claim, it does not necessarily legitimize a Nation’s sovereignty, whose authority and jurisdiction can be based on a completely different meaning of ownership and jurisdiction. When speaking to a representative of the Haida Nation about the governance implications of reconciliation protocol agreements, he explained his perspective of this ‘work around’ as acceptable (for now):

*It [Kunft’aa guu – Kunst’aayah Reconciliation Protocol] basically opens up with two statements and the statements are that we agree to disagree on title and we agree that we are going to work together to manage human activity on the lands…we put aside the ownership question and we’re [Haida] alright with that cause really even answering that, what’s it going to change at the end of the day? Because none of us really own it. Haida believe we are stewards of the land and it’s only because Canada and British Columbia keep making these statements of ownership that we’re compelled to make that statement as well. But that’s not something that’s deeply embedded in us. You know and so here we are in this world of two different distinct sets of rules and values, trying our best to find a way through it (H5, 2016).*
This passage reveals not only the assertion of two distinct and conflicting forms of sovereignty, but that part of that difference lies in Haida’s belief that they are first and foremost land stewards, caretakers and not owners of the land. Whereas the Crown believes the land belongs to them or can be designated as private property. This Haida leader points out that even though Haida consider themselves caretakers of the land, not owners, they have been forced to assert ‘ownership’ of their territory equivalent to the Crown’s definition. These differing views about ownership have caused significant conflict over land and water use in coastal BC for over a century. Similar language of ‘ownership’ is used in the 2009 Coastal First Nations Reconciliation Protocol Agreement and the 2016 Amending Agreement and will be discussed in more detail below.

2.3 Reconciliation Agreements

One of the most important places the work of sovereignty is currently taking place outside the courts is the negotiation and implementation of “reconciliation agreements.” Reconciliation agreements have risen in popularity among several BC First Nations as a way to “acknowledge [Indigenous] rights and avoid legal conflicts” and shift “regional decision-making agency toward Indigenous governments in both co-management and government to government processes” (Adams et al, 2014, p.3). Reconciliation agreements are thought to be and are thus negotiated as smaller scale agreements, as compared to the formal work of sovereignty conducted through the BC treaty process or within court proceedings. In her master’s

11 Instead of term, ‘co-management’, co-governance is often a more accurate descriptor of the type of arrangements that First Nations seek as resolutions to conflict over natural resources, especially where communities are asserting their own competing claims of jurisdiction and authority over their territories.
thesis, Davies (2012) looked at reconciliation agreements under the umbrella of “non-treaty agreements” and describes them as:

...broad, high-level commitments that are based on strategic land use plans agreed to by both the province and First Nations. The agreements incorporate many consultation and accommodation measures into them, like resource revenue-sharing, joint decision-making arrangements and control over place names (pg.13).

Davies (2012) provides a thorough analysis of different kinds of accommodation agreements the BC government has pursued with First Nations in order to reconcile Indigenous rights and title claims with the economic needs of a resource dependent provincial economy.

Generally, reconciliation agreements aim to explicitly address economic, social and ecological objectives, and realize tangible benefits for Indigenous communities. According to the Government of British Columbia website, “reconciliation and related agreements focus on closing the socio-economic gaps that separate Indigenous people from other British Columbians, and building a province where its citizens can participate in a prosperous economy.” Since 2009, approximately 13 separate reconciliation agreements have been signed, which include approximately 35 First Nations governments; 11 out of those 13 agreements have been signed since 2014.

Reconciliation agreements (also known as “reconciliation protocols”) continue to be used in day-to-day political interactions within Canadian governance institutions, namely between several coastal First Nations governments and the provincial Crown. Among the first

12 The terms and language contained within reconciliation agreements varies considerably between signatory Nations and the Crown, depending on geographic locations and what the provincial Crown is willing to acknowledge in terms of Indigenous rights to self-government and jurisdiction.
reconciliation agreements negotiated and signed was the 2009 *Coastal First Nations Reconciliation Protocol* (known hereafter as the ‘2009 RPA’). The 2009 RPA, of which the Heiltsuk Nation was a signatory Nation, was a novel agreement at the time it was negotiated between Coastal First Nations – a political organization representing an alliance of First Nations on BC’s coast – several and the Province of British Columbia.\(^{13}\) The 2009 RPA has since been amended to expand upon its original commitments, particularly the sharing decision making process known as the Engagement Framework. This agreement is known as the 2016 Amending Agreement.

When I began my research with Heiltsuk Nation in Bella Bella, the Heiltsuk Integrated Resource Management Department (HIRMD), asked me to investigate the implications of the 2009 RPA in terms of how it was manifesting tangible benefits for Heiltsuk Nation as well as the broader governance implications for Coastal First Nations. As such, the argument below is based on interviews (n=14) with practitioners and elected First Nations leaders for Heiltsuk Nation, Kitasoo/Xai’Xais Nation and Nuxalk Nation who use and/or implement the 2009 RPA, and its subsequent agreements\(^ {14}\), in their day-to-day work. Coastal First Nations staff and First Nations leaders involved in the negotiation of the 2009 RPA are also included in my interviews. My findings also draw from key policy documents from Coastal First Nations and Heiltsuk Tribal Council. I focus primarily on the original 2009 RPA at the request of HIRMD, though I provide details related to agreements and initiatives that have occurred since the original 2009 RPA.

\(^{13}\) At the time the 2009 RPA was signed, Coastal First Nations represented Wuikinuxv Nation, Metlakatla First Nation, /XaiXais First Nation, Heiltsuk Nation, Haisla Nation, Gitga’at First Nation. Nuxalk Nation later became a signatory to the RPA.

\(^{14}\) The 2016 Amending Agreement will be elaborated on in Chapter 4 and 5.
As illuminated below, the negotiation and implementation of the 2009 RPA, and its enabling of subsequent amendments, has, to put it colloquially, made life more difficult for the Crown. For example, a leader from Kitasoo/Xai’Xais has leveraged the intent of the 2009 RPA and its recent amendments (i.e. to renew government to government arrangements) to secure meetings with high level decision makers within BC government ministers (i.e. the Assistant Deputy Ministers) that would not have otherwise been possible. When speaking about a disagreement between Kitasoo and BC Parks about the issuing of permits to tourism operators in Kitasoo territory, this leader said:

_We’re [Kitasoo] is going to issue our own permits for these areas [in Kitasoo territory]. We’ve been going back and forth [with BC Parks]. As a result we came to some sort of agreement with BC Parks and we put it into abeyance, sort of a one year period to sort out all this stuff out. Our one year is coming up very soon. That’s why we’re at these tables with the ADMs [Assistant Deputy Ministers]…to push through on these issues. (H2, 2017)_

I begin with an overview of the 2009 Coastal First Nations Reconciliation Protocol Agreement (2009 RPA), followed by a detailed explanation of the five separate “Schedules”, using reflections from my interviewees to guide my analysis. I then move on to explore some of the broader implications of the 2009 RPA by using Webber’s meaning of sovereignty discussed above.
2.4 Coastal First Nations Reconciliation Protocol, 2009 and 2016

The 2009 Coastal First Nations Reconciliation Protocol was among the first of its kind to be negotiated and signed in British Columbia\(^{15}\). The agreement was negotiated between a regional group of First Nations collectively referred to as Coastal First Nations\(^{16}\) and the Province of British Columbia (also referred to as the ‘Crown’).

The 2009 Reconciliation Protocol Agreement is 28 pages and written in the form of a contract. It is not a written as a treaty or land claim agreement. The first nine pages describe 15 separate topic areas that define terms to which both Parties agree, including:

1. Definitions
2. Geographic Area and Parts of this Protocol
3. Purpose
4. Responsibilities [of the Parties]
5. Governance Framework
6. Shared Decision Making
7. Revenue Sharing
8. Economic Opportunities
9. Economic Strategies
10. Stakeholders
11. Resourcing
12. Representation and Warranties
13. Amendment
14. Effective Date and Termination
15. General Terms

The remaining 19 pages contain five separate “Schedules” (A,B,C,D,E) that express the major commitments agreed to by each Party. It’s important to note the original 2009 RPA has

\(^{15}\) The Kunst’aayah Reconciliation Protocol between Haida Nation and the BC government was negotiated around the same time; it contains slightly different commitments and is an agreement strictly between the Province of British Columbia and the Council of Haida Nation.

\(^{16}\) The RPA negotiations recognized the authority of Coastal First Nations as a regional political entity. The first RPA was signed in early December 2009 by the Premier of BC and the leadership of the Wuikinuxv, Gitga’at, Kitasoo, Heiltsuk and Metlakatla. The Coastal First Nations Reconciliation Protocol Agreement was amended in December 2010 to include the Nuxalk Nation and again in October 2011 to include the Haisla Nation.
been amended several times, including recent amendments resulting in the *Spring 2016 Amending Agreement* (known as the “2016 Amending Agreement”). The five schedules are:

- Schedule A: Provincial Legislation Associated with Provincial Land and Resource Decisions
- Schedule B: Engagement Framework
- Schedule C: Carbon Offsets Sharing
- Schedule D: Economic Opportunities
- Schedule E: Economic Strategies

A major purpose of this agreement was to provide a “bridging” step to a future reconciliation of Aboriginal titles, rights and interests with provincial title, rights and interests. That is, this agreement codified new understandings of how both Parties would work together to reconcile the overlapping assertions of sovereignty (Crown and Indigenous) over much of the central and north coast. Crucial to First Nations signatories, was the fact that 2009 RPA does not “define, amend, recognize, affirm or limit [their] aboriginal rights” (see sections 14.11 and 14.13). While the BC treaty process may have attempted to reconcile Aboriginal titles, rights and interests with those of the Province, it did so in a way that severely disadvantaged First Nations governments from the outset (Kotaska, 2013). Heiltsuk Nation realized this and the aforementioned limitations of the BC treaty process, resulting in their withdrawal from the BC treaty process in the early 2000s.

Importantly, the RPA marked the onset of a significantly different relationship between signatory First Nations governments and the Crown; a relationship in which Nations demanded to be regarded as a distinct form of government with, at the very least, decision-making
authority equal to the Crown. While it was not new for First Nations to demand to be realized as a distinct form of government (Low and Shaw, 2011), the negotiation, and certainly the implementation of the 2009 RPA signalled their determination to question the Crown’s absolute sovereignty outside of the courts and BC treaty process. In this way, questioning exactly how much decision-making power signatory Nations would gain, and whether or not that authority would constrain the authority of the Crown, were essential concerns for First Nations. Whether the Province realized it at the time, several signatory Nations to the RPA had higher aspirations for the RPA than it being another consultation agreement or co-management arrangement.

From Coastal First Nation’s perspective, the RPA was meant to cover a broad scope of economic development and governance matters. As a senior negotiator explained:

*The [RPA] highlighted a number of agenda items. The province in particular, the bureaucracy, had a much smaller list of agenda items then we did. And so the scope of the agreement became critical for us because as you see we had ideas of shared decision making, we had the carbon credits, we had forest revenue, we had issues around commercial access and such to tenures and things like that...* (H8, 2016)

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17 For several First Nations on the coast, I would argue the ideal would be for them to have “ultimate” decision-making authority, particular in decision-making about the natural resources in and on their lands and waters.

18 Provincial and federal governments have attempted to address First Nations concerns in resource management through co-management arrangements that deal directly with resource use on traditional territories (Tindall, Trosper and Perreault, 2013). Co-management arrangements can mean situations where First Nations and the state share equally in the management of a particular resource. However, co-management arrangements have been highly criticized by scholars for how Indigenous people have to adapt the socio-political structures, concepts and language of colonial government in order to engage with them (Nadasdy, 2003; Alfred, 2005).
From this CFN negotiator’s perspective, the agreed upon scope of the 2009 RPA was critical because the agreement had the potential to set the stage for First Nations gaining significantly more control over resource and land use in their territories. For example, this increased control would be manifested through specific, clear processes through which both governments (Crown and First Nations) would communicate with each other more efficiently. The details of how the 2009 RPA was negotiated are discussed further in Chapter 3.

Here, I focus on the commitments contained within the RPA, providing a description of several of the key promises and how they do or do not grapple with the underlying assumptions of Crown sovereignty. I then highlight the expression of different forms of sovereignty as argued by Webber. These expressions are important because they continue to unfold for Heiltsuk Nation through subsequent agreements and initiatives, with the 2009 RPA being an explicit catalyst for these expressions.

More specifically, the 2009 RPA contains provisions for Nations to have increased access to economic opportunities through forestry and transportation initiatives, commitments to implement new regional renewable energy projects and plans to create and market carbon credit projects (Coastal First Nation, 2016). The RPA also establishes two new government-to-government processes to “confirm and renew government to government relationships through which the Parties can work collaboratively on the shared decision making and transformative change agenda” (2009 RPA, pg. 2). The first process, known as the Engagement Framework, was intended to be a collaborative, consensus based framework for land and resource decision-making (Coastal First Nations, 2016). As explained by a CFN negotiator, the terms of the Engagement Framework bind provincial agency representatives to engage directly with representatives of each signatory Nation with the goal of reviewing all relevant information and
developing consensus recommendations on each potential land and resource decision (H7, 2017). The Engagement Framework is discussed in more detail below.

The second process is the establishment of a “Governance Forum” mandated to undertake activities to support implementation of the 2009 RPA. The Governance Forum has three levels: 1) an Executive Level consisting of the CFN Board or Executive and provincial Ministers, 2) a Working Group consisting of “senior representatives” of the CFN and the Province, and 3) a variety of technical teams tasked with undertaking specific work activities. The creation of such a Forum demonstrates the commitment from both the Province and signatory First Nations governments to ensure the effective and efficient implementation of the 2009 RPA. This Forum also provided First Nations leaders, at least for a time, with a direct line of communication with high level decision makers with the Province. A CFN negotiator explained that from a governance perspective having a “simple body that can reach out to ministers and deputies about major issues” was crucial for First Nations to feel the decision making processes had been enhanced enough to satisfy them.

Below is a brief description of four (out of the five) “Schedules” contained within the 2009 RPA. A deeper look at the Schedules is important because it demonstrates what the Crown initially committed to by signing the RPA, and how those commitments are or are not being met from the perspective of First Nation’s staff who use it. I begin with Schedule C because it has been described by Coastal First Nations and Heiltsuk Nation as the most successful commitments of the RPA. I then focus on how Heiltsuk Nation and the RPA and explore the broader implications using Jeremy Webber’s four meanings of sovereignty described above.
Carbon Offset Sharing (Schedule C): The carbon offset commitments, now known as Atmospheric Benefit Sharing Agreements (ABSAs), are one of the major successes of the 2009 RPA. This schedule was an ambitious endeavour of “developing environmentally credible and marketable forest carbon offsets” and “researching the eligible program criteria, the appropriate offset protocol, and the requirements for offset project plans” (RPA, 2009, pg. 20). The intent of this endeavour was to provide revenue for each Nation to implement the RPA and if possible, the revenue generated could be used to support other community projects.¹⁹ This is certainly a unique component of the RPA, or any negotiated agreement between the Crown and First Nations because it was a market-driven initiative meant to drive the implementation of the RPA for each signatory Nation. Otherwise, this agreement would rely heavily on provincial funding for implementation. As a Coastal First Nations negotiator and Stewardship Director explain respectively:

*And, of course, carbon credits. At the time, because of the Great Bear Rainforest it avoided deforestation, you have significant carbon sinks being created and at that time there was no policy in play that we could essentially take these carbon sinks, avoid deforestation and move them forward so that we could create a commodity for carbon credits. Like no place had that been done in North America on Crown lands (H8, 2016).*

*There was no funding to implement the reconciliation protocol from the province, they didn’t have any money to give us and so this was the avenue we used, the carbon credits.*

*We agreed that if we [the Nations] got a benefit sharing agreement, any sales from those

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¹⁹ This commitment has just recently turned into its own separate agreement known as the Atmospheric Benefit Sharing Agreements (ABSAs) with each Nation.
tons of carbon available in the Great Rear rainforest area, which at that time was 33 million tons of carbon, we would put together and agree to a formula based on total territory area, population and the amount of timber available in the area (H6, 2016).

The success of ‘Schedule C: Carbon Offset Sharing’ played a crucial role in facilitating each Nation’s implementation and continued use of the RPA. These funds were used to support the administrative services required for referrals and stewardship initiatives. For example, Stewardship Director positions and associated offices were created for each signatory First Nation.

Forestry Revenue & Tenure Agreements (Schedule D): Scheduled D’s revenue sharing portion of the agreement was negotiated to ensure signatory Nations had an opportunity to benefit economically from resource extraction already taking place in their territory. For most of the communities this meant they could apply for a replaceable, long-term volume-based forest license. A few signatory Nations were interested in pursuing economic development through forestry. CFN’s negotiators were able to leverage this to address the problems of previous forestry agreements between Nations and the Province known as Forest Consultation and Revenue Sharing Agreements. Namely, in these older agreements, First Nations were still not ‘granted’ access to viable timber supplies in their territories by the Crown. As a CFN negotiator explained:

*The Province had essentially assigned most of the wood to the major forest companies, leaving First Nations at the back of the wood pile, with the worst wood, with the wood that was the least economic. So we had under this agreement set a framework that would have
us involved up front in looking at chart areas and getting into them early, not late (H8, 2017).

The second thing under the Forest and Range Agreement was that it was on a formula basis of fifty cubic meters per capita; the province basically indicated that they did not have a volume of wood available for that and we negotiated in that the continuation of that fifty cubic meters, part of it was through tenures and some of it was through undercut etc. But that was a negotiation that previously said ‘we’re going to reduce your tenures and so we just put it under the reconciliation protocol’ and used the weight of the protocol with the Premier to maintain that fifty cubic meters (H8, 2017).

By CFN ensuring the 50 cubic meters of wood per capita annually remained in the RPA, the BC government was forced to then work differently with major forest license holders and First Nations moving forward. This is an example of CFN’s efforts to negotiate a better share of timber resources and revenue, also demonstrating the desire of several Nations to be directly involved and perhaps a key player in resource management occurring within their territories. This includes both a bolstering of their position as rights holders overall as well as linked economic development activities including owning and operating their own logging companies. This component of the agreement is complex and challenges to its implementation continue to this day. The success of this component also depends on the desire of each Nation to pursue forestry ventures in their territory.

Tourism Tenure Opportunities (Schedule D): Tourism was also a component of revenue agreements, and thus part of the overall economic commitment to signatory First Nations.
Involvement in the tourism sector for the “Great Bear Rainforest” region, included the right to secure and develop an equitable portion of the permit tenure opportunities in their traditional territories. The success of this schedule varies across Nations, as some Nations acquired the capacity and wherewithal to pursue more economic development based on tourism than other Nations. For example, a Stewardship Director explains that at the time the 2009 RPA was signed, there was momentum within the Heiltsuk community to capitalize on the tourism tenures. However, for several reasons, including internal politics of Heiltsuk Nation, this commitment has not reached its potential. As the Stewardship Director explains, the opportunity to set aside more areas for economic development was missed at the time, and the implications of this for [economic] well-being\textsuperscript{20} were also noted:

\begin{quote}
The two tourism tenure opportunities served as really good momentum as we were leading up to signing the agreement… each nation from the CFN would identify up to fifteen areas they wanted to just set aside for Heiltsuk entrepreneurship whether, it’s with HEDC [Heiltsuk Economic Development Corporation] or individual community members. It wasn’t really anybody’s fault, everybody just kind of dropped the ball on that human wellbeing case. At the end of the day we dropped the ball from the Economic Development Corp. side and the Nation to engage with the Province to set those areas aside. We can’t just point at the Province it wasn’t really all their fault. But the bottom line is I think other than forestry, human wellbeing wasn’t really something that people paid attention to (H6, 2016).
\end{quote}

\textsuperscript{20} The ways in which these commitments impacted human well-being in the region will be discussed again in more detail in Chapter 4.
An elected leader from Kitasoo Xais Xais offered very different reflections on the Tourism Tenure Opportunities. He felt strongly the Tourism Tenure Opportunities were problematic because they assumed Crown authority over the region whereby all Parties interested in developing tourism initiatives must apply to the BC government for permits to use First Nations territory, including *First Nations governments themselves*. He explains:

> For instance, tourism tenure opportunities: so they [the CFN] wanted me to go and apply for tenure for my Territory from the provincial government? Why would I apply to some other government to ask for our own opportunities in our back yard? It didn’t make any sense to me. I think it’s that people should be applying to us for those opportunities. I’ve always taken that position (H2, 2017).

This astute interpretation that says: “I think people should be applying to us for those opportunities” directly challenges Crown sovereignty. That is, the critique places the ‘rightful’ authority to make decisions in the hands of territorially relevant First Nations governments, not the Crown. This is to say that varying parts of the RPA have been used in different ways, depending on the interests of the individual signatory Nation. While the tourism opportunities (as defined in the RPA) could be a potential short term benefit to Heiltsuk Nation, a Kitasoo leader sees this the “tenure tourism opportunities” as undermining Kitasoo jurisdiction over their territory.

**Engagement Framework (Schedule B):** Perhaps one of the most substantial and controversial elements of the 2009 RPA is the Engagement Framework. Firstly, the Engagement Framework was intended to “provide a framework for land and resource decision making that is more efficient, effective and responsive to the interests of each Nation and First Nation and the
Province” (p. 6). The original Engagement Framework was meant to be a clear and structured “government-to-government” process through which the BC government representatives and First Nations government representatives could communicate to reach decisions together regarding land use and resource development. This means “Provincial and Agency and First Nation Representatives” share information and discuss the potential decision, with the goal of reaching consensus on recommendations for First Nation and Provincial decision makers, who then make decisions in accordance with their respective laws, policies and customs. This is important because both the Crown and First Nations assert their authority, jurisdiction and sovereignty over the coast of BC; this process was meant to alleviate some of tensions associated with this overlapping jurisdiction.

Secondly, the signatory Parties agree that implementation of the Engagement Framework is a step toward shared decision making and is intended to reduce or avoid the number of land and resource disputes and minimize the need for the Parties to engage in litigation or other types of formal dispute resolution. Specifically, the Engagement Framework attempts to reach these shared decisions through the referrals process\(^2\). When a proponent wants to do business in a First Nations territory, they are required to seek consent from the First Nation. The Crown is also

\(^2\) Referrals are letters sent to First Nations government from Crown government agencies to request input on proposed land or natural resource authorizations or project (Kotaska, 2013). Referrals are mandatory by law when the proposed activities or land use decision have the potential to infringe upon Aboriginal or treaty rights. The Delgamuukw 1997 and the Haida 2004 decisions bolstered the need for the Crown to send First Nations referrals under the ‘duty to consult’. A First Nation can receive hundreds of referrals a year depending on their location and proximity to potential resource developments. Some Nations have been able to create positions, departments, processes and systems to coordinate referrals, which have become part of Crown consultation processes with First Nations. However, other Nations do not have such capacity and the referrals get piled on desks in Band Council offices (Kotaska, 2013).
obligated to consult with First Nations when a resource project or activity is proposed.\textsuperscript{22} Thus, the implementation of the Engagement Framework is in no small part an attempt to ease tensions between the Crown and First Nations governments over meaningful consultation processes, which continue to be undertaken by the Crown in a relatively spurious manner (Booth and Skelton, 2011; Gregory, 2010; Natcher, 2001).\textsuperscript{23} For the Crown, this process was meant to foster a more efficient consultation process and lessen the likelihood of being taken to court by First Nations over their asserted title claims. At the time, several First Nations governments viewed this process as an improvement to the way the Crown fulfilled their duty to consult through the ‘Strength of Claim’ process. This will be discussed in detail in Chapter 3. Here, it’s important to know the implementation of the Engagement Framework as it was originally intended has been a challenging endeavour because the authority in this process remains asymmetrical; that is, several First Nations are demanding much more out of this process in terms of their power as a decision maker.

However, it has not been a complete waste of time for First Nations, as through the engagement framework, the roles and responsibilities of each Party have also been clarified and has indeed helped alleviate many tensions. Insights from those tasked with implementing the RPA in 2016 are particularly useful for understanding how the framework has been used in practice. From a pragmatic standpoint, the 2016 Engagement Framework has better defined the

\textsuperscript{22} The Engagement Framework and the associated Guidebook provide criteria for determining the appropriate Engagement process or “Level”. The more complicated and substantive the issues associated with a referral, the more time is allowed for both Parties to review relevant information, share or develop new information, discuss issues, and seek solutions. All reasonable efforts must be made to achieve consensus at the Engagement Level, and throughout the Engagement process. (pg. 5, The Engagement Framework Guidebook (Version 2)).

\textsuperscript{23} A detailed explanation of the Engagement Framework as it relates to failures of consultation processes are discussed in Chapter 3.
roles and responsibilities of each Party in the consultation process. It has also made prior vacuous consultations that much less acceptable. As a technical staff member for Heiltsuk describes:

*And I think that's important. What we've just done really through this is reaffirmed the roles of the parties, who, we've identified the players in the room, we've identified a way that we engage with one another at a table or over the phone, about the other resource thing, but most importantly we've identified the need to do that. And that it's entirely unacceptable for them [the Province] not to [engage with First Nations] (H3, 2016).*

Importantly, the sentiments above explain the Engagement Framework binds the Province to a standard of best practices for consultation with First Nations governments (at least for the signatory First Nations of the RPA). This is important because these requirements for consultation “push” the fiduciary responsibility of the Crown not just to recognize First Nations’ authority and as a level of government, but to also formalize processes with which to engage with each other as decision-making powers.

### 2.5 Heiltsuk Nation, Kitasoo/Xia’Xais and the Reconciliation Protocol Agreement

Heiltsuk Nation has used the 2009 RPA and the recently amended 2016 RPA strategically to advance several of their governance objectives. Leaders from Heiltsuk Nation have understood the original 2009 RPA as a mechanism to bring short-term economic and social benefits to their community while at the same time providing more certainty for the Province with respect to land use and resource development (H6, 2016). Interestingly, the RPA has been described as “macro-level accommodation” by those tasked with its implementation. This means the BC government is beginning to accept responsibility for historical injustices and importantly, understand it must
accommodate the demands of First Nations in ways that recognize their authority as sovereign Nations. This is clearly explained by a HIRMD staff member:

The RPA is the gold standard globally. No other, well let's keep it to the confines of Canada, no other First Nation community anywhere in the country does anything like this, whether it's a Treaty Nation or not. No one has this [the RPA]. And so we're talking about, again, macro level of accommodation, right? Concerns and means were recognized by the federal government way back when and many of those responsibilities have been transferred to the provincial government to implement. Right? That's what the RPA really is (H3, 2016).

This interpretation is important because it points to how this kind of agreement differs from the process of negotiating a treaty with the Crown. The RPA holds the Province accountable to a regional group of Nations who rightfully assert themselves as sovereign and self-determining Nations. The RPA does not require signatory Nations to give up any of the rights as Indigenous peoples, nor does it restrict the Nations from participating in any other negotiation with the Crown or third party. While Nations involved in the treaty process also assert their sovereignty, it is beholden to authority of the Crown.

Again, whether the Province realized it at the time, several coastal Nations were ready and willing to use the 2009 RPA in ways that would assert their sovereign authority over their territories. The HIRMD Stewardship Director has explained to me the RPA set the stage for what will continue to happen in the next few years in terms of how the Heiltsuk government interacts with the provincial Crown (H6, 2016). In other words, Heiltsuk will continue to interact with the

24 This claim is not to take away from First Nations governments who have signed or and currently negotiating modern day treaties with the Crown.
provincial Crown as a sovereign political entity with autonomous jurisdictional powers. The RPA has been used strategically to not only conceptualize the idea of Indigenous sovereignty, but also to actualize it in practice within Heiltsuk and Kitasoo Territory.

2.5.1 Realizing Sovereignty

Perhaps the most crucial (and hopeful) work of the 2009 RPA, and its subsequent amendments, is expressed in how First Nations’ assertions of sovereignty are being legitimized by the Crown and resource users in each Nation’s respective territories. An elected leader from Kitasoo reflects on how the RPA helped to manifest a more balanced relationship with the Province, one in which Kitasoo is recognized as a level of government:

...but certainly the Reconciliation Agreement helps strengthen some of that [relationship with the Province] in terms of being a level of government. I would say the province has come a long way and the relationship has really changed with the province. It’s gotten a lot stronger, which is great. I don’t think it’s quite where it could or should be (H2, 2017).

While this more balanced relationship does not necessarily mean the Crown accepts the First Nations as sovereign Nations (just yet), for now it’s more important for Nations to know they can work with Crown governments in ways that realize their inherent rights and sovereignty. To demonstrate what I mean, I look to the relationship between First Nations and third parties who profit from resource development in their territories. The relationship between First Nations’ communities and resource users, while it has been known to be tense, has also benefited from the 2009 RPA. It seems resource users, including commercial tourism operators, forestry companies, mining operators, are beginning to understand First Nations have a level of authority within their own territories, an authority that is distinct from that of the Crown.
And now at least we are talking to each other, which is great. I think commercial operators are starting to understand there’s a new level of government. I should say “new level” (interviewee adds quotation marks) because we’ve always been there. But I think First Nations are starting to get recognized in a way for their stewardship capacity, we’re building that through some of these agreements. The funding is now there, we have a stable funding source in the Coast Opportunities Funds. We have a stable source in the Carbon Credit Opportunities. I think stakeholders are starting to look at us like governments and that’s been huge because in years past, I remember 13 years ago when I went to negotiate the first protocol agreements with those operators, some of those operators said “get the fuck off my boat. How dare you try and gouge me, I’ve been gouged by the province, why the hell would I pay you guys?” Now they’re starting to understand that they have to talk to us (H2, 2017).

In the sentiments described above, the long held assumptions of Crown sovereignty – “or more specifically, its ultimate authority over the existence and application of rights and obligations, the entitlement to make or unmake any right whatsoever”– has been significantly challenged (Webber 2016, p.77). With the quotation marks used for “new level” of government, this First Nations leader is referring to the fact that First Nations’ inherent authority is equal to, or supersedes that of the Crown. In this case, the Province is not the only governmental body with which the resource user must engage with when operating on the coast (i.e. – applying for permits and follow Canadian laws).

In Heiltsuk territory, the original Engagement Framework was particularly challenging to use in practice because of disputes between HIRMD staff and representatives for the Ministry of Forests, Lands and Natural Resource Operations (FLNRO). These disputes were primarily over
what level of engagement was necessary for each forestry referral accepted by the HIRMD Office. These tensions jeopardized the intention of shared decision-making and resulted in standstills between the Parties lasting for years at a time. A member of Heiltsuk Nation explains these frustrations he had with provincial staff:

You know sitting in meetings where there was over a hundred referrals that were back logged because there was just no agreement on the level of engagement. There was this constant battle so I came in very aggressive from my side pushing for better relationship with the province. The province was here at almost every meeting with [the forest] industry...we’re having these discussions, agreeing on what [engagement] level. But we could never come to an agreement, even with the province sitting here. They’d go away and still write up a different level. You know the people that we were dealing with just got really frustrating.

In response to this frustration, HIRMD decided to “back door” the Province by meeting directly with the forestry industry operating in their territory. Specifically, HIRMD developed Memorandums of Understandings (MOUs) with individual forest companies that laid out how each company would engage with Heiltsuk Nation in regards to their forestry plans. He explains:

When I introduced the idea of an MOU in 2014, I said yeah we can continue to have a pissing match [with the provincial staff], or... I started having these side bar discussions with Western and Interfor for the most part because they’re the big players here [in Heiltsuk territory] and obviously with our own company [Heiltsuk Coastal Forest Products]. You know if we have an MOU, you [forest companies] agree to come to Bella Bella, we [Heiltsuk] look at any of your planning process prior to you providing an application for a permit. You know we can have a better relationship [with forest
That kind of rolled off this whole notion of eliminating the province from the whole equation and that it would be more efficient for us to sit down, spend 2 or 3 days doing the plans and us writing a letter of support for your permit rather then you going through the referral process.

In this sense, Heiltsuk Nation was acting as a sovereign Nation by dealing directly with resource users, regardless of the involvement of the Crown. HIRMD staff did not ask for the Crown’s permission to engage directly with forest companies; Heiltsuk did it on their own accord, and motivated by their inherent authority and jurisdiction as a sovereign Nation. In this case, the forestry companies agreed to work with Heiltsuk Nation, viewing the Nation as a distinct form of government with they must deal with if they are to operate on the coast.

2.5.2 Reframing Sovereignty?

The negotiation and strategic use of the 2009 RPA has implied and affirmed coastal First Nation’s desire to assert Indigenous sovereignty over their territories. Webber’s meaning of sovereignty 3 states:

*the idea that law and the associated governmental rights originate from within the particular people’s own traditions. They have the their own autochthonous origin, their own autochthonous legitimacy; they are not the result of a grant of authority from any other entity (other than, in some traditions, a supernatural entity) (pg. 82).*

In other words, the legitimacy of Indigenous sovereignty (and the rights, title, authority) is rooted in each Nation’s laws, traditions and customs (Borrows, 2010). The Crown does not grant sovereignty to Indigenous peoples; rather it is their inherent right as Indigenous peoples with their own forms of governance and ways of knowing (Turner, 2013). This meaning of sovereignty is crucial to understanding the way Heiltsuk Nation, and several other Nations, are
asserting their sovereign authority over their territory. In coastal BC, several First Nations, including Heiltsuk and Kitasoo, practice their hereditary governance system based on chieftainship.\footnote{The chief system involves stewardship of lands and waters, and the inheritance of chieftainships includes inheritance of responsibilities for the portions of the territory to which each chiefly name is attached (Heiltsuk Nation, 2015).} Hereditary governance systems on the northwest coast of BC are well documented by Indigenous and non-Indigenous scholars, particularly from the anthropology, history and legal literature (Halpin, 1984; Menzies and Bulter, 2008; Miller, 1984; Robertson and Kwagu’l Gixsam Clan, 2012). From a historical perspective, Raibmon (2005) describes that many First Nations on the Northwest coast organized their society into a hereditary hierarchy. Raibmon explains that for the Kwakwaka’waka: “members of each extended family unit, or numaym, means “those of one kind,” shared a common supernatural ancestor. Each numayn contained a fixed number of positions or seats for which the nobility alone was eligible” (pg. 19). The hereditary rights and positions of high ranking were validated through ceremonies, most notably through potlatches. Importantly, the hereditary system of governance for many of the Nations is practiced today and is a crucial part of First Nations’ societies and day-to-day interactions.

