

Nisga'a final agreement

ISSUES & RESPONSES



Status of Nisga'a Rights

THE ISSUE:

Some people are concerned that instead of eliminating old inequalities, the Nisga'a Final Agreement creates new ones. They say that the Treaty will give the Nisga'a "special" rights based solely on race. The fisheries entitlement, the voting structure in the Nisga'a Government, the relationship between the Treaty and the constitution, and even the way the Nisga'a will ratify the Treaty are given as examples of where the Nisga'a and other Canadians won't share one law for all.

THE ANSWER:

The Courts and the constitution of Canada have recognized that Aboriginal peoples' prior presence in Canada has given them a special status and rights as Aboriginal people of Canada. These existing Aboriginal and treaty rights are protected by the constitution. The fact that these rights exist means that First Nations people have unique rights; it does not mean that they have "better" rights.

The Nisga'a Final Agreement does not aim to cure past discrimination by promoting more discrimination; instead it sets out the terms of a new relationship between the Nisga'a, Canada and British Columbia. It offers ways for the Nisga'a to take their place in society and the Canadian economy.

The Nisga'a, like other First Nations in Canada, have been living under the *Indian Act* for more than 100 years. The *Indian Act* is based on race and, in many ways, places burdens on First Nations people that no other Canadian would tolerate. The Nisga'a Final Agreement offers a way to leave this past behind and to create equality of opportunity.

"We are all governed by one law, the constitution, and that most fundamental of laws states that existing Aboriginal rights are recognized and affirmed... Critics...who oppose special rights per se oppose the constitution, and they should take their quarrel elsewhere."

HAMAR FOSTER, PROFESSOR
UNIVERSITY OF VICTORIA

MORE TO CONSIDER:

What about equality? Most people agree that the *Indian Act* should be eliminated, but that doesn't mean that this Final Agreement with the Nisga'a is a step in the right direction.

The Final Agreement will not give the Nisga'a unfair advantages. Equality is about treating people with dignity and respect. It does not necessarily mean treating people the same. Sometimes treating everybody the same perpetuates inequality.

more...



Federal Treaty Negotiation Office

PO Box 11576
2700-650 West Georgia St
Vancouver, BC V6B 4N8

Telephone (604) 775-7114 or
1-800-665-9320
Website <http://www.inac.gc.ca>

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True equality recognizes that not all individuals start in the same place. Existing Aboriginal and treaty rights are protected by section 35 of the *Constitution Act, 1982*. First Nations that sign treaties also have constitutionally protected treaty rights. The purpose of section 35 is to reconcile the prior presence of Aboriginal people in North America with the assertion of Crown sovereignty.

When the Nisga'a Treaty is ratified it will give Nisga'a citizens an opportunity to participate in our country's economy and social structure on the same basis as other Canadians.

Can the Nisga'a exercise both Aboriginal rights and treaty rights once the Final Agreement is ratified?

The Nisga'a Final Agreement exhaustively sets out all their section 35 rights, including their attributes and geographic extent.

What about the Supreme Court of Canada's decision in *Delgamuukw*? Will it affect what rights the Nisga'a will have under a treaty?

No. In *Delgamuukw*, the court made some important pronouncements about one kind of Aboriginal right, the right to Aboriginal title. However, the court's findings will not affect the Nisga'a Final Agreement. Once the Final Agreement is in effect, the rights of the Nisga'a will be those set out in the Treaty.

What happens if Nisga'a Treaty rights conflict with other rights? For example, what happens if the Nisga'a Government affects other individuals living on Nisga'a Lands?

Everyone on Nisga'a Lands will continue to enjoy the same rights and freedoms under the *Canadian Charter of Rights and Freedoms*. Everyone will continue to be subject to the *Criminal Code of Canada*. The Treaty addresses the relationships of Nisga'a laws with the laws of Canada and B.C. and identifies the specific areas in which Nisga'a law will prevail.

In addition, the Nisga'a Government will be required to consult individuals who are not Nisga'a citizens living on Nisga'a Lands about decisions that directly and significantly affect them. These people will also be able to participate in elected bodies that deal with issues that have a direct and significant effect on their lives. The means of participation can include opportunities to make representations, to vote for, or seek election to, Nisga'a public institutions and to have the same means of appeal as Nisga'a citizens.

Find more information on the Nisga'a Final Agreement at www.inac.gc.ca, or contact:

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