GETTING TO THE TABLE:
MAKING THE DECISION TO NEGOTIATE COMPREHENSIVE LAND CLAIMS IN BRITISH COLUMBIA

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Although the rest of Canada has a long history of treaty making, British Columbia has refused to negotiate treaties with Natives since 1854. In 1991, B.C. reversed this position. Events across Canada in the years 1990 and 1991 provide a case study to explain why this decision was made.

Quebec's Oka crisis catalyzed the decision making process underway in B.C. First, during the Oka crisis, B.C. agreed to cooperate with the federal government on a strategy to settle Indian land claims. Second, following the Oka crisis, the First Nations and the federal and provincial governments set up the B.C. Claims Task Force to recommend how these negotiations should proceed. Third, the Task Force made recommendations to address numerous Native grievances and to prevent "another Oka." Fourth, because of the changed political environment in B.C., both governments accepted all the Task Force's recommendations by December 10, 1991. It can be argued that B.C. took a rational approach in making this decision to negotiate.

The B.C. comprehensive claims conflict can be viewed as part of the evolution of the Native/non-Native relationship in Canada. In early Canada, the two parties initially cooperated through trading and military alliances. Next, in the coercive phase of their relationship, the parties interacted through treaty making and assimilation attempts. Starting in 1959, Natives used protests, lobbying, and legal cases to
confront non-Natives. Although B.C. followed a similar pattern, this province's most notable difference is that no major treaties were signed here. Now, by agreeing to negotiate comprehensive land claims, B.C. is starting to re-establish the cooperative relationship that Natives and non-Natives initially had.
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GLOSSARY

The following terms and terminology are those found in the Coolican Report (1985) and the Report of the B.C. Claims Task Force (1991) and are used in this thesis.

The terms First Nations, aboriginal, and Native, are used interchangeably to refer to the descendants of the aboriginal inhabitants of this land. The terms Indians, Inuit, and Metis are Constitutional terms used to describe specific aboriginal groups. Similarly, the terms Europeans, whites, and non-Native refer to the non-aboriginal population.

The term land includes waters; resources refer to the products of both land and water.

The terms Indian title, aboriginal title, and rights are used interchangeably to refer to the rights of aboriginal peoples.
ACKNOWLEDGMENTS

Writing this thesis has been both difficult and interesting. When the going got tough, I thought of the task in a humorous way . . .

It has occurred to me that thesis writing and indeed negotiations, are like episodes from Star Trek. Successful missions depend on having the right crew and support staff. Many people assisted me on this particular voyage.

Thanks to Tony Dorcey for being in the Captain's chair. Many thanks to my second-in-command, Paul Tennant, for sharing his Spock-like knowledge of the B.C. Land Claims question and his human kindness with me. Thanks to Peter Boothroyd, the McCoy, for providing a third point of view.

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CHAPTER ONE: INTRODUCTION

1.1 INTRODUCTION AND CONTEXT

Natives and non-Natives have a long history of resolving their disputes through treaty making. Initially, European nations made treaties with Aboriginals to establish trading relationships and forge military alliances. Following confederation, Canada made treaties with Natives to acquire land for settlement and development. These "numbered treaties" cover most of western Canada. "Modern day" treaties are complex legal documents that cover most of the North. For various historical, political, economic, and legal reasons, British Columbia refused to make treaties with Natives from 1854 onwards. In 1991, B.C. finally agreed to negotiate Natives' outstanding claims. The thesis explains why this decision was made.

All British Columbians now face the challenges and opportunities presented by negotiating these "modern day" treaties. To resolve our differences, we must share the use and benefits of the land and the responsibilities to make decisions regarding it. Negotiators face the difficult task of deciding how to fairly distribute the costs and benefits of settlements amongst existing users. Some users may incur losses (e.g., a decrease in fish allocations) as a result of claims settlements, thus paving the way for further resource conflicts. Balancing these challenges are opportunities. In my opinion, we will all benefit if agreements reached include more sustainable resource
management regimes. Most importantly, these negotiations provide First Nations with opportunities to address the numerous social and economic problems they face. Together we face a difficult, yet promising task.

1.2 PURPOSE AND OBJECTIVES

The specific purpose of this thesis is to explain why B.C. made the decision to negotiate comprehensive land claims.

The general objectives of this thesis are:

- To describe conflicts and conflict resolution processes.
- To explain when negotiation is an appropriate way to resolve conflicts.
- To outline the historical background of this conflict.
- To discuss the alternatives to negotiation pursued by First Nations and the province.
- To suggest areas for further research regarding this conflict and its resolution.

1.3 SIGNIFICANCE OF THE RESEARCH

This research is significant to planning for two main reasons. First, by summarizing the background behind comprehensive claims, this thesis helps planners understand many of the current conflicts and changes occurring in the area of natural resource planning. For example, questions related to aboriginal title underlie many ongoing
fisheries\(^1\) and forestry disputes. In Clayoquot Sound, the recent interim agreement reached between Natives and non-Natives affects forestry practices.\(^2\) Throughout the province, final agreements will create changes in natural resource management regimes (see Cassidy and Dale 1988). Since comprehensive claims affect these many areas, planners should understand the issue.

Second, this research is important because it examines conflicts and conflict resolution—two topics familiar to planners. Although numerous methods of conflict resolution exist, negotiating is an increasingly common and expected way for planners to resolve disputes (see Forester 1989). To be effective practitioners, planners should know when and how to negotiate. By studying the province's decision as a case study, this thesis helps planners understand why parties negotiate.

1.4 METHODOLOGY

The thesis uses the years 1990 to 1991 as a case study. The rationale for this approach is as follows. Tennant's (1990) detailed study of the B.C. land question ends at 1989. At this time, the provincial government still refused to negotiate. However, by July 31, 1990, the province agreed to "cooperate" with the federal government on a strategy to settle land claims. By December 10, 1991, B.C. accepted

\(^1\)See *Vancouver Sun*, 29 June 1993. "Court rulings 'hammer' natives."

\(^2\)See *Vancouver Sun*, 11 December 1993. "Logging deal upsets green strategy."
all the Task Force recommendations for a new land claims policy.
Clearly, the years 1990 to 1991 mark the turning point in this conflict.
The events that happened during this time deserve a close analysis and
therefore form the subject matter for the case study.

The case study uses secondary sources of information. These
sources include Native and non-Native newspapers, newsmagazines,
journals, books, and government publications.

1.5 THESIS ORGANIZATION

The thesis unfolds as follows. Chapter One provides an overview
of the thesis. Chapter Two discusses conflict resolution models. In
two sections, Chapter Three traces the evolution of this particular
conflict. The first section provides a survey of Canada's history,
focussing on how the relationship between Natives and non-Natives
evolved and changed over time. The second section looks more closely at
B.C.'s history, highlighting how this province acted differently than
the rest of Canada and how these historical behaviors led to the present
day conflict. Chapter Four analyzes the events that occurred between
1990 to 1991 that caused the provincial government to change its
position. Chapter Five draws conclusions about this conflict and
identifies areas for further research.
CHAPTER 2: CONFLICT RESOLUTION PROCESSES

2.1 INTRODUCTION

Conflicts are a common, unavoidable and important aspect of life. Conflict

... prevents stagnation, it stimulates interest and curiosity, it is the medium through which problems can be aired and solutions arrived at, it is the root of personal and social change (Deutsch 1973, 9).

Along with creative aspects, conflict also has destructive properties. Wars can be an outcome of poorly managed conflict. Since conflict has these "Jekyll and Hyde" aspects, the challenge is not to eliminate conflict, but handle it better.

Since conflicts are so common, they have been studied extensively within various disciplines (e.g., sociology and political science) and from multidisciplinary approaches. Although various authors use different terminology, (e.g., Mack and Snyder 1957, Deutsch 1973, Rex 1981, Fisher 1990), all seem to agree that the social conflict phenomenon consists of (1) parties in conflict, (2) over substantive issues, for example land, ideology, and jobs (3) applying behaviors or processes meant to influence each other's positions. Examining point (1) answers "who" questions about a conflict whereas point (2) answers the "what" questions, and point (3) looks at the "how" and "why" aspects of a conflict. Since the specific purpose of this thesis is to explain why British Columbia agreed to negotiate land claims with the First Nations, this chapter focusses more on point (3). At the same time, it is recognized that all three parts of a conflict are inter-related.
In order to understand the conflict resolution process, two different models are examined. The first model, an inductive one, is based on Ury, Brett, and Goldberg's (1988) experiences in resolving conflict in the coal industry. The second model, a deductive one, comes from Fisher's (1990) multidisciplinary, multilevel analysis of conflict research. The features of these two models will be first described separately and then compared and contrasted with each other.

2.2 URY, BRETT, AND GOLDBERG'S MODEL

According to the Ury, Brett, and Goldberg (1988) model, conflict consists of disputes over interests, rights, and power. Interests are "needs, desires, concerns, fears—the things one cares about or wants. They underlie people's positions—the tangible items they say they want" (p. 5). Rights disputes involve disagreements over the application of agreed upon standards, for example rules, contracts, or law, to specific interest situations. The authors define power as "the ability to coerce someone to do something he would not otherwise do" (p. 7). Power includes objective sources such as financial resources and subjective sources such as the other side's perception of one's power. In their view, "The reconciliation of interests takes place within the context of the parties' rights and power" (Ury, Brett, and Goldberg 1988, 9). For example, satisfying First Nations' interest in accessing timber resources, depends on having recognized rights (e.g., obtained through the courts or in the form of a "modern day" treaty), and access to power
to enforce these rights, if necessary (e.g., police force). The diagram below illustrates this relationship (Ury, Brett, and Goldberg 1988, 9):

FIGURE 1: Interrelationships Among Interests, Rights, and Power

The authors then divide conflict resolution processes into three types based on the above diagram. The first process, reconciling interests, involves "interest-based" or "problem-solving" negotiations with or without a neutral mediator. The authors differentiate interest-based negotiations from those based on rights or "power-based"
negotiations that involve verbal insults and threats. The second process focusses on the formal use of a legitimate third party to determine who is right. Examples of this include use of the courts or adjudication. In the third process, parties use various types of coercive power to determine who appears stronger. The authors also recognize that not all disputes get resolved in these three ways; some disputes end up with parties "lumping it" or avoiding contact with each other.

The authors believe that, in general, an interest-based negotiation process is "best" and that a "rights" based approach is better than a power struggle. They base their conclusions on the following criteria or "costs and benefits":

1. **Transaction costs** in terms of time, money, and emotional energy.
2. Parties' **mutual satisfaction** with the fairness of the results and the dispute resolution system.
3. **Effect on the relationship** between the disputing parties.
4. **Recurrence** or whether a particular approach produces a lasting agreement.