As an elected leader of Kitasoo/Xai’xais describes below how the authority of their hereditary system of governance and laws are re-emerging as a source of political strength for several coastal Nations. Indeed, the authority of a hereditary system of governance is playing a key role in the way First Nations government are engaging with the Crown:
We’re going through a time where we have all the authority through our Hereditary system and our Indigenous Laws and governance. We’ve lost that over the last 150 yeas and it’s only been recently, the last 20 years and with court cases that First Nations have finally begun to regain some of their control and historical access. How do you start to push that? It’s our generation now that has to push those new opportunities. I even listen to the way my elders in the community and some of them will say no, no, the province won’t allow us to do that. I say who gives a shit what they say. Push back. This is our territory. We never surrendered it, they never conquered it. Let’s continue to assert what we believe is our right and our title (H2, 2017).

By describing a way to “push back” against the provincial Crown, this Kitasoo leader is signalling that the hereditary system of laws and governance will be the Kitasoo’s source of political strength moving forward in negotiations with the Crown, and in continuing to assert their sovereignty over their territory. It’s clear from the sentiments above and below, for several Indigenous Nations, these convictions of sovereign authority and title are what must be reconciled with 150 years plus of assumed Crown sovereignty. As we hear below, the Treaty process will not be the way to reconcile asserted sovereignties for Heiltsuk or Kitasoo. In fact, there are times when Indigenous leaders are hopeful solutions will arise that work for both Parties.

It’s the implementation of Indigenous Laws. That’s going to be huge. But respecting us as a level of government. We understand that the provincial government it not going anywhere and we’re not going anywhere. We made it very clear to the ministers and the ADMs. Somehow we gotta figure out a system that’s going to work. We’re not going anywhere but it’s both our responsibilities for stewardship. And I told the Province that
with or without the Province we are going to implement our stewardship responsibilities. That’s always been our right and we’ve always had the title to do that and I said we’ve never signed a treaty and we’ll never sign a treaty, we’ll work to manage it. Whether we go down the title case or whether we just implement. It’s ours and it’s always been ours but like I said I want to find a ways of working with other governments to say let’s go find some creative solution. I think we can do everything. I think we can do everything sustainably. Even forestry. I think we can do that at a sustainable level. So it’s just trying to get the right people in the room and make those things happen and go (H2, 2017).

While the RPA does not explicitly draw on the authority of the Hereditary governance of coastal First Nation, to the Chief Councillor of Heiltsuk Nation does consider it one of the factors contributing to the accomplishments Heiltsuk Tribal Council and community:

So I guess one of the things that we’ve been doing and it’s connected to, I wouldn’t say it’s a direct result, it’s one of the considerations and factors have led to where we are today ‘cause so many things contribute to where we are today right, but in late October we affirmed our declaration over Heiltsuk title of rights here in the community and basically we said these are all the things that our community has been saying for years and years affirming Bob Anderson’s statement, affirming our past really strong leaders in the community, Cecil Reid, Edwin Newman, Cyril Carpenter, Jasper Vickers, you know all these really strong leaders, Arlene Wilson and being able to just organize all of that work, you know you organize everything develop a strategy to move forward affirming that as a mandate (H9, 2016).

Importantly, Heiltsuk draw their political strength from their hereditary governance system, which in one way is demonstrated in their Heiltsuk Title and Rights Strategy: A Reconciliation
Agenda. The Heiltsuk Title and Rights Strategy asserts Heiltsuk sovereignty much more than the 2010 and 2016 RPA. And expert from the Heiltsuk Title and Rights Strategy explains the specific places from which Heiltsuk base their inherent authority:

This declaration is based on 7áxvá (our inherent jurisdiction that flows from ownership of our lands) and ̌Gvi’ilá (our governing authority over all matters related to our lands and people).

We are the Heiltsuk people, descendants of ancestors who exercised sovereign authority over our land and waters for thousands of years. Today, we affirm the continued existence of Heiltsuk title, and our rights as a Nation to exercise management authority and derive economic benefits from lands, waters and the resources within our territory.

While such an analysis goes beyond the scope of this chapter, a demonstration of how hereditary governance and Indigenous laws are the driving force behind change on the coast is certainly warranted. I turn to such an analysis in Chapter 5. For now, the bolded words hold literal and significant meaning to Heiltsuk people, as does the asserted authority of their ancestors over their territory. This assertion of Heiltsuk sovereignty certainly extends far beyond the 2009 RPA or any other its subsequent agreements. Despite the hopes of several who negotiated and strategically use the RPA, in its current form, it does not fall significantly far from the realm of status quo Crown sovereignty. The entrenchment of Crown sovereignty runs far and deep, though so too does the hereditary governance systems of coastal First Nations. Perhaps the RPA weakens those long held assumptions of Crown sovereignty and adds to a myriad of calls from Indigenous peoples that the issue of sovereignty has and will not disappear.
2.5.3 Challenges of the 2009 Coastal First Nations Reconciliation Protocol Agreement

In terms of practical use, the 2009 RPA has not been without its implementation challenges. For example, the RPA has provided resources to hire new staff and have dedicated office space for stewardship staff in several of the communities. The Stewardship Office, at least in Heiltsuk territory, has developed structures and institutional mechanisms, such as the Forestry and Referrals Committee, which is tasked with interacting with resource users and/or the Crown on a regular basis through the referrals process (discussed in more detail in Chapter 3). A negotiator from CFN explains the RPA has helped create the ‘bureaucracy’ necessary for First Nations to engage with the Crown in ways they will be taken seriously as a government:

Well the RPA on one level of governance, one it’s created a huge new capacity in First Nations communities to have the bureaucracy and the policies to have greater controls over their lands. If you don’t have the human and financial resources to hire people or if you don’t have a policy framework to be part of the decision making...Before we even started land use plans it was all litigation and confrontation because forest companies were cutting in areas that were high valued cultural areas or conservation areas for First Nations (H8, 2017).

Similar to the capacity building implications explained above, the RPA has provided structure to the political work of Heiltsuk leadership, resulting in progress towards achieving some larger stewardship goals of the Nation. For example, the RPA played a role in Heiltsuk obtaining more decision making power over high valued cultural areas in their territory. As a HIRMD staff member explains, the RPA strengthened the internal governance structures of the Heiltsuk
government in important ways, namely the RPA has driven Heiltsuk to formalize their stewardship planning as a level of government:

Yeah, I think in terms of governance it’s forced our hand to be more ready to deal with certain things. So, you know, why negotiate a conservancy and then not have a conservancy plan to implement? It’s kind of made us, internally, you know, be a bit more strong in terms of planning and implementing (H4, 2016).

Another implication of the RPA and “need for rationalized state-like structures of authority” (Webber, 2016, p.86) is the ongoing tensions between communities and their often varying goals and desires, and the regional authority of Coastal First Nations. As reconciliation agreements are new for coastal BC, and were certainly novel in 2009, important political questions for Indigenous governance are playing out with the agreement’s implementation. These tensions are reflected by both Coastal First Nations representatives and Heiltsuk leadership; for instance, below are remarks from a negotiator at Coastal First Nations about the overall governance structure of the RPA. He explains the Crown’s insistence on an agreement that delegated power to a political body representing a number of First Nations governments in a designated region. This demand is not surprising, as the Crown does not have the resources to negotiate with each individual First Nation in the province. Also not surprising is the serious tensions that surfaced over the delegation of this power among signatory Nations – as each Nation is seeking authority and jurisdiction over their own lands and waters.

And now if you take a look at the start of the reconciliation agreement there’s two parts to it, one is it creates a roles and responsibility, the roles of this office versus the roles of the community. That was an aggregation that the province had some very strong opinions on and that was built into the model and that’s not easy for communities ‘cause communities
see themselves of self-governing and the questions delegating certain authorities to other bodies has to be done very carefully by them. There were some very serious debates in communities about whether they wanted to do that or if they had other interests (H8, 2017).

The regional approach to negotiating a reconciliation agreement may have worked for the Crown, though it took years of building trust for this approach to work effectively for the signatory Nations. Some tensions between Nations still exist today; overlapping territorial boundaries are a significant challenge to overcome. Almost eight years after the Province signed the original 2009 RPA, the Province has recently signed a separate reconciliation protocol agreement directly with Heiltsuk Nation. While the details of this agreement are still being worked out in practice, this speaks to the heightened level of authority Heiltsuk will continue to assert over their territory. These sovereign expressions seem to be varied among different First Nations along the coast.

This heightened expression of sovereignty through bureaucratic processes is proving to be challenging for some of the Heiltsuk community. From the perspective of a Heiltsuk elected leader, an unintended consequence of the RPA is the creation of a complicated bureaucracy that is not helping to solve issues at the community level (H1, 2018).

On the one hand I think it’s really challenging that in response to this huge crashing bureaucracy we have to deal with the provincial and federal government, that we created these regional bodies to work through and advocate for us, places like Coastal First Nations and we said you know “go forth and represent us.” And they do confront this bureaucracy for us but…I don’t think it was the original intent but I think what ended up
happening is we just created our own bureaucracy that is just as complicated as the one were trying to deal with.

This reflection is key to understanding the unintended consequences to ‘becoming sovereign’ and reflects Nadasdy’s (2003) critique of co-management arrangements in the Yukon. One such critique is co-management arrangements can not only reinforce existing power relations, but actually extend the power of the state further into First Nations’ communities and prevent meaningful change by tying people up in the bureaucratic process. While reconciliation protocol agreements extend beyond a co-management arrangement over a single resource, it is necessary for First Nations governments to remain cautious of colonial state-like structures. It seems these bureaucratic thinking and processes warrant significant attention from signatory First Nations to the RPA, including Heiltsuk. Whether creating a First Nations bureaucracy is negative or positive is not for me to decide, though these concerns pose important questions for Heiltsuk leadership, staff and decision makers. The implications of these bureaucracies can hinder important work happening day to day in communities. An elected leader from Heiltsuk Nation touches on these concerns below:

I know rationally that important things are being negotiated to kind of lay a foundation that we can build on that’s much stronger than what be the case otherwise but maybe it’s my work at Qqs as an organization with a really open mandate that really strives to be nimble above all else but I just feel like some of the things we developed to help us work better in the face of that department of bureaucracy have just become so slow moving and

26 Several if not all Nations consider themselves sovereign and self-determining Nations. Here, I mean ‘becoming sovereign’ in the eyes of the Crown.
overburdened and that they’re not really helping us to work better on the ground (H1, 2016).

While there are certainly challenges and shortfalls of the RPA and its subsequent amendments, First Nations from across BC (and even Canada) seem to aspire to what it has accomplished thus far. From the reflections of a Heiltsuk elected leader and HIRMD staff respectively:

You know normally it’s a very critical lens for me but then I’ll be talking to people from the interior or from other Provinces and they’ll be saying: “how do we get what you have? Like, this is great how on earth did you manage to negotiate this? Why can’t everybody have this? (H1, 2016).

It's huge, it's huge, it's huge, it's, it should be the envy of every other, it shouldn't be, we should be envious of other people because they have better deals than this but, it's the shining star right now globally for an aboriginal hegemonic government agreement (H3, 2016).

The latter reflection from a HIRMD staff member reminds us that while the 2009 RPA has had significant implications for Heiltsuk governance and assertions of Indigenous sovereignty, the work of Indigenous governments and the Crown is far from over. The RPA, and similar kinds of agreements are one step towards a larger trajectory of Indigenous sovereignty and self-determination.
2.5.4 Conclusion

Conceptions of sovereignty are integral to debates about Indigenous-state relations in Canada. Heiltsuk Nation and several other First Nations continue to express their sovereignty through the negotiation and implementation of reconciliation protocol agreements, beginning with the original 2009 Coastal First Nations Reconciliation Protocol and now with the implementation of the 2016 Amending agreement. The original intent of the 2009 RPA was to provide a ‘government-to-government’ framework for signatory First Nations to more fully realize Indigenous rights on the land base while avoiding legal conflicts, and to shift more decision making power from the Crown to First Nations governments. It also included several economic components to ensure First Nations receive tangible benefits from the resource development occurring in their territories. Some commitments within the 2009 RPA, most notably the carbon offset program, have manifested tangible benefits for coastal First Nations communities.

However, signatory First Nations remain frustrated by the constraints to their decision making power, especially as it is expressed through the Engagement Framework. Despite these frustrations – and whether or not it was the intention at the time – the 2009 RPA bolstered several subsequent agreements and initiatives that are realizing expressions of Indigenous sovereignty. These expressions of sovereignty have manifest through the development of institutional mechanisms (i.e. the Engagement Framework) that Heiltsuk use strategically to assert authority over forestry operations occurring in their territory. As well, through asserting their hereditary governance system, Kitasoo have started to “push back” on both the Crown and Coastal First Nations for their belief that the Crown has the jurisdiction to issue tourism permits in Kitasoo territory. While this push back on the ‘status quo’ of Crown sovereignty may seem
minor, it is beginning to be expressed on the ground through confrontations between resources users and Kitasoo and Heiltsuk people. In practice, the Province is now being challenged almost daily to not only realize the authority of Indigenous Nations, but to understand the legitimacy of this authority is rooted in their hereditary governance systems and laws.

I do not wish to overestimate the influence of the 2009 RPA; even in its current form, it does not fall significantly far from the realm of status quo Crown sovereignty. Though the 2009 RPA and its subsequent agreements have garnered the attention of other First Nations governments, and the provincial and federal Crown. Challenges to Crown sovereignty are certainly occurring in BC and elsewhere in Canada; though they raise difficult questions with complex answers: *What exact matters fall within Indigenous peoples’ sovereign jurisdiction?* If “we are all here to stay”, through what institutions are Indigenous sovereignties reconciled with assumed Crown sovereignty? Does the exercise of Indigenous sovereignty fall under some other version of the Canadian constitution, or does it require the enactment of new Indigenous constitutions? If the former or the latter are so, under what conditions will this be made possible? These are all questions that behoove us to address in meaningful ways, and I attempt to do so with the remainder of this dissertation. To end, I return to a quote by Alicia Elliot, who reiterates Indigenous sovereignty does exist, and will continue to be expressed:

*And most importantly, they [the Canadian government] will need to acknowledge the Indigenous nations of this land are sovereign nations, respect us as sovereign nations and consult and negotiate with us as sovereign nations. Anything less is politically correct posturing (Globe and Mail, January 11, 2018).*
Chapter 3: The Coastal First Nations Reconciliation Protocol Agreement and Heiltsuk Nation: Aspirations of Jurisdictional Authority

The legal landscape of Indigenous rights and title in Canada has changed significantly from 150 years ago. However, practices of Indigenous sovereignty, as they occur outside the courtroom, have changed only recently. At the time Canada was being created Indigenous peoples were thought to be ‘a dying race’, either they would be eradicated from or assimilated into Canadian society by policies such as residential schools. As Ladner and Tait (2017) put it, the founders of Canada were only really concerned with the matter of which level of government – federal or provincial – would “hold jurisdiction over Indigenous peoples and their lands, until, of course it was no longer relevant” (p. 10). Obviously, the relevance of which level of government was to hold jurisdiction over Indigenous peoples and their lands remains entirely relevant. This is particularly the case in British Columbia, where historic treaties are few and the courts have made slow movement in court decisions towards recognition of the existence of Aboriginal title, and the need to develop state mechanisms to realize this title.

For First Nations in BC, assertions of their inherent jurisdiction over their lands are increasingly prominent. For instance, the British Columbia Region of Assembly of First Nations have defined self-government as “…the right of a First Nation to govern itself, make decisions for its future and exercise a full range of jurisdiction and authority over its land, people and resources” (Menczer, 2012:3). Elsewhere in Canada, Indigenous people are also engaging in jurisdictional debates that directly contest Canadian legislative and legal authority. For example, Ladner (2005) explores how both the Mi’kmaq and Canadian governments, as nations, claim to have gained jurisdiction over Mi’kmaq territory and the salmon within said territory. Further,
neither the Canadian government nor Mi’kmaq see their jurisdiction as being circumvented, eliminated by, or ceded to the other. In this case, the Canadian Crown bases its jurisdictional claims on, among other things, the practical reason that the Constitution Act of 1867 provided the federal government with responsibility to maintain the public fishery (Ladner, 2005). The Mi’kmaq, on the other hand, base their claims on their own constitutional order, which defines and regulates fishing as both a right and a responsibility of Mi’kmaq.

Indeed, jurisdictional gains on the part of Indigenous Nations in Canada have been made through the comprehensive land claims process (e.g. Inuvialuit Final Agreement); co-management and co-governance arrangements (e.g. Hadia Gwaii Advisory Council); the modern day BC Treaty Process (e.g. The Nisga’a Final Agreement and Tsawwassen First Nation), and; court cases that involved the spatialization of title (e.g. Tsilhqot’in Nation v. British Columbia). Despite these gains, the current processes used to potentially address issues of overlapping jurisdiction are expensive (i.e. title cases) and/or take a very long time (i.e. 20 years plus for a 200-300 page treaty to be negotiated). Importantly, there is the fact that many of these “gains” have also required significant concessions from the involved Indigenous Nation(s), including the extinguishment of their Aboriginal rights and title. And also, Indigenous Nations are still beholden to western, colonial legal and political systems to negotiate these potential gains.

But are these gains the only basis through which Indigenous jurisdiction is argued and/or ceded? How else do Indigenous nations assert their jurisdictional authority over their territories? This chapter begins with the assumption that there are other means through which Indigenous peoples assert jurisdictional authority over their lands in Canada and asks what, if any, the implications have been when Nation assert this authority? After all, the jurisdictional authority (and so sovereignty) of Indigenous nations predates the creation of Canada (Alfred, 2005; Asch,
2014; Ladner, 2005; Pasternak, 2014). Since the arrival of Europeans, Indigenous peoples have continuously challenged the authority of the governments of the time to claim jurisdiction over their bodies and their lands (Daschuk, 2013; Ladner 2005). While the Crown claimed territorial sovereignty over Indigenous peoples and lands through processes of settler colonialism, the Crown did not obliterate the multiplicities of Indigenous legal and political systems already in existence. As Pasternak (2017, p. 4) eloquently puts it:

*Long after the ceremonies of possession, the granting of Royal Charters, and a bewildering haze of imperial legalities that bore only the slightest relevance to their supposed subjects, Indigenous people’s social and political orders remained intact, even as they adapted to the influx of European and other settlers on their lands. The ongoing exercise of Indigenous jurisdiction over lands, resources, and bodies on their homelands today reveals the continuity of this suspended space between settler assertions of sovereignty and the vitality of Indigenous territorial jurisdiction.*

Contestations over jurisdictional authority are certainly sites to examine larger debates of competing sovereignties, as well as the reconciliation of those sovereignties (i.e. Ladner, 2005). Local sites of jurisdictional quagmires are crucial sites of analysis in and of themselves, in part because people’s livelihoods depend on the opportunities afforded through such jurisdictional authority. In this chapter, I draw attention to what Pasternak calls in her quote above: “the continuity of the suspended space between settler assertions of sovereignty and the vitality of Indigenous territorial jurisdiction.” What concerns me here is how this suspended space is playing out in Heiltsuk territory, as the Crown claims to hold jurisdictional authority over the land (i.e. Crown land), while at the same time, Heiltsuk assert their own inherent jurisdiction, including the rights to manage and responsibly care for the land and waters in their territory.
In this chapter, I aim to give credence to the argument that the inherent jurisdiction of Heiltsuk Nation is not fully formed or conjoined to Crown sovereignty, evidenced by the way Coastal First Nations, including Heiltsuk, have posed significant challenges to the jurisdictional authority of the BC government since the early 2000s to the present day. Specifically, I trace a “gaining of jurisdiction” for Heiltsuk Nation through the negotiations leading to the 2009 Coastal First Nations Reconciliation Protocol Agreement (RPA), the 2009 RPA itself, and its subsequent 2016 Amending Agreement, including the Engagement Framework. The gaining of jurisdiction to which I refer means a gaining of jurisdiction the Crown can no longer disregard. I make my claims from the basis that all Indigenous nations hold legitimate claims of title, jurisdiction and sovereignty over their territories.

I begin with the jurisdictional authority expressed through the government-to-government process borne from forestry conflicts on the north and central coast (a region also known as the Great Bear Rainforest) and on Haida Gwaii (Barry, 2012; Low and Shaw, 2011). Next, I explore how Indigenous sovereignty was asserted in government policy documents known as the Strategic Land Use Plan Agreements (SLUAPS), signalling several First Nations were willing to resolve conflicts over land use in negotiations that at least recognized their inherent jurisdiction to the territories. Lastly, I consider the aspirations of “shared-decision making” that are contained in the 2009 Coastal First Nations Reconciliation Protocol through the Engagement Framework and continue to this day. These three processes, or “signposts” are by no means the
end goal for the practice of jurisdiction; instead they are another signal the BC government can no longer ignore the overarching governance powers First Nations possess.\textsuperscript{27}

I draw heavily on the recent work of Pasternak (2017) with the Algonquin of Barrier Lake because it illuminates the ways in which disputes over jurisdictional authority between Indigenous nations and Crown agencies are playing out in practice. Pasternak argues it is through tensions over jurisdiction (i.e. who has the power to make decisions, and where does that power come from?) that practices of Indigenous sovereignty can be most effective at unsettling Crown sovereignty.

3.1 Sovereignty as Jurisdiction

The idea of sovereignty as ‘jurisdiction’ is particularly important to the argument that Heiltsuk are posing significant challenges to expressions of “on the ground” Crown sovereignty. That is, inherent in the colonial meaning of sovereignty is jurisdictional domain by a singular law and singular authority (i.e. the king, the state, the tribal council, etc.) over a clearly defined territory (Shaw, 2008; Simpson, 2014). Nadasdy (2012) stresses the fundamental concept of sovereignty is ‘territorial jurisdiction’, which is a government’s ability to exercise power and authority over discrete mutually exclusive territories separated by linear borders.\textsuperscript{28} Pasternak (2017) argues jurisdiction offers “a coherent vocabulary with which to express these spatial encounters where sovereignty discourses fall short” (p.7). That is, jurisdiction captures the day-

\textsuperscript{27} I argue the RPA has helped Heiltsuk and several other coastal Nations increase their authority, though jurisdiction over territory remains unachieved.

\textsuperscript{28} Nadasdy (2012) provides an example of the sovereign state asserting its territorial jurisdiction even in the negotiation of modern day treaties and land claims agreements in the Yukon. Nadasdy (2012, p.503) argues land claims agreements are not simply formalizing jurisdictional boundaries among pre-existing First Nation polities; they are mechanisms for \textit{creating} the legal and administrative systems that bring those polities into being.
to-day legal and political interactions of sovereignty over a defined territory. Conceptions of jurisdiction are conceivably more important to Indigenous assertions of sovereignty and self-determination than might be initially realized: As a community member at Barriere Lake once told me, “Canada can have its sovereignty. We just want our jurisdiction” (Pasternak, 2017, pg. 5). Thus, framing the overlapping assertions of sovereignty on most of Canada’s landbase as a problem of jurisdiction potentially provides for a better understanding of how jurisdictional challenges are playing out in practice and what exactly is at stake for Indigenous sovereignty.

According to Dorsett and McVeigh (2012), jurisdiction is concerned with the modes of authority and the manner of the authorization of law. In Canada, jurisdictional powers are ordered and exercised through legislation such as the Constitution Act of 1867 and 1982 (Pasternak, 2014). Further, the distribution of jurisdictional powers spans over a myriad of institutional bodies subordinate to federal and provincial powers, such as municipalities and counties. Provincial jurisdiction includes control over natural resources, with this control delegated to oversight bodies such as the park management authorities (i.e. Ontario Parks). Federal jurisdiction includes “Indians, and lands reserved for the Indians”, meaning Indigenous peoples have their education, healthcare and a wide range of programs and services delivered to them by the federal government. Equally troubling is Indigenous peoples are governed under the Indian Act, 1867, which effectively means Indigenous peoples have been “gradually transformed into objects of jurisdiction rather than subjects in nation-to-nation relationships”

29 These two examples of the division of federal and provincial jurisdictional powers alone have created devastating conditions for Indigenous peoples who live on and off reserve. For example, disputes between federal and provincial healthcare agencies have meant significant delays in crucial health care services to Indigenous patients. See Barrera, J. (2017, October 24). Health Canada knew of massive gaps in First Nations child health care, documents show. *CBC*. Retrieved from: https://www.cbc.ca/news/indigenous/health-canada-ruling-children-1.4368393
(Pasternak 2014, p. 152). This means, despite the fact that Indigenous nations, with their own well-established social and political systems in existence well before the arrival of Europeans, the lives of Indigenous people are controlled by the legal and political frameworks of the federal and provincial governments of Canada.

However, in settler colonial states such as Canada the practices of jurisdiction by the state are not so clear-cut. For example, the legal systems that govern the practices of jurisdiction in Canada are English common law, French civil law and many Indigenous legal orders (Borrows, 2018). As discussed in Chapter 2, assertions of state sovereignty are challenged with competing assertions of Indigenous sovereignties over most, if not all, of Canada’s land base (Alfred, 2005; Asch, 2014). Importantly, Indigenous Nations understand their rights as Indigenous peoples to mean the political jurisdiction that includes a landbase (Asch, 2014). In other words, the jurisdictional authority asserted by Indigenous nations flows from their connection to land and their respective laws, customs and practices. The Crown, on the other hand, has relied on the Supreme Courts to determine what Indigenous rights mean and how they must be proven or upheld (McNeil, 2008). The courts have distinguished “Aboriginal title” from other limited rights including harvesting rights such fishing or hunting. In the Crown’s view, Indigenous peoples may have title to their lands because they have proven their consistent occupation and use of their claimed territories since before the assertion of Crown sovereignty\(^\text{30}\). Aboriginal title is not, however, sourced in the authority of Indigenous laws, customs and governance systems (McNeil, 2008). Therefore, title does not necessarily mean rights to self-government and jurisdictional authority over their territories. Despite this, Indigenous nations continue to assert

jurisdictional authority over their traditional territories and reserve lands in ways that are creating significant challenges for the Crown.

In her recent book, Shiri Pasternak argues jurisdiction is “the apparatus through which sovereignty is rendered meaningful, because it is through jurisdiction that settler sovereignty organizes and manages authority” (2017, p.3). That is, jurisdiction is a way to understand how the sovereign state’s authority is ordered and legitimized. In Canada, authority of the Crown is grounded in its ability to inaugurate law on lands acquired through colonial settlement (Pasternak, 2014). Pasternak (2014) illustrates jurisdiction as a historical concept, distinguishing settler colonialism as a specific type of European colonialism premised on land acquisition and population replacement. Unlike colonials in South Asia and Africa, Europeans in North America sought to replace Indigenous societies with their own. Well-established scholarship explains Crown acquisition of sovereignty over North America through settler colonial law occurred through various means of violence, dispossession and the mythology of terra nullius or the doctrine of discovery (Asch, 2002; Culhane, 1998; Harris, 2001; Macklem, 2001; Shaw, 2008). Harris (2001, p. 186) explains, “Europeans believed they brought civility to supplant savagery, Christianity to banish superstition, progress to supersede stasis, and law to replace anarchy.” Much more recently, the well adopted thesis for Canada’s acquisition of sovereignty from judicial decisions has been that Indigenous people who lived in Canada prior to colonization were too “primitive” to have a form of sovereignty and underlying title that required recognition by colonial authorities (Asch, 2002).

31 Wolfe (2006) argues replacement is embedded in the institutional logic of settler colonialism.
32 Terra nullius refers to a territory without people, one that was either previously unoccupied or not recognized as belonging to another political entity (Asch, 2002).
Obviously, Indigenous peoples (and many non-Indigenous people) see things very differently; they see the Crown’s acquisition of sovereignty over their territories as an illegitimate act (Slattery, 2005). As discussed in Chapter 2, Indigenous peoples assert they had international sovereignty before the coming of the colonists, a sovereignty that was never surrendered or extinguished, even through transaction of the newcomers (Webber, 2016). This meaning of sovereignty underlines the sentiments by the Barrier Lake member above – *Canada can have its sovereignty, we want our jurisdiction* – in that what is most crucial to Indigenous peoples is recognition of their substantial autonomous jurisdictions with respect to their people, their lands, and relations with non-Indigenous governments (Webber, 2016). Importantly, Canadian assertions of sovereignty did not obliterate Indigenous governance *authority*. There are, in fact, multiplicities of Indigenous governance systems existing in Canada, each within their own territories and political cultures (Pasternak, 2017). Or put differently, from Indigenous perspectives the meaning of authority can be sourced within a range of legal traditions (Borrows, 2010; Napoleon, 2013).  

The authority of Indigenous governance systems is often rooted in Indigenous legal traditions and exercised daily by Indigenous nations across this country. Hence, Pasternak (2017) refines the concept of jurisdiction to mean “the authority to have authority.” Another way to think about it is: by what authority does a law have authority to be inaugurated and to govern? In Canada there are competing forms of authority asserted over the land base, and this conflict of authority reveals itself in practices of jurisdiction.

Pasternak provides a compelling example of this conflict when competing forms of law are asserted on the traditional territory of the Algonquins of Barriere Lake. At this site, like many

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33 In *Canada’s Indigenous Constitution*, John Borrows provides rich examples of legal traditions according to several Indigenous nations in Canada (see pg. 61-106).
others across Canada, there has been a long-standing confrontation over who has authority to occupy and govern Algonquin lands. For instance, a member of Barriere Lake, Norman Matchewan, attended a shareholder meeting of Copper One Inc., a mining company who had purchased a mining license in the heart of Barriere Lake’s territory (3 hours north of Ottawa, Ontario). He explained to the Board of Directors of this mining company there will be no mining in Barriere Lake’s territory because the territory is divided up among families and each one is responsible for the care of an area. He further explained the families of the proposed mine site did not give their consent and have serious concerns about its impacts. In response, the mining company suggested that Barriere Lake become a partner in the company. Norman immediately declined this offer and reiterated no mining will occur in Barriere Lake’s territory. Norman’s explanation of a kin-based tenure system - where families responsible for particular ranges hold the legal decision making power - was incompatible with Copper One’s solution of transforming that system into commercial rights under state law. This conflict is over whose laws will apply on Barriere Lake territory, those of the settler state and private property or those who have lived on that territory for thousands of years and have a duty to protect it.

By understanding jurisdiction as “the authority to have authority”, we see how important the practice of jurisdiction – in its varying forms – can be crucial to Indigenous Nations achieving their long terms governance goals (whatever they might be). The Algonquins of Barriere Lake are demonstrating a Nation can seek to usurp the jurisdictional authority of a settler state like Canada. For example, the Algonquins of Barriere Lake have invoked their legal system embodied in the Mitchikanibikok Anishnabe Onakinakewin, a sacred constitution that
binds them to their territory in a relationship of care\textsuperscript{34}. This constitution has been used to oppose the destructive forestry operations on their lands for decades and continues today. By invoking this constitution, Barriere Lake is disrupting “the notion of non-overlapping, absolute domains of space” entrenched in settler sovereignty (Pasternak, 2014, p.154). On a broader scale, this example demonstrates the failures of the jurisdictional and administrative arrangements of the sovereign state to render meaningless the Indigenous and political orders already in place at the time of European contact. This disruption by the Barriere Lake, and the work of Pasternak to tell this story, reveals the nebulous space between assertions of Crown sovereignty and the continued practices of Indigenous territorial jurisdiction. Ultimately, Indigenous nations desire to have control over what occurs in and on their territory. However, this desire does not necessarily mean First Nations will refuse to work with Crown agencies altogether.

This space articulated by Pasternak can be used to frame the struggles over jurisdiction on the central coast of British Columbia, where the province, resource users and private citizens are facing significant challenges to their assumed jurisdiction by First Nation’s governments. I use the work of the Heiltsuk Nation and specifically the Heiltsuk Integrated Resource Management Department (HIRMD), to highlight a slightly different scenario of how state authority can, at the very least, be challenged by First Nations inherent jurisdictional authority through negotiated agreements. In Heiltsuk territory, which spans 35,553 square kilometers of land and waterways – Heiltsuk people continue to assert their jurisdiction both within the Canadian political and legal frameworks and as a sovereign nation. My focus in this chapter (and

\textsuperscript{34} In Chapter 3 of Grounded Authority, Pastnerack provides a rich account of the legal order of the Mitchikanibkok Inuk, which ensures a relation of care over Algonquin land and people. This historical account is a glimpse into the source of authority used by Barriere Lake to resist against settler assertions of jurisdiction.
the dissertation) is on how these assertions of jurisdiction continue to make life difficult for the BC government, who also assert jurisdictional authority over Heiltsuk territory, including matters pertaining to forestry, mining and tourism operations. Below, I trace a ‘gaining of jurisdiction’ for Heiltsuk Nation and several Nations on the coast through a series of land use planning process, negotiated reconciliation agreements and the implementation of these agreements.35

It is important to note these jurisdictional ‘gains’ occurred, and continue to, in part because of a negotiated approach between First Nations governments the BC government bolstered by judicial decisions. While the courts have avoided decisions that fully address the colonial presumptions upon which Canada was founded, recent legal precedents have forced the Crown to directly engage with First Nations in BC in more meaningful and comprehensive ways (Kotaska, 2013). Before turning to this ‘gaining of jurisdiction’, I look to how authority of the Canadian Crown can and has been constrained by the courts in ways that are seemingly helpful to Indigenous struggles over jurisdiction (Asch, 2014; Borrows, 2010; Macklem, 2016; Slattery, 2005), most notably with the duty to consult and accommodate.

3.2 Duty to Consult and Accommodate

The intent behind the ‘duty to consult and accommodate’ has been a contentious issue for First Nations and the BC government even before it was decided in Haida Nation v British Columbia and Taku River Tlingit River v British Columbia. This is especially the case on the

35 The implementation of these agreements is by no means the only way Heiltsuk jurisdictional authority is asserted on their territory. For example, with the recent sinking of the Nathan E. Stewart in Heiltsuk waters on October 13th, 2016, Heiltsuk swiftly took charge of the clean up efforts by demanding the command centre for the operation be located in Bella Bella. Please see, https://www.cbc.ca/news/canada/british-columbia/heiltsuk-spill-report-1.4058560
central coast where First Nations governments yield considerable political clout and remain open to negotiating agreements with the Crown (mostly outside of the modern day treaty process). As per *R v Sparrow*, the legislative authority of the Crown can infringe upon claimed Aboriginal rights provided the government can prove two things: 1) “a valid legislative objective for the infringement that is substantial and compelling”, and 2) “that the Crown’s fiduciary obligations to the Aboriginal people in question have been respected” (McNeil, 2008, p. 35). This means the second branch of the test can involve asking questions like: “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” (McNeil, 2008, p.35).  