According to them, interests based negotiations may involve lower transaction costs, better resolve the problems underlying a grievance, lead to a higher level of mutual satisfaction, produce better working relationships, and prevent disputes from reoccurring. Since the authors advocate an interests-based approach, they do not discuss rights or power processes in any detail.
The remainder of their book focusses on setting up an interest-based dispute system. The diagram below shows their model of a dispute resolution system (Ury, Brett, and Goldberg 1988, 22):
FIGURE 2: Model of a Dispute Resolution System
To create a "better" system, the authors recommend that you first diagnose the existing system, then design a more effective one, and finally, implement your new system. These three steps are discussed below.

The first step towards creating a better dispute resolution process involves collecting information that answers "what, how, and why" questions about the existing system. Finding out about the current and recent issues in a dispute answers the "what" questions. Learning about the existing conflict resolution processes answers the "how" questions. Since "why" questions are important to understanding the nature of the B.C. Comprehensive claims dispute, some of the authors' questions are outlined below (adapted from Ury, Brett, and Goldberg 1988, 33-39):

- How satisfied are disputants with the outcomes of the procedures?

- Does the procedure provide an opportunity for "voice"? Can disputants air their grievances fully in their own terms? Do disputants have control over the procedure—are they in charge, or does someone take it out of their hands? Do disputants participate in shaping the outcome? Do they think the procedure is fair?

- Does the procedure allow for the venting of emotions such as anger and frustration?

- How costly do disputants perceive the procedure to be in terms of time and money?

- Does the procedure serve the interests of parties other than the disputants? [e.g., Does a protest serve to unify a group internally and consolidate leadership?]

- Does the procedure serve purposes for the disputants other than resolving the particular
dispute at hand? [e.g., Is it a public relations exercise?]

- Is negotiation hampered by a lack of norms, precedents, laws, and other standards that could be used to settle disputes or by a lack of technical information about the problem?

- Do the procedures need to be actively administered by a person or an institution?

- In what ways are procedures in use affected by organizational decision-making procedures?

- How does the surrounding culture affect the procedures used?

These questions give insights into the motivations, skills, and resources that influence the use of either an interests, rights, or power approach to dispute resolution.

Once these diagnostic questions are answered, the next step is to design a new conflict resolution system that addresses the above issues.

The six principles of designing a new dispute system are:

- . . . put the focus on interests; build in "loop-backs" to negotiation; provide low-cost rights and power backup; build in consultation before, feedback after; arrange procedures in a low-to-high cost sequence; and provide the necessary motivation, skills, and resources (Ury, Brett, and Goldberg 1988, 42)

In order to implement a new conflict resolution system, the authors recognize that you need the right opportunity and the support of the disputing parties. The right opportunity can arise through a crisis, an insider's idea, or when a new relationship or organization is being established (Ury, Brett, and Goldberg 1988). The authors note that
it is exceedingly difficult to change a dispute resolution system without working closely with the disputing parties. The process of design is as much of a political task of garnering support and overcoming resistance as it is a technical task (Ury, Brett, and Goldberg 1988, 65).

To summarize, the Ury, Brett, and Goldberg (1988) model divides conflict resolution processes into interest, rights, and power based approaches. Because they believe that an interest-based approach is best, the authors outline how to diagnose the existing system, design a better approach, and then implement the new interests-based approach to conflict resolution.

2.3 FISHER'S "ECLECTIC" MODEL

In building his "eclectic," deductive model, Fisher (1990) reviewed individual, group, and intergroup conflict literature. The result was (Fisher 1990, 93):
FIGURE 3: The eclectic model
Fisher's (1990) model separates conflict into high and low intensity states. System states are "conditions of the system in which all units take on distinctive values or ranges of values that persist over some period of time" (Fisher 1990, 108). Ury, Brett, and Goldberg (1988) would call this the "diagnosis" of the dispute resolution system. The boundaries or limitations of Fisher's (1990) model are that it applies to two group conflicts, in which both groups are relatively equal in power, live in close proximity to one another, and interact frequently. The time frame for the conflict may be short or long. His model is restricted to conflicts that evidence minimal regulation or are not highly institutionalized.

In a low intensity conflict, interests and values are the sources of disagreements. Interests are conflicts over resources or positions (e.g., jobs) that can be resolved through negotiation or mediation. Value conflicts, involving incompatible preferences, principles, or practices (e.g., culture, religion, politics, or ideology), require accommodation or withdrawal from each other. Accommodation requires adhering to some superordinate values that allow for differences among subordinate values. In low intensity conflict, the group is moderately cohesive, communicates well with the other party, and has a mixed competitive and cooperative orientation.

In a high-intensity state, needs and power are the sources of conflict. A power conflict is the attempt of one group to have control
over non-negotiable needs such as identity, recognition, security, and self-determination. Within the group, individuals are ethnocentric, that is, they show a high-level of in-group cohesion and negative out-group attitudes or prejudices and they communicate poorly. Their competitive behaviors involve various forms of coercion or power struggles.

Fisher’s (1990) diagramming of escalative and de-escalative processes are helpful in understanding how system-states change. A conflict will escalate if the parties have a history of antagonism and experience cultural differences, malignant social process (i.e., poor conflict resolution systems), and structural changes (e.g., decline or disappearance of resources). Fisher (1990) outlines three processes to de-escalate a conflict. The first, "resolution effects," involves a strategy of safe "conciliatory gestures" (i.e., a cooperative, but "firm" approach). The second approach relies on a mediator to judge both parties and intervene accordingly. The third approach is the same strategy that a low-intensity system applies to resolve value conflicts, that is, the finding of mutual goals.

2.4 COMPARING AND CONTRASTING THE TWO MODELS

Although arrived at in different ways, the Ury, Brett, and Goldberg (1988) model and the Fisher (1990) model are essentially alike. Their terminologies differ; for example Fisher's (1990) low-intensity conflict is the same as Ury, Brett, and Goldberg's (1988) interest-based
dispute resolution system. There is some confusion over the different definitions of the substance of a conflict, for example Ury, Brett, and Goldberg (1988) include "needs" as interests, whereas Fisher (1990) separates the two. Both models outline a similar process, that is the movement from a power based dispute resolution system or high intensity conflict to an interest-based or low intensity one. The questions Ury, Brett, and Goldberg (1988) suggest asking to diagnose a system are similar to the individual, group, and intergroup variables Fisher (1990) identified in his "system-states." Although Fisher's (1990) model clearly shows how conflicts evolve and escalate (e.g., history of antagonism), Ury, Brett, and Goldberg (1988) discuss this process through numerous examples. Thus, both the inductive and deductive approaches yield similar models of conflict resolution.

Ury, Brett, and Goldberg's (1988) model has some advantages over Fisher's (1990). First, Ury, Brett, and Goldberg's (1988) model incorporates the institutional or relationship aspects of a conflict, whereas the Fisher (1990) model lacks this. Institutions and relationships shared between parties are important in the conflict resolution process. Formal institutions (e.g., the legal system) define the boundaries for an interest-based process. Informal institutions or relationships such as Natives marrying non-Natives, attending school together, and speaking the same language, create numerous "cooperative bonds" that keep the conflict at a low to moderate intensity (Mack and Snyder 1957, Deutsch 1973). Second, Ury, Brett, and Goldberg's (1988)
diagrams are simpler and easier to follow; their approach is more "user friendly." Third, Ury, Brett, and Goldberg (1988) recognize that disputants negotiate when it is in their best interest to do so (in terms of costs and benefits), a point not well discussed by Fisher (1990). Thus the Ury, Brett, and Goldberg (1988) model is more applicable to the problem addressed in this thesis. Since both models do not address the role of power adequately, this topic is discussed separately below.

2.5 POWER PROCESSES IN CONFLICT RESOLUTION

Power is a nebulous, but important part of conflicts and conflict resolution processes. Ury, Brett and Goldberg (1988) note, "In some instances, interests-based negotiations cannot occur unless rights or power procedures are first employed to bring a recalcitrant party to the negotiating table" (p. 16). Since this statement applies to the B.C. Comprehensive claims conflict, no discussion of conflict resolution processes would be complete without explaining some aspects of power.

Power can be defined in many ways. Authors who take a narrow view see power only as a coercive force (e.g., Mack and Snyder 1957, Ury, Brett, and Goldberg 1988). Deutsch (1973) gives a broader view of power:

An actor (a term used here to refer to either a group or an individual) has power in a given situation (situational power) to the degree that he can satisfy the purposes (goals, desires, or
wants) that he is attempting to fulfill in that situation. Power is a relational concept; it does not reside in the individual but rather in the relationship of the person to his environment [environmental power]. Thus the power of an actor in a given situation is determined by the characteristics of the situation as well as by his own characteristics [personal power](pp. 84–85) . . . [P]ower can be facilitative as well as coercive, that it can liberate as well as restrain, that is, it can be "for" as well as "against"(pp. 86–87).

This broader definition of power is used in this thesis when referring to power processes. Deutsch (1973, 87) then identifies some of the different types of power:

- Coercive power, which uses negative incentives, such as threats to physical well-being, wealth, reputation, or social status, to influence the other;

- Reward or exchange power, which employs positive incentives, such as promises of gain in well-being, wealth, and the like, in exchange of what is desired from the other [e.g., "In the long-run, settling land claims will cost the taxpayers less money"];

- Ecological power, which entails sufficient control over the other's social or physical environment to permit one to modify it so that the modified environment induces the desired behavior or prevents the undesired behavior [e.g., "Self-government strategies will reduce the incidence of family violence on the reserves"];

- Normative power, which is based on the obligations arising from social norms governing the relationship [e.g., "Indians should be treated fairly by the government"];

- Referent power, which uses the other's desire to identify with or be similar to some person or group in order to alter his attitudes and values [e.g., "All Canadians, including Indians, want the best for their children"];
Expert power, which is grounded in the other's acceptance of one's superior knowledge or skill [e.g., "Indians have managed natural resources in an ecological manner long before the white man ever came"].

Coercive power can be further classified on a continuum from non-violent (e.g., peaceful roadblocks) to violent processes (e.g., organized use of armed forces). Violence refers to "... physical injury to persons or destruction of their property" (Schellenberg 1982, 226). The use of violent coercive power often is a crisis or turning point in a conflict; after its occurrence, conflict becomes more difficult to resolve (Miall 1992). However, violence is not necessary to make coercive processes effective; threats or implied threats of force also influence a party's behavior.

Various types of coercive processes are acceptable in different societies. A party using a coercive process must be capable of carrying out the threat, be credible to the target party (e.g., the police are allowed to enforce the law on citizens), the act must target the right party, and be legitimate (Schellenberg 1982). Legitimacy depends on the party establishing a good reason for carrying out its actions and establishing credibility in the eyes of "disinterested" or neutral parties (Schellenberg 1982). Thus social norms and values dictate the use of coercive types of power. For example, it is acceptable for a parent to discipline a child and it was historically acceptable for the federal government to enforce the "paternalistic" Indian Act onto its Indian "wards."
The description of non-coercive types of power gives insight into cultural aspects of the Native/non-Native conflict. At the time of contact, both parties had very different cultural norms, different religious beliefs, and different sets of laws. In power language, each party possessed different normative, expert, ecological, and reference powers—they were distinct nations. Because of their greater coercive power, non-Natives tried to make Natives abide by their cultural norms (e.g., assimilation policy). As Deutsch (1973) notes, the use of any type of power entails "costs." He believes that

\[ \ldots \text{the costs of maintaining effective coercive and ecological power far outweigh the costs of maintaining the noncoercive forms} \]

[e.g., normative power], it is generally a short-lived economy to employ coercion as a substitute for the effort involved in developing a trusting relationship with the other (p. 88).

In simpler language, non-Natives' use of coercive power greatly damaged their relationship with the Natives. This is why both the B.C. Claims Task Force (1992) and the Royal Commission on Aboriginal Peoples (1992) focus on the need to build "new relationships" between Natives and non-Natives.

This discussion of power also lends insight on the recent changes that have occurred in the Native/non-Native relationship. In 1969, Indians were referred to as "powerless" people by the federal government (see White Paper 1969). Now both the federal and provincial governments refer to them as "equal partners" at the negotiating table (see Report of the British Columbia Claims Task Force 1991). Clearly, using this language, Natives have become empowered. Their power-building
strategies include increasing the resources that underlie power (e.g., land claims); increasing the effectiveness of existing resources (e.g., becoming better educated); by finding allies (e.g., environmental groups); and/or by decreasing the resources or increasing the costs of the more powerful group (e.g., court injunctions affecting forest companies). In addition, Natives have used other strategies recommended by Deutsch (1973) such as inducing the high-power group to use its power benevolently, through such techniques as ingratiating (reference power) and the arousal of guilt or the appeal to general norms of equity or justice (aspects of normative power). In making these suggestions to a low-power group, Deutsch (1973) notes:

It is difficult to assume that such a group is unlikely to change the power relations unless it is an effectively organized, cohesive group with a high level of frustrated aspiration, a significant degree of optimism about the possibilities of change, and considerable freedom of fear of the high-power group (p. 91).

Thus to gain some power, a group has to be organized, motivated, and have freedom to criticize the high power group. Power-building strategies also have to happen in the right "environment" or point in time to be effective.

From the non-Natives' perspective, in this discussion, they were the "high-power" group, lacking incentives to change the existing power relationships (Deutsch 1973). Over the history of the Native/non-Native conflict, non-Natives have used the following types of power to defend and promote the status quo. They
• Attributed greater competence (expert power) and/or superior moral value (normative power) to themselves;
• Employed defense mechanisms such as avoiding contact with the low-power group (e.g., B.C. government not wanting to negotiate with the First Nations);
• Denied the existence of any problems (e.g., Joseph Trutch, a government "expert" denying that B.C.'s Indians were unhappy).

An understanding of the different types of power lends insight into many aspects of the complex Native/non-Native relationship. At the same time, power remains a confusing concept yielding almost tautological definitions. Viewing power only in a coercive way simplifies things, but this approach ignores the "persuasive war of words" that accompanies most non-violent forms of coercion. For example, the "power" of an Indian roadblock forces logging companies to get court injunctions, but at the same time, appeals for justice influence public opinion. To this end, it seems that power is always part of a conflict, but it cannot be measured directly. Public opinion polls and behaviors of third parties are indirect ways to assess the relative strength of each party without naming and evaluating the different types of power used.
2.6 SUMMARY AND CONCLUSIONS

So far, this chapter has described and discussed two models of dispute resolution. Although both models were alike, Ury, Brett, and Goldberg's (1988) model was simpler to understand and more complete. Because neither model discussed the role of power thoroughly, this topic was discussed under a separate heading. This final section discusses the conflict resolution process from the point of view of the participants and then diagrams how the Ury, Brett, and Goldberg's (1988) model applies to the Native/non-Native conflict.

Fisher and Ury (1981), with their "Best Alternative to Negotiated Agreement" (BATNAs), simplify the above theoretical explanation of models and power processes. At the same time, they take the view of parties contemplating negotiations, rather than those designing the dispute resolution system, and give them the following advice.

According to Fisher and Ury (1981), you should first list your BATNAs and then compare each one to what you would get through negotiating. This step coincides with the "diagnosis" stage of the Brett, Ury, and Goldberg (1988) model. The BATNAs for the First Nations' are (1) civil, non-violent forms of protest such as road blocks, marches, rallies (power processes); (2) use of court system (rights process) and (3) policy changes (rights process). The province also tried (2) and (3) in addition to avoiding the issue.
Next, Fisher and Ury (1981) prescribe selecting the "best alternative to negotiating" from your list and developing it fully. Since this particular conflict involves numerous First Nations members with differing opinions, Natives undertook a multi-faceted BATNA involving all three processes. For similar reasons, the province also pursued all their BATNAs.

Finally, Fisher and Ury (1981) believe, "The reason you negotiate is to produce something better than the results you can obtain without negotiating" (p. 104). Others support this point of view (e.g., Deutsch 1973, Schellenberg 1982) and it also parallels the Brett, Ury, and Goldberg's (1988) rationale for building "interest-based" conflict resolution systems. This thesis supports this rational view that the province agreed to negotiate when it was in their best interest to do so.

Applying the Brett, Ury, and Goldberg's (1988) model and Fisher and Ury's (1981) "BATNA" terminology to the Native/non-Native conflict yields the following diagrams:
FIGURE 4: Modelling the Native/non-Native Conflict

Diagram A: Background to Conflict

Non-Natives' Interests, Rights, and Powers (as in Fig. 1) ——> Cooperation ——> Interests-based dispute resolution system ——> Power-based dispute resolution system

Natives' Interests, Rights, and Powers (as in Fig. 1)

Coercion

TIME

Confrontation

Diagram B: Case Study

Blockades (First Nations' BATNA) ——> Environment

Legal Redress (Both parties' BATNA) ——> Social, Economic, Cultural

Third Parties' Behaviors

Public Opinion

INTEREST-BASED PROCESSES

Disputes ——> Procedures in Use

Policy Changes (Both parties' BATNA)

"Do Nothing" (Province's BATNA)

RIGHTS-BASED PROCESSES

Motivations ——> Skills ——> Resources

POWER-BASED PROCESSES

Costs and Benefits

OKA CRISIS
These diagrams show the following. Diagram A relates to the historical background of the Native/non-Native conflict covered in Chapter Three. It shows that Natives and non-Natives initially cooperated (Miller 1991) or used an interests-based dispute resolution model (Brett, Ury, and Goldberg 1988) when their power was relatively equal and their interests coincided. In the coercion phase, non-Natives and Natives interests did not coincide; non-Natives used their greater power to coerce Natives to assimilate. In the confrontation phase, Natives are attempting to re-establish a relative balance of power with non-Natives based on common interests. Diagram B refers to the years 1990 to 1991 in British Columbia. It shows the variables that were important in making the decision to negotiate land claims in B.C. These variables relate together as a system, rather than in a linear fashion. The province's rational decision to negotiate arises from this model of a dispute resolution system.
CHAPTER THREE: BACKGROUND

3.1 INTRODUCTION

Writing this section presented a challenge: Whose view of history is "right"? As a high school student, I recall learning how savage Indians scalped pious missionaries. Some historians (and Native politicians) now portray the White man as the villain. Neither approach tells both sides of the story; no one race of people can be entirely savage or conversely, completely benevolent. This chapter is an attempt to provide a balanced view of the background issues, events, and policies important to the case study. Section I briefly highlights how the conflict evolved in Eastern and Central Canada, while section II focusses on B.C.'s history.

Of all the books reviewed for this section (e.g., Berger 1991, Frideres 1988, Ponting and Gibbons 1980), Miller's (1991) Skyscrapers Hide the Heavens, proves the most useful. Miller (1991) classifies the Native/non-Native relationship into three phases of cooperation, coercion, and confrontation. In his eyes, Natives are neither ignorant savages nor passive victims, but active participants in all phases of the relationship. Since his approach is both fair and comprehensive, this thesis uses it as an outline for this chapter and as the main source for section I.

3.2 OVERVIEW OF CANADA'S HISTORY

3.2.1 Cooperation

Early explorers thought they found an "empty" land that they could claim for their respective countries. This terra nullius was populated with numerous and different groups of Natives, living in recognized territories and practicing their own form of self-government. Natives traded and carried out small scale warfare with each other. Despite very different cultural values, non-Natives and Natives initially got along.

Natives and non-Natives initially cooperated through trading. Aboriginal peoples and the newcomers established trading relationships during the 1500-1700s in Eastern Canada and on the Prairies. They cooperated because their interests coincided; Europeans desired furs and Natives wanted products such as guns and iron utensils. Initially, Natives had the upper hand in these early "business negotiations"; they had better wilderness skills and greater numbers than their non-Native
trading partners (Miller 1991). As a sign of their cooperation, these parties signed "Peace and friendship" treaties during this time.

The next phase of this cooperative relationship involved military alliances. As Europeans struggled for control over North America, Native tribes sided with the warring factions. When the English and their Indian allies finally defeated the French at Montreal in 1760, the victors wished to maintain the loyalty of their allies. Through its language, The Royal Proclamation of 1763 recognized this important "connection" between sovereign "Nations or Tribes" and the British:

And whereas, it is just and reasonable, and essential to our Interest, and the Security of our colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under Protection, should not be molested or disturbed in the Possession of such parts of our Dominions and Territories as, not having been ceded to or purchased by us, are reserved to them or any of them, as their Hunting Grounds.

Wanting to stay on good terms with Indians, The Royal Proclamation protected Aboriginal land rights from being abused by increasing numbers of new settlers. The Royal Proclamation stated that land was to be ceded only to the Crown (which excluded colonists) and if not ceded or purchased remained reserved to Indians. In addition, this proclamation stipulated the process for land transfers: No longer could individuals freely trade land, now transfers could occur only at a public meeting attended by authorized representatives of the aboriginal group. This "Magna Carta of Indian Rights" became the policy for subsequent
treaties and remains an important part of comprehensive claims arguments today.