Broadly, *R v Sparrow* led the way for *Haida* and *Taku*, which shifted the Supreme Court’s view that the existence of Crown sovereignty over Indigenous peoples was legally unquestionable (Slattery, 2005).

Specifically, in *Haida Nation v British Columbia (2004)*, the Haida Nation challenged decisions by the BC government in the early 1990s to approve the transfer of a tree farm licence from one forestry company to another (Olynyk, 2005). Haida argued that the decisions would affect their aboriginal rights and title, and so the BC government had to consult with them on those decisions. In *Taku River Tlingit First Nation v British Columbia (2004)*, the Taku River Tlinght argued the same position when they challenged a decision by the BC government to grant a project approval certificate under the BC Environmental Assessment Act to Redfern

36 *R v Sparrow*, 1 SCR 1075 [1990], p. 1119  
37 *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC73  
38 *Taku River Tlinigit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74
Resources for an access road to an old mine site (Olynyk, 2005). In both cases, the Crown argued it did not have to consult with either First Nation unless and until the First Nations had proved the existence of their rights. And in both cases, the B.C. Court of Appeal agreed with the First Nations’ arguments. The courts held that the Province should have consulted with both Nations about the decisions, even though the First Nations had not legally proved the existence of their aboriginal rights and title (Slattery, 2005). This was a significant win for First Nations, as the ‘duty to consult and accommodate’ asserted Indigenous rights and title became an effective means of forcing the provincial and federal governments to involve Indigenous peoples in decision-making processes. This is especially the case with decisions pertaining to resource development or land use activities on First Nations territories in BC (McNeil, 2008).

Again, it is important to recognize that *Haida* and *Taku* began shifting the views of the courts and the Crown towards an understanding that when the Crown claimed sovereignty over Canada, although it did so in the face of pre-existing Indigenous sovereignty and territory rights (Webber, 2016). In both decisions, the court speaks of the Crown’s assertion of sovereignty as opposed to its acquisition of sovereignty. For example, in both decisions the court described Crown sovereignty as de facto. The term de facto “characterizes a state of affairs that is illegal or legitimate but accepted for practical purposes” (Slattery, 2005, p. 437). As will be discussed below, this use of language is particularly relevant to the implementation and strategic use of several negotiated reconciliation protocol agreements, including the 2009 Coastal First Nations Reconciliation Protocol Agreement.

In practice, the ‘duty to consult’ has not lived up to its potential of facilitating honourable dealings between the Crown and First Nations governments. For example, the *Haida* decision placed the onus on the Crown to develop approaches to consultation that are proportionate to
decisions being made. According to the decision, consultation processes should not impose unworkable burdens on government decision makers and “Aboriginal groups.” This means the court left it up the Crown to decide how much consultation is required on a case-by-case basis. The *Haida* decision said the scope of the duty to consult is proportionate to: 1) a preliminary assessment of the strength of the case supporting the existence of the right or title\(^{39}\), and 2) to the seriousness of the potentially adverse effect (of the proposed decision) upon the right or title.\(^{40}\) From *Taku River*, the duty to consult was upheld, though the courts decided that governments determined how best to integrate consideration of “aboriginal interests” into government decision-making. In other words, the government does not need to develop a separate process for consultation with First Nations, outside of the normal statutory process.

Despite these limitations, the duty to consult has created many challenges for the BC government, including its implications for the (already) slow progress of the BC treaty process. For instance, at least 34 new court cases were launched against the Crown after the *Haida* and *Taku* decisions (Kotaska, 2013). These subsequent court challenges, among others developments, led to the following declaration by the BC Treaty Commission in their 2005 Annual Report title “Changing Point”:

> 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,

\(^{39}\) This is known by First Nations as the “strength of claim” process, which they must conduct if they feel their aboriginal rights are bring infringed upon by resource development decisions.

\(^{40}\) *Haida Nation v British Columbia* (Minister of Forests), 2004 SCC 73, par. 39
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 (BCTC, 2005, p.7).

Indeed, this was a changing point for the BC Treaty process because both the province and many First Nations began to turn their attention to other means through which to achieve their governance goals. The ‘duty to consult’ meant continued litigation on the part of First Nations, and also significant resources and time on the part of both Parties put towards consultation and accommodation processes and direct bilateral government-to-government agreements, such as reconciliation protocol agreements. The ‘duty to consult’ became a crucial motivation for both the Crown and several coastal First Nations to continue to resolve land use conflicts with a negotiated approach through government-to-government processes. As the courts continued to support First Nations claims to title (Tsilquot’in Nation 2014), and upheld the seriousness of the Crown’s obligations to consult (Mikisew Cree First Nation v. Canada 2005), negotiated agreements like reconciliation protocol agreements became much more than initially intended for Crown. This is the backdrop to the negotiation and implementation of the 2009 Coastal First Nations Reconciliation Protocol Agreement (and its subsequent amendments) discussed below.

41 Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 SCC 69
3.3 The 2009 Coastal First Nations Reconciliation Protocol Agreement

In late 2009, Heiltsuk Nation, along with several other coastal First Nations, and the Government of British Columbia signed the Coastal First Nations Reconciliation Protocol Agreement (hereafter known as the 2009 RPA). The original intent behind this agreement was to establish new understanding of how the signatory First Nations and BC government would acknowledge and work collaboratively to take steps to reconcile their respective Indigenous and Crown titles, rights and interests. A major purpose of the RPA was to be a bridging step to a future reconciliation of the overlapping assertion of Indigenous sovereignty with assertions Crown sovereignty on the central coast. In practice, the 2009 RPA has led to the implementation of a ‘shared-decision making’ framework known as the Engagement Framework, between the provincial ministries, such as the Ministry of Forests, Lands and Natural Resource Operations, and several individual signatory First Nation governments. The RPA also includes commitments to deliver on several socio-economic objectives, including increased access to viable forest tenures for First Nations and a more equitable distribution of tourism tenure opportunities between First Nations and private operators. Importantly, the RPA contained the ‘Carbon Offset Sharing’ program, which resulted in the required revenue for each signatory Nation to implement the RPA and where possible support other community based projects. The 2009 RPA was later reviewed in 2014 and as a result the Amending RPA was signed between several Nations and the BC government in 2016. The major amendments include improvements to the Engagement Framework and commitments to include First Nations in the re-charting of major forest tenures. This latter commitment was to ensure signatory First Nations have access to forest tenure with viable timber reserves, instead of just an increase in tenure with wood that is not economically valuable.
Arguably, struggles over jurisdictional authority are playing out in practice for Heiltsuk Nation in part because of their strategic use of the 2009 *Coastal First Nations Reconciliation Protocol Agreement*. In addition to 2009 RPA and the 2016 Amending Agreement, Heiltsuk Nation is currently involved in a reconciliation process with both the Government of British Columbia and the Government of Canada. However, this shift to a negotiated approach with the Crown, and the Crown’s eventual recognition of competing sovereignties and jurisdictional authority did not actualize overnight. Several conflicts and “negotiation hurdles” took place before the RPA was reached, and are crucial to understanding how the RPA has had implications for Indigenous sovereignty on the coast and more specifically in Heiltsuk territory.

3.3.1 **Land and Resource Management Tables and Coastal First Nations**

Heiltsuk have asserted authority in several ways over time, including being part of the BC treaty process, creating the Heiltsuk Land Use Plan, protesting the commercial herring fishery, and recently by implementing their Heiltsuk Title and Rights Strategy (which is discussed in more detail in Chapter 5). However, their strategy to advance their authority over their territory turned more political in the late 1990s, when conflict over old growth logging on BC’s coast escalated from the western side of Vancouver Island in Clayoquot Sound to the north and central coast, a region now known as The Great Bear Rainforest (Shaw, 2004). In the mid 90’s, the NDP government attempted a planning process, then known as the Land and Resource Management Process (LRMP) to settle long-standing conflicts between the industry development

42 It is important to note the analysis below focuses on the original RPA signed in late 2009. Since that time, key amendments have been made to the RPA and are touched on in this dissertation.
and environmentalists, and importantly to appease the concerns of several First Nations whose territories cover the entire land base of the north and south coast.

The political relations between First Nations and the BC government at the time these land use planning processes began was shifting because of the legal precedent set out by the Delgamuukw (1997) decision, which established that Aboriginal title was affirmed in the absence of treaties (Asch, 2014). This meant the BC government could no longer deny the existence of Aboriginal title over the majority of the province’s landbase, nor ignore specific First Nations who were claiming title to their territory in court. A decade later – while these land-use planning processes were still occurring – court decisions were continuing to advance First Nations title and land rights. Importantly, the aforementioned Haida and Taku decisions (2004) determined that settler governments were required to consult and accommodate First Nations when resource use decisions were being made that might negatively affect their claimed ancestral lands and waters. These two court cases provided First Nations governments the leverage they needed to become prominent voices at the LRMP negotiating table.

In March 2000, leaders from several First Nations met to discuss the development of a strategy to ensure their interests were included in the land-use plans for the region. They also discussed how to collectively deal with the persistent actions of the provincial government and stakeholders that threatened their territories (Coastal First Nations, 2016A; Davis, 2009, my emphasis). This was a new and crucial strategy as First Nations communities have a past of working in isolation from each other (Smith, Sterritt, and Armstrong, 2007). These meetings (and the help of the David Suzuki Foundation) resulted in the signing of the Turning Point Declaration. This declaration soon resulted in the creation of the Coastal First Nations Turning Point Initiative, a legal society governed by a Board of elected and hereditary leaders from the
Nations who signed the Turning Point Declaration. The goal of this coast-wide alliance was to “restore and implement ecologically, socially and economically sustainable recourses management approaches on the central and north coast of Haida Gwaii” (Smith, Sterritt and Armstrong, 2007, p. 5). The Coastal First Nations member Nations include: Wuikinuxv, Heiltsuk, Kitasoo/Xaixais, Gitga’at, Nuxalk, Metlakatla, Old Massett, Skidegate, and Council of the Haida Nation. The Turning Point Initiative has since changed its name to the Coastal First Nations – Great Bear Initiative. Collectively, First Nations agreed they needed to increase economic development opportunities to create employment while protecting the ecological values of the region. Since its inception, Coastal First Nations has entered into several “government-to-government” negotiations with the BC government on behalf of its member Nations. Their creation of Coastal First Nations was a signal that relations between provincial staff and ministries and several First Nations along the coast were about to change indefinitely, not just for these land-use planning processes but for determining who would be involved in decision making about the land and water well into the future.

3.3.2 Government-to-Government: From ‘stakeholder’ to decision-maker?

Specifically, Coastal First Nations wanted to be recognized as a government, not as a “stakeholder”, in negotiations with the BC government (Low and Shaw, 2011). The legal precedents mentioned above, and the creation of a united Indigenous political organization

43 Over the years, the mandate and structure of Coastal First Nations has remained relatively the same. According the CFN website: “The Coastal First Nations Great Bear Initiative is a unique alliance of nine distinct First Nations working together: To protect our coast and improve the quality of live in our communities.” Retrieved from, https://coastalfirstnations.ca/our-communities/our-people/ (Last accessed, July 6, 2018)
pushed the demands of Nations even further. If they were going to participate in land use planning in BC, they wanted it on their terms and with the authority to make decisions about their territories. The provincial government responded to these demands by signing a government-to-government protocol agreement with eight member Nations of Coastal First Nations in 2001, known as The General Protocol Agreement on Land Use and Interim Measures\(^4\). In essence, The General Protocol recognized Nations as a government in their own right and established a new “government-to-government” (G2G) process for land use planning in which the BC government committed to “work with First Nations to define principles, anticipate scope and outcomes of the land use planning process” (CFN, 2001). For the BC government, this new process meant the legal rights of First Nations needed to be addressed; it would require them to negotiate real, substantive agreements pertaining to new collaborative governance and decision-making arrangements (Barry, 2012; Low and Shaw, 2011).

The Protocol also facilitated a land use planning process to be conducted by First Nations communities that was occurring simultaneously to the LRMP processes. It was agreed that once First Nations’ land use plans were complete and consensus was reached at the LRMP tables, the BC government and First Nations government would return to government-to-government negotiations to reconcile the LRMP plan with those plans of individual First Nations. The LRMP recommendations, along with First Nations land use plans, were the basis of subsequent G2G discussions on land use in the Central and North Coast and Haida Gwaii. The G2G discussions that took place after the General Protocol was signed in 2001 dramatically shaped the outcomes

\(^4\) The General Protocol on Land Use Planning and Interim Measures (the “General Protocol”) was signed by leadership of Metlakatla, Gitga’at, Haisla, Kitasoo, Heiltsuk, Old Massett, Skidegate and Council of Haida Nation and the Premier of BC, and the then Ministers of Environment, Forest and Aboriginal Affairs (Coastal First Nations, 2016).
of land use planning processes on the north and central coast and created several new governance arrangements, such as the Coast Information Team\textsuperscript{45} (a regional scientific and technical body tasked with developing information and analyses to support land use planning at the First Nation territory and sub-regional levels) (Price et al, 2009). These G2G discussions included talks between representatives from the BC Ministry of Forests, specific First Nations and key major forest licensees, focusing on providing First Nations with access to forest tenures, business partnerships and other commercial forestry opportunities (Coastal First Nation, 2016). The government-to-government negotiations model is of major significance because it meant the BC government was committing to an entirely new process of negotiations with several First Nations in the province. Importantly, it was to become a process First Nations used to question the legislative and jurisdictional authority of the Crown.

From 2004 – 2006, the government-to-government discussions, with input from representatives from the forest industry and environmental groups, led to agreements between Coastal First Nations and the Province. It was then called the Coast Land Use Decision (2006). The Coast Land Use Decision was a culmination of agreements between the Province and First Nations, and was announced initially by environmental groups, forest companies, the BC government and First Nations’ as the “Great Bear Rainforest Agreements” in 2006.\textsuperscript{46} This [Coast

\textsuperscript{45} The Coast Information Team was managed by a steering committee co-chaired by First Nation and Provincial representatives and involving stakeholder representatives. Coast Information Team technical reports and research/analysis work products are still available: http://www.citbc.org/. A key report produced by the Coast Information Team, the “EBM Handbook” was formally adopted by the Province and CFN Nations as a guide to implementation of land use plans and EBM.

\textsuperscript{46} These agreements were finalized almost a decade later and formally announced by Premier Christy Clark in the school gymnasium of the Bella Bella Community School in Heiltsuk Territory. The level of ambition for sustainability and shared decision making in theses agreements is substantial and will be
Land Use Decision) then became the Strategic Land Use Agreements (or SLUPAs), which were signed by each signatory Coastal First Nations and the BC government. The SLUPAs were important because they continued the government-to-government process, pushing for more dialogue between the parties and a permanent forum in which G2G discussion could take place. Thus began what Barry (2012) refers to as the movement from a government-to-government model, as a theoretical concept, to an institutionalized approach. With this institutionalization came a shift in where the locus of power lay across once influential stakeholders. It shifted from environmentalists and industry to First Nations.

Ultimately, First Nations were able to leverage this shift to push forward their concerns over jurisdiction for their individual territories. What is particularly important here is that the government-to-government process created conditions to enable several coastal First Nations to assert their authority in ways that significantly challenged the authority of the BC government in practice. In doing so, a political space for negotiating jurisdiction became possible. Put differently, the G2G process led to a kind of localized version of spatial jurisdiction for First Nations through the land use planning process, and more dramatically in the negotiation of separate Strategic Land Use Planning Agreements (SLUPAs) with each individual Nation.

3.3.3 Rethinking Jurisdictional Obligations: Strategic Land Use Planning Agreements and Land and Resource Forum (2006-2008)

Strategic Land Use Planning Agreements (SLUPAs) were the first of their kind in BC, with each individual agreement containing commitments from the Province and each signatory discussed in Chapter 4. Please see https://www.for.gov.bc.ca/tasb/slrp/plan17.html for full detail of the Great Bear Rainforest Order.
Nation related to land use and decision making for each Nation’s territory.\textsuperscript{47} Broadly, the SLUPAs were the beginnings of negotiating more meaningful consultation processes. They also emphasized how crucial it was for each Nation to realize their own economic objectives. Specifically, the SLUPAs committed each signatory Nation to engage in further discussion and negotiations with BC to develop new agreements and frameworks for:

- land and resource consultation
- commercial recreation tenuring and site selection
- archaeological and heritage site inventory, impact assessment and alteration permitting
- stewardship of cedar and other cultural forest resources.

A complementary collective agreement, the Land and Resource Protocol Agreement (LRPA) was also signed in early 2006 by leadership from several CFN member Nations and the Minister of Agriculture and Lands\textsuperscript{48}. The LRPA committed the BC government to jointly develop “a terms of reference for, establish and participate in a consensus-based G2G Land and Resource Forum that would oversee and manage implementation of the SLUPAs and discussions at leadership, working and technical levels” (Coastal First Nations, 2016A, pg. 12). The creation of Land and Resource Forum was ambitious at the time; it required consensus building between Parties (namely First Nations government decision makers and technical staff and BC government bureaucrats and decision makers) that, depending on the Nation, had a history of

\textsuperscript{47} SLUPAs were signed between the Province and each of the following Nation in early 2006: Gitga’at, Wuikinuxv, Haisla, Kitasso, Metlakatla and Heiltsuk Nation The Council of Haida Nation agreed to a SLUPA for Haida Gwaii in September 2007 and Nuxalk signed a SLUPA in October 2008 (Coastal First Nations, 2016).

\textsuperscript{48} The LRPA also committed the Province to implement ecosystem-based management (EBM) on the central and north coast through each SLUPA with each Nation.
mistrust. However, the structure of the Forum was further institutionalized the government-to-
government process committed to by the Province and several First Nations governments.

The details within each Nations’ SLUPA and LRPA are important because the scope of
the commitments surpassed any of the negotiations or agreements that had heretofore been
realized. These agreements were a “precedent setting commitment by the Province to discuss and
accommodate the Nations’ strategic land use interests” (Coastal First Nations, 2016A, pg. 13).
From the CFN’s perspective, these agreements were a step in advancing signatory Nation’s
Aboriginal title and rights (Coastal First Nations, 2016). It was also a significant moment in the
relationship between Nations and the Province because it signaled a willingness on the part of
the Province and several coastal Nations to work together as two levels of government. This shift
in status as negotiating partners also shifted the Crown’s jurisdictional obligations. Increasingly,
the Province had to ensure First Nations governments were engaged in all decisions made about
their territories, including rethinking the way forest tenures were distributed and leased to major
forest companies in the region. Up until the mid 2000s, the forest industry on the coast had a
very close relationship with the Province. This was changing, however, and soon forest
companies would be forced to work with staff from First Nations government in similar ways to
that of provincial staff. This was, from the perspective of Heiltsuk Nation, an important step in
the emergence of legitimate jurisdictional authority. Several Nations, including Heiltsuk, were
making it clear they would not back down from the commitments in the SLUPAs and LRPAs
and were prepared to assert jurisdictional authority over their territories using other means.
Negotiating a SLUPA with the Province provided some resolution to long-standing conflicts
with resource users and environmentalists -- over jurisdiction in their territory, in particular.
While the vision embedded within the SLUPAs was substantial, it was not without its implementation challenges for both Parties. In practice, delivering on the commitment to develop better consultation policies and achieving the agreed to socioeconomic objectives became extremely time intensive. As a senior negotiator from CFN explains, the implementation of EBM took more time then initially anticipated:

So in the SLUPA’s was a commitment to negotiate a new arrangement for consultation and there was attached to the SLUPA a schedule around socio-economic opportunities. There were some objectives and strategies attached to those and then sort of the conservation side of implementing the SLUPAs. And as it turned out, implementing the conservation side of the SLUPAs was so complicated and time consuming that from 2006 – 2008 not much progress was made on the new consultation governance arrangements and not much progress was made in terms of actually delivering some of these socio-economic opportunities (H7, 2017).

While progress had been made in establishing new governance arrangements for the implementation of ecosystem-based management and protected areas, tensions remained over the so-called consultation occurring when major decisions were being made about land use. Decisions of this nature foregrounded again the tense matter of jurisdiction, for example, when and where major forestry companies could operate in territories remained a critical question.

3.4 ‘Upping the ante’: Jurisdiction and The Coastal First Nations Reconciliation Protocol

Coastal First Nations (CFN) seized a rare political opportunity a few years after the SLUPAs were signed, one that reinvigorated the potential for First Nations to assert jurisdictional authority over their territory. This occurred when CFN captured the political will of the Premier’s Office and several First Nations governments to negotiate a “pilot” reconciliation
agreement, which was then known as the aforementioned Coastal First Nations Reconciliation Protocol Agreement. To each signatory Nation the agreement became and is known as the Reconciliation Protocol Agreement or the ‘RPA.’ The RPA was signed in early December 2009 by the BC government and the leadership of Wuikinuuv, Gitga’at, Haisla, Kitasoo, Metlakatla and Heiltsuk Nations. Each signatory Nation interprets and uses the RPA strategically in various ways, depending on the community’s internal processes, strategy and governance goals. Heiltsuk Nation leadership clearly saw this agreement as another opportunity — in addition to the SLUPAS — to assert authority over their territory. Heiltsuk also sought to be more strategic about the economic opportunities an agreement like this could provide their community both in the short and long term (H6, 2016). Initially, Heiltsuk Nation was particularly interested in how this reconciliation agreement could be used to advance their interests in forestry (i.e. create their own successful logging company). They were also keen to use the revenues from the carbon offsets program for stewardship efforts (i.e. – creating and maintaining the Heiltsuk Integrated Resource Management Department).

The commitments from both the Province and signatory First Nations agreement were negotiated across senior representatives of the CFN and the BC government, with a final draft RPA emerging over a six-week period during October and November 2009 (H7, 2017). The discussions to begin the negotiation of the RPA occurred shortly after efforts by the Province and the BC First Nations Leadership Council to craft and reach agreement on provincial reconciliation legislation fell apart. The senior representatives for CFN took this as an

49 The Council of Haida Nation signed a similar but separate RPA – the “Kunst’aa Guu-Kunst’ayaah Reconciliation Protocol” in December 2009. For the purposes of this work, I am referring almost explicitly to the CFN RPA, unless otherwise stated.
opportunity to address the outstanding commitments over socioeconomic objectives and
decision-making arrangements in the SLUPAs. An individual who was closely involved in the
negotiations for Coastal First Nations describes it as:

_The Provincial negotiators were instructed to be creative and they had a direct line of
mandate confirmation to the Premier’s Office. Not to other Deputies or other Ministers,
directly to the Premier, which is really unique in the history of provincial-First Nations
relations. So we just dreamed stuff up. We said, okay, well we’ve got this outstanding
commitment for some new collaborative governance and decision-making arrangements in
the SLUPAs, which we never acted on (H7, 2017)._ 

This unique “window” between the BC government and First Nations leadership is important
because it allowed for a particular moment in time in which it was _politically_ possible for both
the BC government and First Nations governments to think creatively about resolving conflicts
about Indigenous rights to their lands and resources. Leading up to this political window, other
First Nations in BC were finding ways to assert their Aboriginal rights and title outside the
courtroom, the BC Treaty process and comprehensive land claims processes. The 1994 _Interim
Measures Agreement for Clayoquot Sound_ (IMA), a co-management agreement signed between
5 Nuu-chah-nulth Nations and the Province, is an example where First Nations sought to assert
their jurisdictional authority over their territories after a decades long conflict over old growth
logging. Goetze (2005, p.253) argues the IMA extends beyond “managerial issues” concerning
resource use in Clayoquot Sound to recognizing the political claims of Nuu-chah-nulth,
including (but not all), the Nuu-chah-nulth structure of governance and the need to incorporate
Nuu-chah-nulth perspectives in jointly managing the area. In short, the IMA was an instance of
“empowered co-management” that both recognized Indigenous authority over their territories and allowed for the effective exercise of this authority in practice (Goetze, 2005).

This unique political “window” pertaining to the Great Bear Rainforest, a decade after the conflict in Clayoquot Sound, highlights the BC government’s nervousness over First Nations growing legal and political authority in decision-making processes pertaining to territories. While the Premier at the time, Gordon Campbell, may have been sympathetic to First Nations rights and interests, the BC government was also motivated by the need to reconcile Crown claims of sovereignty and jurisdiction with those of First Nations assertions of jurisdiction and in some cases sovereignty. These overlapping claims, and what they meant in practice, were (and remain) the root cause of land use conflict in BC. It was clear these issues could not continue to be resolved solely by the courts for either the Province or First Nations. While First Nations in the region and across the province continued to build their title cases, several First Nations governments were willing to negotiate political agreements as well, especially given the need to build new economies and to increase community well-being in the region.\(^{50}\)

While questioning the Crown’s jurisdiction was not formally on the table when the RPA was being negotiated in 2009, the government-to-government negotiations and SLUPAs demonstrated that several First Nations on the coast were not prepared to give up asserting more authority over their territories. As the RPA was negotiated, and even now in its implementation, it became clear that several First Nations were shaping the agreements into those with jurisdictional purchase. This was largely achieved by pushing real shared decision-making

\(^{50}\) Well-being is discussed in more detail in Chapter 5.
through the Engagement Framework process. The other important piece of the RPA was the much needed socioeconomic benefits to be potentially derived for signatory Nations. Chapter 2 already designates the RPA’s provisions for Nations to have more access to economic opportunities through forestry and tourism tenures (Schedule D), and ambitious plans to develop and market carbon credit projects (Schedule C). Coastal First Nations, as well as several of the signatory First Nations to the RPA, rendered each commitment within the RPA priority and immediately began rigorous work to implement the agreement.

### 3.4.1 Competing Assertions of Sovereignty

However, what really differentiated the SLUPAs and the 2009 RPA from other land use and forestry agreements was new language pertaining to the assertion of Indigenous jurisdiction and sovereignty and the reconciling of these asserted rights with those of the Crown. Importantly, both the Province of BC and the signatory First Nations assert their rights and interests to the land and decision-making authority. Here I draw attention to the first page of the SLUPA:

*The Heiltsuk Nation asserts that:*

*The lands, waters and resources belong to the Heiltsuk Nation and are subject to the inherent sovereignty, jurisdiction and the collective rights of the Heiltsuk people;*

*They hold existing Aboriginal rights, including title and other interests, to the Traditional Territory, including the right to make decisions on how the land and its resources are used and the responsibility to steward such land and resources on behalf of this and future generations;*
The Province asserts that:

The lands, waters and resources included in its Central Coast and North Coast LRMP areas are Crown lands, waters and resources, and are subject to the sovereignty of Her Majesty the Queen and the legislative jurisdiction of the Province of British Columbia.

The two assertions of sovereignty from First Nations and the Crown reflect the need for and intention of treaties proposed by Macklem (2016). Treaties, from the perspective of Indigenous nations, were written as true constitutional accords meant to reconcile competing claims of sovereignty and jurisdiction over territories. The SLUPAs certainly did not go this far with their intent, however; at the time the SLUPAs were signed, they were the first of their kind in BC. In them, the Province and signatory First Nations governments solidified their commitments to work collaboratively together in a government-to-government (G2G) process going forward. Here, the G2G process was defined as “formal opportunities for bilateral discussions between the Parties which seek to resolve land use and resource management issues…” (SLUPA, p. 3). Importantly, in theory, the SLUPAs were among the first land use agreements to consider the reconciliation of asserted Indigenous sovereignty claims with those of the Province. Though, as explained above, the ambition expressed in the SLUPAs signed with individual First Nations proved challenging and time consuming to implement in practice.

Returning to the 2009 Coastal First Nations Reconciliation Protocol Agreement (RPA) between Coastal First Nations and the BC government, the signatory Parties took the consideration of reconciliation takes one step further by explicitly describing the RPA a “bridging step” to reconcile these overlapping assertions:

The Province acknowledges that the Nations and First Nations have aboriginal title, rights and interests within their traditional territories and this Reconciliation Protocol is a
bridging step to a future reconciliation of those aboriginal title, rights, and interests with provincial title, rights and interests (p.1).

In 2009, this recognition of Aboriginal title, rights and interests was something new for the Province of BC, as historically they had denied Aboriginal rights and title ever existed, or at least had done so until a few decades ago. Also, by signing the RPA, signatory Nations agreed to accept the Province asserted sovereignty and asserted legislative jurisdiction in a legally binding contract. This was a huge step for First Nations governments, who must have viewed the Crown’s recognition of Aboriginal title, rights and interests to be more significant than their [First Nations’] recognition of the status quo (i.e. – assumed Crown sovereignty). This recognition was arguably more important than the Province’s duty to consult, which at the time had been described by First Nations leaders as “a complete waste of time” (DC, 2017). As a technical staff member from Heiltsuk explains:

So the really key thing that the RPA does is recognize. The province recognizes title of the Nations and the Nations recognize that the province also has a claim to title. That was quite ground breaking when it came in and it’s there. It [title] underlies everything. I mean obviously there wouldn’t be a requirement to consult and accommodate if there was not title underlying everything. That recognition component as opposed to denial, which under the provinces consultation framework, is based more on denial and strength of claim. This [RPA] is recognition. So it’s something even if it’s not respected in decisions (H12, 2016).

This assertion of Aboriginal title was certainly a signal the BC government was thinking about First Nations’ claims to their territory in a more legitimate way. Whether or not this recognition was initially taken seriously by government staff is less clear. But by formally recognizing First Nations assertions of their rights and title to their traditional territory, the BC government was
acknowledging another form of authority that was overlapping their own and over a territory. Whether this was fully clear to the province at the time is uncertain. More importantly, signing the RPA meant the BC government could be held accountable. Hereafter they needed to both recognize co-existing title, but also address this overlap of jurisdiction in land use decision-making for the region. While the beginnings of this recognition with the SLUPA’s and LRPA was first evidence, the RPA foregrounded this overlap of jurisdiction and so too inserted that need into all interactions between government staff and First Nations governments, and when negotiating on behalf of Coastal First Nations.

3.5 The Engagement Framework: Disruption of Unilateral Decision Making and so Jurisdiction Itself?

As first hinted above, a central mechanism through which the jurisdiction question was forced onto the table was through an agreement of process known as the Engagement Framework (here in known as ‘the framework’). The purpose of the Engagement Framework is to “provide a framework for land and resource decision making that is more efficient, effective and responsive to the interests of each Nation and First Nation and the Province.” Under the framework:

*The Parties agree that implementation of the Engagement Framework is a step toward shared decision-making and is intended to reduce or avoid the number of land and resource disputes and minimize the need for the Parties to engage in litigation or other types of formal dispute resolution (p.6, italics added).*

In practice, the Engagement Framework is intended to do two things: 1) ensure the Province is undertaking a more meaningful process of consultation with member Nations when
resource users apply for permits to develop or operate within their territory\textsuperscript{51}, and 2) provide Nations and the Crown with a more efficient, collaborative process through which decisions about land and resources could be made using a new shared decision making process. It is important here to highlight the distinction between \textit{shared} decision-making and \textit{joint} decision-making. In shared decision-making, First Nations have an advisory role and the province retains ultimate authority (Kotaska, 2013). In joint decision-making, the ultimate authority is shared in a process that requires consensus of both parties (Kotashka, 2013). The closet example of joint decision-making is the established Haida-BC joint decision-making council, The Haida Gwaii Management Council, which is part of the shared decision-making structures in the Kunst’aa guu Kunst’aayah Reconciliation Protocol between the Council of the Haida Nation and the Province of British Columbia. This Council is required to reach a consensus based decision, with neither party having veto power. If a consensus-based decision cannot be reached, an independent decision-maker is used to make the final decision.\textsuperscript{52} Interview data from Kotaska (2013) reveals that several decision-makers from the BC government still see the Province as the “ultimate, and unbiased, decision making authority” (p. 333).

Not surprisingly, the issue of ultimate authority remains the most significant challenge in the implementation of the 2009 RPA and its subsequent amendments. Of note, the 2009 RPA also includes a statement pertaining to the authority of both the Province and signatory First Nations within the Engagement Framework:

\textsuperscript{51} It’s important to note that the province cannot reply on the Framework to say it has fully met its legal consultation or accommodation requirements. Instead, the Framework is described in the Reconciliation Protocol as a tool to assist the parties in meeting their legal obligations.\textsuperscript{52} For an illuminating and ethnographic account of the Haida-BC joint decision-making process, please see Kotaska (2013), pg. 329-337.
6.3 This Protocol does not change or affect the positions any of the Parties have, or may have regarding its jurisdiction, responsibilities and/or decision-making authority nor is it to be interpreted in a manner that would effect or unlawfully interfere with that decision-making authority. (pg.6)

The above statement means the asserted authority of First Nations cannot undermine Crown jurisdiction, which is legitimized by its legislative authority. However, by the wording “[the RPA] does not change or affect the positions any of the Parties have, or may have, regarding its jurisdiction, responsibilities and/or decision-making authority” leaves open an interpretation whereby signatory First Nations’ assertions of their inherent jurisdiction (based on the authority of their hereditary governance systems) likewise cannot be undermined by the Crown. In practice, this statement is really saying the RPA does nothing to change the fact that the Province has ultimate authority and jurisdiction over First Nations’ territories on the central coast. While this statement is in direct tension with my analysis above, my intention is to show how First Nations negotiators, particularly from Heiltsuk Nation continue to challenge this statement by asserting persistently asserting Heiltsuk inherent jurisdictional authority.

3.5.1 Frustrations of the Engagement Framework

While the Engagement Framework didn’t change the minds of BC government staff in terms of their “ultimate authority”, it certainly exacerbated the tensions between provincial staff and First Nation’s government staff over consultation. The framework was meant to function as part of the Crown’s ‘duty to consult.’ While the Haida (2004) decision (which, again, designated the ‘duty to consult’ as valid and robust) was considered a strategy that effectively shifted power in land and resource decision-making in the direction of First Nations (Kotaska, 2013), the
processes used to conduct consultation have proven ineffective and frustrating to Nations on several accounts. Firstly, even though the Province must demonstrate a reasonable effort to address the First Nations concerns, the Province has no duty to agree with a First Nation, only the duty “to a meaningful process of consultation” (Coastal First Nations, 2016B). However, the Engagement Framework that was negotiated as part of the RPA was far more detailed and advanced than any other “consultation” policy that had been used prior by the BC government. The RPA built on the progress made by the senior negotiators at CFN by negotiating SLUPAs for each individual Nation with respect to more collaborative consultation processes. As a senior negotiator for CFN explains:

When we started negotiating all of this stuff in 2000, First Nations had no say.

Consultation was completely token. You could pour your heart into a referral on a logging cut permit and it was a complete waste of time. So there were blockades and stuff. (H7, 2017)

In part, this framework was created to ensure the Province was undertaking a more meaningful process of consultation with signatory Nations, especially when resource users applied for permits to develop or operate within their territory. As discussed in Chapter 2, when a proponent wants to conduct an activity or develop a resource on First Nations territory, the Crown is required to consult with First Nations before the project is approved. Much of the time this consultation process is set in motion when the Crown sends a referral letter to the specific First Nation to request their input on proposed land or natural resource operations occurring in

53 It’s important to note that the province cannot reply on the Framework to say it has fully met its legal consultation or accommodation requirements. Instead, the Framework is described in the Reconciliation Protocol as a tool to assist the parties in meeting their legal obligations.
their territory. Kotaska (2013) explains some Nations have been able to create positions, departments, processes and systems to coordinate referrals, which have become part of Crown consultation processes with First Nations. However, other Nations do not have such capacity and the referrals get piled on desks in Band Council offices. In many cases, the Crown considered their obligation to consult with First Nations fulfilled simply by sending a referral letter.

The model of consultation prior to the Engagement Framework was ineffective from the perspective of First Nations because Nations did not have the capacity to adequately respond to referrals within the stipulated process and timeline set out by the Province. As we recall, the Haida decision said the ‘duty to consult’ is proportionate to a preliminary assessment [by the Crown] of the strength of the case supporting the existence of a First Nation’s right or title in the area proposed for development. That is, in the absence of the Engagement Framework, the Province decides the level of consultation necessary by using a ‘strength of claim’ process whereby the First Nation is required to submit evidence to support their title claim. If the Crown decides the First Nation has a strong enough title claim to the area, the Crown might put forth marginally more effort to work with First Nations through the consultation process because of their fear of being taken to court. And even if the Nation had the capacity with a “Referrals Coordinator” position, the Province uses an internal process to make their final land use decision. There was (and still is to some degree) no guarantee the provincial staff conducting consultation process meaningfully considers the information put forth by Nations when making recommendations to the decision makers. A negotiator for CFN describes consultation prior to the Engagement Framework as:

...so prior to the Engagement Framework, provincial staff would do a strength of claim assessment. If they thought you didn’t have much rights, they wouldn’t even bother talking
to you. If they [Nations] had evidence of strong rights, they realized they needed to consult with you. Consultation was...they would send you the information and you’d respond to it, they would think about it, they would unilaterally develop recommendations to their decision maker and do their own internal risk assessment and away they went (H7, 2017).

From a CFN perspective, a function of the Engagement Framework was to help Nations strategically engage with the Province in a way that ensured their interests and recommendations for each referral were taken seriously in the decision-making process. The hope of CFN was a “back and forth” process between First Nations technical staff and provincial staff that would allow for a more collaborative dialogue to take place that would lead to better informed land and resource decisions. For the province, the Engagement Framework has put in place a much more procedurally stringent requirement on what they had to do to satisfy the process (H7, 2017). As a CFN negotiator explains:

So really one of the primary purposes, kind of Machiavellian on my part was just to get to a creative process whereby it was really in the interest of First Nation representatives to talk to provincial staff...not necessarily in an adversarial way, just simply... the guys on the other side are required to reach consensus with you...to make all reasonable efforts. That’s a pretty high legal standard. They [the Province] has to back and forth and talk about the issues and try and work things out in ways that they have never been required to before (H7, 2017).

From the province’s perspective, the Engagement Framework was and is considered a step towards “shared decision-making” process, which provincial staff and decision makers find to be very progressive (anonymoun, personal communications, June 22, 2017). Several Nations, on the other hand, consider the EF a glorified consultation process and feel there is much more work to
be done before shared decision making is achieved (H4, 2016). First Nations were interested in not just better “consultation” processes for major land and resource decision that may negatively impact their territory, they wanted to be more involved in the actual decision making, using their own information, and in some cases, their own laws (H2, 2017). Even though the intent of the Engagement Framework was to get to “shared decision making” over land and resource decisions, from the Heiltsuk perspective this did not come to fruition with the initial 2009 RPA. Currently, the Province and several signatory First Nations to the 2016 Amending RPA are making significant efforts to use the Engagement Framework to reach something closer to shared decision making.

### 3.6 Heiltsuk Nation and the Engagement Framework

For Heiltsuk Nation, the Engagement Framework has been called a moderate success by resource staff and elected leaders because it has established a more efficient process for tracking incoming referrals and responding to each referral with meaningful input within the allotted timeframe (H6, 2016). HIRMD has established a “Forestry and Referrals Committee” to review each referral that comes to the HIRMD Office, and through the Forestry Manager and Referrals Coordinator, the feedback is collected and engagement with the Province takes place over email and phone. As a HIRMD resource staff member describes:

*The Engagement Framework that comes out of the RPA has been okay, I mean there are obviously holes in it. That’s where we have been trying to develop our own policy, to sort of alleviate some of that. But the referrals process is...it was a good trial run coming out of the original RPA. The Engagement with the government was strained prior to that, and you know I think we were able to work out a fairly good system of tracking referrals and we’re*
sort of getting to the point now where we can get on our feet and deal with our referrals on
time, effectively, and not just rushing things along but actually putting meaningful input
into referrals, through the framework and being able to go back and forth with the
government on referrals is…that process has improved greatly (H4, 2016).

While there are certainly challenges with the Engagement Framework, which will be discussed in detail below, this new consultation process has demonstrated a source of political strength from Heiltsuk Nation. As an elected leader explains:

*I guess the other would be…and its had its own growing pains but the engagement referral
process, that’s one of the things our department [HIRMD] has really taken really
seriously. They are so on top of the referrals and really meaningfully implementing that
portion of the protocol too, which only strengthens us in terms of how the province deals
with us, in terms of referrals, and in terms of a Nation - so I think that’s really, really good
(H9, 2016).

However, while it is now completely unacceptable for Provincial staff not to engage in serious consultation, several challenges remain as concerns timelines and capacity. For example, the initial timelines set out in the Engagement Framework require Nations to respond to the referral in accordance to the Province’s schedule and expertise. A HIRMD staff member responsible for processing incoming referrals has indicated that timelines within the Engagement Framework do not meet the community’s schedule. For example, there have been several instances where a Forestry and Referrals Committee meeting had to be postponed or rescheduled because members were away for days at a time harvesting herring roe, which of course is their Aboriginal right. As

54 For example, “If an Applicable Nation or First Nation does not provide a response within 10 business days, the Provincial agency will…” (2009 RPA, p. 13).
he puts is, “this is a foreign tool, and administratively and clerically, it’s a pain in the ass” (H3, 2017).

The capacity of staff to process the referrals and so enact jurisdictional authority, let alone within the given timeframe, is limited. In many cases, the Province has the skill set and/or access to the training required to efficiently use the Engagement Framework in a way that works in their best interest. Several, if not all, communities do not have this level of training or resources. And even if the capacity does exist within a First Nations’ government (i.e. – with a Forestry Manager or Referrals Coordinator position), the workload associated with dealing with just one referral, let alone hundreds, is enormous and largely unrealistic. As a result, technical staff feel they “can’t do the level of due diligence the community deserves” for each referral (H3, 2017). Even today (early 2017), and with recent amendments to the Engagement Framework process, frustration with Provincial staff is still felt by member Nations along the coast.

It is certainly not just Heiltsuk Nation disappointed with aspects of the Engagement Framework. A member of Nuxalk Nation explains the Province constantly ignores her Nation’s input when they reply to referrals, even while using the Engagement Framework process:

In my opinion, the referrals system is so lacking real, I guess, collaborative-ness with the provincial government. It isn’t there and I’ve had some direct experiences recently where they don’t respect us. We say here are our concerns and they say “we see your concerns, we try to understand but we really don’t think it’s going to affect your Aboriginal rights and title so we’re going to give permits (said in a mocking tone). And it happens constantly (H10, 2017).
This kind of response by the Province highlights the ‘shared’ aspect of this decision-making process is far from being actualized in any meaningful way for coastal First Nations. It also shows that the Province remains the ultimate authority in this process because provincial agency staff act like they have the legislative authority to decide whether or not Aboriginal rights and title have been infringed. Rather, should this process not start from the understanding that any proposed development on First Nation’s territory infringed on their title and because of this, First Nations, at the very least, should have authority in the decision making process?

The RPA, through the Engagement Framework, has certainly changed the way the BC government consults several coastal First Nations on major land use decision. Despite this, Nations have expressed their discontent with the Engagement Framework, calling it just another process and not shared decision-making. This disappointment in the Engagement Framework process comes in part because several Nations, not just Heiltsuk, want to be considered real decision makers; they want Crown-recognized jurisdiction with in their own territory. A HIRMD staff member explains that this jurisdiction would mean the Heiltsuk government (i.e. Heiltsuk Tribal Council or HIRMD) having the authority to decide what happens in their territory (i.e. tourism operations) and what processes will be used to make those decisions.

...if I [Heiltsuk member] wanted to start an ecotourism operation, why should I have to go to the [BC] government for a license to do that in my own territory? Why can’t I come down here [HIRMD] and talk to my own people, to our managers and say ‘hey, this is what I want to do.’ And we can together work that out internally without getting others involved. So that’s sort of been a stumbling block for people trying to get things in operation. (H4, 2016)
The above statement signals Heiltsuk Nation is not only seriously questioning the jurisdicitional authority of provincial Crown; Heiltsuk is interested in actualizing their authority through jurisdictional control over their territory. Below, I discuss that one of the major challenges of actualizing Heiltsuk jurisdictional authority are tensions between the legitimacy of the source of this authority.

3.7 Challenges to Jurisdictional Authority

Significant attempts by both the Province and Coastal First Nations to improve the outcomes of the Engagement Framework have occurred during the past few years. For example, major amendments made to the Engagement Framework in 2016 “bind the Province to work to achieve consensus and to solve larger policy issues on a G2G basis as they come up” (CFN, 2016, p. 6). That is, although the Province is not required by law to reach agreement with each signatory Nation using the framework, they are required to make all reasonable effort to reach consensus on recommendations and to resolve disputes through government-to-government process. Despite these amendments, significant challenges persist regarding decision-making authority and where the source of that authority is derived. The sentiment below captures this tension in real time from a HIRMD staff member after attending a two-day CFN Engagement Framework Information Sharing and Strategy workshop in Vancouver. The workshop was organized for First Nations government staff and provincial government staff to meet to discuss recent amendments to the Engagement Framework and to share information and discuss ideas, strategies and best practices for engagement on referrals. While the provincial staff seemed pleased with the progress being made with the Engagement Framework, several First Nations
government staff part of that workshop were very frustrated. The HIRMD staff member reflects on his interactions with the provincial staff as follows:

_We [Heiltsuk] are living it. They [the province] are not. They [the province] keeps saying ‘this is great.’ But we’re not talking about boxes being checked. It’s a wee step towards shared decision making about land and water. We are trying to ram our jurisdiction into your system. How do we get to shared-decision making? Collectively. Not your way. Your way doesn’t work, at least from our [First Nations] perspective. There’s a long way to go. ‘We’re really pleased with this’ says the province. Bah. This can’t take another 20 years._ (H3, 2017, my emphasis).

Although the Engagement Framework has been considered a success because it has put in place a more efficient referral processing and tracking system for Nations, it still doesn’t provide Nations with a level of decision making power they feel is commensurate with their position as a sovereign body with jurisdictional authority. And rightfully, Nations connect this decision-making authority to their inherent rights and title as Heiltsuk people. That is, Heiltsuk Nation exercise their hereditary governance systems to enact much of this jurisdictional authority.

The jurisdiction referred to by the HIRMD staff in the quote above is the jurisdictional authority that comes from being Heiltsuk, and that is embedded in millennia of Heiltsuk generations practicing their _Gvi’ilás_. _Gvi’ilás_ is a set of customary laws that governs the overarching system of the Heiltsuk Nation (Heiltsuk Land Use Plan, undated living document). Heiltsuk exercise a system of governance based on hereditary chieftainship that is continuous from pre-1846 through to present. The _Hemas_ (hereditary chiefs) inherit the responsibilities for portion of the territory to which each chiefly name is attached (Heiltsuk Title and Rights Strategy, 2015). It is understood that all 35,553 square kilometers of Heiltsuk Territory
(including land and waters) continues within the control of the Hemas. The ancestral names of the Hemas, and their immediate and extended families, affirm their title and rights to the lands, waters, and the resources within their territories. Importantly these names hold 7áxvá, the authority, power, responsibilities and jurisdiction derived from connections and ownership to their lands. The Hemas and their families affirm their title and rights in the Potlatch. This is where Hemas pass down traditional Heiltsuk names that come from specific places within Heiltsuk territory. Heiltsuk assert they have maintained exclusive authority over their territory through their hereditary governance system.

Hereditary governances systems are well established in several First Nations on northwest coast (Robertson, 2012), as well as on the west coast of what is now Vancouver Island (Raibmon, 2005). For example, Goetze (2005) describes traditional governance structures of the Nuu-chah-nulth in which hereditary chiefs are responsible for the management and distribution of lands and resources for their communities. Menzies and Butler (2008) argue that for the Ts’msyen and Gitxaala, the social and cultural authority of their customary leadership continues today, including the social relations of kinship and ranked hereditary names. In Becoming Tsimshian, Roth (2008) explains that for the Tsimshian people, names (or name-titles) are characterized as objects of inheritable wealth (2008). Similarly, Halpin (1984) implies that names are wealth, and for the elders of the community of Hartley Bay, names were of ultimate social value (p.59). In other words, value was in the name, and not necessarily the individual having that name.

Several coastal Nations, including Heiltsuk, Kitasoo and the Haida, have active hereditary governance systems in place, working in conjunction with the liberal democratic governance arrangements set out by the Indian Act. For example, in Bella Bella, the Hemas Council (a
council of hereditary chiefs) advices the elected band council on several matters before final decisions are made by the elected council members. One of the major frustrations for Stewardship Directors is the provincial government’s ignorance and perhaps disrespect of the jurisdictional authority inherent in the hereditary governance system. As a technical staff from the Kitasoo Nation explains:

I think the biggest thing for us is...even though we signed this agreement and it strengthens some of our work, the province doesn’t consider us decision makers in the process and we’re not viable. We can make recommendations for these processes, whether it’s the development of a conservancy management plan, whether it’s a permit but we’re not decision makers in eyes of the province and we keep getting the response you can’t fetter the authority of the minister. We tell them that you can’t fetter the authority of our hereditary system either so we just continue to implement it, with or without the province, with this Reconciliation Agreement at least we’ll have a mandate to rule our territory and we’re trying to find a way to do that. (H7, 2017)

What is crucial here is the emphasis placed on the authority of the Kitasoo hereditary governance system; asserting it as having the same level of decision-making power as the Minister of a provincial ministry (i.e. the Ministry of Forest, Lands and Natural Resource Operations). This is not unlike how Pasternak (2017, p. 5) understands jurisdiction to be the “authority to have authority.” The Kitasoo Stewardship Director does not wish to recognize the authority of the Minister (vested in the legislative authority of the Canadian sovereign state) because that model of decision-making authority does not hold as much legitimacy as the hereditary governance system of his community. Rather, he is much more willing to accept the authority (and therefore
laws) of his hereditary chiefs. As discussed above, this system of governance derives its authority from the ancestral names of their hereditary chiefs who are responsible for the resources within their areas of the Nation’s territory.

When asked how the provincial government responds to the Stewardship Director’s assertions that the authority of his hereditary chiefs cannot be fettered, he explains the Province will often ignore it, however he believes the Province “know(s) there are challenges on the ground in terms of how decisions are made” (DN, 2017). That is, in practice, even though the Province holds jurisdiction over First Nations territory, provincial agencies are failing to provide adequate resources and administrative arrangements to ensure resources are properly managed. This has been a prominent tension in Kitasoo territory, where BC Parks is authorized to monitor tourism operations, though completely lack the resources to do so and it is First Nations who are left to deal with the consequences:

*The province doesn’t have the capacity, they don’t have the money, they don’t have the people to get out there to monitor and manage. And they still make decisions for our territory in terms of permits and people and we are left to babysit. That’s just unacceptable in my opinion.* (H2, 2017)

Further, even though Kitasoo do not have official jurisdictional authority (i.e. – in the eyes of the Crown) over their territory, they are more capable of managing it in ways that are consistent with their stewardship goals. This is explained in the quote below in the context of tourism operators and the work of the Coastal Guardian Watchmen:\textsuperscript{55}

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\textsuperscript{55} The Coastal Guardian Watchmen program is an important part of all coastal First Nation’s efforts to monitor, protect and restore the cultural and natural resources of their territories. They are men and women from each coastal community who “ensure resources are sustainably managed, that rules and
We have a number of commercial operators who use our [Kitasoo] territory. Everything from sport fishermen to tourists and sport fish lodges, to helicopters...it just goes on and on. We’re fine with that but our Coastal Guardian Watchmen, we invest about $250,000 dollars a year and zero dollars come from the Province of BC. Again, we invest $250,00 and we probably have one of the most robust Watchmen Programs on the Coast and we’re out there everyday. We have a data set to prove that. I have maps that show our patrols versus BC Park patrols. I’ve mapped all the BC Parks and DFO patrols and... they are not out there. (H2, 2017)

In other words, the expression of different forms of authority are differentially recognized; “on the ground” expressions of authority are that of the Kitasoo (i.e. the people that know what’s actually going on, and are the first to deal with problems), however, it is the Crown that remains the formal decision-making authority. Another example of this difference is:

provincial agencies such as BC Parks continue to hold the jurisdictional authority to distribute park permits to users who wish to access areas within the territories of coastal First Nations such as Kitasoo. From the perspective of a Kitasoo member, this is problematic because First Nations are not included in the process used to provide these park permits:

They are giving people permission for people to access our territory and unfortunately First Nations do not have a lot of weight in the decision making process and we said listen “we are a level of government, we signed off on the Reconciliation Agreement and this Collaborative Management Agreement with the Province of British Columbia and we said...

regulations are followed and that land and marine use agreements are implemented effectively” (Coastal First Nations, 2017). Retrieved from, https://coastalfirstnations.ca/our-environment/programs/coastal-guardian-watchmen-support/

For an analysis of the Coastal Guardian Watchmen and the ‘Regional Monitoring System’ they use to monitor ecological and cultural values in their territory, see Chapter 5 of Kotaska (2013).
that there are two levels of government here at the table.” And that’s what the whole Reconciliation Agreement is about. How do we reconcile our differences and how do we find ways to collaborate? (H2, 2017)

From a First Nation’s perspective, the 2009 RPA and 2016 Amending Agreements have the potential to be used as a tool for two levels of government, with different sources of authority, to work collaboratively together on issues of overlapping jurisdiction. Until recently, the Province has been comfortable asserting its jurisdiction over First Nations territories, as it is the sovereign state with legislative and legal authority of the Crown. However, through an on “the ground presence”, Kitasoo and Heiltsuk are demonstrating the Province is not the only political game in town.

From the Heiltsuk perspective, there is frustration in the fact that land use decisions are still not handled in what they deem as a legitimate fashion, through a process or through the referrals office in Bella Bella. As expressed below, these frustrations have deep roots in Heiltsuk assertion of their Indigenous rights and title over their territory.

Something that we’ve really been wanting to go towards is basically when, for example, when someone applies for license of occupation in our territory, we sign off jointly on that with the province. You know, we approve that process, and then they [government] approves that process and then they come get the license. What we’ve been sort of wanting to do is sort of issue that through our own office, cause we don’t recognize, we’ve never surrendered any of our title and rights to either government. But still they are having a hand in management… so it’s something we’ve been trying to figure out a way on how we can work towards issuing our own licenses. Being able to improve our own processes and not have to go through the government (H4, 2016).
From this reflection, Heiltsuk aspirations of jurisdictional authority would mean that processes and administrative arrangement pertaining to the activities of jurisdiction (i.e. approval of licenses for tourism and forestry, permit fees, etc.) occurs separately from those of the Province. An example such as this is consistent with the Heiltsuk Title and Rights Strategy, which, in no uncertain terms, asserts Heiltsuk are descendants of ancestors who exercised sovereign authority and ownership over their lands and waters for thousands of years. As such, Heiltsuk have recently reaffirmed the continued existence of their rights as a Nation to exercise jurisdictional authority over the land, waters and resources within their territory.

These claims signal the new reality that several provincial and federal agencies are experiencing when working with First Nations governments in BC: issues of title, jurisdiction and authority are not going away, and nor are political agreements like the RPA. It is clear First Nations governments continue to push the BC government to change their thinking around decision-making authority on the coast. While the BC government has since changed from Liberal to NDP, in early 2017 some First Nations leaders found themselves in direct face-to-face meeting with Provincial decision-makers to discuss concerns First Nations have regarding use of their territory: 

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So I have a meeting on the 25th – Minister of FLNRO, BC Parks and MARR – and we’re going to see where that discussion goes but I don’t think that we’re considered a decision maker in the process. We can make a recommendation in it but we’re not considered a

56 My guess is these meeting have and will continue with the new NDP government.
decision maker and that doesn’t sit so well with me because I think we want to know who is coming into our backyard, we want to know are they good people, are they safe, what’s the industry that they’re doing. Does it jive with what we want to do? (H2, 2017)

At the very least, meetings with BC decision makers, and the persistent interactions between First Nations staff and provincial agency staff like those described above are consistently challenging what Pasternak (2014, p. 156) has called “notion of non-overlapping, absolute domains of space” entrenched in the in the Canadian state model. At best, these encounters are forcing the provincial and federal governments into uncharted and uncomfortable political spaces that deal directly with the reconciliation of Indigenous sovereignty and jurisdiction with their own.

3.8 Conclusion

While the RPA does not provide Heiltsuk with the jurisdictional authority it seeks and deserves, it does make strides in unsettling the notion that “jurisdiction” is an object fully formed and conjoined to state sovereignty. Several Nations on the coast, including Heiltsuk and Kitasoo, practice their inherent jurisdiction daily (e.g. by being on the water as Guardian Watchman, by implementing their own management plans, etc.), and as evidence by the conviction of resource managers from both Nations, expression of Indigenous jurisdiction authority will only continue into the future. However, I have been careful not to argue the 2009 RPA and 2016 Amending Agreements are the silver bullet for all jurisdictional gains by Indigenous nations on the coast. In the eyes of the Crown, Nations do not hold jurisdiction over Crown land. However, encounters between the Province and First Nations governments bolstered by the 2009 RPA have revealed insights into the ways First Nations authority is and should be understood through negotiated agreements moving forward. For example, from what negotiators from Heiltsuk and Kitasoo
have reported, Nations do not only assert their inherent jurisdictional authority (and knowledge) to manage and steward their territories, their capacity to do so in terms of boats and trained staff extends beyond the resources of provincial agencies (e.g. BC Parks). And, for the time being, some signatories to the 2009 RPA and 2016 Amending Agreement remain open to working collaboratively with the Crown to “work out” jurisdictional issues (while the alternative approach could be for First Nations to attempt process of jurisdictional alone).

The 2009 RPA has facilitated an important beginning within a new political reality for the BC government and First Nations governments – a reality that may include a meaningful reconciliation of Crown and Indigenous jurisdiction as a matter of central, even forefront, concern. While the Province may hail the 2009 RPA as successful, Coastal First Nations and the Heiltsuk specifically, see it (more reasonably) as a small but important step towards Crown recognition of their inherent jurisdictional authority.

While Protocol Agreements are making some governance gains for First Nations, there is a strong critique by Indigenous scholars such as Alfred (2005), who is opposed to any “negotiations in state-sponsored and government regulated process” because he believes real change will only be achieved “after Onkwehonwe [First Peoples] resurges against white society’s entrenched privileges and the unreformed structure of the colonial state” (p.22). By this, Alfred is referring to the fact that negotiated agreements are not worth the time and resources from Indigenous communities because they operate within the colonial project which created, and continues to reproduce, the oppressive conditions for Indigenous Nations in the first place. And this is certainly a compelling argument. Though, within the context of reconciliation protocol agreements, I wonder if, for several First Nations in BC, the risk of not participating in negotiations with the Province may be greater. I attempt to address Alfred’s critique, and others
like Arthur Manuel, in Chapter 5. A similar, but perhaps more subtle, sentiment was echoed by a Heiltsuk leader regarding the RPA. Below, the leader is referring to all the negotiated agreements thus far. While she is an integral part of the political process, she struggles with it on a personal level:

*You look at things like that [the RPA] and you always think, "do we really have to give that [sovereignty] up or do we really have to phrase it that way?" I feel this way about most MOUs with the province or agreements or conversations where you just have to state things so politely. I feel like I want to speak in the raw truthful way of our power and our sovereignty and not kind of have to put it in that bureaucratic English that really sanitizes us and the way we represent what we do. Whether that actually has any functional limitations on our work I don’t know but it’s a personal frustration I guess* (H1, 2016).

That is, Nations do struggle with the fact that it is up to them to work within a colonial governance system imposed on them and often times inconsistent with their own inherent laws and governance. Admittedly, my arguments to demonstrate the small bits of progress made for Indigenous governance in BC is an attempt to respond to Audra Simpson’s rightful critique of scholarship (including anthropology, political science and political theory). She writes, “Because of their Western, institutional, and statist focus, none of these disciplines have dealt evenhandedly, robustly, or critically with Indigenous politics and how they challenge what most perceive as settled. This is the presumption that the colonial project has been realized: land has been dispossessed; its owners have been eliminated or absorbed.” It is incumbent upon us all to demonstrate the colonial project, whether malicious or not, is alive and well.
Chapter 4: On the Emerging Nature and Logic of Indigenous Well-Being for Heiltsuk Nation

On January 26th, 2016, Heiltsuk leaders Chief Marilyn Slett, Jess Housty and Pam Wilson made their way to the Bella Bella airport. They were there to greet the then BC Premier Christy Clark, the Minister of Forest, Lands and Natural Resource Operations, Honourable Steve Tomson, and a delegation of government officials and welcome them to Heiltsuk Territory. The visitors then went to the Bella Bella Community School gymnasium to officially announce and sign The Great Bear Rainforest Order. The signing of Order represented “the tremendous amount of work it took to come up with these unique solutions,” said Steve Tomson. “This agreement has actually been about 10 years in the making, these things don’t come together unless we decide to think about the things we share in common. And that’s what this agreement is all about,” said Premier Christy Clark. To demonstrate good faith the BC government presented Chief Marilyn Slett with $150,000 cheque to be allocated to training funds for secondary students in the forestry sector. Chief Marilyn Slett reassured the audience of community members of Heiltsuk’s commitment to ensure work being done with the government was aligning with Heiltsuk values. She also emphasized that Heiltsuk well-being was intimately connected to the lands and waters. The ceremony ended with the children drummers and singers singing the Herring song.

Human well-being is a commonly known concept on BC’s north and central coast. The goal of ‘increasing human well-being’ has been a major commitment contained within several of the political agreements negotiated between the BC government and Coastal First Nations since the early 2000s (Smith, Sterrit and Armstrong, 2007; Price, 2009; Smith, 2010). Human well-
being was introduced initially when a new forestry management regime, known as ecosystem based management (EBM), was negotiated between environmentalists, industry, the BC government and several coastal First Nations. Agreements on implementing EBM were also a critical moment to end a more than decade-long dispute over logging (Low and Shaw, 2011/12; Page, 2007; Price, 2009; Howlett et al, 2009). EBM sets targets for the health of both the ecosystem and the people who live in it. In the early days of land use planning processes, known as the Land and Resource Planning Management tables (LRMP), EBM was defined as:

...an adaptive, systematic approach to managing human activities that seeks to ensure the co-existence of healthy, fully functioning ecosystems and human communities. The intent is to maintain those spatial and temporal characteristics of ecosystems such that component species and ecological processes can be sustained, and human wellbeing supported and improved (my emphasis, Coast Information Team, 2004, p.2).

The human well-being (HWB) component of EBM is the focus of this chapter. Initiatives to achieve high levels of human well-being are a crucial part of the politics of this region, particularly because of the signing of the 2009 RPA, the 2016 Amending Reconciliation Protocol (herein known as the 2016 Amending RPA) and the 2016 Great Bear Rainforest Order. The Great Bear Rainforest Order is a ministerial order encompassing a range of land use objectives and measures to implement ecosystem-based management in the region. The Order Preamble explains:

The Province is committed to implementing ecosystem-based management in a manner that maintains ecosystem integrity and improves human well-being concurrently. Ecosystem integrity is being maintained when adverse effects to ecological values and processes are minimal or unlikely to occur. A high level of human well-being is being achieved when the
quality of life in communities is equal to or better than the Canadian average (Ministry of Forests, Lands and Natural Resource Operations, 2016).

As such, the meaning of human well-being is crucial to the people who call this region home. While the concept of human well-being was introduced in 2001, crucial steps to achieving higher levels of human well-being were being negotiated on a government-to-government (G2G) basis between Coastal First Nations and the BC government in 2016. Further, it’s only recently that resource users in the region – particularly forestry companies – have been willing to make significant changes to the way they operate in order to achieved increased levels of human well-being in the region. In other words, the BC government and resource users face a new reality where they must not only recognize First Nations authority and jurisdiction; they must meaningfully address First Nations’ priorities when negotiating the use or extraction of resources in First Nation’s territories. That is, if human well-being is to improve for First Nations people on the north and central coast, the legacies of colonialism need to be adequately accounted for in well-being policies. To date, initiatives and policies to address well-being have been negotiated by provincial bureaucrats and negotiators from Coastal First Nations, as well as involvement from environmentalists and the forest industry. Human well-being objectives are explicitly expressed in the 2016 Amending Agreement and the 2017 Great Bear Rainforest Land Use Order.

The purpose of this chapter is to explore how policies meant to achieve increased levels of human well-being are or will be implemented on the central and north coast of BC. In particular, I use documentary evidence, ethnographic data and interview data from my fieldwork with

57 Recent legal victories and precedent by the Supreme courts have spurred on much of this change.
Heiltsuk Nation in Bella Bella, BC to investigate how recent attempts to achieve human well-being are congruent (or not) with meanings of ‘Heiltsuk well-being’. Important insights into the ways human well-being policies can address legacies of colonialism can be gleaned from a deeper exploration of Heiltsuk well-being, including how to account for place-based values. Further, this investigation argues efforts to address ‘increase human well-being” on BC’s coast are part of larger expressions of Indigenous rights and sovereignty. Below is a brief review of current health and well-being literature, followed by an account of how negotiated government-to-government (G2G) political agreements pertaining to the central and north coast are attempting to achieve higher levels of human well-being for First Nations communities in the region. I then provide an account of the different ways ‘being well” as a Heiltsuk person is understood to by those who work to increase human well-being in Heiltsuk territory.

4.1 Colonialism and Well-Being

As with all of Canada, Indigenous people on the north and central coast of BC have experienced dispossession, appropriation and assimilationist policies following both European contact and in relationships with subsequent settler communities. Unlike eastern Canada, much of the colonial impact is comparatively recent in western provinces, particularly British Columbia (Harris, 2002; Miller, 2009). Sustained presence of Indian agents, loss of lands, recruitment of First Nations into the cash economy through fishing and employment in canneries occurred primarily in the late 1800’s through to the current day (Harris 2002; Knight 1996; Newell, 1993). Furthermore, paternalistic and colonial features of policies pertaining to Indigenous people in BC are still very much intact today (Page, 2007; Asch, 2014). Comprehensive accounts exist in particular addressing the unfolding set of discriminatory and disposing laws and policies that created the
reserve system (Harris, 2002) and appropriated the natural resource upon which First Nations depended for survival and livelihood security. These included suspension of use of aquatic and terrestrial territories, and the attempted destruction of the hereditary governance systems that maintained these territories – as replaced by industrial resource capitalism (Harris 2001; Menzies and Butler, 2008; Rajala 2006; Tindall and Trosper, 2013).\(^{58}\)

The violent placement of children into the residential school system and the later 60’s scoop are well documented phenomena which left legacy scars present today and fully relevant to most discussions of reconciliation (Milloy, 1999; Regan, 2010; Vowel; 2016). A further key policy of this period was the banning of the potlatch in 1884 as this was explicitly motivated by colonial policy meant to (among other things) drive First Nations people into the emerging market economy and wage labour (Lutz, 1992; Rajala, 2006). The potlatch ban also sought to eradicate important legal and political spaces for First Nations – sites of governance and decision making as well as the witnessing of transactions and decisions that comprise all of the cultural business that occurs as part of the potlatching/feasting complex (e.g., recognition of marriages and descent; naming practices and assignation of clan or lineage-based territorial rights (Halpin, 1984; Masco; 1995; Roth, 2002; Robertson and the Kwagu’l Gixsam Clan, 2012). Together these events enabled and increased settler colonial access to Indigenous land and resources (Harris, 2002). While most First Nations communities continued the potlatch and feast fugitively until the ban was lifted in 1951, Indigenous people on the north and central coast were and continue to be politically marginalized and economic structures of capitalist relations of production have significantly reduced First Nations’ management, use and control over their natural resources.

\(^{58}\) In the context of fisheries on the coast, Harris (2001) provides a thorough study of the colonization, through law of British Columbia’s salmon fisheries.
The profound and detrimental effects on the physical, social, and cultural fabric of First Nation’s health and well-being cannot be overstated (Richmond et al., 2005).