3.2.2 Coercion

The relationship between the Natives and non-Natives changed during the 18th century with cooperation becoming less important as the fur trade declined, warfare decreased, and white settlement increased. Now, rather than valuable war and business partners, whites saw Indians as impediments to getting land they wanted for farming. In this changed relationship, treaty making and assimilation attempts were the white's solutions to the Indian "problem."

Initially, both sides saw treaty making as their best alternative. By making treaties, the federal government could meet its goals of: avoiding a costly Indian war; obtaining cheap access to land for agricultural settlement, railway building, and resource exploitation; and following the guidelines stipulated under The Royal Proclamation. For the Indians, treaties also met their goals of: ensuring their cultural survival against encroaching white settlement; avoiding further population losses in a war; and obtaining education and tools necessary for a new lifestyle.

The two groups negotiated treaties throughout Canada starting with the "Robinson" treaties in Upper Canada. Following confederation, they made seven "numbered" treaties in the southern parts of the prairie
provinces and Ontario. Next, during 1899 to 1921, Natives and the federal government negotiated treaties 8-11 in the northern parts of the country. In northern B.C., they negotiated treaty 8 without any provincial involvement. The map below shows the location of these historical treaties.
(Source: Frideres 1988, 10)
Indians believe they were treated poorly during these historical negotiations (Barber 1977, Berger 1977, Fisher 1977). Because the government entered into the process only when it was most convenient for them, some Indian groups were starving when they signed treaties. Since many Indians could neither read nor write and depended on others to translate for them, the government sometimes used missionaries to persuade them to sign treaties (Daniel 1980). Due to their differing languages and views of land ownership, some Natives maintain they did not understand the meaning of "extinguishment" (Price 1991). These experiences taint the present day relationship between Natives and the federal government.

The second goal of the white society was to "assimilate" the Indian population, meaning they wanted to make "inferior" Indians "civilized" like themselves. The rationale for this process came from misinterpretations of Darwin's evolution theories, religious zeal, and a lack of understanding of and interest in Indian ways. Since the government thought their assimilation policy would be a success, they gave less attention to fulfilling promises made in treaties.

Europeans used religion, education, and legislation in their assimilation attempts. In an effort to convert "heathen" Indians to Christianity, missionaries initially lived with the tribes and later set up special schools for Indian children. At one time, the federal government labelled Indian doctors or lawyers "fully assimilated" and
forced them to give up their special status. Under the treaty system, the federal governments established reserves to "protect" Indians while they were taught white farming ways. Through the Constitution, the newly established Dominion of Canada had jurisdiction over "Indians and lands reserved for Indians." Since it now had a formal "guardian" role over its Indian "wards," the federal government proceeded to develop the paternalistic Indian Act to fulfill its mandate. This legislation classified Indians into categories (e.g., status and non-status), created new methods of land ownership, displaced traditional governance systems, and banned potlatching and sundancing (till 1951).

Although this assimilation policy failed to achieve its ultimate goal, it had good, bad, and indeterminate effects on Indians. For example, while some Indians welcomed Christianity, others rejected it, and still others practiced a hybrid of the two religions (Miller 1991). Indians wanted education; it was the way they were "taught" and abused in residential schools that was wrong. Although the government tried to ban potlatching, its legislation was unenforceable and the tradition carried on under a Protestant disguise (Tennant 1990). Although most Indians now want to get rid of the Indian Act, they also want to keep the benefits it provides. As Indians learned about the bad effects of this policy, for example, their marginalized position in society, they grew increasingly angry at any further government "assimilation attempts."
3.2.3 Confrontation

Indians' rejection of the 1969 *Statement of the Government of Canada on Indian Policy* (known as the *White Paper*) marked a turning point in the Native/non-Native relationship in Canada (Pouting and Gibbons 1980). Although the *White Paper* was the federal government's attempt to better the Indians' economic and social conditions, Indians thoroughly rejected its proposed "equitable ending" of treaties and of their special status. They also disagreed with its view that comprehensive claims were "too general." While some politicians lauded its "liberal individualism" focus, Indians viewed the *White Paper* as an explicit assimilation policy. By forcing the withdrawal of the document, Indians served notice that the federal government could no longer dictate solutions to them.

Further confrontations helped strengthen the Indian position. With federal government funding, the Native Indian Brotherhood (now Assembly of First Nations) lobbied for control over Indian social programs, self-government and education. Their extensive political lobbying put Native rights into the 1982 Constitution:

Section 35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. . . .

(3) For greater certainty, in Subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
This amendment was significant for several reasons. First, it gave constitutional protection to any new land claims agreements reached. Second, it led to numerous attempts to define what these aboriginal rights were and thus kept the topic on the public agenda. Third, by arguing that land claims agreements generated rights requiring constitutional changes, the federal government could pressure B.C. to get involved in negotiations (Morse 1989). Fourth, despite disagreements within the Aboriginal community, this amendment was a major symbolic victory for them. While the White Paper had argued against rights based on racial criteria, now Aboriginal rights were "recognized and affirmed" in the most important document in Canada.

During these confrontations, public opinion supported the Indians' aspirations (Weaver 1981, Dyck 1988). When comparing results of his 1976 and 1986 study, Ponting (1988) found:

Canadians generally hold supportive attitudes toward Natives, although that support varies considerably from region to region and has eroded slightly since the mid-1970s. . . . Canadians seem to recognize Natives' special relationship with the land and up to a point, are willing to make accommodation for that. . . . While there is widespread support for the general notion of increased self-determination for Natives, levels of knowledge and awareness of aboriginal issues were found to be generally low (p. 9)

During the 1970's, public opinion was influenced by the black civil rights movement in the United States, the Hawthorn Report (1966-67) that documented Indians miserable socio-economic conditions, and the increased media attention (e.g., the 1977 Berger Inquiry). Protests and
lobbying are the main influences on present day public opinion (Jhappan 1990a, 1990b).

3.2.4 Summary

In the East and Central Canada, the Native/non-Native relationship evolved as follows. Although Natives and non-Natives initially cooperated in trading and military relationships, when warfare decreased and European settlement increased, whites viewed Indians as a "problem" that required a solution. During the period of coercion, whites saw treaty making and assimilation as the appropriate solutions to the Indian problem. These solutions failed and left Indians angry; their rejection of the White Paper marked the start of confrontations with the non-Natives. The Indians' confrontational behavior captured the politicians' attention and the public's support.

3.3 BRITISH COLUMBIA'S HISTORY

3.3.1 Cooperation

As in other parts of Canada, fur trading flourished between B.C. Indians and the Europeans between the 1770s and the 1820s. They traded similar items; Indian pelts for European cooking and carving tools. However, B.C.'s history differs from other provinces in that Native/non-Native military alliances were not part of this cooperative relationship. Also, because of the more recent and briefer period of
contact, many Native groups in B.C. maintained their strong cultural identities (Tennant 1990).

In the transitional period from fur trade to colonialization, James Douglas had the pivotal role in determining the direction of the B.C. land question. His fur trading background gave him knowledge and respect for Indian culture; he often used traditional Indian ways to mete out justice. Because he was an agent of the British government, he applied British laws to land deals. As governor, he wanted to maintain peace in the colonies and thus tried to treat both groups fairly. Therefore, he first made treaties with Indians to appease whites and then later refused to when he realized their limited benefits to Indians.

As governor of the colony of Vancouver Island from 1851 to 1864, Douglas negotiated fourteen small treaties with the Indians to make way for white settlement. In these treaties, Indians were reserved land that they had village sites and enclosed fields on in exchange for blankets and gifts. Since the initial treaties were blank pieces of paper that Douglas filled in after the signing occurred, both parties later questioned the validity of these agreements (Tennant 1990). However, in the cases Regina v. White and Bob (1965) and Saanichton Marina Ltd. v. Tsouat Indian Band (1989), the court ruled that these documents were treaties.
Despite ongoing pressure from settlers and authorities, Douglas made no more treaties with Natives. Most scholars believe treaty making stopped due to a lack of funds (Duff 1964, Fisher 1977, Miller 1991). However, Tennant (1990) argues that Douglas did have funds to arrange treaties on the mainland colony, but instead chose to spend the money on roads to take gold miners into the interior of the province. Because Douglas believed that Indians would soon be assimilated as equals into the white society, he viewed treaty making as unnecessary. He also noticed that Indians with treaties were worse off than their cohorts. Unlike his contemporaries, Douglas believed "the solution" was to give Indians the right to pre-empt land like the settlers. Although initially well meaning, his land policies ignored cultural differences and pre-existing aboriginal title. Thus by not making treaties, Douglas sowed the seeds for the "Indian land question" protests to follow.

3.3.2 Coercion

While Douglas attempted to treat Indians as equals, Joseph Trutch took the opposite approach. His correspondence and speeches contain numerous derogatory references to Indians (Fisher 1977). In his position as Chief Commissioner of Lands and Works from 1864 to 1871, he reclaimed Indian reserve lands that Douglas allocated and gave it to settlers. In 1866, with Trutch's support, legislation was passed to prohibit Indians from pre-empting land. Despite undouing Douglas' work, Trutch refused to make treaties.
Trutch maintained his position against pressure from the federal government, advising Prime Minister John A. Macdonald that Canada's treaty making policy was inappropriate for B.C. He claimed that B.C. had never recognized aboriginal title and that Douglas' treaties were only "friendship" ones (Tennant 1990). Furthermore, Trutch implied treaty making was unnecessary since Indians were content with the treatment they were receiving here (Fisher 1977).

Contrary to what Trutch said, B.C. Indians were dissatisfied with their situation. First, they asserted their unextinguished aboriginal title and demanded the government negotiate treaties. Second, they desired parity with other provinces regarding reserve land allocations. They complained that they received only 10 acres per family of five, whereas Indians under the numbered treaties received 160 to 640 acres. Both governments took steps to resolve Indian grievances; however the province's participation came only when the federal government promised that aboriginal title was not on the agenda.

By addressing other grievances, politicians hoped the questions about Indian title would disappear. Thus, officials of the Joint Commission (1877-1910) ignored questions about Indian title as they allocated reserve land in B.C. Aboriginal title was not on the McKenna-McBride Commission's agenda as it undertook "a final adjustment of all matters relating to Indian Affairs in the Province of British Columbia."