First Nations in this region are palpably rich in culture and pride for their people. Despite the aforementioned attacks to their political, economic and social structures through processes of colonialism, several coast First Nations continue to practice elements of their hereditary governance and legal system today (Goetze, 2005; Menzies and Butler, 2008). They are a place-based people who identify profoundly with their territory; it is not only where they come from but who they are as Indigenous people. This region thus has the potential to demonstrate that renewed well-being can have positive implications for the health and well-being of Indigenous people. However, what remains crucial in this process is addressing the complex historical, political and social context of this region. As well, Indigenous communities must be part of the process of determining both the definition and measures of well-being, and they need to feel the results of well-being policies in tangible ways. Interestingly, much of the current well-being literature fails to provide the clear links between the impacts of colonialism and/or the complexities of the need to achieve higher levels of collective and individual well-being for Indigenous peoples.

4.2 Indigenous Well-being

Human well-being (HWB) is gaining traction in policy making and natural resource management (Fish, 2011), resulting in the need to produce clear frameworks to translate social science expertise into terms usable by policy makers (Sangha et al., 2015b; Breslow et al., 2016). Work by Martha Nussbaum and Amartya Sen on human well-being emphasizes the principles of individual agency and freedom; the capabilities or set of opportunities to choose and to act (Sen,
Nassbaum (2011) describes capabilities as “not just abilities residing inside a person but also the freedoms of opportunities created by a combination of personal abilities and the political, social, and economic environment” (p.20). If the task of government is to ensure people are able to pursue a dignified and flourishing life, Nussbaum (2011) argues political institutions must secure at least a threshold of ten ‘Central Capabilities’ to all citizens. A recent study of HWB elaborates on the Capabilities Approach with the following definition of human well-being: “a state of being with others and the environment, which arises when human needs are met, when individuals and communities can act meaningfully to pursue their goals, and when individuals and communities enjoy a satisfactory quality of life” (Breslow et al, 2016, p.2). Importantly, this definition of human well-being recognizes that the well-being of both the individual and the collective is linked to their ability to pursue their own goals.

Critiques of the above definitions of human well-being have also emerged: psychologists have been criticized for being predominately reflective of Anglo-American and Judeo-Christian values (Panelli and Tipa, 2007), and much of the work reported on human well-being so far remains the purview of socio-economic scholars who regard the maximization of economic utility as the central basis for well-being (Sangha et al., 2015a). A small set of scholars have acknowledged the necessity of culturally specific notions of well-being (Dalziel et al., 2006; Izquierdo, 2005; Richmond et al., 2005). In one such study, Panelli and Tipa (2007) sought to explore “the potential in conceptualizing a place-based notion of well-being that recognizes the cultural and environmental specificity of well-being for specific populations in a given setting”

These capabilities include: life, bodily healthy, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play and control over one’s environment.
(p.445). In other words, they have offered an idea of well-being as place-based and culturally specific.

A place-based notion of well-being has been particularly relevant to Indigenous populations, who have argued strongly that the current definition of human well-being does not adequately capture the needs and voices of Indigenous peoples (Prout, 2012). This absence is important as Indigenous peoples around the world are growing in capacity and calling for ways to define, measure and enhance human well-being in their communities (Prout, 2012; Taylor, 2008; United Nations Permanent Forum on Indigenous Issues, 2009). Current well-being measures fail to incorporate nature-related attributes when measuring Indigenous well-being (Sangha et al., 2011; Sangha et al. 2015b; Richmond et al., 2005). This is evident in Australia, where the role of “country” in Indigenous well-being approaches is ignored by policy makers, resulting in ineffective polices (Sangha et al., 2015a). Current well-being measures also fail to account for the culture and placed-based identity of several Indigenous populations (Panelii and Tipa, 2007; Bryce et al., 2016; Poe and Levin, 2014). Several studies have shown, more broadly, how Indigenous peoples around the world conceptualize well-being as lived experiences within their natural, social, spiritual, and cultural worlds (Ingersoll-Dayton et al., 2004; Izquierdo, 2005; McLenna and Khavarpour, 2004; Prout, 2012). Dockerty (2009) uses data from the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS)\(^{60}\) to present empirical evidence on the link between culture and socio-economic indicators. The results showed a strong attachment to culture is found to enhance outcomes across a range of dimensions of socio-economic well-being, including: lesser substance abuse and incidences of arrest, and improved

\(^{60}\) All respondents of the NATSISS are of Indigenous descent in Australia.
employment and educational attainment. The study also addressed long held debates in Australia, where it is assumed that elements of traditional Indigenous culture are incompatible with achievement of socioeconomic outcomes valued in non-Indigenous societies (Dockerty, 2012).

While the impacts of colonialism (i.e. – intergenerational trauma, loss of culture, loss of identity, etc.) are now being linked to low levels of well-being in Indigenous populations around the world, little work has been done to account for these impacts in actual well-being policies. Colonial histories of degradation of human well-being are somewhat prominent in research on indigenous health, however the definitions and potential indicators of well-being operationalized through health-science fields have been dominated by “compartmentalized understandings of well-being derived from Western understandings of the individual or self and the conditions that might be enjoyed in a satisfactory life” (Panelli and Tipa, 2007, p. 456). That is, well-being definitions and indicators tend to be derived from Western conceptualizations of socio-economic well-being, and completely ignore the significance of alternative Indigenous worldviews and perceptions of well-being (Taylor, 2008). Within this scholarship there also exists a tendency to describe the inequality of health and social conditions between Indigenous and non-Indigenous populations, though little effort is made to critically examine the processes that underpin these inequalities and contribute to their growth over time (Richmond et al., 2009). Rather, indigenous people are often labeled as ‘at risk’ (Million, 2008). This has led to a subset of health science scholars, and more specifically Indigenous health studies, to conclude that health disparities between Indigenous and non-Indigenous people are entrenched in and so largely explained by the history of colonial relations between Indigenous peoples and the nation-state (Adelson, 2003; Richmond et al. 2005). This is particularly so given the history of institutionalization and forced assimilation indigenous people faced:
A history of colonialist and paternalistic wardship, including the creation of the reserve system; forced relocation of communities to new and unfamiliar lands; the forced removal and subsequent placement of children into institutions or far away from their families and communities; inadequate services to those living on reserves; inherently racist attitudes towards Aboriginal peoples; and a continued lack of vision in terms of the effects of these tortured relations – all of these factors underlie so many of the ills faced by Aboriginal peoples today (S64).

Bourassa et al. (2001) highlights the way the Indian Act differentially affects Aboriginal men and women in Canada. This analysis finds that colonization has had a direct affect on Aboriginal women’s access to social determinants of health and impedes their ability to develop a healthy sense of identity, which can contribute to personal well-being. In a study exploring the high rates of suicide among Inuit youth, focus on concepts of well-being or happiness (quviasungniq) and unhappiness revealed family, talking/communication, and traditional Inuit cultural values and practices as central to well-being (Bourassa et al., 2001). It also highlights the impacts colonialism had on kinship-based social organization among Inuit people, which was identified as a key factor in social problems experienced by the Inuit.

Furthermore, the physical displacement of Indigenous peoples from their traditional territories has negatively affected the collective well-being of Indigenous populations (Richmond and Ross, 2009). Environmental dispossession is broadly understood as the processes through which Indigenous people’s ability to be in territory and sustain the cultural practices rooted there are reduced. Key here is the environment itself and access to that world as a social determinant of health is particularly potent for Indigenous people. For this reason, Richmond and Ross
(2009) examine the effect of environmental dispossession as a determinant of health for rural and remote First Nations communities across Canada. They find that “decreased access to environmental resources and the corresponding shift away from traditional foods and economies [to be] a precursor to life imbalance, loss of life control, changing forms of education, lacking material resources and strain on social life” (pg. 409). This study concludes that health policies, health programmes and future health research need explicitly address determinants of health that are central to Indigenous populations, determinants that cannot be understood without blatant recognition of the complex, historical, political and social contexts that have shaped current patterns of health and social inequality and allowed them to grow to such appalling proportions.

In a separate study, Richmond et al (2005, p. 355) employed a political ecology approach to report on the decline in well-being for ‘Namgis First Nation:

Most community respondents indicated that the community suffers poor health as a result of the process of colonialism, which has resulted in their lacking control over and participation in government decisions that affect them as First Nations.

This study found that those interviewed (n=23)\(^{61}\) identified explicit, dependent relationships between environmental resource use, economic choice and opportunity, and outcomes for health and well-being. Not surprisingly, respondents pointed to colonial policies such as the British Columbia Fisheries Act – which attempted to limit fishing areas and reduce the ability of First Nations to sustain their fishing economies and all that accompanied these as a function of reduced access to natural resources in their territory. They connected this reduced

\(^{61}\) Please see pg. 355 of Richmond et al (2005) for the study design and method details of this study.
access and declining economic opportunity explicitly to their declining health and well-being (Richmond et al., 2005).

On Haida Gwaii, human well-being is a component of the Kunst’aa Guu-Kunst’aayah Reconciliation Protocol. Kent (2014) explores human well-being indicators important to local residents on Haida Gwaii through a qualitative case-study approach. In this work, respondents critiqued the first set of human well-being indicators used in the North and Central Coast planning process (NCC) in the early 2000s. Of particular note are respondents’ reflections on the overuse of common economic indicators (i.e. – employment rate, median household income, etc), which demonstrate an absence of context and culturally specific indicators. For example, most participants felt it was more important to measure jobs (e.g., type and quality of work) than income. Overall the NCC indicator framework did not capture the main concerns of participants (Kent, 2014).

While progress has begun as to a broadening of our understandings of human well-being, and even Indigenous human well-being, translating this knowledge into effective policies remains nascent. The need for policies that will account for the colonial record, past and present, and so create momentum toward achieving higher levels of well-being for indigenous people is key. Such efforts can and should address (but are not limited to): 1) the continued removal and/or degradation of natural resources from First Nations territories for the benefit of third party operators, 2) the inextricable link First Nations have to their territorial lands and waters, which not only supports their culture and identity but is pivotal to their economic survival, and; 3) their autonomy as self-determining Nations. In Canada, Crown decision-makers and policy makers must fully accept their responsibility of deploying almost two centuries of colonial policies and structures, which, to put it lightly, completely and violently disenfranchise Indigenous peoples
even today. Accordingly, Indigenous people are owed the opportunity to negotiate the terms upon which their well-being is defined and measured. While this is certainly an immense task for both the Crown and First Nations governments who chose to negotiate such terms, the work taking place on the north and central coast of BC, a region also known as the Great Bear Rainforest, is revealing insights into the possibilities for what human well-being could and should mean for Indigenous people, particularly Heiltsuk Nation.

4.3 Human Well-being in the Great Bear Rainforest

Assessing how the 2016 Amending Agreement and the Great Bear Rainforest Land Use Order are being applied in ways that support the achievement of well-being is crucial because to date, they are the only two policies (both negotiated in a government-to-government process) that state explicit human well-being objectives. As the Great Bear Rainforest Order is a ministerial order, “achieving high levels of human well-being” is now formally entrenched in provincial legislation and warrants attention. Just what well-being is and how it might be measured for First Nations communities is also key and is a substantial component to all agreements being negotiated by First Nations governments, the BC government, resource users and communities in this region.

The earliest definition of human well-being specific to this region is from the Coast Information Team (CIT), defined there as: “a condition in which all members of society are able to determine and meet their needs and have a large range of choices and opportunities to fulfill their potential” (Prescott-Allen, 2005). Commitment from the BC government and several First Nations to fully implement EBM was launched in 2006 (as a part of the February 2006 Great Bear Rainforest Land-Used Decisions). One of the earliest initiatives launched to support and
improve human well-being was the Coast Opportunities Funds, a $120 million conversation financing initiative spearheaded by environmental groups. Half of the funds became a permanent conservation endowment. Interest-derived income targets the protection and management of ecosystems in the region (Price et al., 2009). The other half of the funds were meant to support *ecologically* sustainable First Nations businesses and economic development within the communities of the region. Many positive outcomes for communities (e.g. 14 Guardian Watchmen programs) have materialized from these funds, which are now known simply as Coast Funds. First Nations have leveraged $76,947,843 in Coast Funds to attract additional investment of just under $200,000,000 for completed and active projects (as of December 31st, 2017) (Coast Funds, 2018).

Apart from the Coast Funds, human well-being was implicitly part of the 2009 *Coastal First Nations Reconciliation Protocol Agreement* (RPA), primarily expressed through the carbon credit offsets program, forestry and tourism tenure commitments (please see Chapter 2 for details). Early efforts to improve human well-being focused on initiatives like the carbon credits program, promoting tourism tenures for each signatory First Nations and better access to longer-term forest tenures. As explained by Coastal First Nations staff who negotiated the 2009 Reconciliation Protocol (RPA):

> So human well-being just deals with, how do we deal with the wellbeing of the humans [in the region]? With our [Coastal First Nations] mandate we don’t have social services, health, or education but within our mandate. So we said, when we do ecosystem-based

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62 Please see the Coast Funds website (https://coastfunds.ca/) for success stories, projects and data that strengthen well-being in the Great Bear Rainforest. Coast Funds “was created to form a vital connection between sustainable development, the well-being of First Nations communities, and the permanent conservation of the region’s globally rare ecosystems.”
management, how are we designing and looking after humans in that? So we [CFN] said from an economic point of view we need to have the ability to have revenues like forestry, carbon credits, we put fish in there [RPA], we put renewable energies in there, we put capacity building like funding and training, all those are elements to advance the economics in the communities so that as you do the ecological values, the human wellbeing values of economic development and self-sufficiency and jobs and that have a component to make the ecosystem what it is (my emphasis, H8, 2017).

The above reflection demonstrates the initial thinking on how to incorporate human well-being into an agreement like the 2009 RPA focused on economic and capacity building initiatives. Increased employment opportunities for First Nations people in this region were particularly important to the Stewardship Director of the Heiltsuk Integrated Resource Management Department (HIRMD). From his perspective, human well-being is and was about the desire to protect resources for the benefit of Heiltsuk people, including a vision of eventually creating new economic opportunities across several sectors (i.e. – stewardship, tourism, and forestry):

This whole notion of human wellbeing, you know it wasn’t about eliminating jobs, it was about being able to find some ecosystem based management measures that would protect some of the resources and then create new jobs in different areas and for us there was not a lot of opportunities you can grow on here other than a stewardship department (H6, 2016).

However, as challenges with implementing the 2009 RPA unfolded (i.e. – conflicts between the BC bureaucracy and First Nations government over the Engagement Framework timelines) it became clear human well-being needed to be addressed more directly by the Parties
involved in the G2G negotiations used to reach the initial 2009 RPA. This realization was particularly relevant as the terms of the 2016 Amending Agreement and the Great Bear Rainforest Land Use Objectives Order were being negotiated, partly in order to address the shortcomings of increasing human well-being in the region. Until this time, and other than the Coast Funds (mentioned above), there were no explicit policies either from the Crown or Coastal First Nations to address matters of human well-being. As one interview described it; defining and measuring human well-being is contentious, difficult and open for interpretation (H3, 2017).

Heiltsuk argued that their community must be convinced of the ability of the Great Bear Rainforest Order to ensure ecological integrity within Heiltsuk Territory while concurrently improving the level of human well-being for its members. This call led to serious efforts internally and on the part of Coastal First Nations to refine what human well-being meant in the context of the political agreements on the table. Notably, the efforts to more clearly define what human well-being meant in policy included the land use objectives within the Great Bear Rainforest Order. For example, one of the harder points to negotiate and ‘win’ on the part of the “First Nation Human Well-Being” team was the new protocol’s preamble, which now reads: “In relation to First Nations Human Wellbeing, the intent is to protect, conserve First Nations forest and cultural values, improve the long-term stewardship of aboriginal heritage and aboriginal forest resources in the area, and provide enhanced access to opportunities for carbon benefits and commercial forestry” (personal communications, March 2018).

Though this meaning provides clear direction about the intent of the Order and the obligation to address human well-being, setting land use objectives remains within the power of the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO). The result is that human well-being measures are strictly contained within forestry legislation. Thus the
opportunities to extend and advance the meaning of human well-being to larger processes of reconciliation are significantly hindered. This has been a major frustration for those who work to implement the Great Bear Rainforest Land Use Order and the 2016 Amending Agreement on behalf of signatory Nations. A HIRMD staff member reflects on the fact that human well-being remains, by and large, within the jurisdiction of the Crown:

*You are somewhat confined, or constrained within the confines of forestry-based legislation, right? So that has been, the whole concept of human well-being has been negotiated through the Crown side of things through forest legislation to be leveraged in a way that ensures we don't lock up the entire fuckin' coast (H3, 2016).*

The burden of these constraints is palpable. This frustration shows the problem isn’t the definition of well-being, it’s that this definition is being controlled exclusively by the Crown. That is, human well-being isn’t “alive” in the agreements. Yet, some progress has been made in the 2016 *Great Bear Rainforest Land Use Objectives Order* a ministerial order containing explicit objectives for how “First Nations Human Well-being” can be achieved through forestry practices. For example, Part 2, Division 2 – First Nations [of the Great Bear Rainforest Land Use Objectives Order] lists 7 specific objectives, including that below, which pertain to one of the sub regions covered by the Great Bear Rainforest Land Use Objectives Order:

5. *Objectives for Aboriginal Forest Resources*

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63 The Great Bear Rainforest Land Use Objectives Order a new ministerial order (i.e. legally binding), announced in January 2016, that supports and continues the implementation of Ecosystem Based Management in the Great Bear Rainforest. The order sets forest management requirements via the establishment of land use objectives that must be adhered to by all major forest licence holders operating in the Great Bear Rainforest. It replaces the ordered South Central Coast areas and the Central and North Coast area (established on July 27, 2007 and December 19, 2007 respectively).
(1) Maintain or enhance Aboriginal Forest Resources in a sufficient quantity and manner necessary to support Applicable First Nations’ present and future stewardship and use of those resources.

(2) Despite subsection (1), Aboriginal Forest Resources may be harvested or altered in order to meet silvicultural obligations, provided there has been First Nation Engagement with Applicable First Nations.

Simply put, the *Great Bear Rainforest Land Use Objectives Order* sets out new requirements for resource users who operate, or who would like to operate, in First Nations territories on the north and central coast of BC. The majority of land use objectives pertain to goals for maintaining or enhancing levels of ecological integrity, for example, maintaining or improving important fisheries watersheds, upland streams, and grizzly bear habit. For the scope of this analysis, what is important is the fact that the Great Bear Rainforest Order extends far beyond any prior policy or initiative as concerns the explicit articulation and linking of ecological integrity to increased levels of human well-being in the region. Unlike the 2009 RPA, the GBR Order expressly recognizes the connection between the well-being of Indigenous peoples and the use and value of natural resource (Sangha et al., 2015a). Importantly, because this agreement is a ministerial order embedded in BC legislation, First Nations can hold the Province, and to a certain extent resource users, accountable for their compliance with these objectives. Whether or not these objectives go far enough to achieve meaningful levels of increased human well-being is an open question. Also key is whether future interpretations of the order will prioritize the interests of commercial forestry operators above those of First Nations interests, should an argument to do so hold. Though those who use the GBR Order, including the forest industry, will closely watch the progress of it, especially because is it the culmination of two decades of tough negotiations.
between the Province, First Nations, resource users and environmental groups (Low and Shaw, 2001; Shaw, 2004; Smith, 2010).

However, the Great Bear Rainforest Land Use Objectives Order exists alongside other schedules within the 2016 Amending Reconciliation Protocol. These latter schedules are a crucial part of implementing meaningful human well-being measures on the coast (personal communications, 2018). The best example of this is the ‘Term Sheet for Continued Implementation of Ecosystem Based Management in the Central and North Coast.’ The EBM Term Sheet is important because it was negotiated on a government-to-government basis (G2G) and because it lays out specific commitments by the Province. For example, one commitment reads that the province “intends to enhance the stability and viability of carbon credit programs and commercial forestry activities”. By way of example of such commitments is the Province’s intent to enact new legislation to ensure First Nations have access to larger timber supply management units. In other words, the EBM Term Sheet provides the institutional governance mechanisms (i.e. tables, committees, governance structures, Parties, etc.) through which the Great Bear Rainforest Land Use Objectives Order will be accomplished. More broadly, it provides significant political purchase for achieving higher levels of human well-being. A HIRMD staff member explains the EBM Term Sheet, for example, as providing the “how” of implementing the land use objectives within the Great Bear Rainforest Order.

In addition to the 2016 Great Bear Rainforest Land Use Objectives Order and the 2016 EBM Term Sheet, Atmospheric Benefit Sharing Agreements (ABSAs) are yet another component of human well-being in the region. ABSAs are binding legal agreements that provide the member Nations of Coastal First Nations (including Heiltsuk Nation) with ownership and rights to sell a negotiated percentage of the carbon offsets produced in the Nation’s territory. That is,
the ABSA’s expand on the Carbon Offset Sharing (Schedule) commitments contained within the 2009 Coastal First Nations Reconciliation Protocol (2009 RPA) by creating a more stable revenue source each Nation can use to implement the negotiated agreements to which they are signatories. Revenues from ABSAs are also used to support stewardship initiatives such as the Heiltsuk Integrated Resource Management Department and the Guardian Watchmen Programs.

In almost all of my interviews with those involved in negotiating the 2010 and 2016 RPA, the initial carbon offsets program was referenced as a tool to achieve increased levels of ‘well-being’. The subsequent 2015 ABSA’s are considered invaluable because Nations such as Heiltsuk use these revenue sources as a lever to pursue their stewardship goals and build capacity. For example, the funds from ABSAs have been used to initiate long term stewardship offices and programs in the communities of signatory First Nations, offering both education opportunities and much needed full time employment. In the words of the aforementioned Stewardship Director: I bet if we didn’t have carbon credits or coast opportunity funds this office wouldn’t be here, I mean those are a result of this whole reconciliation protocol.

At the announcement of the Great Bear Rainforest Order in Bella Bella, the Heiltsuk Tribal Council acknowledged the time and work required to complete both negotiated agreements: “Everyone is not here today just for a photo op. There is great weight behind everything we are doing here today and a lot of time and energy went into this momentous occasion...we are always thinking of the interests of our peoples and Nation.” Importantly, the meaning of human well-being as expressed in the Great Bear Rainforest Order and the commitments outlined in the 2016 Amending RPA has been characterized as much more Heiltsuk driven than the human well-being initiatives in the early 2000s. However, how does the negotiated meaning of human well-being also address the colonial history of this landscape? Can
it be claimed, for example, that human well-being fits into the larger picture of sovereignty and
reconciliation on the coast? Is there a framework in place to measure the effectiveness of the
negotiated human well-being measures, and if so, what is being measured? While I cannot do
full justice to these questions, some insights into the ways in which human well-being is now understood by Heiltsuk Nation are instructive.

4.4 Human Well-Being in Heiltsuk Territory

When I began my research with Heiltsuk Nation in 2014, human well-being was not as clearly defined as it is currently in the GBR Order and the 2016 Amending Agreement. Yet, through my time at HIRMD, I noticed significant ‘behind the scene’ efforts taking place on the part of First Nations’ governments to bring forward solutions to the Province to ensure higher levels of human well-being are achieved in a long term, meaningful manner. It was, and continues to be, the burden of First Nations to drive forward ideas of increasing human well-being across years of negotiations with the Province and resource users. As an elected leader recalls below, the initial efforts put towards negotiating with the Province focused on “technical components”, rather than how to achieve higher levels of human well-being for coastal residents. Whereas more recently, the momentum toward well being has been enhanced by the very idea of a different coastal economy:

I remember clearly sitting down at the CFN table [with] a Masset representative. And she talked about it, and she said ‘look, human wellbeing is not being addressed, it’s not where

we should be. ’ I always think back to [name] saying that at the table...you know back then even and this was probably around 2005. She was kind of saying we’re spending so much time on the technical pieces of implementing the agreements and not enough on human well-being so what does it mean for us? I mean, I think for part of it is that piece around maintaining the environmental integrity of our lands so people can enjoy it and use it into the future but it also means things like education, capacity development, creating a green economy, or a sustainable economy here in the coast and in Bella Bella, improving the quality of life for our people. That’s not fast enough for us but taking steps in that direction we have been doing...recognizing that it is going to be sort of like a graduated process I think (H9, 2016).

This reflection speaks to the need to address well-being as a function of the ecological integrity of the region, though it also emphasizes that developing a different kind of economy – one that will work for the region and Bella Bella – is key. This is certainly not surprising, as we know from above the resource based economies of fisheries and forestry have suffered dramatically over the past century (Newell, 1993, Rajala, 2006). Within the context of Haida Gwaii and the Great Bear Rainforest, Green (2007, p.259) points out “sustaining current economic activity in the logging industry and increasing local economic activity in other sectors does not guarantee improved human well-being.” Here, Green (2007) is signalling the importance of subsistence and informal economic activity to the region, and therefore the quality of economic activity that takes place will matter most.

Interestingly, when I asked my interviewees: what well-being meant to them, many reflections revealed an understanding of well-being much deeper than economic dimensions per se. They included, more often than not, explicit reference to a colonized past and present and a
decolonized future. Specifically, reflections called out the existing colonial structures within which First Nations governments must work to drive their governance and well-being goals forward. Furthermore, the processes used to negotiate the terms of human well-being on the coast were criticized for not adequately accounting for First Nations as sovereign Nations with their own inherent jurisdiction and authority over their territories. The process remains problematic because First Nations are still regarded as ‘stakeholders’ in these negotiations and not as governments and rights holders. As an elected Heiltsuk leader explains:

*I have issues with the way that whole process was outlined so that we came in with our values so close to the end when people were so burnt out that they didn’t want to hear that you weren’t happy with things. I feel like so often we are victims of a reality that we come in as an afterthought in things like this because I don’t think there’s a wide appreciation of the difference between stakeholders and rights holders, people write us off as being a stakeholder (H1, 2016).*

The above and below reflections eloquently illuminate the looming tension remaining between First Nations governments and the Province. Here, the Crown is being criticized for continuing to operate as the sole, sovereign decision maker over Heiltsuk Territory. Despite Heiltsuk persistently demonstrating their desire and ability to assert their inherent political authority in “government-to-government processes”, in the eyes of the Crown, Heiltsuk remain just another “interest” in an array of other interests and priorities.

When pressed more about the process of negotiating human well-being, and whether there exists an acceptable way to articulate this concept, let alone develop a way to measure it, an elected Heiltsuk leader expressed frustration. That frustration was specific to and articulated in expressly anti-racist, anti-colonial terms: it was the sheer effort of “trying to get across realities
and values that aren’t inherent in processes that are developed by colonial bodies or by white environmentalism or by industry” (H1, 2016). Environmentalists and First Nations have a track record of confrontation on the coast, for example, in the early 1990s, direct action campaigns often occurred within First Nations territories without their consent (Davis, 2009). The relationships between environmentalists, industry and First Nations have certainly shifted over the decades to more of allies (Smith, 2010), however; clearly some tensions remain. The realities and values being discussed in the above reflection were offered in considerable detail:

And when you push back and say you know if we’re going to my values and my customs and my laws, you destroyed the meadow where I can go for medicine, you know I can’t go gather it from this 85% of other similar places that were protected. That was my place. That’s the place where my identity is rooted, where my family comes from, where my stories are, where I am written on the landscape and my history and genealogy are right there. So it’s a matter of numbers and percentages and math and balancing acts for people who don’t actually have a stake in it. But you know, for us it’s a matter of survival and survival is such an important thing in communities that have historically been oppressed or are currently oppressed. We’re that identity that we’re fighting to protect now. You know we’ve seen generations of people trying to take that identity away from us and when you look at the things that were sold out and processes like this [negotiations to reach agreements]. Ultimately it looks like a lot like the kind of disenfranchising practices and kind of that (my emphasis, H1, 2016).

This sentiment identifies that the meanings of well-being relevant to those who live in the region (i.e. place based identity) “gets lost” in the negotiation process. Many of the people involved in the processes used to reach negotiated agreements like the RPAs (2009 and 20016) and the Great
Bear Rainforest Land Use Order do not understand what is precisely at stake for the well-being of Heiltsuk people when aspects of Heiltsuk territory are being negotiated into categories of “protected” or “developed”. Heiltsuk territory is not just land and waterways in need of protection because of its ecology and beauty (although this is part of it); more importantly, the Territory is at the centre of a complex social and political system to which Heiltsuk individuals and family lineages are inextricably tied (Gauvreau et al., 2017). The importance of these territorial ties to Heiltsuk’s present day governance practices will be discussed in more detail below. Here, and for this individual, agreements that pertain to human well-being continue to threaten parts, if not all of her territory. Not only are these threats the antithesis of what well-being means to many Indigenous people (Prout, 2012), it resonates strongly with colonizing practices of the past.

Further, the processes used to reach the various political agreements have been critiqued for their inherent exclusion of Indigenous perspectives on well-being. With respect to the negotiations of the Great Bear Rainforest Order – which spanned over two decades – often times First Nations communities were not included in designing well-being measures and policies until late in the process, if at all. When First Nations governments fought their way into the discussions on human well-being, the onus was on them to clearly identify well-being measures relevant to their communities. My sense is that identifying human well-being measures in a short amount of time, and within the constraints of the aforementioned forestry legislation was yet

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65 In fact, archaeological evidence supports Heiltsuk oral history. Recently the presence of a Heiltsuk settlement dated back to 14,000 years ago was discovery on BC’s coast. See: https://www.cbc.ca/news/canada/british-columbia/archeological-find-affirms-heiltsuk-nation-s-oral-history-1.4046088
another task to burden already overstrained First Nations governments. Because First Nations governments were not involved in human well-being discussions and negotiations from the beginning, a definition of well-being that addressed some of the values above, such as ‘inextricable links to territory’, were compromised:

*When we’re not part of designing the process and asserting what is important to us and what we want to accomplish on the outset, I feel like you end up with huge weaknesses like the way human wellbeing is articulated… I feel like there’s a burden that rests on us to do our internal work to kind of come from a place of strength first when we’re walking into those giant tables instead of starting at those joint tables. But yeah, the way that I define human wellbeing of Heiltsuk wellbeing is so radically different and deeper than the way it is articulated or probably would be articulated in this process (H1, 2016).*

From the reflections above, we hear a meaning of human well-being that is much more than that negotiated in the RPAs (2009 and 2016) and the Great Bear Rainforest Order articulates or even can. And of course, First Nations governments know their values tied to well-being will be challenged by the Crown. Many of these well-being values conflict with Crown’s ability to provide certainty to potential investors and resource developers (Kotaska, 2013). As Simpson (2017, p.42) reiterates, “The Canadian state has always been primarily interested in acquiring the “legal” rights to [Indigenous] land for settlement and for the extraction of natural resources.” To that end, several Nations including Heiltsuk continue to overtly and unequivocally link human well-being to their unceded Indigenous rights and title:

*Another big piece of the human well-being is what we do with any other agreement with this government or anyone else is ensuring that the title and rights of the people are not infringed upon in anyway. What we do with these agreements, is usually they have a piece*
Because Heiltsuk were not involved from in defining what “increasing human well-being” would mean in their territory, the BC government, industry and environmentalists ran the risk of reproducing colonial processes and bodies that caused such harm in the first place. The overarching theme reflected by respondents (n =12) is there is a concern for Heiltsuk well-being first and foremost. This theme emerged without any prompt from the interview questions and demonstrates the meaning of human well-being is complex and rooted in a local and placed based identity resisting over a century of colonial polices. To avoid the disenfranchising practices mentioned above, and to account for the place based values of Heiltsuk people, rethinking human well-being as Heiltsuk well-being is a valuable endeavour. Once human well-being is framed as Heiltsuk well-being, the cultural and context specifics of well-being are uncovered in a more meaningful manner.

4.5 Being Well As Heiltsuk

*Human well-being, to increase the quality of life for a Heiltsuk person...if they want to build a house out of cedar, they would have access to cedar anywhere in our territory (H4, 2016).*

One of the most interesting things that emerged from interviewees reflections about human well-being is that instead of focusing on the well-being of all people in the region, the Heiltsuk are specifically concerned with the well-being of their own people, whether they live in Bella Bella or elsewhere. And in very specific ways, which can be summarized before elaboration below as: 1) economic benefits specific to Heiltsuk, 2) as Heiltsuk defined, 3) as compensatory
of Heiltsuk benefits foregone, 4) as attentive to cultural and ecological territory, with sufficient ecosystem health to enable practices essential to being Heiltsuk and 5) as legitimate rights holders with jurisdictional authority over their territories. As such, ‘being well’ as Heiltsuk is the focus of this section and is also instructive for the negotiation of indicators that effectively measure well-being for Heiltsuk over the coming years. First and foremost, as explained by a Heiltsuk leader, it is the well-being of their own people that is primary:

So through these LUOs [Land Use Orders] and the Engagement Framework coming out of this [2016 Amending RPA] we were able to sit down and have something more Heiltsuk-driven, to our standards a bit more. We’ve been able to define things like human well-being around Heiltsuk well-being, never mind humans. So focusing on our own people in these agreements and implementing things like the land use objectives and the RPA that are beneficial to Heiltsuk. Not just to people in general but Heiltsuk specifically within our territory (H4, 2016).

A major attribute of Heiltsuk well-being is that Heiltsuk members have employment opportunities through the allocation of training funds and commitments from both the Province and resource users (i.e. forest companies) for education and capacity building to facilitate these opportunities. Importantly these reflections of Heiltsuk well-being are very much in line with several of the economic and forestry objectives set out the 2016 Amending RPA and Great Bear Rainforest Order; though it was most likely First Nations negotiators who ensured this was the case:

We basically revamped the human well-being to sort of reflect Heiltsuk well-being, which a big piece of that, which we just talked about, was employment opportunities. Ensuring that
Heiltsuk had the first priority in all areas, which lead us to push for the training dollars to make that happen. (H4, 2016)

More than just the economic opportunities is the idea that Heiltsuk well-being is about creating stable, long term opportunities for Heiltsuk people, opportunities from which they have long since been excluded across colonial policies. The point here is substantial undoing of both historic and present marginalization in the region (Harris, 2001). From the perspective of a Stewardship Director:

So basically what we’ve been telling the governments over time is...we [First Nations] should be the ones that have the majority of those opportunities because we’ve been deprived of the existing opportunities that are there, whether it’s in the forestry department or the fisheries and even tourism for that matter. So yeah, I think there’s lots of opportunity... (H6, 2016).

More specifically, for these opportunities to be seized by Heiltsuk people, they require adequate and thoughtful access to education, capacity building and job training in various sectors, not solely the industrial sectors. Furthermore, this access to economic opportunities through education and job training is closely tied to realizing improved individual and cultural well-being. As the HIRMD department manager explains:

And I think that was how we negotiated human well-being in a way that looked after some of the financial, economic aspects through the forestry company. Today and tomorrow. With some training dollars. To help support and get some of our people working and to build and create projects that encourages social and cultural expression in our community (H3, 2018).
A Heiltsuk leader also expresses that even just the access to opportunities, whether they be cultural, social, economic or more individual focused, is important to being well as a Heiltsuk person. In fact, the aim of the well-being policies put forward by Heiltsuk aimed to advance all aspects of well-being, not just focus on economic opportunities.

*Whether it is to encourage employment, just personal well-being, or cultural well-being, access is open, within means to do that. So that was really a key thing that we didn’t want to center it around just money. To have the opportunity to advance things culturally, economically, socially, sort of build the capacity in that way was the aim (H4, 2016).*

Heiltsuk well-being also means Heiltsuk have complete access to resources in their territory. And there is some tension here; just as Heiltsuk well-being involves access to economic opportunities characterised by the modern capitalist economy, it also means Heiltsuk have the opportunity to use, manage, steward the land however they see fit. Discussed below, the ways in which Heiltsuk may wish to manage and steward their lands and waters are often tied to their traditional patterns of territoriality and resource ownership (Turner and Jones, 2000). This also includes the option of Heiltsuk needs, such as protecting food sources, being prioritized over other conservation and forestry commitments contained within the 2009 RPA and the 2016 Amending Agreement. As HIRMD staff explains:

*We’re leaving behind the culturally sensitive areas where people have access to. In some cases we have protected valleys that are important for hunting, we’re leaving areas open and protecting areas for your people to continue to go to. And sometimes you have to go to bat for it because guess what, those areas are high timber value. But our people use it for food (H4, 2016).*
To address these deeper meanings of Heiltsuk well-being requires changes not just to government activities in Heiltsuk territory, but also by industry, business and private land holders. This is not surprising given the historical and present colonial context within which achieving high levels of Heiltsuk well-being has come to be so necessary. These changes to the status quo (i.e. large scale industrial logging operations, commercial fisheries and private tourism operations to name a few) are certainly raising tensions within Heiltsuk Territory over where and how land is used and who benefits from this use. As HIRMD staff explains, it all comes down to providing Heiltsuk members with as many different opportunities to access their territory, in varying capacities (i.e. tourism tenures, forest auditing, planning, etc.) as possible:

*You know, right from forestry to the SLRD and the BMTA and conservancy planning, even tourism. The opportunities to employ our people to do those sorts of things, it all sort of loops back on the well-being of Heiltsuk. Give Heiltsuk opportunities to access all the different areas in many different forms, whether it be that we’ve protected some of our areas from, for example, logging operations because they want to put a log storage area in particular areas. We said no, you can’t do that because that’s one of the beaches where they have the commercial clam fisheries – it employs 20 Heiltsuk in the winter. So no you can’t go there. You gotta find somewhere else to go. And through our agreement with industry, they have no choice to abide by what we are telling them. Those are culturally sensitive and economically sensitive areas that are Heiltsuk so you’ve got to move. This betters the well-being for 20 other people in the winter.*

(H4, 2016)

Access to territory for future generations is also an important part of well-being for Heiltsuk people. This meaning of *access to territory* differs from that of having access to
resource-based opportunities such as forestry or tourism. The quote below expresses that the ability of Heiltsuk to protect their access to territory (and therefore their resources) is part of Heiltsuk well-being because it ensures Heiltsuk people will be taken care of in the future no matter what the circumstances (i.e. – complete failure of the agreements, climate change impacts, nuclear apocalypse, etc.):

And that’s a big part of human well-being because we’re leaving access for not only our selves but for our children. So you know, all those things tie in to the conservancies. We negotiated those conservancies so that 50% of our territory, no matter what else, shit hits the fan and everything goes sideways, half of our territory is going to be pristine forever. That’s a part of human well-being because that encouraged our own people to go out on the land, go out on the water. You have a place to go and do that, you have a place to go, whether it’s just camp or reconnect with your family routes or whatever. That’s human well-being. It’s not just an opportunity to make a buck in an EBM area (H4, 2016).

Access to territory in and of itself and for specific reasons is crucial to Heiltsuk well-being, and rightfully so. Heiltsuk have an inherent connection to the land and ocean, and most, if not all Heiltsuk people would argue it is this connection that is at the center of their identity. This aspect of being well as Heiltsuk is common to Indigenous peoples globally (Prout, 2012). Through three in-depth cases studies of Indigenous groups across Queensland, Australia, Sangha et al. (2015b, p.456) explain “access to clan sites, which have been important to their [Indigenous people’s] lives over thousands of years” is an imperative part of their well-being. It is this connection to territory that has resisted more than 150 years of colonial and assimilationist policies. An elected Heiltsuk leader describes Heiltsuk well-being as meaning Heiltsuk people have access to
everything they need to be Heiltsuk; ensuring the things and places that make Heiltsuk ‘Heiltsuk’ thrive for future generations:

*Well when I think of Heiltsuk wellbeing for me it’s as simple as wanting to ensure that we are able to be Heiltsuk and you know what does that mean, that means being able to go out and gather medicine and be on the land, be on the water, feed ourselves, sustain ourselves, practice our ceremonies, have access to the things we need to do all of that and to be able to learn a cross generations by going out in the territory to occupy it, to use it, to love it, to know that that’s where we come from and it’s the only place we come from and it’s always going to be the place we come from and that for every generation that the future builds of people that’s going to be where they come from (H1, 2016).*

I want to draw attention to the idea of well-being for Heiltsuk being connected to land and water to order to “go out and gather medicine and be on the land, be on the water, feed ourselves, sustain ourselves, [and] practice our ceremonies.” In the aforementioned study, Sangha et al. (2015b) explore what well-being means for Indigenous Australians, with focus on how Indigenous people’s connections to their “country” (or territory or land) contribute to their capabilities and well-being. They integrate the capabilities approach by Sen (1999) on social systems, and the Millennium Ecosystem Approach (MA) approach on social-ecological systems, whereby *functionings* mean the ‘doings and beings’ of people and the *capabilities* are the freedoms/opportunities of people to lead creative and healthy lives (Sangha et al. 2015, p. 446). The MA links ecosystem services (with focus on non-monetary ES) to pre-determined constituents of the well-being of people (i.e. food, good air and water, security for use of resources for present and future generations, etc.).
From the reflection above…to be able to go out [on the land] and gather medicine… to be on the water, feed ourselves, sustain ourselves…to have access to what we need to do all of that…to be able to learn across generations by going out on the territory to occupy it... are crucial capabilities and functionings of Heiltsuk people. Clearly the unhindered access to territory (i.e. valuing natural resources) is essential for all of these capabilities and functionings to be at their fullest, and thus is a crucial part of being well as a Heiltsuk person. This approach was developed to help transform the current well-being concept in Australia by incorporating the values of natural resources and traditional knowledge as valuable functionings that contribute to enhanced well-being. This approach by Sangha et al. (2015b, p. 446) is meant to “help develop appropriate well-being measures and policies for Indigenous people in Australia, as well as worldwide.” A similar approach could certainly be used in the context of developing appropriate measures of Indigenous well-being on the central and north coast; reflections above (and several others from my interviewees) reveal the very ability for Heiltsuk to access territory for a number of reasons (or functionings) – gather medicine, occupy it, love it – enhances their well-being. However, I would shift (or perhaps extend) this understanding of Heiltsuk well-being as just being access to territory for only its value to cultural practice, to an understanding of territory being irreplaceable to Heiltsuk practices of governance. As explained below, these practices of governance (which are inextricably tied to their territory) are the foundation of Heiltsuk jurisdictional authority and sovereignty.

Access to territory is crucial to Heiltsuk’s practice of a system of governance based on hereditary chieftainships that is continuous from pre-1846 through to present day (HTC, 2015). A key component of this governance system is that the Hemas (hereditary chiefs) own all lands, waters and resources within Heiltsuk Territory (HTC, 2015). Heiltsuk people continue to identify
as being from one or more of five tribal groups, 'Wúyalitxv, 'Wúíɬ’itxv, 'Yisdáitxv, 'Qvúqvaítxv, 'Xíxís. The ancestral name of each Hemas is attached to one of these five tribal groups, as well as an inheritance of responsibilities for the stewardship and ownership for their respective territory within the whole of Heiltsuk territory. In the past, resource ownership was regulated through the law of 7áxvá, and refers to the inherent authority held by the Hemas within their territory. The inherent authority is derived from their millennia-old land tenure system comprised of access, title and stewardship rights and responsibilities associated with family-owned harvesting locations. Gauvreau et al. (2017) presents an illuminating example of this tenure system in a recent study of the relationship between Heiltsuk and herring. Through interviews with Heiltsuk Nation herring resource users, including elders and hereditary chiefs, the following strategy (of many) was identified as crucial to herring management and stewardship in Heiltsuk Territory (p.8, Table 3): “If people want to harvest herring and herring roe at another family’s site, they must ask the highest ranking person within the family for permission; this is typically a Heiltsuk hereditary chief (Hemas).” This example demonstrates two things: 1) Heiltsuk territory is inextricably linked to social organization, specifically through a chief system connected to specific areas, and 2) this system of governance is practiced in much the same way today as it was in the past (HTC, 2015). In several of the negotiations over the past decade, Heiltsuk have used parts of this system of governance to assert their rights and title over their territory.

As elaborated on in Chapter 3, the inherent authority of each Hemas is rooted in their ancestral name. Specifically, these names hold 7áxvái, which is the aforementioned authority, power and responsibilities and jurisdiction derived from the ownership and connection the Hemas have to their territories (HTC, 2005). Hence, these names are of immense importance,
and passed on from generation to generation – with the inherited responsibilities – through the potlatch (Gauvreau et al., 2017; Harkin, 1997; Roth, 2002). For Heiltsuk, the potlatch is where important business is conducted and borne witness to by those in attendance (personal communications, 2016; Harkin 1997). The potlatch is fundamental to Heiltsuk society; it is here where traditional names, rank, or hereditary privileges are claimed through dances, speeches and the distribution of property to those involved in the potlatch (Cole and Chaikin, 1990; Gauvreau et al., 2017). This is congruent with Raibon’s (2005) account of the Kwakwaka’wakw potlatch used to mark community events, including marriages, coming of age ceremonies, apologies, debt repayment and winter ceremonies. Raibon (2005, p. 19) explains dances are tied to certain high-ranking names, and the “legitimacy of this prestigious inheritance hinged on the presence of community witnesses at a potlatch.” These exchanges are examples of why the potlatch is key to the social and political system of Heiltsuk Nation. Importantly, all potlatches are held in a big house, which is the scared place in which the Heiltsuk continue to conduct ceremonies and uphold governance practices.

To that end, Heiltsuk have recently secured the resources they need to build their Big House, part because of Heiltsuk negotiations with both the provincial and federal Crown, in the centre of Bella Bella. Heiltsuk Nation has not had a Big House in their community since the time of European contact (Lamb-Yorkski, 2018). Heiltsuk currently conduct their potlatches, marriages, adoptions, celebrations and funerals in their community hall (which is aging and in

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As I write this section and the next, I heed Daisy Sewid-Smith (2008)’s argument that today several First Nations communities struggle with the reshaping of their ritual world by academic interpretations. I do my best in this case to identify sources (i.e. trained specialists who work within Heiltsuk culture and recently published journal articles by researchers of whom I know) to ensure I am portraying an accurate view of the importance of the potlatch and Big House. Where possible, I also use language and explanations from documents and media sources published directly from Heiltsuk Tribal Council.
Rebuilding the Big House means potlatches will now be held in the physical building of Heiltsuk’s traditional governance house. The significance of the Big House cannot be underestimated; it is not a relic of history but a literal representation of Heiltsuk hereditary governance and a reassertion of Heiltsuk sovereignty. In fact, the Big House represents the future of Heiltsuk Nation, not just the past. A cultural advisor for Heiltsuk Nation, William Housty, spoke about the Big House in a recent newspaper article, stating: “A lot of them [older Heiltsuk members] had a rough stretch with the residential schools and a loss of language, but our culture’s finally starting to come back.” He goes on to say, “When we have this structure [the Big House] built in our community we will have a place we can all go, where we are free to practice our culture. Our community can flourish again.” I interpret this reflection to mean the Big House will have significant implications for the well-being of Heiltsuk members because the space the Big House provides is completely separate from the colonial structures of the Canadian state.

Importantly, the Big House exemplifies what it means for human well-being policies to address the past and current colonial legacies of this territory. The Big House was and remains a sacred space for Heiltsuk, a space where the business of governing took place before the potlatch ban from 1884 to 1951. From the above analysis, Heiltsuk have maintained their connection to their lands and waters, and stayed firm in the governance authority they derive from this connection to territory. Among many things, the Big House will strengthen Heiltsuk authority and their political purchase with the Crown in contemporary times. In fact, the Big House was used as leverage by Heiltsuk when negotiating components of human well-being with the Province. An elected leader of the Heiltsuk Tribal council describes one of the achievements of the Great Bear Rainforest Land Order like this:
The other would be the big house, with the Great Bear Rainforest Order, the fiber, the 50,000 cubic meters towards the big house helps tremendously. It’s anywhere between $800,000 to $1.2 million depending what we sell it for. **That was one of the things that we mentioned talking with HIRMD and talking with the internal conversations, we weren’t prepared to sign off on the Great Bear order unless there was some human wellbeing measures that we can clearly identify** (my emphasis, H9, 2016).

Further, the building of the Big House demonstrates a link between well-being and the Heiltsuk’s chosen reconciliation journey with the Crown. It may be too early to speak to the Crown’s commitment on this journey, though a Heiltsuk elected leader understands the Crown’s contribution towards the Big House as a signal of the their willingness to move forward on reconciliation efforts on Heiltsuk terms:

...one of the things that we mentioned to both BC and Canada at our reconciliation table, [the Big House] is not just a contribution to a building in our community. It [the Big House] is part of reconciliation. It symbolizes reconciliation that we are going to be working together. It’s not going to be easy. There’s going to be probably fundamental areas that we won’t agree on but being able to build this Big House, being able to contribute to it means that you’re [the Crown] is prepared to move in that direction of reconciliation with Heiltsuk. Because this [Big House] is our sacred house, our traditional governance house (MS, 2016).

Being well as Heiltsuk will mean many things to many people; it is complex and rooted in a rich oral history of a place-based people. As I am a non-Heiltsuk person, I can only express possible meanings of Heiltsuk well-being through my own interpretations of the reflections of Heiltsuk people. Of course, meanings of well-being more in line with non-Indigenous value systems (i.e.
economic resources, income, housing) will also play a key role in increasing levels of Indigenous well-being on the coast. However, the above analysis into the specific meanings of access to territory, Heiltsuk governance, and the Heiltsuk Big House will be instructive to the development of adequate indicators of “First Nations Human Well-Being” in Heiltsuk territory in the future.

4.6 Conclusion

Much of the current well-being literature fails to provide the clear links between the impacts of colonialism and the need to achieve higher levels of collective and individual well-being for Indigenous peoples. In light of this, this chapter explored the ways human well-being definitions and policies are being deployed on the central and north coast of BC, or a region also known as the Great Bear Rainforest. Achieving high levels of human well-being for the Great Bear Rainforest has been a major goal of this region since in the early 2000’s and is now explicitly addressed in political agreements and legislation, including the Coast Funds, the 2016 Amending Agreement, the Great Bear Rainfr Land Use Order and the Atmospheric Benefit Sharing Agreements (ABSAs). These recent developments are helping Heiltsuk realize a definition of well-being that takes into account economic dimensions, and well as governance related (i.e. the building of the Big House) relevant to several coastal First Nations that were once ignored. This will mean industry working with Heiltsuk and other First Nations in a new way that supports options to enable Heiltsuk development of harvest opportunities while simultaneously accepting that different kinds of economies are crucial to the economic and community well-being for First Nations people. While being part of the modern economy is important to ensuring Heiltsuk people have access to long-term employment, so to is ability of every Heiltsuk member to have access to the resources they rely on for the subsistence.
economies (i.e. the clam fisheries, herring roe and seaweed). These economies are crucial to Heiltsuk way of life, yet not well understood by those who historically have the power to implement well-being policies. And this will certainly be a difficult reality for forestry on the coast, which has historically operated under a traditional resource based model. There is reason to be hopeful, however, because important work by savvy and creative negotiators is taking place to devise solutions to build these new relationships with both industry and provincial agencies (anonymous, personal communications, 2018).

However, do these initiatives, policies and legislation go far enough to address the legacies of colonialism on the central coast? No. Not yet. For increased levels of Heiltsuk well-being to be achieved, the Crown must work to undo the historic marginalization of Indigenous peoples by prioritizing Heiltsuk’s jurisdictional authority over their territory. This is not a “courtesy” of the Crown, but a necessary part of reconciling the existence of well-established Indigenous political, social and economic systems with asserted Crown sovereignty. Addressing these considerations, and perhaps varying understandings of human well-being from other signatory First Nations, will been no easy task; a significant amount of work by all Parties involved in the negotiations was required to agree on a set of measures that mildly attempted to account for these sorts of things. Though if Indigenous well-being is contemplated in the larger picture of Indigenous sovereignty and reconciliation on the coast, instructive lessons for the negotiation of effective indictors of well-being are possible. Through a deeper reading of what well-being could mean to Heiltsuk (of which there are many), tensions explicit to colonial histories and present are profound. Above all, access to territory is key to being well as Heiltsuk.
Chapter 5: “To turn things around and make things rights again”:

Reconciliation Efforts in Heiltsuk Territory

On October 25th, 2015, Heiltsuk Nation released their Heiltsuk Declaration of Title and Rights and enacted the Heiltsuk Title and Rights Strategy: A Reconciliation Agenda (‘the Strategy’). The Heiltsuk Title and Rights declaration and strategy are key political documents that set a clear strategy for how Heiltsuk Nation will continue to “build on [their] existing capacity to effectively exercise authority” and “continue to assume greater jurisdictional power on all matters related to [their] people, lands and resources.” The strategy was developed through rigorous community consultation, dedication from the elected leadership at the Heiltsuk Tribal Council and with the support of the Hemas (the Hereditary Chiefs Council). Of particular note, the formal Heiltsuk Declaration of Title and Rights is intended to renew the commitment of the Heiltsuk political leadership (i.e. Heiltsuk Nation) to reconcile their sovereignty with the Crown and Canadian society. Such a framing of reconciliation is consistent with the claims of Chief Justice Lamar in Delgamuukw vs British Columbia, which states the basic purpose of s. (35) of the Canadian Constitution is “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown” (1997, para 186). However, Heiltsuk Nation is making it clear that for their nation, it is a matter of how the Crown asserted sovereignty over Heiltsuk lands and waters that requires reconciliation. That is, reconciliation, in part, is about the Crown making amends for past and present injustices, and the potential for Canada and Heiltsuk to advance on a path of reconciliation together.

Curran (2017, p.820) characterizes several of the negotiated agreements now being implemented on BC’s coast (i.e. the 2009 Coastal First Nations Reconciliation Protocol
Agreement, and the Great Bear Land Bear Land Use Order) as a “a comprehensive example of Crown-Indigenous relations in an era of reconciliation, providing one of the rare accounts of what reconciliation looks like on the ground.” My work in this chapter explores “on the ground” efforts of reconciliation unfolding through Indigenous-state relations in more detail through the ‘reconciliation process’ occurring in Heiltsuk territory. I seek to understand: How reconciliation efforts with the federal government are unfolding for Heiltsuk Nation, and how these efforts can inform conceptions and practices of reconciliation more broadly?

Canada’s current “era of reconciliation” has been forced through decades of Indigenous advocacy, court challenges, international law and the Truth and Reconciliation Commission (to name but a few). However, the meaning/impact of this era remains very much to be determined. Thus understanding the way in which reconciliation efforts are playing out in practice remains an important task. Some might argue that Canadian society is at a crossroads where the potential exists for Indigenous and non-Indigenous governments to progress towards a mutual and respectful nation-to-nation relationship. However, great potential also exists for reproducing the colonial structures that have plagued Indigenous peoples for over 150 years (Alfred, 2005; Coultard, 2014; King and Pasternak, 2018; Simpson; 2018).

The Heiltsuk Title and Rights declaration and strategy are an important part of reconciliation efforts occurring in Heiltsuk territory, particularly because both documents provide the Heiltsuk with a political mandate to work with both with the Province of British Columbia and of the Government of Canada in a “reconciliation process” (H6, 2016). By “reconciliation process”, I am referring to the ongoing efforts and initiatives unfolding in Heiltsuk territory meant to give shape to what reconciliation could look like between Heiltsuk
Nation and Canada. To be sure, Heiltsuk are determined to participate in this reconciliation process as the penholders and demand immediate and tangible benefits from it.

In this chapter, I first review the current reconciliation literature as it pertains to Indigenous-settler state relations in Canada, with a particular focus on how reconciliation has been defined through the courts and Canadian government policies (i.e. the Truth and Reconciliation Commission and the Royal Commission on Aboriginal Peoples (RCAP)). I then turn to some of the specific ways Heiltsuk Nation is proceeding with a reconciliation approach with the Government of Canada. Specifically, I analyse the Heiltsuk Title and Rights strategy and declaration and the Haíɫ̓cístut: Framework Agreement for Reconciliation in light of recent conceptions of reconciliation within the Canadian context. I seek to show how Heiltsuk Nation is advancing an ambitious reconciliation agenda with the Crown because I argue Heiltsuk’s experience offers potentially useful insights for other Nations in the province who are or chose to engage in reconciliation efforts with Canada.

5.1 ‘Reconciliation in the Canadian Context’

Reconciliation in Canada is not a new concept. In the context of scholarship on settler colonialism, and Indigenous-state relations, it has several interpretations. For their part, the courts have impacted constitutionally protected “Aboriginal and treaty rights” and their relationship to reconciliation in Canada through their interpretations of Section 35 of the Constitution Act (Galbraith, 2014; Curran, 2017). R v. Van der Peet (1996) was the first court case to declare: “Aboriginal rights recognized and affirmed by S.35 (1) must be directed towards reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown.” However, Dale Turner presents an important critique of Van der Peet. As with the Truth and
Reconciliation Commission (discussed below), Van der Peet “does not allow for Aboriginal nationhood to play a central role in defining the meaning and content of s. 35 (1) rights” (Turner, 2013, p. 108). Instead, Van der Peet characterizes Indigenous rights as a form of cultural rights, thereby placing the source of Indigenous rights in the distinctiveness of Indigenous cultural practices (Hewitt, 2014; Turner, 2013; Slattery, 2007). This interpretation is problematic because it misses the inherent view of Indigenous rights and title, which begins from the position that Indigenous peoples constitute Nations. Instead of placing emphasis on reconciling the assertion of Indigenous sovereignty, Turner (2013) focuses his analysis on the importance of reconciling Aboriginal laws and customs with the assertion of Crown sovereignty (my emphasis). The not altogether subtle difference between sovereignty and laws and customs is important because the expression of Indigenous laws and customs (in the practical ways of governing) are a major part of how Indigenous Nations assert their sovereignty (Webber, 2016).

The courts have contributed to the idea that reconciliation is about process rather than substantive principles or ultimate outcomes (Curran, 2017; Slattery, 2007). In Delgamuukw v British Columbia, the reconciliation of “Aboriginal societies” with asserted Crown sovereignty is achieved through “negotiated settlements, with good faith and give and take on all sides, reinforced by the judgements of the this Court” (Curran, 2017; Shaw, 2008; Turner; 2013). In the context of BC, where there are few signed historic or modern day treaties, an example of a processes, or day-to-day framework, through which the reconciliation of Aboriginal rights with the interests of Canadian society may be achieved is the Crown’s duty to consult and accommodate Indigenous peoples (Curran, 2017). As discussed in Chapter 3, Haida Nation v. British Columbia and Taku River Tlingit Nation v. British Columbia ruled the Crown has the duty to consult Indigenous peoples when it plans to carry out a (resource) project that will affect
“Aboriginal rights and title” (Ochman, 2008). As Galbraith (2014) highlights there are only a few options through which First Nations can seek “reconciliation” of their pre-existing societies with Crown. Other than the BC treaty process (discussed below), “what is on offer from the Crown is legally required consultation and accommodation processes” (p.455). However, some legal scholars would argue that for the affirmations of Aboriginal rights in section 35 to “serve as a vehicle for reconciliation, reconciliation cannot be conceived as the absence of infringement” (Curran, 2017, p.823). In other words, reconciliation extends beyond reconciling “Aboriginal interests” with Crown-defined resource development or economic interests (i.e. forestry, mines, fisheries, etc.). As will be made evident below, the ‘duty to consult’ may be an effective way for staff from First Nations government and provincial staff to communicate over land and resource matters (such as land use permits), but it does not constitute a process resembling a conception of reconciliation agreed to by most First Nations.

Conventionally, from the Crown’s point of view, the ‘duty to consult’ is a prevailing framework through which “reconciliation” is defined as a process with substantive outcomes that can be achieved (Egan, 2012). Slattery (2007, p. 25) posits that such definitions also “mandate the Crown to negotiate with Indigenous peoples for the recognition of their rights in a form that balances their contemporary needs and interests with those of broader society.” Importantly, Slattery (2007) then distinguishes between two types of aboriginal rights – historical rights that gained their basic form because of their practice in the past, and generative rights. The latter are rights that, although rooted in the past, have the capacity to renew themselves as organic entities. From this view, Slattery (2007, p. 25) argues aboriginal rights are not just historical, “they are also generative rights that need to accommodate the full range of modern interests, both aboriginal and non-aboriginal, and as such may require articulation in agreements with the
Crown.” This thinking draws attention to a meaning of reconciliation based on relationships (specifically the relationships between Indigenous and non-Indigenous peoples) that, in theory, could involve “sincere acts of mutual respect, tolerance and good will that serve to heal rifts and create the foundations for a harmonious relationship” (Walters, 2008, p. 168). In sum, legal scholars have showed that the courts understand the main purpose of Section 35 to be the reconciliation of the existence of Aboriginal societies with the assertions of Crown sovereignty. While strides have been made to define processes to achieve said reconciliation (i.e. consultation), these processes have failed because they do not account for the inherent sovereignty authority of Indigenous nations. Thus, the courts now advocate for reconciliation to take place outside the courtroom because creative processes will be necessary if a genuine reconciliation between Indigenous nations and Canada is to be achieved.

Legal scholars aside, other meanings of reconciliation are debated among scholars and practitioners. Blackburn (2007), for example, defines two distinct meanings of reconciliation relevant to Indigenous-state relations in Canada: 1) as “linked with correcting the mistakes of the past and producing a new, more harmonious relationship between Indigenous and non-Indigenous peoples” (p.622), and 2) as rendering rights [heretofore incompatible] compatible (p. 622). The Truth and Reconciliation Commission (TRC)\(^6\) is an example of Blackburn’s first meaning, as the TRC’s mandate describes reconciliation as:

\[...an\ \textit{ongoing\ individual\ and\ collective\ process,\ and\ will\ require\ commitment\ from\ all\ those affected\ including\ First\ Nations,\ Inuit\ and\ Metis\ former\ Indian\ Residential\ School}\]

\(^6\)“The TRC’s mandate focuses on the historical injustice of the residential schools, and coming to terms with their devastating effects on Aboriginal peoples, but its purpose is to heal Aboriginal communities, which in turn is see to represent an important step towards the reconciliation between Aboriginal and non-Aboriginal Canadians (Turner 2013, pg. 109).
(IRS) students, their families, communities, religious entities, former school employees, government and the people of Canada. Reconciliation may occur between any of the above groups (TRC, 2015, pg. 16).

For the TRC, reconciliation is about establishing mutually respectful relationships between Indigenous and non-Indigenous peoples in Canada, and in order for that to happen, “there needs to be awareness of the past, acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change the behaviour” (TRC, pg 7).

The TRC is a crucial part of truth telling and healing for residential school survivors, and an awakening for many Canadians unaware of the residential school systems and its devastating legacies (Regan, 2010). But it has also been criticized for failing to incorporate the inherent rights of Aboriginal self-government into its mandate (Turner, 2013). In this sense, reconciliation can be read as an attempt to heal “unhealthy” Indigenous communities, which can also mean that “the government’s idea of reconciliation does not place Aboriginal nationhood at the centre of renewing the legal and political relationship” (pg. 100). This critique echoes the second meaning of reconciliation: the idea of making incommensurable rights, in fact, commensurable – because in this sense, reconciliation is about how Crown claims to sovereignty

68 It’s important to note several scholars, including Turner (2013) reversed their positions on the inadequacies of the Truth and Reconciliation Commission’s (TRC) mandate when the final report was publically released in June 2015. The final report included language and “calls to actions” that promotes a reconciliation between Indigenous and non-Indigenous peoples in Canada based on mutual respect, relationship building, and importantly, calls for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to be “the framework for reconciliation at all levels and across all sectors of Canadian society” (TRC, 2015a, p. 3). These changes demonstrate the rapidly unfolding nature of efforts of reconciliation occurring in policy and in the literature. What my findings attempt to show what reconciliation currently looks like on the ground for Heiltsuk Nation, as work to analyze it’s implications could prove useful for Nations with similar governance goals.
need to be made compatible with assertions of Indigenous sovereignty (Kotaska, 2013). Reconciliation in this combined sense, is thus not only a matter of “healing” but also a condition of deep political contestation (Macklem and Sanderson, 2016).

In 1996, the report of The Royal Commission on Aboriginal People (RCAP) \(^{69}\) notably tackled the idea of reconciling the asserted sovereignty of the Crown with the asserted sovereignty of Indigenous peoples by declaring that Aboriginal peoples have:

...a right to fashion their own destiny and control their own governments, lands and resources. They constitute nations, with an inherent right of self-government. The federal Crown should undertake to deal with them as such. (RCAP, Volume 5, pg. 5).

Here, the RCAP argues that Canadian governments should seek to negotiate with Indigenous peoples as sovereign Nations, which gives credence to the concept of a “nation-to-nation” relationship with the Crown and individual nations. Crucially, according to RCAP, these negotiations must realize the inherent rights of Indigenous peoples, which most certainly include rights to their land, resources and self-governance (e.g. Heiltsuk’s jurisdictional authority derived from their 7áxvá). It also implies these inherent rights cannot be infringed upon or extinguished by the Crown. That is, as mentioned in Chapter 2, Indigenous rights are not bestowed upon Indigenous peoples by way of the Crown (Acsh, 2014). This is similar to the claim that reconciliation, and its implementation, “will take direction from Indigenous laws, created by communities that have neither lost nor surrendered their right to continue to develop and maintain their own laws” (Hewitt, 2014, p. 261). What is important here is any lasting

\(^{69}\) RCAP, commissioned in 1991 by the federal government in response to Oka crisis, was the Canadian’s state first major post – 1982 initiative at reconciliation with Indigenous peoples. The commission’s mandate examined Aboriginal health, education, governance, the north, the Metis, urban issues, and Elders (Turner, 2013, pg.102).
reconciliation process between the Crown and an Indigenous nation will require serious consideration of the inherent rights of Indigenous peoples, including Indigenous laws.

Turner (2013) points out RCAP renders reconciliation as about *renewing* the legal and political relationship between Indigenous and non-Indigenous people in Canada (Turner’s emphasis). In fact, RCAP’s definition of a renewed relationship was guided by the principles that arose from a historical understanding of the early treaty relationship: mutual recognition, reciprocity, responsibility and sharing (Turner, 2013). Importantly, the RCAP’s definition of reconciliation involves a process that also reconciles Aboriginal ways of knowing with the contemporary legal and political discourses of that state. However, as we know, federal or provincial governments have made efforts to implement the recommendations within RCAP. And, as evident by court decisions, government policies and some reconciliation efforts thus far, Crown sovereignty is never questioned in any path moving forward, including the BC Treaty process and Truth and Reconciliation Commission.

This is so even though the BC treaty process was ostensibly an early attempt at reconciling Crown assertions of sovereignty with Indigenous assertions of title. The failures of the BC Treaty process have been well documented by Indigenous and non-Indigenous scholars (e.g. Alfred 2000; Blackburn 2009; Egan 2012; McKee, 2009; Penikett, 2006; Woolford, 2005) and are also discussed in Chapter 2. From the Crown’s perspective, negotiating contemporary treaties is a way for the Crown to guarantee finality and certainty for development activities and their investors. From many Indigenous perspectives, contemporary treaties should remain rooted instead in the conception of a nation-to-nation partnership between peoples (Asch, 2014). As Alfred (2005, p. 156) explains, this kind of partnership “is reflected in the original treaties of peace and friendship consecrated between indigenous peoples and newcomers when white
people started arriving in our territories.” And yet few would deny that this original conception
of treaties has been completely ignored and distorted to suit the interests of the Crown (Asch
2014; Miller 2009). Not surprisingly, the BC Treaty process has never lived up to its intent to
reconcile Crown sovereignty with Aboriginal “interests” including those referencing the land and
self-government (Kotaska, 2013).

Kotaska (2013) provides a detailed account of reconciliation efforts unfolding in British
Columbia since Delgumuukw vs British Columbia, claiming the relationship between First
Nations and the BC government has changed dramatically since that decision. Delgumuukw
affirmed the existence of Aboriginal title, but did not say where it existed. Instead, Aboriginal
title would have to be negotiated or proven in court. This decision also reiterated the need for the
BC government to consult with First Nations on decisions that may infringe on Aboriginal title.
This consultation requirement “effectively forced the provincial government to consider the
effect of their actions on and initiate a different type of relationship with First Nations” (Kotaska,
2013, p.123). This requirement for the government to consult was later affirmed in the
aforementioned 2004 Haida Nation and Taku River decisions.

The Supreme Court of Canada then handed down another hugely influential decision
related to reconciliation on June 26th, 2014, by granting a declaration of Aboriginal title over
Tsilhqot’in lands (Borrows, 2015). In essence, the Tsilhqot’in Nation vs British Columbia
confirmed that Aboriginal title comes from the exclusive occupation of land at the time of Crown
sovereignty (McNeil, 2015). The Tsilhqot’in Nation (2017, para 73) was recognized as holding:

...ownership rights similar to those associated with fee simple, including: the right to
decide how the land will be used; the rights of enjoyment and occupancy of the land; the
right to possess the land; the right to the economic benefits of the land; the right to pro-
actively use and manage the land.