By giving B.C. Indians $100,000 a year instead of treaty benefits in 1927, politicians hoped to satisfy any outstanding grievances. At the
same time, the federal government amended the Indian Act to make land claims activity illegal throughout Canada (in place till 1951). Daniel (1980) refers to these numerous political activities as "bureaucratic devices for settling inter-governmental disputes, rather than a means to achieve comprehensive agreements between native people and governments (p. 205-6). Thus, none of these efforts satisfied B.C. Indians, nor did they make the question of aboriginal title disappear.

Indians pursued numerous alternatives in an attempt to get treaties. They sent protest delegations and petitions to Victoria, Ottawa, and London. The Nisga'a formed a land committee in 1907 to pursue the question of aboriginal title. Although Indians established various political organizations, these parties lacked the unity and clout to change the province's position (see Tennant 1990). During this time, Indians were of little concern to the public, making it easier for the government to ignore their concerns (Tennant 1990). It was the 1973 Calder case that provided Indians with their first breakthrough in their long struggle to get treaties.

3.3.3 Confrontation

Through the Calder case, the Nishga'a attempted to get legal answers to questions about aboriginal title in B.C. In the Supreme Court of Canada judgment, six judges agreed that the British recognized Indian title to land at the time of B.C.'s colonialization. (One judge
dismissed the case on a technicality.) According to three of the judges, this recognition derived from the Royal Proclamation. The remaining three believed title existed because of Indians' long occupation of the land. However, the Court split 3-3 on the issue of whether this title had been lawfully extinguished in B.C.

Although it was an inconclusive legal judgment, this case was an important political victory for Indians. After this judgment came out, the federal government announced a new comprehensive claims policy and began negotiating with the Nishga'a. Now that they had a comprehensive claims policy, other Indian groups began to prepare their claims submissions. Following this case, the federal government reached the following "modern day" treaties with Aboriginals: James Bay (1975) and Northern Quebec Agreement (1978); Inuvialuit Agreement (1984) Yukon Agreement (1988); and Nunuvut Agreement (1992). The map below illustrates the location of these "modern day" treaties.
FIGURE 6: Northern Comprehensive Claims

(Source: Price 1991, 94)
Legend to "Northern Comprehensive Claims"

1. Council for Yukon Indians
2. Inuvialuit Settlement Region
3. Dene Nation
4. Metis Association of the Northwest Territories
5. Tungavik Federation on Nunavut
6. James Bay and Northern Quebec Agreement
Although effective at the federal level, the Calder case left the province's position on aboriginal title unchanged. They argued that since the Calder case was a split decision, the lower court decision (in favor of the province) held. B.C. also argued that Indians and their claims were federal responsibilities and thus took only took a "bystander" role in the Nishga'a's negotiations. Their entrenched position hindered progress and frustrated other claimant groups who were now waiting their turn to negotiate.

By the 1980s, Natives and environmentalists shared a common interest in protecting the forests of B.C. Angry with the province's position on land claims, Natives took direct action to protect their cultural heritage from being harvested away (see Pinkerton 1983). Concerned with the province's forestry practices, environmentalists joined the Natives on blockades. Although the state of B.C.'s forests concerned both groups, only the Natives' land claim issue got legal recognition.

Through various processes, Native groups put pressure on the province. In Macmillan Bloedel Limited v. Mullin et al., the Nuu-Chah-Nulth won an injunction to prevent the logging of Meares Island pending the resolution of land claims. In the B.C. Court of Appeal on March 1985, Justice McFarlane seemed to speak directly to the province when he said:
[I]n the end, the public anticipates that the claims will be resolved by negotiation and by settlement. This judicial proceeding is but a small part of the whole of a process which will ultimately find its solution in a reasonable exchange between governments and the Indian nations (p. 607).

Public support for the Nuu-Chah-Nulth's strengthened their case against the government: A suppressed poll showed that 78% of the B.C. residents surveyed believed that land claims settlements should precede logging on Meares Island.3

The South Moresby conflict was similar to the Meares Island case. In court, the Haida argued their religious obligation to protect their cultural heritage. While dressed in traditional costume, they deliberately got arrested in the media's presence (Jhappan 1990a). Again, a public opinion poll done by the Vancouver Sun on November 30, 1985, found that 63% of the people believed that Premier Bennett should negotiate land claims. Additionally, on average 50% of the respondents felt that the Haida were justified in their actions.4 This time the province diverted the pressure by transferring the disputed land into the federal government's hands. In the end, the federal government reserved the land for park purposes and left the land claim issue unresolved.

Because of the successes obtained by the Nuu-Chah-Nulth and the Haida, other Native groups used the same combination of roadblocks.

3Vancouver Sun, 31 January 1985. "MB sits on poll results."
4"Talk land issue, poll tells Bennett."
media attention, and court injunctions to get their concerns addressed. Notable victories included: the Kwakiutl obtaining an injunction against logging in their territory; Indian bands along the Thompson River stopping railway expansion; the Gitskan-Wet'suwet'en halting logging preparation in their claimed area; and the McLeod Lake band stopping resource development in the Treaty 8 area (Tennent 1990). With these injunctions, the courts were clearly telling the province that questions about aboriginal title could no longer be ignored.

In addition to the above strategies, the First Nations were lobbying third parties. When the Lytton and Mount Currie bands launched a campaign to protect the Stein Valley in 1988, their story gained media attention through David Suzuki’s television show, *The Nature of Things* (Jhappan 1990a). Indian organizations met with the British Columbia Federation of Labor, the British Columbia Council of Forest Industries, and the Fisheries Council of British Columbia (Tennent 1990). These meetings helped educate and address concerns of these third parties, who then lobbied the government to change their position.

The provincial government did respond to the Indians activities. Initially, prominent Social Credit politicians attempted to discredit their arguments about title (Tennent 1990). Since this failed to sway the public, the province began to address Indian concerns. While still publicly refusing to talk about title they:

• Established a Ministry of Native Affairs;
• Became an active party in both the tripartite negotiation processes to resolve the "cut-off" reserve land issue (e.g., Chemainus Band, 1984; Penticton Band, 1985) and in setting up the Sechelt self-government model in 1988;

• Created a Premier's Council on Native Affairs in July 1989 to review provincial policies affecting aboriginal people and hear tribal councils' concerns.

Behind the scenes, the province's Attorney General, Brian Smith and federal Indian Affairs Minister, David Crombie were communicating on how B.C. might resolve the issue of comprehensive claims.5

The activities undertaken by both the First Nations and the provincial government between 1985–1989 set the stage for a "yes" decision on the land question. By pursuing their alternatives in the courts, through protests, and with third party lobbying, B.C.'s First Nations obtained support for their cause. During this time, the province recognized the importance of the issue and stopped "doing nothing." By establishing the Ministry of Native Affairs (now the Ministry of Aboriginal Affairs) and participating in other tri-partite negotiations, the province began to address the institutional and relationship aspects of the Native/non-Native conflict. However, at the end of 1989, B.C. still refused to negotiate land claims and continued to defer the issue to the federal government.

3.3.4 Summary

While the pattern is similar to that in the rest of Canada, B.C.'s Native/non-Native relationship has several important differences. First, B.C.'s briefer and more recent period of cooperation left Indian culture more intact and in a stronger position to pursue the land question. Second, James Douglas envisioned a society in which Indians and whites would be equals and to this end, he believed that Indians should pre-empt land rather than sign treaties. Third, despite disagreeing with Douglas' views, his successors did not sign treaties. Fourth, although governments made numerous attempts to address Indian grievances over the years, none of their interventions addressed the issue of aboriginal title. Fifth, the Indians' confrontational activity during the 1980s gained the support of an environmentally conscious public. Together, all these differences created the setting, need, and support for an affirmative decision regarding land claims. The next chapter outlines how the province finally reached a "yes" decision.
4.1 INTRODUCTION

B.C. would have continued its small incremental steps towards making a "yes" decision into the 1990s had it not been for the catalyst provided by the Oka crisis. During the Oka crisis, B.C. took the first major step towards conflict resolution by agreeing to cooperate with the federal government on a strategy to settle Indian land claims. Second, following the Oka crisis, the parties set up the B.C. Claims Task Force to recommend how these negotiations should proceed. Third, the Task Force made recommendations aimed at preventing "another Oka." Fourth, because of the changed political environment, the governments accepted all nineteen recommendations made by the Task Force. The signing ceremony on September 21, 1992, on Squamish Indian land symbolized the start of this new cooperative relationship. This chapter explains each of these four steps separately. The timeline below summarizes the events and steps that occurred during this time.
TABLE 1: 1990–1991 Time Line

<table>
<thead>
<tr>
<th>First Nations' activities</th>
<th>Governments' activities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>March 1990</strong></td>
<td>Release of The New Democratic Land Claims Policy stating that a NDP government will negotiate the Land Claim Question.</td>
</tr>
<tr>
<td>Elijah Harper used the peaceful symbol of an eagle feather to reject the Meech Lake agreement.</td>
<td><strong>June 1990</strong></td>
</tr>
<tr>
<td>Start of the Oka Crisis in Quebec</td>
<td><strong>July 11, 1990</strong></td>
</tr>
<tr>
<td></td>
<td>Premier Bill Vander Zalm receives the <em>Progress Report and Interim Recommendations</em> of the Premier's Council on Native Affairs.</td>
</tr>
<tr>
<td>Event</td>
<td>Date</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Release of the Union of B.C. Indian Chiefs' draft treaty for settling Indian land claims</td>
<td>July 31, 1990</td>
</tr>
<tr>
<td>Oka crisis ends</td>
<td>Sept. 26, 1990</td>
</tr>
</tbody>
</table>

6 *Vancouver Sun*, 20 October 1990. "Land claims imperil jobs, study finds." During the first three months of 1990, Price-Waterhouse surveyed many mining and forestry firms in B.C. The study found that fears about B.C. native land claims were putting $1 billion in capital investment and 1500 jobs at risk.
4.2. WHY DID THE PROVINCE AGREE TO CO-OPERATE ON A STRATEGY TO SETTLE INDIAN LAND CLAIMS?

The tensions created by the Oka crisis gave the province the needed incentive to change its position and agree to cooperate with the Natives. During this crisis, the world watched confusing and upsetting events happen at Oka, Quebec: Masked and armed Mohawk warriors maintained a blockade; Corporal Lemay was shot; and Mohawk women, children, and elders were stoned by whites at nearby Kahnawake while the Quebec police stood by. Premier Bill Vander Zalm also watched the events at Oka unfold and did not want this "worst case scenario"
happening in B.C. He decided it was in B.C.'s best interest to "cooperate" and settle land claims here.

4.2.1 Background to the Oka crisis

The Oka crisis brought together all the elements of the larger Native/non-Native conflict. First, there was the sovereignty issue with the residents of Kanesatake and Kahnawake believing they are neither Canadians nor Americans because the 1794 Jay Treaty exempted them from allegiance to either country. Unlike the majority of First Nations, they consider themselves a sovereign nation outside Canada and some use this argument to justify the gambling and smuggling activities that occur on the reserves.

Next, the Indian Act created internal power struggles between traditional "People of the Longhouse" (Haudenosaunee) and the federally acceptable Hereditary chiefs. Because the Haudenosaunees do not recognize the Hereditary chiefs and regard any initiative related to the Indian Act as contrary to Mohawk law, they refuse to participate in federally sponsored referenda or elections meant to resolve these internal disputes (Hughes 1991). The militant Mohawk Warriors also support these People of the Longhouse. As a result of these internal conflicts, two Mohawks were killed on the Akwesasne reserve before the crisis.
Third, the Oka crisis involved a long-standing land conflict. Although this land dispute went to the highest law court in the land, the Mohawks were unsatisfied with the 1912 Judicial Committee of the Privy Council's findings that title to the land belonged to the Sulpicans (a Roman Catholic religious order). In 1945, the federal government took over the land left by the Sulpicans and began to buy land to assemble an Indian reserve. As a result, blocks of reserve land were interspersed with privately owned land. Although the Mohawks filed both comprehensive and specific land claims to the area, their submissions failed to meet the federal government's criteria. Thus, despite numerous attempts over the years, the land conflict remained unresolved.

In the summer of 1990, all these outstanding grievances came to a tragic boiling point. Before the crisis, the Municipality of Oka held an option to buy these privately held lands. The Mohawks also valued this land as it provided access to their cemetery. Against the protests of the Mohawks, the municipality planned to exercise their option and then lease "the Pines" to the Oka Golf Club. Although the parties attempted a negotiated solution, neither the federal government nor the Mohawks would compromise their position on sovereignty (Hughes 1991). Since initial negotiations failed, some Mohawks erected blockades to protect what they believed was rightfully their land. Armed Mohawk Warriors resisted the Quebec police's and army's attempts to remove these blockades. During this resistance, Corporal Lemay was shot and killed. When the House of Commons called on Senator Ken Hughes to
investigate and report on the Oka crisis, Hughes (1991) concluded, "The tragedy was avoidable" (p. 30).

4.2.2 The outcome

Because of the attention the Oka crisis received, other Indian leaders used the threat of violence to get their grievances addressed:

This is not going to be the last battle. This is not the last stand, this could be the first stand.7

[If the army shot Indians, then you're going to see a long, protracted fighting condition by the Indian people, and it'll be guerrilla warfare.]8

Yes, more battles lay ahead. And I am afraid that some of them will be bloody, as we have recently seen with the Mohawks at Oka, Quebec. It need not be that way. It should not be that way. I hope to God it's not that way.9

[Confrontations might increase] in number and intensity as a direct result of the government's lack of political will and imagination.10

Although Native leaders made these "political" threats, I believe that they preferred to negotiate, not repeat the Oka crisis.

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7 George Erasmus, national chief of the 593,000 member Assembly of First Nations cited in Maclean's, 10 September 1990 "The Fury of Oka."
8 Don Ryan, Gitksan-Wet'suwet'en Chief, cited in Maclean's, 10 September 1990 "The Fury of Oka."
10 Saul Terry, Union of B.C. Indian Chiefs, cited in the Vancouver Sun, 1 August 1990. "Land claims plan reached."
Because Natives depend on public support to attain "relative power" with the government, they must use "power processes" that do not erode this support. As Jhappan (1990a) notes,

Indians must be sparing in their use of acts of protest which are high on the militancy scale, since public tolerance is likely to diminish the more frequently such tactics are used (p. 300)

Ken Hughes (1991) made similar comments when he said:

There is a deep well of public support for First Nations people on the issues of land rights and self-government. There is an equally deep commitment to the principle of non-violent social and political change. The armed standoff at Kanesatake and Kahnawake triggered conflicting emotions as Canadians tried to reconcile their support in these two areas. In the end, it seems clear that support across the country for peaceful conflict resolution remains deeply entrenched in the public mind. Canadians want justice achieved for aboriginal peoples in Canada but will not accept any side of the negotiating table resorting to the use of arms as a negotiating technique or as a fail-safe for a lack of creativity, goodwill or negotiating skill. In a world of competing interests and often conflicting perspectives and values, peaceful conflict resolution is the only real guarantee of human rights and good government (p. 29).

Both Jhappan's (1990a) and Hughes' (1991) comments are emphasizing the appropriate boundaries in the Native/non-Native conflict. However, because the public continued to support the Indians over the government, the Indian leaders' "political threats" were acceptable. For example, a public opinion poll done between September 19–27, 1990, by Angus Reid, found:
• 67% believed that the government broke its obligations to aboriginal peoples
• 70% believed that the government failed to honor its treaty obligations
• 62% supported land claims settlements (cited in Fleras & Elliot 1992)

Thus, the onus was on the government, rather than the Indians, to change their behaviors to de-escalate the Native/non-Native conflict. The Oka crisis created both a need and an opportunity to try new conflict resolution processes.

The international community also noticed the events at Oka. Archbishop Desmond Tutu and American black activist Jesse Jackson spoke out publicly against the handling of Oka. Even the Pope questioned Prime Minister Mulroney about human rights violations at Oka (Fleras & Elliot 1992).

With all this attention on Oka, Canadians called their politicians to task. On September 25, 1990, Prime Minister Brian Mulroney denounced the Quebec police behavior as "absolutely disgraceful." He promised to accelerate both specific and comprehensive land claims settlements and appoint a land claims commissioner (cited in Fleras & Elliot 1992). In his report to The House of Commons, Hughes (1991) concluded that, "Some substantive policy change is required immediately" (p. 29). Regarding land claims policies, he believed the federal government should:

(i) Establish a body independent of government to conduct an independent review of the validity
of claims and to make recommendations to the Government on acceptance of claims for negotiation;

(ii) Establish a judicial tribunal independent of government to deal with the validity of specific claims and to recommend compensation required to meet valid claims;

(iii) Establish an independent body to monitor and review the implementation of claims policy and of claims agreements to ensure fairness;

(iv) Establish a National Mediation Service, independent of the Department of Indian Affairs and Northern Development and of the Department of Justice, composed of expert mediators in each region of the country acceptable to the parties involved. These people would be made available to apply their mediation skills to prevent local land use conflicts from expanding into larger disputes (p. 32).

He believed the same institution could perform these four functions. As with Mulroney's announcements, Hughes' recommendations influenced the outcomes of the B.C. Task Force.

The Oka crisis had its most significant effect on the B.C. situation. Although Indian blockades were a common occurrence in B.C. before Oka, violence was not yet a part of these protests. During the Oka crisis, more blockades went up to support the Mohawks. The map below illustrates the location of some of these roadblocks.
FIGURE 7: Indian Roadblocks in B.C on August 1 1990

1. Duffey Lake Road: Closed
2. Penticton: Information blockades
3. Vernon: Information blockades
4. Moricetown: Information picket
5. Kitwancool: Taken down Tuesday
6. Agassiz: Information picket removed
7. Alert Bay: Blockade

(Source: Vancouver Sun, 1 August 1990)
As the diagram shows, most of the roadblocks are in the interior of the province, and by bands who support the Union of British Columbia Indian Chiefs (UBCIC). At the time of the Oka crisis, the once powerful UBCIC played a minor role in B.C. Indian politics. Bands or tribal groups supporting the First Nations Congress, the other major B.C. Indian political party, did not erect roadblocks. They knew that a decision to negotiate land claims was imminent, thus they were more concerned with designing a framework for these negotiations, rather than undertaking roadblocks. Ironically, as events unfolded, the First Nations Congress benefitted the most from the roadblocks put up by the UBCIC's supporters. Most British Columbians are not aware of these political divisions between these two Indian organizations; what they saw was another potential "Oka." Thus, Premier Bill Vander Zalm took steps to diffuse the situation here in B.C.

Two key events happened on July 31, 1990. For the first time, Vander Zalm, Forests Minister Dave Parker, and the B.C. Indian Affairs Minister Jack Weisberger personally visited a Kitwancool blockade to hear the Natives' concerns. On the same day, Vander Zalm met with the federal Indian Affairs Minister Tom Siddon in an airport hangar in Sydney. Together, they announced that the federal and provincial governments would cooperate on a strategy to settle Indian land claims. In making this important decision, Vander Zalm acknowledged that Ottawa was "primarily" responsible for the costs of settling claims, but agreed

11Personal communication, Paul Tennant, Feb. 16, 1994).
12Vancouver Sun, 1 August 1990. "Land claims plan reached."
that his government would be "flexible." Thus, to de-escalate the Native/non-Native conflict, Vander Zalm made what could be called a "cooperative, but firm" statement (Fisher 1990).

Since the Premier's Council on Native Affairs had released their Progress Report and Interim Recommendations on July 25, 1990, one could argue that the Premier based his decision on its findings rather than on the Oka crisis. This report found that, "The outstanding issue of aboriginal land claims was the over-riding concern of the tribal councils." It also concluded that the current federal land claims policies were totally impractical for the B.C. situation and that B.C. must do its part to address this complex issue.

This argument is less than plausible for several reasons. First, from the Indians' perspectives, the report contained nothing "new"—all previous governments had ignored these same concerns. Second, this report left the Premier's position unchanged: When he met with the Kitwancool early on July 31, 1990, Vander Zalm declined to comment on their requests for "comprehensive agreements," telling the Natives that ". . . things can't remain the way they were in years gone by and a healthy provincial economy is necessary to maintain the standard of living that British Columbians have come to respect." Because of these comments, the Kitwancool expressed regret for taking down their road block. Third, his later meeting with Tom Siddon seemed hastily

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13 op. cit. at 12.
14 op. cit. at 12.
arranged and his statements differed to those that he had just communicated to the Kitwancool. Perhaps Tom Siddon emphasized the seriousness of the Oka situation to the premier. It does seem that during this meeting Vander Zalm changed his position and not after the release of the above report. Thus, although the Premier's report provided him with politically defensible reasons for making his decision, it was the events at Oka that forced him into action.

4.3 WHY WAS THE TASK FORCE SET UP?

The second step in this decision making process occurred on December 3, 1990, when representatives of the First Nations, the government of B.C. and the government of Canada created the British Columbia Claims Task Force. The Task Force's role was to recommend how the three parties could begin negotiations and what these negotiations should include. Seven members were to sit on the Task Force; two each from the federal and provincial governments and First Nations Congress members, with a seventh seat reserved for the Union of B.C. Indian Chiefs. This section explains why a Task Force was needed.