The breadth of this decision is substantial. For the first time an Indigenous nation in Canada
secured a robust protection of their land rights in the Canadian courts (Borrow, 2015; McNeil,
2015). To get to this declaration of title, Tsilhqot’in “had proven sufficiency of occupation
necessary to establish Aboriginal title” (Borrows, 2016, p. 716). The courts ruled that because
Tsilhqot’in governance systems enabled them to enjoy continuous and exclusive use of their
lands before Crown assertions of sovereignty, Tsilhqot’in continue to hold rights to territorial
title to the present day.

Despite the court’s unprecedented affirmations of territorial title to Tsilhqot’in lands,
Borrows (2015) draws on the fact that the deep-rooted doctrine of discovery or “terra nullius” is
problematically reproduced in this decision.70 For instance, in the decision it states: “At the time
of assertion of European sovereignty, the Crown acquired radical or underlying title to all the
land in the province.” Further, the Supreme court argued that title land without the inclusion of
provincial and federal law would create a “legal vaccum” (Garcia, 2015). Ultimately, the court
ruled the Crown “could infringe Aboriginal title if it demonstrated a compelling and substantial
objective for the benefits of the larger Canadian population, and if it acted consistently with its
fiduciary duty.”71 This means that Aboriginal title is subordinate to the underlying title of the

70 The doctrine of discovery, or terra nullius, was the notion that Indigenous peoples were inferior to other
peoples. Because of this inferiority, land was declared to be legally empty at the time of European
sovereignty over what is now Canada. This is what effectively allowed European law to control
Indigenous peoples.
71 Tsilhqot’in Nation v British Columbia, SCC 44 (2014) (para 125)
Crown. In a broader sense, however, the *Tsilhqot’in* decision is a very important one because it gave credence to the notion that Tsilhqot’in people now own and control their land in the claim area and can use it for a variety of purposes. Further, and perhaps more influentially, Tsilhqot’in people can “bring injunctions, claim damages, and secure orders for the Crown to engage in proper consultation and accommodation of Aboriginal title” (Borrows, 2016, p.741).

Not surprisingly, the implications of the above court cases have motivated the BC government to shift from “dealing with” the interests of First Nations as if they were another ‘stakeholder’ in decision-making processes (Low and Shaw, 2011) to recognizing First Nations assertions of their rights and title to their territory in negotiated agreements (Kotaska, 2013). For example, after decades of denying Indigenous rights and title even existed, followed by years of failed modern day treaty negotiations, the Crown demonstrated a willingness to negotiate land use issues with First Nations in separate “government-to-government” processes (Low and Shaw, 2011). In turn, these negotiations resulted in several of the agreements examined in Chapter 2 and 3 (i.e. the Strategic Land Use Planning agreements and Coastal First Nation Reconciliation Protocol). At the same time, and bolstered by the above court cases, First Nations were (and are) redefining the vision for reconciliation using these negotiated agreements to regain more control over their territories. At least on the central and north coast of BC, reconciliation can be “seen by decision-makers on both sides as an incremental and ongoing

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73 At the very least, the government-to-government negotiations formally recognized the distinct nature of the relationship between First Nations and the province, addressing First Nation’s long standing rejection of being categories as stakeholders.
process of building relationships, creating sustainable economies, co-governing with a common vision, and building capacity to meet these goals” (Kotaska, 2013, p. ii).

While these different meanings of reconciliation in Canada are not new, and are now framed by court interpretations of Section 35 (1) (i.e. *Van der Peet, Delgumuuk, Tsilhqot’in*), there is little work by scholars on what reconciliation means outside the courtroom, and what it might look like when it is put into practice through deliberate negotiations between Indigenous nations and the Crown. It is increasingly apparent that the ‘duty to consult’, the BC treaty process, and even the affirmation of Aboriginal title as per *Tshilqot’in* (including the possibilities for territorial governance) fall significantly short as options for meaningful reconciliation between Indigenous peoples and the Crown. But what has shifted is the degree of pressure now exerted outside the courtroom. Given this, the question remains: What are some of the alternative ways reconciliation could potentially be expressed between First Nations and Canadian governments? And what do these say about what reconciliation itself means to one Indigenous nation as discrete from prevailing Crown definitions and expressions?

Thus my intention is to shed light on what a ‘reconciliation process’ – driven by an Indigenous nation (rather than the Crown or courts) – could look like in practice. That practice is ongoing at this writing and so what follows must also be understood as an exploratory analysis. That is, reconciliation efforts between Heiltsuk Nation and the Government of Canada have been occurring recently and rapidly through formal channels (i.e. official meeting and negotiations taking place primarily in Bella Bella) as well as through community driven initiatives, such as

74 Jana Kotaska’s PhD work is certainly an exception to this claim. Also see Galbraith (2014) for a discussion of how planning processes, specifically those used on Haida Gwaii have revealed potential for reconciliation.
HIRMD’s commissioning of a ‘reconciliation mural’ to be placed in a central location in the community. What follows is also inspired by Saul Brown, a member of the Heiltsuk Nation, whose thoughts in a recent article were as follows: *In the era of what is considered an “era of reconciliation” in Canada, the Heiltsuk have invoked our own power, through our native tongue, to define the pathway forward* (Brown, 2018).

5.2 Reconciliation and Heiltsuk Nation

Reconciliation efforts are unfolding in several forms in Heiltsuk territory. These efforts are not only informed by the definition of reconciliation emerging from the courts or Canadian policies (i.e. reconciliation as is about “healing” Indigenous communities or a process leading to a more balanced relationship between First Nations and the Crown), these efforts are driven by Heiltsuk Nation goals. Through several different examples, I aim to show how Heiltsuk Nation is changing the definition of reconciliation to one that includes both a short term and long term vision with potential implications for Heiltsuk sovereignty. Importantly, Heiltsuk Nation insists that any reconciliation efforts with the provincial and federal Crown occur on their terms: “The times of government officials deciding solutions for Indigenous peoples, without Indigenous involvement, are over” (Brown, 2018). These terms are set out in the *Heiltsuk Title and Rights Strategy: A Reconciliation Agenda* and the Heiltsuk Title and Rights Declaration, which are two key documents used to initiate the reconciliation process between Heiltsuk Nation and the Government of Canada in spring 2016.
5.2.1 The Heiltsuk Title and Rights Strategy and Declaration

The Heiltsuk Title and Rights Strategy\(^{75}\) and Heiltsuk Declaration of Title and Rights are key documents and expressions of the Heiltsuk position mentioned above. Developed over many months by the Heiltsuk leadership and with extensive community input, these documents set out Heiltsuk Nation’s strategy as to how they will articulate their “Aboriginal title and rights interests [with] others as [they] seek to achieve reconciliation with Canada and BC.” The strategy itself contains the declaration of Heiltsuk title and rights, though the declaration was also published as a standalone document.\(^{76}\) The strategy contains 5 main components:

- Introduction
- Heiltsuk Since Time Immemorial
- Heiltsuk Declaration of Title and Rights
- Tsilhqot’in Legal Analysis
- Heiltsuk Title Strategy
- Implementation Plan (not public)

The strategy and declaration demonstrate that Heiltsuk is willing to work with both the provincial and federal Crown to renew their political relationship, based on a spirit of reconciliation and partnership. For example, the first paragraph of the Strategy reads:

*The title of this Heiltsuk Title and Rights Strategy references ‘reconciliation’ because we recognize that First Nations, the Crown and non-Aboriginal society are all here to stay and it is in everyone’s best interest to find a new way forward. We believe Heiltsuk can be leaders in this respect. Our Nation has a history of seeking political, legal and economic solutions to reconcile our relationship with Canada and BC. We have sought to develop*


strong partnerships with those undertaking resource activities within our territory and our Nation continues to build a conservation economy for a sustainable future (p.1).

The declaration and strategy are also examples of Heiltsuk exercising their jurisdictional authority derived from their inherent rights and title as Heiltsuk people. The Strategy itself contains justification for Heiltsuk inherent jurisdiction over their territory, and names the source, ‘Gvi’ilà, from which Heiltsuk governing authority is derived. This is enshrined in the Strategy formally as (my emphasis):

A. This declaration is based on 7áxvá (our inherent jurisdiction that flows from ownership and our lands) and ‘Gvi’ilà (our governing authority over all matters related to our lands and people).

In other words, Heiltsuk ground their vision for reconciliation in the strength and leadership of their hereditary governance system, including its place-based authority (Gauvreau, et al. 2017). These experts below are from the strategy and clearly explain Heiltsuk justification for their exclusive authority over their territory through their hereditary system:

The source of Heiltsuk title flows from our historic ownership occupation, stewardship, use and control of our territory. Our title predates and survives the assertion of European sovereignty. Each generation is taught the history of our lineage and how it connects our People to ownership and responsibilities related to our territory

...Heiltsuk definition of our territory is inextricably linked to social organization, through our chief system connected to specific areas. We have maintained exclusive authority over these areas through our hereditary system.
These declarations of Heiltsuk’s inherent jurisdiction and governing authority are important because, as Turner (2013, p.110) argues, “reconciliation, as an ongoing process, is not only about healing the past wounds in order to move the relationship forward, it is also about asserting and defending the integrity of Aboriginal nations.” That is, the Declaration of Heiltsuk Title and Rights, and the Heiltsuk Title and Rights Strategy: A Reconciliation Agenda are a formal assertion of Heiltsuk sovereignty, as well as a plan for how they will use their Heiltsuk title and rights in seeking reconciliation with the Crown, and more broadly, Canadian society.

The strategy suggests Heiltsuk are open to working collaboratively with settler governments because, to put it colloquially, Canadian society is not going anywhere. For this reason, the Heiltsuk Title and Rights declaration and strategy are intended to “set an agenda for any development within Heiltsuk territory” (p.1). This is important because it signals the need for reconciliation with not only the Crown, but also with those who wish to use or develop natural resource projects in Heiltsuk territory. A clear example of Heiltsuk seeking to “develop strong partnerships with those undertaking resource activities in within [their territory]” is the newly formed Heiltsuk Horizon Maritime Services Limited, which brings together Heiltsuk Nation as the majority partner with Horizon Maritime Services Limited77, a Canadian marine and offshore company. Heiltsuk Horizon have submitted a proposal to the federal government that if successful means “the company will lease two new sister ships to the Canadian Coast Guard to provide state of the art emergency towing capability for responding to ships in distress off the B.C. coast” (Heiltsuk Horizon, 2018). As Harvey Humchitt, a Hereditary Chief from Heiltsuk Nation explains: “This is a huge opportunity for Canada to support an-on-the-ground approach to

77 See: https://heiltsukhorizon.ca/
reconciliation.” He continues, “[Heiltsuk Horizon] is a unique partnership, we’ve aligned our Heiltsuk values with the core values of Horizon Maritime to demonstrate how First Nations and industry can embark together on a bold step toward reconciliation…” (Heiltsuk Horizon, 2018). Such a partnership as the one between Heiltsuk Nation and Horizon could be read as “reconciliation based on relationships that are “sincere acts of mutual respect, tolerance and good will” (Walters, 2008, p.168) because if successful, this partnership has the potential to address the historical marginalization of Heiltsuk people from protecting the marine resources upon which they are so intimately connected. What is important here is this partnership is Heiltsuk driven and could lead to significant capacity building through a Heiltsuk-led Indigenous Marine Response Centre.  

Furthermore, a strategy such as the Heiltsuk Title and Rights Strategy: A Reconciliation Agenda, clearly demonstrates that the Canadian state led processes, such as the ‘duty to consult and accommodate’ – originally conceived of as a way to achieve reconciliation – are insufficient tools for reconciling Crown sovereignty with Indigenous governance systems, laws and customs in existence well before European arrival. Why does the ‘duty to consult’ fail as a process of reconciliation? Generally, a consultation process is triggered when Aboriginal rights may be affected by a statutory decision such as a land-use permit (INAC, 2011). In Heiltsuk territory, the ‘duty to consult’ is at play when the Crown and the Heiltsuk government use a shared decision-

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79 Here I am referring to consultation and accommodation processes that have been a central legal mechanism use to work towards “reconciliation” between the Crown and Aboriginal peoples and their interests. These mechanisms are used when Aboriginal rights may be affected by a statutory decision, such as a land use permit, and include a range of activities, such as notifications, meetings, or rejecting the project. (INAC, 2011, p.44)
making process, known as the Engagement Framework (as discussed in detail in Chapter 3), to reach decisions about proposed resource development, such as forestry operations. While the Engagement Framework was a process reached through negotiation between Coastal First Nations (of which Heiltsuk is a member) and the Crown, it was still developed through Crown rules and uses common law frameworks to reach such decisions.\textsuperscript{80}

Yet, “colonial laws stand in contrast to Indigenous law, which encompasses the existing and evolving laws of each Indigenous community” (Curran (2017, p. 819).\textsuperscript{81} From the above assertions of Heiltsuk inherent jurisdiction and governing authority in the \textit{Heiltsuk Title and Rights Strategy}, Heiltsuk are interested primarily in a reconciliation that “takes direction from Indigenous laws, created by communities that have neither lost nor surrendered their right to continue to develop and maintain their own laws” (Hewitt, 2014, p.261). Thus, by design and definition, any decision reached through a ‘duty to consult’ process will almost always infringe on Heiltsuk rights and title as it will not reflect rights derived from Heiltsuk laws. For example, almost any resource development decision is likely to impact lands and/or waterways crucial to the structure of Heiltsuk governance system. Recall Heiltsuk people continue to identify as being from one or more of five tribal groups, with each group’s ancestors belonging to different regions within the whole of Heiltsuk territory: ’Wúyáltxv, ’Wúił̓’itxv, ’Yísđáitxv, ’Qvúqva’yáitxv, and ’Xíxís. This means that in Heiltsuk territory, almost any proposed resource development will infringe on the ownership rights held by the families whose ancestors belong to that area.

\textsuperscript{80} This claim does not diminish the initial intent of the Engagement Framework to act as a “bridging step towards the reconciliation of Crown rights and interest with those of the signatory Nations who use the Framework.

\textsuperscript{81} Here, Curran draws on the work of Val Napoleon and John Borrows, see footnote 21 on pg 819.
Heiltsuk assertions of their inherent jurisdiction and governing authority over their territory are similar to those expressed by Tsilhqot’in in a decades-long court battle for Aboriginal title (explained above). It is important to note that Heiltsuk have not discounted the option of launching a title case against the Crown (KB, 2016). At the same time, Heiltsuk fully recognize the courts themselves are pushing for “reconciliation” outside the courtroom. In the *Heiltsuk Title and Rights Strategy*, Heiltsuk express that Tsilhqot’in may “build on many victories First Nations have had in the courts, it clearly has created even more incentive for creative ways to work together and reconcile” (p.7). What must also be made clear, however, is what is being reconciled, which for Heiltsuk remains their conviction that the Crown is at fault for historical and present injustices facing Heiltsuk people.

As such, and so too crucial to reconciliation with the Crown, is the Heiltsuk concept of *Hai̇lci̇stut*, which is a traditional potlatch concept and means “to turn things around and make things right again.” This concept is integral to the reconciliation process because it recognizes Heiltsuk did nothing wrong, however, it also positions Heiltsuk as a Nation open to accepting attempts by the Crown to correct the mistakes of the past.

### 5.2.2 Hai̇lci̇stut: Framework Agreement for Reconciliation between Heiltsuk Nation and the Government of Canada

On January 28th 2017, *Hemas ’Qvúmáŋakvla*, elected Chief Councillor Marilyn Slett from the Heiltsuk Tribal Council, and Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs officially signed the *Hai̇lci̇stut: Framework Agreement for Reconciliation* (the Agreement) in Bella Bella, BC. As described by the a press release from the Government of
Canada, the *Hailcistut: Reconciliation Framework Agreement* sets out shared “principles and objectives” that will frame future negotiations on reconciliation between both parties:  

> This Agreement establishes a shared vision, principles and objectives, and identifies negotiating priorities most important to Heiltsuk, including housing, infrastructure, community safety and prevention of violence again women, fish and marine resources, self-government, and a recognition of Heiltsuk’s Aboriginal rights and title.

Formally speaking, the signed *Hailcistut: Framework Agreement for Reconciliation* is the first step in ongoing discussions between Heiltsuk Nation and the Canadian government about how Crown sovereignty will be reconciled with Heiltsuk title, rights and self-government. From a Heiltsuk perspective, in the reconciliation process now occurring between Heiltsuk and Government of Canada, “[Heiltsuk] will continue to progress with the intent of governing beyond the Indian Act, reconstituting as a self-governing people, and strive towards managing wealth” (HIRMD, 2018). In other words, Heiltsuk Nation is defining a meaning of reconciliation linked to how they intend to govern and rebuild their nation. By signing this agreement, both Heiltsuk Nation and the Government of Canada agree to “keep building on their relationship through exploratory negotiations conducted pursuant to this Framework Agreement for Reconciliation” (p.1).

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The Haíɫ̓cístut: Framework Agreement for Reconciliation is the first of its kind to be signed between an individual First Nation and the Government of Canada. The Agreement contains a “shared vision” section which identifies priority areas, known as “Priority House Posts”, that are to be further developed in a “Reconciliation Action Plan”, including (but not limited to): 84

- Infrastructure and Housing
- Employment, Training and Economic Development
- Education
- Health and Wellness
- Lands and Environment
- Self-Government
- Marine and Fisheries

While I do not provide a detailed account of each component of the federal Haíɫ̓cístut: Framework Agreement for Reconciliation here, the scope of this agreement is comprehensive. The shared vision section states: “The Parties will collaborate to find practical ways to support a renewed relationship with each other” (p. 2). Below, I attempt to illuminate some of these “practical ways” – as mentioned in the Agreement – a more meaningful reconciliation process could be unfolding in Heiltsuk Territory. Given this kind of political agreement concerning reconciliation between an individual Nation and Canada is new, I examine insights that show how Heiltsuk are changing the definition of reconciliation to ensure it accounts for several

84 The Haíɫ̓cístut: Framework Agreement for Reconciliation I discuss here focuses on negotiations between Heiltsuk Nation and the Government of Canada, however, Heiltsuk Nation are also in similar reconciliation discussions with the Province of BC. Within the context of the federal Haíɫ̓cístut Framework Agreement for Reconciliation, provisions to include the BC government where necessary are present, for example: “The Parties may explore potential partnerships with the provincial government in developing the Reconciliation Action Plan through tri-partite discussion on...” (p1., Section 3.1.6).

188
things, including: 1) a reconciliation process that is Heiltsuk-driven and focuses on tangible outcomes, particularly economic related, 2) a process of reconciliation that remains legitimized by the Heiltsuk membership, and 3) a process that will address the question of how Crown sovereignty will be reconciled with Heiltsuk title and rights.

5.3 Heiltsuk-driven Reconciliation Process and Outcomes

*Canada doesn’t know what it needs to do to reconcile. I respond to them by saying “’Ask us! We know what we need. Listen to the people that live here” (anonymous, personal communications, 2018).*

From a Heiltsuk perspective, engaging in a reconciliation process with the Crown is an important part of Heiltsuk Nation continuing to rebuild their community, including strengthening their local economies:

*It is the first step in our journey towards reconciliation. Reconciliation is vital to the Heiltsuk as we continue to build a healthy economy and healthy community. The Government of Canada’s actions demonstrate that they are committed to working on a nation-to-nation basis with the Heiltsuk (Watt, 2017).*

In fact, a Heiltsuk-driven definition of reconciliation will most likely be grounded in restoring sustainable, local and (potentially global) economies for Heiltsuk people. For example, the quote below is from an article written by a Heiltsuk member, Saul Brown, who provides a concrete definition of reconciliation – namely meaningful employment and economic opportunities – in the context of the economy:

*For the Heiltsuk, at least for the time being, in the context of the economy, reconciliation means: Heiltsuk economic development based in an owned/driven by the Heiltsuk Nation*
and people – balancing ecological integrity with a vibrant economy, meaningful employment, development of sustainable infrastructure, capacity to create economic opportunities and benefits for the Heiltsuk Nations, and fostering the health and well-being of all Heiltsuk peoples and territories in the economic development process.

These reflections echo the Truth and Reconciliation Commission’s exploration of reconciliation in that for Indigenous peoples, natural resource development is linked to reconciliation (Curran, 2017). Further, the TRC defines a “sustainable reconciliation” that “involved realizing the economic potential of Indigenous communities in a fair, just and equitable manner that respects their right to self-determination” (TRC, p. 207). As the aforementioned Heiltsuk Horizon example demonstrates, such a partnership between a Canadian business and Heiltsuk Nation is a step in a conception of reconciliation that is cautiously being supported by Heiltsuk members:

Meaningful reconciliation means putting a stop to tankers and articulated tug barges, and enforcing harsher regulations for anyone traversing our waters. Meaningful reconciliation means supporting an Indigenous – led Marine Response Center (IMRC), for those closest to the ocean, those who have always been the caretakers (Brown, 2018).

This articulation of “meaningful benefits” shows tangible and immediate benefits to Heiltsuk people are a singular priority. That is, Heiltsuk Nation is currently most interested in immediately improving the well-being of Heiltsuk citizens (personal communications with reconciliation negotiator, 2018). This includes the Government of Canada providing immediate investment in the Priority House Posts (listed above) that were identified by the community through rigorous consultation sessions. For example, Heiltsuk insist on outcomes of the reconciliation process that will address: the housing crisis in Bella Bella; intensive language
revitalization programs; investment in the marine sector to support infrastructure such as the Bella Bella fish plant (to name but a few) (HIRMD, 2008).

These goals also suggest, as explained by a member of the Heiltsuk negotiating team, that immediate investments are necessary to show Heiltsuk members that the work of their elected leadership is genuine, as must be the work of the Crown.

5.4 Reconciliation: with Community Support and Without Treaty

The fact remains that expectations of the Heiltsuk community are high for this reconciliation process, as is recognition itself that this historical moment is unique. At a community meeting in spring 2016,⁸⁶ it was clear negotiating “reconciliation” through discussions with the Government of Canada, was a new approach to reconciliation for both Heiltsuk Nation and the Crown. As Kelly Brown explained to the a group of Heiltsuk members, the reconciliation process Heiltsuk are engaging in with the Crown is the first of its kind in Canada:

...there is no prescribed process right now on reconciliation with governments other than tables like the CFN Reconciliation Agreement [2009 and 2016 RPAs], which is a bilateral agreement with the province. It’s not clearly laid out. This path that we are putting forward is breaking new ground.

We are only one in four First Nations in BC at a table like this, and one in 20 nationwide.

We are at a special place and we are leading the way on this stuff as a Nation. Being

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⁸⁶ This public meeting was an opportunity for Heiltsuk community members to learn and provide feedback to the Heiltsuk government about their negotiations with the provincial and federal Crown.
innovative and taking a risk in seeing if we can get something done before anyone else. I feel like we are in a good place to do this.

These reflections signal Heiltsuk Nation are cautiously willing to engage in a reconciliation process with the Crown if it takes place on a “nation-to-nation” basis. By this I mean Heiltsuk will negotiate with the Crown as long as they have equal authority in the process. That is, Heiltsuk (rightly) feel they are deserving of meaningful participation from the Crown. Such reflections could be read as Heiltsuk supporting a meaning of reconciliation that is about bringing “balance to the relationship between Canada and Aboriginal people, which is too one-sided and has been tense for centuries” (Hewitt, 2014). That is, manifesting such a “balanced relationship” means much more to Heiltsuk than restoring an amicable relationship with the Crown. It means restoring Heiltsuk communities and governance as first and foremost priority:

Reconciliation without restitution perpetuates a long-standing asymmetrical power dynamic between First Nations and Canada. By restitution, I mean creating the space to restore our Heiltsuk communities, our lands, our languages, systems of governance, our laws, our potlatches, our cultural practices, our knowledge systems and our waters (Brown, 2018).

A way for Heiltsuk Nation, specifically the elected leadership, to hold the Crown accountable to a process that could lead to a “more balanced relationship” is to demonstrate that the Heiltsuk leadership has the support of the Heiltsuk community. That support is best expressed by the Heiltsuk Title and Rights declaration and strategy because it was (and is known to have been) developed through intensive consultation with the Heiltsuk community members (anonymous, personal communications, 2018), and crucially with the support and strength of the Hemas (Hereditary Chiefs). This key aspect of the Heiltsuk Title and Rights strategy and
declaration came to light when I ask an elected leader from the Heiltsuk Tribal Council (HTC) what the negotiations between the Heiltsuk government and the federal Crown looked like in real time. Her answer demonstrated how crucial it was for the Heiltsuk leadership to have the support of the community when they entered into negotiations with the Crown. She explained that by showing the Heiltsuk leadership had the support of community, the Heiltsuk Tribal Council could start to erode some of the asymmetrical power structures that exist in other types of negotiations (the BC Treaty process comes to mind). She explains:

...developing a strategy to move forward, affirming that [the Strategy] as a mandate, is the most powerful thing you can do with government [the Crown]. By walking in [to negotiations with the Crown] and saying “we have a mandate from our community.”

Because, I mean we can go in there, we can say all these openings but if we don’t say... it legitimizes what you’re bringing forward. We [Heiltsuk] on a regular basis will say “our community is watching what we’re doing, how we’re announcing this...with different federal ministers and high level bureaucrats. We basically said [to the Crown], all our community is watching what we’re doing, they’re watching the Province, we’ll be reporting back to them on the progress and if they’re not satisfied then, well you know what could happen [alluding to herring stand off](MS, 2016).

This powerful claim by an elected leader of the Heiltsuk Tribal Council demonstrates that the political mandate of the Heiltsuk Title and Rights strategy and declaration are not arbitrary words on paper. The strategy and declaration, and the reconciliation process itself, has maintained legitimacy with the Crown because it continues to have strong community support. This also places a significant amount of responsibility on the Heiltsuk leadership to ensure it consults and communicates their strategy to Heiltsuk members. In fact, HTC has hired a full time
position dedicated to communicating developments of the reconciliation process to Heiltsuk members both on and off reserve (HIRMD, 2008).

Heiltsuk Nation must also prepare for the reconciliation process with the Crown to fail. To prepare for such a reality, the Heiltsuk leadership are very clear about what the Haíɫcístut: Framework Agreement for Reconciliation is and what it is not. Crucially, this agreement is not final, nor does it resemble a treaty or land claim. As Kelly Brown explained to community members:

*There is a lot to consider moving forward and we’re not entering into any sort of final agreement with the feds or province here. I want people to know this. This is not a land claim, it’s not a treaty. It’s nothing like that. It’s an interim measure to bring opportunities back to the people. An interim measure to bring back some jurisdiction and authority that we could have as a tribe on our own for our territory.*

Marilyn Slett has also emphasized the Haíɫcístut: Framework Agreement for Reconciliation is not part of the BC treaty process, and instead an emerging alternative to reconciliation that will better address the needs of the Heiltsuk community:

*Just to add to Kelly’s presentation, particularly with the election of a new government in October. They came out with their mandate letters and one of the things they are looking for is different alternatives to the treaty process. We’ve heard so much about the treaty process. We pulled out in 2001 and were not interested in that moving forward. Now we have harnessed an opportunity in developing alternatives in ways that will address our needs. This is one of the things we are helping to unfold moving forward (Marilyn Slett, 2016).*
From the perspective of some Heiltsuk leaders, this reconciliation process (involving the \textit{Haíɫčistut: Framework Agreement for Reconciliation}) is an entirely different process than the BC treaty process and comprehensive land claims. As discussed in detail in Chapter 3, the modern day BC treaty process was intended to reconcile “the existence of Aboriginal societies” with assumed Crown sovereignty through final agreements that required the extinguishment of Aboriginal rights (Kotaska, 2013). As mentioned in the quote above, Heiltsuk consider the treaty process a failure and will not be taking part in the treaty process moving forward. Rather, a Heiltsuk driven reconciliation process with the Crown offers much more flexibility and clearly does not require Heiltsuk to cede their inherent rights and title. Perhaps even more key is that this reconciliation process does not negate the ability of Heiltsuk Nation to choose a litigation strategy in the future. This aspect of the Heiltsuk-driven approach to reconciliation with the Crown is fascinating, and particularly brilliant. While Heiltsuk have clearly chosen a path of political negotiation with the Crown, Heiltsuk leaders have also indicated strongly that a title case, following \textit{Tsilhqot’in} is still an option on the table, whereas a Treaty strategy is not. As pointed out in the \textit{Heiltsuk Title and Rights} strategy, when it comes to \textit{Tsilhqot’in}, “the question is how best to leverage this decision for transformative change.” Clearly, Heiltsuk have decided that for now, the best way to leverage this decision is to negotiate with the Crown as a sovereign Nation.

Despite the potential risks of engaging in this reconciliation process with the Crown, Heiltsuk leadership have worked hard to ensure that this reconciliation process provides clearly articulated benefits to Heiltsuk people in the short term. However, my sense is Heiltsuk Nation is also preparing for the possibility of a “long-term reconciliation” and strategically planning for what such a future could look like in reality.
5.5 Reconciliation of Crown Sovereignty with Heiltsuk Title and Rights (or ‘Out from under the Indian Act’)

In addition to an ambitious strategy and declaration and well-articulated outcomes, what is becoming increasingly evident about the reconciliation process between Heiltsuk and Canada is the need to address the question of how Crown sovereignty will be reconciled with Heiltsuk title and rights. By this I mean, how are Heiltsuk Nation and the Crown going to reconcile the fact that Heiltsuk Nation is a sovereign nation with their own laws, jurisdictional authority and ways of governing? What does such relationship between two Nations with overlapping jurisdictions look like? While I cannot answer these questions here, they most certainly are, or will be, part of any long-term reconciliation between Heiltsuk and the Crown. Understandingly such questions will remain a sensitive and confidential part of the reconciliation process, though there are signals Heiltsuk intend to describe the nature of their rights, title and core jurisdictional areas for self-governance and clarify how these will reconcile with Canadian legal frameworks (anonymous, personal communications, 2018).

Of particular importance to this work will be the enactment of a Heiltsuk constitution. Heiltsuk leadership and their legal team are currently hard at work drafting a Heiltsuk constitution driven by the mandate set out in the Heiltsuk Title and Rights Strategy. This is important because it demonstrates Heiltsuk are preparing to govern in a way that indeed, “comes out from under the Indian Act.” Interestingly, the initial negotiating process of the 2009 RPA (discussed in detail in Chapter 2) has helped prompt work on the Heiltsuk constitution. When asked about what would make the 2009 Coastal First Nations Reconciliation Protocol Agreement (2009 RPA) the most ideal for Heiltsuk, an elected member of the Heiltsuk Tribal Council explained:
I think one of the things that we’re moving to and we’ve done some work over that last few years is putting together our constitution and you know that’s a long process, we’ve been working on it for the last few years. So integrating our constitution, our laws into the RPA would be an ideal RPA so and I think we’ll get there someday, yeah but right now it’s a work in progress with the constitution (MS, 2016).

Notably, this elected leader then referred to the colonial aspect of the 2009 RPA in relation to a Heiltsuk constitution:

I mean all of the agreements that we have right now will have our description of who we are as a Heiltsuk Indian Band or a Heiltsuk First Nation and it’s how we’re referenced in the colonial sort of aspect right. I think about an agreement that intertwines with who we are as Heiltsuk people with our own constitution. I would see Heiltsuk being defined as how we would define Heiltsuk rather than how we’re looked at by the colonial laws and more of our language you know intertwined in it…(MS, 2016).

It is important for Heiltsuk leadership to explicitly address the colonial aspects of all past and present negotiated agreements, as the interviewee did above using the ‘Heiltsuk Indian Band’ as an example. Reflections such as this suggest Heiltsuk will not accept the status quo of assumed Crown sovereignty in any negotiated agreement going forward. In both reflections above and ongoing, few disagree that a Heiltsuk constitution will be an integral part of Heiltsuk renewing a balanced, political relationship with the Crown. For Heiltsuk, a constitution will significantly strengthen the expression of their inherent jurisdiction and governing authority by clearly defining the role and responsibilities of the people and leaders within the Heiltsuk governance system.
5.6 Challenges to the Reconciliation Process

What is also unique about the Heiltsuk is how they appear to deviate from the outright rejection of reconciliation by some scholars and indigenous leaders, critiques of reconciliation protocol agreements included. Scholars of Indigenous resurgence continue (rightfully) to critique “reconciliation” as deepening and sustain colonization. In her recent book, Leanne Betasamosake Simpson clearly rejects any processes of reconciliation because she believes “neoliberal states manipulate the processes that maintain settler colonialism to give the appearance that the structure is changing” (Simpson, 2018, p.47). That is, Simpson (2018, p.50) is intensely wary of any reconciliation process that does not derive from Indigenous practices on the land:

*I am not interested in a multicultural resurgence or an artistic resurgence as a mechanism for inclusion into the Canadian mosaic. I am not interested in a resurgence that continues to replicate anti-queerness and heteropatriarchy. I am not interested in a resurgence that replicates anti-Blackness. I am not interested in inclusion. I’m not interested in reconciling. I’m interested in unapologetic placed-based nationhoods using Indigenous practices and operating in an ethical and principles way from and intact landbase. (my emphasis)*


*The reason the province is pushing these agreements is clearly to sidestep dealing with the substantive issues of recognition and affirmation of Aboriginal title and rights and to be able to carry on with business-as-usual in the face of the economic uncertainty caused by*
the fact that Indigenous peoples do have proprietary and economic rights in their tradition territory. This reconciliation process merely supports the B.C. economy. It does nothing to build up our Indigenous economy. It is another of the happy-faced reconciliation frauds being imposed on our people.

I feel we have to look closely at these Reconciliation Framework Agreements (RFA) to see how devious governments are in their handling of our rights. And we must always stay clear in our own minds about what we are after.

These sentiments express Manuel’s argument for what is at stake for Indigenous Nations in BC: agreements take time and energy away from the real issue of building up Indigenous Nations with the inherent right to self-determination. Manuel argues strongly that reconciliation agreements do not alter, in any way, the position of the provincial and federal governments in how they view Indigenous peoples under the Constitution. He regards such efforts as depleting the marginal resources of the Nations who agree to engage in such negotiating processes. He presents strong arguments based on years of advocacy, politics and passion. In particular are his words: “we must always stay clear in our own minds about what we are after” (p.205).