From the Indians' perspective, a Task Force provided opportunities for them to resolve their long-standing political differences over the land claims issue. On one side was the minority viewpoint of the Union of British Columbia Indian Chiefs (UBCIC). They wanted the federal government to persuade the province to accept their organization's terms for negotiating. If British Columbia refused to accept the UBCIC's
terms, the province was to be barred from any negotiations.\textsuperscript{15} Knowing that the federal government was unable to persuade the province to negotiate in the past and recognizing that the province needed to be at the negotiating table, other First Nations questioned whether UBCIC's requests were realistic. The majority supported the First Nations Summit (formerly the First Nations Congress), and their plans for a Task Force that involved the province. Since the majority of Indians rejected the UBCIC's framework treaty, the UBCIC did not accept the seat offered to them on the Task Force committee. Thus, before the December 3, 1990, announcement, the First Nations Summit had clearly identified themselves as the main political organization for B.C.'s Indians and had met with the Premier in August 1990.\textsuperscript{16} Although the Task Force did provide an opportunity to unify B.C.'s Indians, success was elusive.

From the federal and provincial governments' perspective, the situation in B.C. was critical and thus required the special attention of a Task Force. No other territory or province in Canada faced the number and extent of comprehensive claims illustrated in the map below:

\textsuperscript{15}op. cit. at 12.

\textsuperscript{16}Kahtou, September 1990."Province Agrees to Negotiate Land Claims."
FIGURE 8: Comprehensive Claims Submissions in B.C

(Source: Indian and Northern Affairs Canada 1991)
Legend to "Comprehensive Claims Submissions in B.C."

1. Nisga'a Tribal Council
2. Kitwancool Band
3. Gitksan-Wet'suwet'en Tribal Council
4. Haisla Nation
5. Association of United Tahltans
6. Nuu-Chah-Nulth Tribal Council
7. Council of Haida Nation
8. Heiltsuk Nation
9. Nuxalk Nation
10. Nazko-Kluskus Bands
11. Kaska-Dena Council
12. Carrier-Sekani Tribal Council
13. Alkali Lake Band
14. Taku Tlingit (Atlin)
15. Kootenay Indian Area Council
16. Allied Tsimshian Tribes
17. Council of Tsimshian Nation
18. Nlaka'pamux Nation
19. Kwakiutl Nation
20. Sechelt Band
21. Musqueam Band
22. Homalco Band

Additional Submissions may be received.
Since both governments believed the Gitskan-Wet'suwet'en would win their land claims case, politicians wanted to present an attractive alternative to more litigation. Mulroney's comments post-Oka, the Premier's Report, and the Hughes report all "diagnosed" the need for a new way to settle comprehensive claims. By setting up a Task Force, the governments could develop this new "made in B.C." approach.

In summary, setting up a Task Force was an attempt to get all parties to design the new process of negotiating land claims in B.C. With all parties participating in the design, the implementation stage had a better chance of succeeding (Ury, Brett, and Goldberg 1988). Although a seat was reserved for the UBCIC, the organization chose not to participate. Thus, the "negotiations about negotiations" were supported by a majority, but not all, First Nations, as well as the provincial and federal governments.

4.4 WHY DID THE TASK FORCE COME UP WITH THEIR RECOMMENDATIONS?

To complete the third step "in getting to the table," all parties had to agree on the Task Force's recommendations. This was difficult; despite having twice revised its initial 1973 comprehensive claims guidelines in 1981 (In All Fairness) and in 1987 (Comprehensive Land Claims Policy), the federal government resisted any real changes to its

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17 When the Delgamuukw decision came out in favor of the province, Federal Indian affairs minister Tom Siddon said, "Everybody was so suprised at the result, they are trying to figure out what to do." Vancouver Sun, 12 March 1991 "Parties agree on Indian policy."
Now after much Indian criticism, supporting government documentation (e.g., The Penner Report 1983, The Coolican Report 1985), the recent Oka crisis, and an expected loss in Delgamuukw, the federal government recognized the need for meaningful change. This section highlights these past criticisms about the policy and then discusses how the Task Force proposed to address them.

First, claimant groups complained that the existing policy was inefficient and ineffective in addressing the number of outstanding claims, especially in B.C. In response to this criticism, the government argued that owing to the complex nature of the negotiations, they could only handle six claims at one time. In addition, they argued that the groups themselves slowed down the process due to conflicts within and amongst claimant groups (Office of Native Claims [ONC] 1983). Thus, rather than making the process more efficient, the federal government blamed Aboriginal groups for any delays.

Second, Aboriginal peoples disliked the conflicting roles held by the Department of Indian Affairs and Northern Development (DIAND). Because DIAND judged the validity of the claims and then subsequently negotiated with claimant groups, critics argued that DIAND acted both as the judge and then as an adversary (Barber 1977, Leghorn 1985). Critics also argued that because the government could both allocate and withdraw funding, it unfairly controlled the process (AFN 1990). Instead of DIAND, Indian groups favored an independent, impartial advisory body (Barber 1977, AFN 1990). Instead of this neutral third party, the
federal government had set up a Comprehensive Land Claims Steering Committee under the 1987 policy. Since its members were Assistant Deputy Ministers from government agencies, this Committee failed to address the criticisms regarding DIAND's conflicting roles.

Third, Aboriginal peoples abhorred the federal government's "extinguishment agenda." (AFN 1990, Barber 1977, Penner 1983). Extinguishment is a powerful, emotional word when taken out of its legal context: It conjures up images of putting out a fire or blowing out a candle. Thus, no group of people would want their rights extinguished. According to the federal government, extinguishment provides "certainty" of title (Comprehensive Claims Policy 1987), but because of all the criticism their extinguishment agenda received, they proposed the following "acceptable options":

(1) The cession and surrender of aboriginal title throughout the settlement area in return for the grant to the beneficiaries of defined rights in specified or reserved areas and other defined rights applicable to the entire settlement area; or

(2) The cession and surrender of aboriginal title in non-reserved areas, while allowing any aboriginal title that exists to continue in specified or reserved areas; granting to beneficiaries defined rights applicable to the entire settlement area (Comprehensive Lands Claims Policy 1987, 12).

These extinguishment alternatives received mixed reactions from Aboriginal groups. The Dene/Metis rejected their final settlement in 1990 despite these "options," whereas in 1992 the Inuit accepted theirs.
From a negotiation perspective, there is an obvious need to generate acceptable alternatives to "extinguishment."

Since the previous comprehensive claims policy had failed to prevent the Oka crisis or address the above criticisms, the Task Force recommended major changes. Believing the cap on six claims was inappropriate, the Task Force recommended that up to thirty separate negotiations be undertaken simultaneously. Although it recognized the need for "certainty" by all parties, the Task Force rejected the "blanket extinguishment" approach of previous treaties.

The Task Force's most important recommendation was:

A British Columbia Treaty Commission be established by agreement among the First Nations, Canada, and British Columbia to facilitate the process of negotiations (p. 82).

This Commission was to be responsible for some of the roles previously handled by DIAND. The five member Commission would help start negotiations, distribute funding to First Nations, assess readiness to negotiate, monitor progress, provide dispute resolution services as requested, submit progress reports to the governments, and inform the public.

Thus, the Task Force's role was to diagnose the existing dispute resolution system and then design a new one. In the diagnosis stage, the Task Force recognized the claimants believed the existing process was inefficient and unfair. The members wanted to design a process that
would prevent "another Oka" and to this end, drew on recommendations made previously by other groups. Most importantly, the Task Force addressed the criticisms regarding the fairness of the process by establishing an institution or neutral third party, the Treaty Commission, to oversee the negotiating process.

4.5 WHY DID THE GOVERNMENTS UNANIMOUSLY ACCEPT ALL RECOMMENDATIONS OF THE TASK FORCE?

On July 3, 1991, the B.C. Claims Task Force released their report. On July 10, 1991, First Nations approved the recommendations. Owing to a federal-provincial conflict over cost-sharing, the federal government's approval was delayed till November 13, 1991.18 The provincial election further delayed the province's response until December 10, 1991. This section argues that the changed political environment in B.C. made the politicians realize that negotiating was "their best alternative."

The Gitskan-Wet'suwet' en led the way in creating this "political environment" in B.C. Not only did they launch the most important land claims trial in Canada's history, Delgamuukw, but they also maintained blockades, published books, and sold T-shirts and buttons to support their bid to get land claims settled. As Don Ryan, speaker for the Gitskan-Wet'suwet' en noted:

You're seeing a move made by the province now to try to deal with this whole question and that we

18 Kahtou, December 1991, "Extinguishment Agenda Exposed."
were trying to create a political environment
for a proper decision in our case.19

First Nations succeeded in creating this "political environment"—it was
Chief Justice Alan McEachern's Delgamuukw judgment that did not fit the
new views of most British Columbians.

Politicians' responses to the Delgamuukw judgment exemplified this
changed political environment in B.C. In this new political
environment, the province set aside old stereotypes or traditional
beliefs and adopted a "new" view of Indians when it agreed to settle
land claims. In conflict resolution terms, the parties accommodated
each other's different values. When Justice Alan McEachern commented
that the plaintiffs' ancestors had "no written language, no horses or
wheeled vehicles" and that "slavery and starvation were not uncommon . .
. that aboriginal life in the territory was, at best, 'nasty, brutish
and short,'" his comments did not fit into this "new" way of thinking
(Tennant 1991). The table below contrasts these two opposing views
(from Tennant 1991):

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TABLE 2: Different Views of Indians

<table>
<thead>
<tr>
<th>Traditional views</th>
<th>New views</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Aboriginal people were primitive.</td>
<td>• Aboriginal groups have same moral worth as other groups of peoples and deserve equal respect.</td>
</tr>
<tr>
<td>• Aboriginal people had no group identities.</td>
<td>• Aboriginal groups have a continuing cultural identity.</td>
</tr>
<tr>
<td>• Indians made little use of the land and its resources.</td>
<td>• Indians used the land in similar ways as other groups of peoples.</td>
</tr>
<tr>
<td>• Politicians blamed Indian assertions of title on &quot;white agitators.&quot;</td>
<td>• Aboriginal communities possess inherent rights.</td>
</tr>
<tr>
<td>• Indians need officials and institutions to identify and solve the &quot;Indian problem.&quot;</td>
<td>• A sharing, cooperative relationship must be established between Natives and non-Natives.</td>
</tr>
</tbody>
</table>

Since the Gitskan-Wet'suwet'en lost their case on these "traditional views," government officials attempted to distance themselves from McEachern's judgment. Provincial Native Affairs Minister Jack Weisberger said, "The vast majority of British Columbians believe that justice has not been done in a moral, political or economic sense." 20

Both the Social Credit and NDP supported "political," instead of legal solutions to the land claims question, agreeing that B.C.'s outstanding

20 op cit. at 17.
land question was too important to become a partisan issue. Thus, the land claims question did not become a major election issue.

The final step in "getting to the table" happened after the NDP defeated the Socreds in the October 17, 1991, election. Since the NDP, third parties, and public opinion all wanted land claims settled through negotiations, and since the NDP were now facing an appeal of the Delgamuukw case, there really was only one choice for the government to make. Upon accepting the recommendations of the Task Force on December 10, 1991, Premier Mike Harcourt stated:

Resolution of land claims is a critical political, economic and moral issue that can no longer be ignored. The settlement of claims will not only bring justice for aboriginal peoples, it will bring economic certainty, increased investment and jobs for B.C. communities. . . . Negotiation, not litigation or confrontation, is in the best interests of all British Columbians.

4.6 SUMMARY

To review, the decision to negotiate comprehensive land claims in B.C. occurred in four steps. First, during the Oka crisis, Bill Vander Zalm agreed to cooperate with the federal government on a solution to the issue. Next, First Nations and the federal and provincial governments agreed to set up a Task Force to design the negotiation process. The third step involved the Task Force making its nineteen

\[21\] op cit. at 17.

recommendation. Finally by December 10, 1991, all parties had accepted the Task Force's recommendations.
CHAPTER FIVE: CONCLUSIONS

This section first draws conclusions about the explanation proposed. Second, it examines areas of concerns regarding comprehensive claims and suggests areas for further research. Third, it draws conclusions about the larger Native/non-Native conflict.

5.1 GETTING TO THE TABLE

This thesis proposed that the province of British Columbia chose to negotiate with the First Nations when it was in their best interest to do so (Fisher and Ury 1981). The case study of the province's decision making behavior during the years 1990 to 1991 supports this view. The province pursued its other alternatives or BATNAs until 1991 when Premier Mike Harcourt concluded that negotiation was in the province's best interest. The province's other BATNAs are summarized below:

<table>
<thead>
<tr>
<th>Alternative</th>
<th>Provincial government's views</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Do nothing</td>
<td>• Risk of &quot;another Oka.&quot;</td>
</tr>
<tr>
<td></td>
<td>• Does not address economic and legal uncertainties created by land claims activities</td>
</tr>
<tr>
<td></td>
<td>• Not supported by public opinion or third parties.</td>
</tr>
<tr>
<td>2. Policy and legislative changes</td>
<td>• Initiatives undertaken did not satisfy First Nations (e.g., Self-government)</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3. Legal Redress</td>
<td>• Risky, costly, and time consuming&lt;sup&gt;23&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>• Focusses on compensating for past wrongdoings</td>
</tr>
<tr>
<td></td>
<td>• Creates adversarial relationships</td>
</tr>
<tr>
<td></td>
<td>• May cause further public embarrassment</td>
</tr>
<tr>
<td></td>
<td>• Court decisions generally favorable to Natives since mid 1980s (e.g., Sparrow, Guerin).</td>
</tr>
</tbody>
</table>

By choosing to negotiate, the province acted in its best interest. By negotiating, the province could avoid a "winner takes all" outcome. Through negotiating, all parties could come up with creative solutions that would address different First Nations needs. Potentially, reaching negotiated agreements could be more expedient and economical than a court based decision. In addition, because all parties create the solutions, they are more committed to making them work. Most of all, negotiations can build the needed "new relationship" between Natives and non-Natives.

Fisher and Ury's (1981) rather simplistic explanation for why parties negotiate belies the complex nature of this conflict. In B.C., First Nations have always wanted to negotiate treaties; their "best interests" arise out of a desire for recognition and respect by non-

<sup>23</sup>The *Delgamuukw* trial lasted 374 days and cost all parties a total of $25 million.
Natives (Tennant 1990). The province's recognition of its "best interest" is the result of First Nations' intense lobbying efforts. From the perspective of conflict resolution theory, the 1980s featured a "power struggle" between First Nations' and the provincial government. The First Nations' strategy of blockading logging roads gained them public support and produced court injunctions in their favor during this time. With these efforts, the First Nations re-established "relative power" with the province.

Next, once "relative power" was established between the two parties, the province began to take steps to de-escalate the conflict. The Oka crisis highlighted the need for peaceful conflict resolution in B.C. and catalyzed the decision making process already underway. First, the province agreed to "cooperate" with the federal government on a strategy to settle land claims. Second, the formation of a Task Force was a way to get all parties cooperating in the preliminary "negotiations about negotiating" process. Third, all parties were involved in the diagnosis of the existing dispute resolution system. Since all parties designed the Task Force's recommendations, it set the stage for unanimous acceptance. Fourth, all three parties accepted the Task Force's recommendations by December 10, 1991. Although the Delgamuukw judgment seemed to indicate that the province could reject the Task Force's recommendations, a newly elected NDP government chose not to. Over the years, the First Nations' strategies had produced a "new view" or changed political climate in B.C., whereby Natives were "equals" to the non-Natives. Instead of backtracking to the "power" or
"rights" approach that characterized the 1980s, the province recognized that it was in its best interest to negotiate under the guidelines it helped create.

Thus, the province's decision to negotiate when it was in their "best interest" is the end result of a complex process of conflict resolution. Although Fisher and Ury's (1981) approach is commendable for its simplicity, understanding why parties negotiate requires the authors' approach be supplemented by a discussion of power processes, models of conflict resolution systems, and de-escalatory behavior. To this end, the Fisher and Ury (1981) approach to negotiating can be considered only as a primer on the larger topic of conflict resolution.

5.2 NOW THAT WE ARE AT THE TABLE . . .

Getting to the table is only one part of a long process in achieving satisfactory agreements. Now the parties face the equally difficult task of translating the words of the Task Force into meaningful actions. The following questions require further research.

1. Do comprehensive claims settlements achieve any lasting benefits?

Although all parties spend much money and time on reaching comprehensive claims settlements, they put little effort into evaluating their results. So far, only the James Bay Agreement (1975) has been evaluated to any extent and most of the results are disappointing (e.g.,
From B.C.'s perspective, knowing the strengths and weaknesses of past agreements would contribute to reaching lasting solutions here.

2. What are the appropriate "substance" models for B.C.?

Now that the Task Force has created a "made in B.C. process," the next step is to now work out what the final settlements might contain. Despite much rhetoric on the topic, Sanders (1991) notes, "To date the First Nations, the province, and the federal government have all failed to suggest factors that would work in settlements in this province" (p. 284). In addition, both Sanders (1991) and Thompson (1992) believe that the contents of the "Northern" agreements are not appropriate for B.C. Although Cassidy and Dale's (1988) predictions of "after native claims" provide some answers about what settlements might look like, we need more research on these possible models.

3. What are acceptable alternatives to "extinguishment"?

Since "extinguishment" is unacceptable to First Nations, the negotiators need alternatives to it. Land trusts may be one reasonable alternative because neither side would "own" the land. Instead, all parties would manage it according to agreed upon standards, thus focusing on their interests rather than their positions. In the state of New York, this solution resolved a land claims dispute between the
Ganienkeh Mohawks and the government. We need further research to know if this or other alternatives could apply to the B.C. situation.

4. How will comprehensive claims settlements meet the needs of urban natives?

According to the *Aboriginal Peoples Survey* (Statistics Canada 1991), over two-thirds of B.C.'s North American Indians adults and children live off reserve and almost 45% of adults living off reserve are in Vancouver or Victoria. Since comprehensive claims settlements focus on traditional territories, it is unclear whether this population will benefit under these agreements. If these urban Natives wish to return to reserves and share the settlement benefits, there is no guarantee that others would welcome them. Both the governments' fiscal restraint program and Indians' urban migration are a reality; settlements must address these issues.

5. What factors affect the public's support of settling land claims?

Comprehensive claims settlements are expensive and change the status quo. Although past public opinion shows British Columbians support the settlement of land claims, this support could change as awareness of settlements increases (e.g., fisheries disputes arising from the *Sparrow* decision). As Jhappan (1990b) notes, publicity is a

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"double-edged" sword that could easily turn into a public backlash against Indians. Although First Nations have learned how to effectively use the media, they should continue to research and track public opinion to maintain this support.

5.3 THE LARGER RELATIONSHIP

The Native/non-Native relationship has historically evolved from cooperation to coercion to confrontation and is now slowly returning to cooperation. Weaver (1990) calls this evolution "a paradigm shift" (also see Tennant 1991). According to Weaver (1990), this new paradigm features:

- The re-establishment of "a permanent organic relationship" between the First Nations and Canada
- Recognition of First Nations' evolving sanctioned rights
- Recognition that aboriginal cultures change and evolve
- Development of political ethics to control the state's relations with First Nations
- Jointly formulated policies
- Empowerment of aboriginal peoples through the development of First Nations self-government
- Development of joint resource management systems
- Recognition of the importance of aboriginal knowledge (e.g., in self-government models, wildlife management boards)
- DIAND taking on a development-oriented administrative role instead of its traditional custodial one
Weaver (1990) believes the Penner Report (1983) and the Coolican Report (1985) broke the ground for this new paradigm. I believe that the B.C. Comprehensive Claims Task Force's work builds on this "new paradigm" foundation.

We face a difficult task in achieving this paradigm shift. At times, the process seems more regressive than progressive. This new relationship is difficult to nurture due to the legacy of mistrust and misunderstanding born out of the old one. In addition, both sides often have different and well-entrenched positions to defend. Despite all this, Canadians see negotiation as the best way to both establish the process and substance for this "new relationship" or "new paradigm" between Natives and non-Native people (Barber 1977, Frideres 1988, Penner 1988, Fleras & Elliot 1992).

The Two-Row Wampum Belt symbolized the early treaties negotiated between the Iroquois and the Dutch in Canada. In this Belt, two rows of colored beads signified the differences between the two Nations, while the white beads represented their common interests of peace, respect, and friendship. Behind the rhetoric on aboriginal title lies similar human needs; First Nations want their cultural similarities and differences acknowledged and respected. In B.C., comprehensive claims negotiations provide hope that Natives and non-Natives can re-establish this "Two-Row" cooperative relationship. We have not yet come full circle.
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