While Manuel might be right in the end, at the very least, it is still worth asking whether the negotiating processes leading to reconciliation agreements are nonetheless useful to a Nation’s overall governance goals? For instance, do these processes create the space possible for First Nations governments and their members to have the important conversations about what it is they wish to achieve? To address this point, I look to what a resource decision maker from the Haida Nation explained when I asked about the major implications of the Haida Reconciliation
The Haida Reconciliation Protocol Agreement was signed between the Haida Nation and the BC government in 2009, around the same time as the Coastal First Nations Reconciliation Protocol Agreement discussed in detail in Chapter 2 and 3.

87 The Haida Reconciliation Protocol Agreement was signed between the Haida Nation and the BC government in 2009, around the same time as the Coastal First Nations Reconciliation Protocol Agreement discussed in detail in Chapter 2 and 3.
as evidenced by Heiltsuk knowingly negotiating and signing reconciliation agreements, Heiltsuk’s view could be understood as a belief that it is more advantage for their Nation to sit “at the table” in order to define their own terms of reconciliation, rather than avoid participate in the debates altogether. Instead of completely dismissing the reconciliation protocol agreements, the Haida Nation, as with the Heiltsuk Nation, have chosen to use the reconciliation protocol agreements as a strategic tool to show they are willing to work with the Crown as they advance their governance goals, though to not do so at the expense of pursing other avenues (i.e. title case) as needed and when ready. As with the Heiltsuk, the development and implementation of the Constitution of the Haida Nation is also crucial. This is because the Constitution grounds contemporary decision-making power (including legislation) in Heiltsuk and Haida laws. Whether this is the beginning of Indigenous sovereignty – wherein the unquestioned authority of the Canadian state does not trump Indigenous sovereignty – is still unknown. And I do not take up this question further here. But what is evident is that Heiltsuk Nation has chosen a different path, and is committed (for now) to strategic engagement with the Crown. Of course, Haida sets a high standard and the political and island-physical context of Haida territory differs from elsewhere on the coast and certainly from the rest of BC.

5.7 Conclusion

The Heiltsuk will continue to assume greater jurisdictional power on all matters related to our people, lands and resources in our territory. We will continue to build on the brilliance of


89 A major difference is the claimed territory of the Haida Nation does not overlapping with any other claims from neighboring Nations.
our ancestors, our intimate knowledge of our territory, and existing capacity to effectively exercise our authority, with or without reconciliation on the national agenda (Brown, 2018).

The work necessary to reach meaningful reconciliation between Canada and Heiltsuk Nation is immense. This chapter has attempted to show how reconciliation efforts are unfolding for Heiltsuk Nation, specifically through the Heiltsuk Title and Rights strategy and declaration and the Hailcistut: Framework Agreement for Reconciliation. The “reconciliation process” ongoing in Heiltsuk territory demonstrates that, in practice, reconciliation extends beyond bringing about a more balanced relationship between Heiltsuk Nations and the Crown, as posited by Walters (2008). Reconciliation also means more than “healing” Heiltsuk Nation, the Crown’s ‘duty to consult’ them on resource development decisions, and the option to launch a Heiltsuk title case in court.

For Heiltsuk Nation, so far, reconciliation is about the Crown making amends for its past and present wrongs and demonstrating their willingness to meaningfully address the desires and needs of the Heiltsuk leadership and community. Reconciliation is also about restitution, and the Crown providing Heiltsuk with the resources they need to rebuild their communities, and to put it colloquially, “get out of the way.” In the short term, reconciliation must be Heiltsuk-driven and deliver on immediate and tangible outcomes (i.e. support to Heiltsuk capacity in marine planning and protection). In the long term, reconciliation will be about finding ways to dismantle long held assumptions of Crown sovereignty and reconcile this with Heiltsuk’s inherent jurisdiction and governing authority. The expression of Heiltsuk laws and hereditary governance in their Heiltsuk Title and Rights Strategy, as well as expressed in the Hailcistut: Framework Agreement for Reconciliation, chart a path for such a reconciliation to come to fruition.
Crucially, my point is not that caution and skepticism isn’t also evident in the reconciliation process between Heiltsuk and the Crown; it is. Negotiators involved in these reconciliation processes remain careful, for example, about the intentions of the federal Crown. One Heiltsuk negotiator explained that even if this process ended tomorrow or two years hence, it changes very little as concerns Heiltsuk Nation’s long-term governance goal of asserting their sovereignty. In the words of one of the negotiators (anonymous, personal communications, May 2018): *this reconciliation process is merely the latest iteration of self-determination efforts.* One of the advantages of this process has also been, in his mind, the fact that the Government of Canada doesn’t “have a fucking clue how to do this.” This has been a good thing for the Heiltsuk leadership, who have been willing to take on the work to develop this process on their own terms. As the quote above demonstrates, reconciliation with the Crown is not the be all, end all for Heiltsuk Nation. This is because with or without this process, Heiltsuk will continue to assert their title and rights over all matters relating to their people and territory.

Reconciliation efforts and outcomes will look different for individual First Nations across Canada. However, clearly demands from First Nations pertaining to Indigenous self-government, jurisdiction and sovereignty will not recede. The reconciliation process occurring in Heiltsuk territory will be watched in particular by First Nations engaging (or thinking about) a negotiated, strategic approach to reconciliation with the Crown. At least for Heiltsuk territory, there are signs that reconciliation (at least in the “short term”) between the Crown and Heiltsuk Nation is possible. Does this mean the Crown and Heiltsuk will make significant progress towards long term reconciliation? If so, what does this look like? Only time will tell. In this “era of reconciliation” it is important for us all to tread carefully, strategically and with cautious optimism that things can be turned around and made right.
Chapter 6: Conclusion

It is a significant time for Indigenous-Canadian state relations in Canada. Indigenous nations have always assumed sovereignty, regardless of the Crown’s abject attempts to annul this fact. For this reason, I have focused this dissertation on demonstrating the multiple and creative ways in which Heiltsuk Nation practices sovereignty over their territory. My analysis focused on practices of sovereignty being expressed outside – though supported by – the courts, and specifically in the negotiation and implementation of “reconciliation agreements” between Heiltsuk Nation and the Province of British Columbia and the Government of Canada. These agreements included the 2009 Coastal First Nations Reconciliation Protocol Agreement, the 2016 Amending Agreement, The Great Bear Land Use Order, and the Hâlcócístut: Framework Agreement for Reconciliation between Heiltsuk Nation and the Government of Canada. Specifically, I have sought to map out “the work” of sovereignty for Heiltsuk Nation and hints at a possible trajectory for how Heiltsuk Nation will (re)build the health and prosperity of their people and regain control over their homelands. This trajectory potentially includes a renewed relationship between Heiltsuk Nation and Canada. To be clear, practices of Heiltsuk sovereignty will continue with or without the Crown. I am not arguing that Crown sovereignty, in its everyday expression (i.e. provincial legislation) has vanished due to practices of Indigenous sovereignty. The deep-rooted assumptions related to “states, and states alone, exercising ultimate authority over a territory” (Shaw, 2008) are alive and well, and indeed not going anywhere (yet). However, I claim that practices of Indigenous sovereignty, in myriad forms, are slowly changing the status quo. That is, the assumption that the Canadian state is in possession of all lands and waters in Canada,
In 2009, Heiltsuk Nation was one of eleven First Nations to negotiate and reach a *Coastal First Nations Reconciliation Protocol Agreement* with the Province of British Columbia. When I began my research in March 2015, I first set out to investigate the governance implications of the *Coast First Nations Reconciliation Protocol Agreement* (2009 RPA) for Heiltsuk Nation. I was particularly interested in how those who implement the 2009 RPA (i.e. Heiltsuk Nation and Coastal First Nations staff) used it in their interactions with Crown agencies and resources users (e.g. the forest industry). *How were these interactions unsettling “business as usual” for the Crown, if at all?*

I was also keen to better understand what “human well-being” meant for people who live in Bella Bella, and how human well-being was being addressed, either implicitly or explicitly, in the implementation of the 2009 RPA. Of particular concern was whether the colonial histories (and present day settler-colonial context) were adequately accounted for in the negotiation of Indigenous well-being policies and initiatives.

However, as my research process unfolded I realized the 2009 RPA, and Heiltsuk’s use of it, was part of a much larger picture of reconciling Crown and Indigenous sovereignty. Essentially, the 2009 RPA was becoming “old news” as Coastal First Nations and the BC government were renegotiating it in an attempt to strengthen the “shared decision-making framework”, known as the Engagement Framework. Whereas the original Engagement Framework was criticized by several signatory First Nations for resulting in nothing but token consultation by the Crown, these subsequent negotiations resulted in the 2016 Amending Agreement, which includes a much more robust mechanism for “sharing decision making” about land use and resource extraction in the region. Furthermore, in addition to this new and improved Engagement Framework, the 2016 Amending Agreement incorporated separate governance
arrangements between the BC government and Coastal First Nations (i.e. Term Sheet for Continued Full Implementation of Ecosystem Based Management in the Central and North Coast), which were codified in 2015 to ensure, among other commitments, that human well-being was being addressed in provincial government policy.

Concurrent to the negotiations of the 2016 Amending Agreement, were ongoing negotiations between the Province of British Columbia and Coastal First Nations on the Ministerial Order for the Central and North Coast, (also known as the Coast Land Use Decision). These negotiations were a continuation of the “Great Bear Rainforest Agreements” first announced by the BC government, First Nations, environmentalists and the forest industry in 2006 and resulted in the 2016 Great Bear Rainforest Land Use Order, which contains the objective of conserving 85 percent of the forest, as well as language intended to fulfill cultural, social and economic objectives of First Nations and meet a high level of human well-being and ecological integrity.

Thus, a lot is happening with respect to Crown-Indigenous relations on the central and north coast of BC, and specifically in Heiltsuk territory. What emerged as a crucial part of the story I tell was that practices of Indigenous sovereignty, specifically those practices of Heiltsuk Nation and Kitasoo/Xai’xais, are rooted in an indigenous governance system based on hereditary chieftainship. It can be argued that these Indigenous law and governance systems are slowly becoming better understood by Crown agencies, and recognized by the courts (e.g. oral histories are now accepted as “formal” evidence). Yet what I wanted readers to understand is that Heiltsuk assertions of jurisdiction are based on a different (yet equally, if not more legitimate) form of authority than those of the Crown. As expressed through this dissertation, and explicitly in the Heiltsuk Title and Rights Declaration, the source of Heiltsuk title (and so jurisdiction) flows
from their historic ownership, occupation, stewardship, and use and control of their territory: “Heiltsuk title predates and survives the assertion of Crown sovereignty” (HTC, 2015). The Canadian Government, on the other hand, derives authority from the Canadian constitution, which is indirectly founded on, among other things, the “doctrine of discovery” and the dispossession of Indigenous peoples from their lands. Distinguishing between these two sources of authority is important because, from the perspective of Heiltsuk Nation, Crown (and Canadian) realization of Heiltsuk’s inherent jurisdictional authority is a necessary condition for genuine reconciliation to occur.

In Chapter 2, I highlight how the negotiation and implementation of the 2009 Reconciliation Protocol Agreement (2009 RPA), and the 2016 Amending Agreement did realize some tangible benefits for Heiltsuk Nation, whose strategic use of the agreements allowed them to secure long term funding sources (i.e. the Atmospheric Benefits Sharing Agreements), develop a more efficient communication process with the Crown with respect to referrals, and obtain more involvement in forestry through increased access to viable timber supply. But more importantly, Heiltsuk Nation and Kitasoo/Xai’Xais leveraged the 2009 RPA and the 2016 Amending Agreement to build a better relationship with provincial agency staff, which became a relationship the provincial Crown could no longer ignore. For example, a leader from Kitasoo/Xai’Xais has used the intent of the 2009 RPA and its recent amendments to secure meetings with high-level decision makers within BC government ministries (i.e. the Assistant Deputy Ministers) that would not have otherwise been possible. Further, the HIRMD Stewardship Director has explained to me that the RPA set the stage for what will continue to happen in the next few years in terms of how the Heiltsuk government interacts with the provincial Crown (H6, 2016), That is, Heiltsuk will act as a sovereign political entity with
autonomous jurisdictional powers. The 2009 RPA and its subsequent agreements have thus resulted in significant changes in the way the signatory Nations are viewed by the provincial government, as well as the way they view themselves in relation to the provincial government. Negotiated agreements of this kind have not been widely studied, however, and ethnographic research presenting Indigenous perspectives on their meaning and use represents an important advance in the literatures known broadly as indigenous-state relations, sovereignty studies, and critical indigenous studies.

Chapter 3 documents the “on the ground” tensions arising from overlapping claims of jurisdictional authority in Heiltsuk territory. The idea of Heiltsuk having jurisdictional authority over what is commonly thought of as “Crown land” disrupts “the notion of non-overlapping, absolute domains of space” entrenched in Crown sovereignty (Pasternak, 2014. p.154). However, Heiltsuk jurisdiction is not just an idea, it is playing out in practice as Heiltsuk persistently assert their rights in negotiating processes, beginning from the government-to-government process codified in the General Protocol Agreement on Land Use and Interim Measures, on to the Strategic Land Use Planning Agreements and the 2009 RPA and 2016 Amending Agreement (including explicit language pertaining to the assertion of Indigenous jurisdiction and sovereignty). The challenges associated with the Engagement Framework (as part of the 2009 RPA and 2016 Amending Agreement) continue to embody the jurisdictional tensions between the provincial Crown and Heiltsuk Nation. On the one hand, the Crown believes the Engagement Framework is a progressive model of shared decision-making because government agency staff and Heiltsuk government staff now have a more efficient communication process and can “go back and forth” on issues pertaining to referrals. However, Heiltsuk have a different view of the Engagement Framework in that it still doesn’t provide Nations with a level of decision making
power they feel is commensurate with their position as a sovereign body with jurisdictional authority. Interestingly, there are differing views as to how jurisdictional issues should be worked out in practice. For example, as this Kitasoo leader explains, there is still hope the 2016 Amending Agreement can be used collaboratively between two distinct forms of Government: *that’s what the whole Reconciliation Agreement is about. How do we reconcile our differences and how do we find ways to collaborate? (H2, 2017).* In contrast, a Heiltsuk leader signals their aspirations of jurisdictional authority could mean working towards “trying to issue [their] own licenses”, meaning activities of jurisdiction will happen separately from those of the Province. Understanding these differences in interpretation is vital to critically assessing the importance and relevance of the Engagement Framework, and indeed the 2016 Amending Agreement as whole when it comes to issues of jurisdiction in these unceded Indigenous territories.

In Chapter 4, I focus on the meaning of human well-being from the perspective of Heiltsuk Nation, and illuminate some of the ways “being well as Heiltsuk” can inform the provincial government and Coastal First Nations staff charged with developing and implementing well-being policies (i.e. the 2016 Amending Agreement and the Great Bear Rainforest Land Use Order). Insights from this analysis are also meant to contribute to broader understandings of how to account for place-based values in well-being measures for Indigenous peoples (Sangha et al., 2015b). The idea of *Heiltsuk* well-being is seemingly important to Heiltsuk Nation, especially as it relates to Heiltsuk people having access to their territory. Crucially, *access to territory* is significant not only because of its value to cultural practices (i.e. collecting medicines, harvesting cedar strips for potlatches, etc.) – although this extremely important in its own right – *access to territory* is irreplaceable to Heiltsuk practices of governance. I also note that Indigenous well-being is often contemplated in the larger picture of
Indigenous sovereignty and reconciliation on the coast. This chapter also offers instructive lessons for the negotiation of effective indictors of well-being as they begin to emerge or become possible.

Chapter 5 depicts some of the ways that Heiltsuk Nation is advancing reconciliation with the Government of Canada. I explore in particular how Heiltsuk are defining a reconciliation process with the federal Crown on their own terms, which means for the Heiltsuk that reconciliation between their nation and Canada must address the past wrongs of the Crown and must also focus on immediate benefits for Heiltsuk people. Crucially, Heiltsuk are also clear about what the reconciliation process is (i.e. the next iteration of self-determination), and what it is not (i.e. treaty). In the short term, the reconciliation process is articulating community priorities (e.g. the Priority House Posts contained within the Haílcístut: Framework Agreement for Reconciliation), building relationships between Heiltsuk leadership and federal government staff, potentially codifying governance processes between Heiltsuk and the federal government (i.e. moving from a framework reconciliation agreement to a “reconciliation action plan”) and strengthening internal communication processes between Heiltsuk leadership and the membership. However, the value of these moves won’t be known for some time, yet for now, the community is beginning to see some tangible benefit to this strategy (i.e. the Government of Canada contributed 2.5 million towards the building of a new Heiltsuk Big House). This chapter opens up further questions about the reconciliation efforts that will unfold in BC, and across Canada, in the coming decade. In presenting a clear account of the Heiltsuk case, its successes and shortcomings, I hope to provide other Nations and researchers with a valuable basis of comparison that can stimulate further dialogue and help to develop effective strategic action for how different First Nations can proceed with reconciliation efforts with the Crown. Most
certainly, the question on the table for the coming decade is: **What are the specific ways in which “reconciliation” can move beyond naïve notions of “healing” Indigenous Nations?**

Several Indigenous scholars have strongly argued for Indigenous nations to reject state sponsored negotiation processes (Alfred, 2005; Coulthard, 2014; Manuel, 2017; Simpson, 2011; Simpson, 2017). As Alfred has put it, “Fundamentally different relationships between Onkwehonwe [Indigenous people] and Settlers will emerge not from negotiations in state-sponsored and government regulated processes, but only after successful Onkwehonwe resurges against white society’s entrenched privileges and the unreformed structure of the colonial state” (p.22). Similarly, Simpson (2011) calls for a “flourishment” of the Indigenous inside by engaging in Indigenous processes and importantly, this needs to be done on “[their] own terms, without sanction, permission or engagement of the state, western theory or the opinions of Canadians.” As discussed in Chapter 5, Art Manuel specifically argues against Indigenous government engage in Reconciliation Framework Agreements to reach their governance goals (particularly related to “reconciliation”) with the provincial or federal governments. He posits these agreements deplete the marginal resources of the Nations who agree to engage in them, and they do nothing to change “how devious governments” are handling Indigenous rights.

However, my findings from work with Heiltsuk Nation push back on the idea that rejection is the only way for Indigenous nations to make gains towards self-determination, and suggest negotiation and use of western tools (i.e. laws and political processes) are desirable for Nations for the time being. Heiltsuk are demonstrating how strategic engagement in reconciliation processes can lead to beneficial and unexpected implications for a Nations, e.g. a more robust internal strategy for obtaining community consensus on the terms of such
reconciliation agreements and a reinvigoration of a Heiltsuk driven economy.\textsuperscript{90} In the Heiltsuk case, the reconciliation process has been “low risk”, as according to those heavily involved in the process, Heiltsuk Nation has done nothing to undermine their long-term governance goals (e.g. developing a Heiltsuk Constitution) by being involved in a reconciliation process with the federal government. It has been clearly communicated to me, as well as to the media (see Brown, 2018), that Heiltsuk’s goal of self-determination will happen with, or without, the Crown. This is not to say significant moments of tension do not exist internal to Heiltsuk governance. At times, palpable tension is present between leaders (younger and elders) who believe rejection of the province and federal government is the way forward. These convictions are consistent with those of Manuel (2017) and Simpson (2011) above, though, at least for the time being, strategies that push for strategic engagement and negotiation with the Canadian Crown are certainly the preferred option for Heiltsuk Nation. As demonstrated throughout my dissertation with quotes by Heiltsuk resource managers and elected leaders, tensions can and do arise between Heiltsuk leaders and resource managers and community members when difficult decisions are being made about resource management in Heiltsuk territory. For example, allowing forestry companies to operate in areas of irreplaceable value to the family linage of which that area belongs. Heiltsuk Nation has made compromises, such as allowing forestry in parts of their territory, for the reality of providing stable employment and obtaining improved management authority through Memorandums of Understandings with forestry companies. Importantly, Heiltsuk Nation has

\textsuperscript{90} The scale and more precise definition of a “Heiltsuk-driven” economy are being worked out in practice. For example, the Heiltsuk clam fishery, which employ approximately 20 Heiltsuk people each winter, is considered extremely important to community well-being of Bella Bella. However, there are also signals Heiltsuk are simultaneously seeking much more ambitious and wide reaching economic goals, e.g. significant capital investment in their fish plant, to more involvement in the marine safety sector, to forestry agreements that make it possible for Indigenous companies to compete more forcefully in global timber markets.
recognized these tensions and made creative attempts to effectively address them. For example, a full time Reconciliation Coordinator position was created to support Heiltsuk political leadership in the reconciliation negotiations with the federal government by assisting the Heiltsuk leadership report back to the community on the status of negotiations, facilitate community focus groups to collect feedback as the process unfolded, and, importantly, support the Hemas (Hereditary Chiefs) in their ability to participate in the reconciliation process. These tensions will certainly continue to play out over the coming years, both internally within Nations and between Nations and Indigenous political organizations, as they continue to assert their sovereign authority in different ways. In the meantime, Heiltsuk Nation will remain resourceful in the ways they use negotiation and strategic engage with the Canadian Crown to their benefit, and will simultaneously practice their Heiltsuk sovereignty.

Admittedly, my research focuses almost exclusively on what is happening in Heiltsuk Territory. My findings are thus limited in their contributions to the broader trajectory of Indigenous sovereignty in Canada. If done differently, I would broaden my analysis of the 2009 RPA, 2016 Amending Agreement and their subsequent agreements to assess the implications of the negotiated agreements on a regional scale, including an analysis from northern communities who face different resource challenges (i.e. increased tanker traffic from LNG). This is important because it became apparent throughout my research process that other Nations have struggled to leverage the 2009 RPA and other negotiated agreements in a way that “gets them to the table” as Heiltsuk have done. Insights from my work in situ have revealed the at times challenging context for First Nations communities up and down the coast. It is difficult, for example, for any one nation to rely on a large regional body of Nations (i.e. Coastal First Nations) to accurately represent the needs of individual community members though this stands as a priority. At the
same time, much of what has been accomplished by Heiltsuk Nation in terms of realized benefits through negotiated reconciliation agreements has been enabled by the strategic alliance of Coastal First Nations beginning in the early 2000s.

Overall, my work with Heiltsuk Nation has demonstrated fully that all matters of jurisdiction will challenge the trajectory of Indigenous-state relations in Canada. Jurisdictional challenges will continue to pervade negotiations between several Coastal First Nations, including Heiltsuk Nation, and the BC government (i.e. how will Heiltsuk and the BC government work through the issue of fettering the minister’s authority, if at all?). Furthermore, jurisdictional matters will continue to be pushed by Coastal First Nations in their negotiations with the Government of Canada, especially as attention moves from negotiating land use (i.e. forests, protected areas, the grizzly bear trophy hunt) to issues of marine use (i.e. fisheries, marine use protection, tanker traffic, etc.). This push is evidenced by the announcement of the Reconciliation Framework Agreement for Bioregional Oceans Management and Protection in early summer 2018, and in the words of Chief Marilyn Slett of the Heiltsuk Nation in relation to this agreement: “[coastal First Nations] want to be leading those efforts [waterway management, increased emergency preparedness and capacity building] on land and at sea as governments responsible for the future of [their] communities and traditional territories.” The implementation of the Reconciliation Framework Agreement for Bioregional Oceans Management and Protection certainly warrants analysis as an expression of Indigenous sovereignty, especially because this is yet another agreement being framed around “reconciliation” by both Indigenous governments and the Crown. What remains to be seen is: What [further] reconciliation are we taking about? Are we reconciling de facto Crown sovereignty with Indigenous sovereignty? Or is
this agreement another example of how reconciliation efforts can produce tangible benefits for First Nations communities in the short term? Or something else?

In the longer term, Heiltsuk are defining their intentions for how they will move forward as a sovereign nation and continue to rebuild their community, resources and territory. That is to say, I believe Heiltsuk Nation is getting ready to govern. This is apparent through the time and effort Heiltsuk leadership have spent to clarify the details of their chosen reconciliation process with the Heiltsuk community. Before the more formal reconciliation process began, Heiltsuk leadership sought a mandate from both the Hemas (hereditary chiefs) and Heiltsuk members to produce a Heiltsuk driven political strategy, which includes an intention to reconcile Heiltsuk’s relationship with the Crown.

Above all else, Heiltsuk Nation is interested in asserting their inherent sovereignty, and with or without reconciliation with the Crown is heading towards self-determination. There are also clear signs emerging that Heiltsuk Nation are on a path to self-determination that will “hit the ground” – colloquially speaking -- sooner rather than later. For example, there are reports that this fall, Heiltsuk Nation plans to present a new Heiltsuk Constitution to band members (Gill, 2018). William Housty, a Heiltsuk cultural leader and resource manager, has said the first piece of Heiltsuk legislation planned to flow out of the Heiltsuk Constitution is an Oceans Act. A Heiltsuk Constitution with the authority to develop and create its own legislation will certainly have implications for more than Heiltsuk people. What would a Heiltsuk Oceans Act mean for tankers, tourism operators, and fisheries? As William Housty has said: “We’re making the move to self-government, slowly but surely” (Gills, 2018).

This dissertation leaves many questions unanswered as well. For example: Does the provincial Crown consider the assertion of Heiltsuk sovereignty as a threat to its authority? If so,
how? If not, and given the recent change to an NDP government, how does the provincial Crown intend to reconcile Heiltsuk rights, title and self-government with its own authority? How will the Government of Canada proceed with Heiltsuk demands for Crown recognition of Heiltsuk title, rights, and self-government? What do Nations need to govern? What are the conditions of possibilities for Indigenous nations in Canada to rebuild (i.e. work towards) their communities and governing systems (whether they are based on traditional or hereditary systems or not)? Heiltsuk Nation are in the process of defining the terms of how they will govern and what it means for those who are accustomed to paramount sovereign authority over Heiltsuk territory. In Heiltsuk territory, there are reasons to be hopeful the days of ‘status quo’ sovereignty are short lived. In the meantime, Heiltsuk Nation will certainly continue to practice their sovereignty, manage and protect their homelands, and be Heiltsuk.
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Appendices

Appendix A Table of Negotiated Agreements

Below is a table of key “reconciliation” agreements negotiated and in place between First Nations involved in Coastal First Nations (CFN) and the Province of British Columbia and the Government of Canada.
<table>
<thead>
<tr>
<th>Agreement</th>
<th>Year</th>
<th>Purpose and Signatories</th>
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<tbody>
<tr>
<td>Turning Point Declaration (now Coastal First Nation – Great Bear Initiative)</td>
<td>June 2000</td>
<td>The Declaration of First Nations of the North Pacific Coast (the “Turning Point Declaration”) was signed by leadership from Metlakatla, Gitga’at, Haisla, Kitasoo, Heiltsuk, Old Massett, Skidegate and Council of Haida Nation. Wuikinuxv and Nuxalk later signed the Turning Point Declaration in 2001 and 2008 respectively. This declaration was a commitment by the signatory Nations to “support each other and work together.” The declaration resulted in the establishment of the Turning Point Initiative, now Coastal First Nations, which is a legal society governed by a Board of elected and hereditary leaders from the signatory Nations mentioned above.</td>
</tr>
<tr>
<td>General Protocol on Land Use Planning and Interim Measures</td>
<td>2001</td>
<td>The General Protocol was signed by leadership of Metlakatla, Gitga’at, Haisla, Kitasoo, Heiltsuk, Old Massett, Skidegate and Council of Haida Nation and the Premier of BC and the Ministers of Environment, Forests and Aboriginal Affairs. It is a political commitment (i.e. not legally binding) to implement interim measures for land use planning, forestry and tourism. Importantly, the General Protocol established a new “Government-to-Government” (G2G) process for land use planning. It committed the Province to “work with First Nations to define principles, anticipated scope and outcomes of the land use planning process” (p. 2). (See: <a href="http://www.haidanation.ca/wp-content/uploads/2017/03/Protocol_Land_Use_FN.pdf">http://www.haidanation.ca/wp-content/uploads/2017/03/Protocol_Land_Use_FN.pdf</a>)</td>
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<tr>
<td>Strategic Land Use Planning Agreements (SLUPAs)</td>
<td>2006 (early)</td>
<td>SLUPA’s were strategic engagement agreements written as a legal contracts and signed between the Province and each of the following individual Nations: Gitga’at, Wuikinuxv, Gitga’at, Haisla, Kitasoo, Metlakatla and Heiltsuk. The SLUPAs committed each signatory Nation to engage in further discussion and negotiations with BC to develop new agreements and frameworks for: land and resource consultation commercial recreation tenuring and site selection archaeological and heritage site inventory, impact assessment and alteration permitting stewardship of cedar and other cultural forest resources.</td>
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<tr>
<td>Land and Resource Planning Protocol (LRPAs)</td>
<td>2006</td>
<td>A complementary collective agreement to the SLUPAs (see above), the Land and Resource Protocol Agreement (LRPA) was also signed in early 2006 by leadership from several CFN member Nations and the Minister of Agriculture and Lands. The LRPA committed the BC government to jointly develop “a terms of reference for, establish and participate in a consensus-based G2G Land and Resource Forum that would oversee and manage implementation of the SLUPAs and discussions at leadership, working and technical levels” (Coastal First Nations, 2016A, pg. 12). Signed by the Province and Gitga’at First Nation, Haisla Nation, Heiltsuk Nation, Kitasoo/Xaixai First Nation, Metlakatla First Nation, Wuikinuxv First Nation.</td>
</tr>
<tr>
<td>Coastal First Nations Reconciliation Protocol Agreement (2009RPA)</td>
<td>2009</td>
<td>New kind of G2G agreement where the Parties agreed to enhanced engagement for land and resource decision-making on “Crown land” (i.e. the Engagement Framework), economic opportunities for First</td>
</tr>
<tr>
<td><strong>Nations and the provincial government, including increased access to timber by signatory First Nations, and carbon offset sharing (where Coastal First Nations have 90% of the rights to sell the carbon sequestered on the north and central coast).</strong></td>
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| **Kunst’aa Guu – Kunst’ayaah Reconciliation Protocol (Haida Reconciliation Protocol Agreement)** |
| 2009 |
| The Council of Haida Nation signed a similar but separate agreement to the 2009 RPA – the “Kunst’aa Guu – Kunst’ayaah Reconciliation Protocol” – in December 2009. It is a strategic government-to-government (G2G) agreement written in the form of a contract. One key objective is to work to implement “shared and joint decision making” that commits the Parties to “working together in the interests of arriving at the best decisions regarding the management of lands and natural resources on Haida Gwaii”. (See: [http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu_Kunstaayah_Agreement.pdf](http://www.haidanation.ca/wp-content/uploads/2017/03/Kunstaa-guu_Kunstaayah_Agreement.pdf)) |

| **Atmospheric Benefit Sharing Agreements (Coastal First Nations and Haida Nation)** |
| 2015 |
| ABSAs are binding legal agreements that provide to the CFN member Nations and the Council of the Haida Nation with ownership and the right to sell a negotiated percentage of the carbon offsets produced in the Nation’s territories as a result of G2G land use agreements and decisions. The following CFN Nations have an individual ABSA with the Province: Gitga’at First Nation, Heiltsuk Nation, Kitasoo Indian Band, Metlakatla First Nation, Nuxalk Nation Wuikinuxv Nation, Haida Nation. (See: [https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/atmospheric-benefit-sharing-agreements](https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/atmospheric-benefit-sharing-agreements)) |

| **2016 Amending Agreement (also known as Coastal First Nations Reconciliation Protocol Major Amendment)** |
| Spring 2016 |
| The latest major amendment to the 2009 Coastal First Nations Reconciliation Protocol (RPA 2009) that adds provincial legislation to Schedule A (Provincial Legislation Associated with Provincial Land and Resource Decisions) and replaces the Engagement Framework (Schedule B) with a “new and improved” version of the shared decision-making process. Signed between the Province and Wuikinuxv Nation, Metlakatla First Nation Kitasoo Indian Band, Heiltsuk Nation, Kitasoo Indian Band, Heiltsuk Nation, Gitga’at First Nation, Nuxalk Nation. (See: [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/coastal_first_nations_reconciliation_protocol_amending_agreement_mar_16_17_signed.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/coastal_first_nations_reconciliation_protocol_amending_agreement_mar_16_17_signed.pdf)) |

| **CFN-BC Term Sheet for Continued Full Implementation of Ecosystem Based Management in the Central and North Coast** |
| Spring 2016 |
| A non-binding strategic agreement between CFN and the province, that reaffirms the structure of the Governance Forum established by the CFN Reconciliation Protocol, and clarifies that implementation of EBM commitments by the Province is the responsibility of the Ministry of Forests, Land and Natural Resource Operations (MFLRNO). The Term Sheet also identifies specific G2G structures |
| **Great Bear Rainforest Land Use Objectives Order** | January 2016 | A new ministerial order (i.e. legally binding) that supports and continues the implementation of Ecosystem Based Management in the Great Bear Rainforest. The order sets forest management requirements via the establishment of land use objectives that must be adhered to by all major forest licence holders operating in the Great Bear Rainforest. It replaces the ordered South Central Coast areas and the Central and North Coast area (established on July 27, 2007 and December 19, 2007 respectively).

It established legal objectives pursuant to section 3.4 of the Land Act, for the purpose of directing forest practices implemented under the Forest and Range Practices Act (FRPA). (See: [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/great-bear-rainforest/great_bear_land_use_order_background_intent.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/great-bear-rainforest/great_bear_land_use_order_background_intent.pdf)) |
Appendix B:

List of Interview Questions (in collaboration with HIRMD)

1. How is the RPA involved in the work you do now (or have done) in the past? What has your experience been with the implementation of the commitments contained within the RPA?

2. Given your experience with the RPA, what commitments of the RPA have been ‘successfully’ implemented? What has allowed for or how would you explain these ‘successful’ implementation(s)?

3. What commitments of the RPA have not been implemented and/or need much more time and resources? Why?

4. What do you see as the current major challenges or barriers to implementing the 2010 Reconciliation Protocol Agreement? Why do these barriers exist?

5. What are some of the lessons you have learned by implementing commitments of the RPA?

6. Can you explain some of implications of implementing the RPA for Heiltsuk governance more broadly?

7. How do you think human well-being can be achieved through agreements like the RPA?