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A B O R I G I N A L C O M M U N I T I E S :

THE SECHLT SELF-GOVERNMENT AGREEMENT,
THE STATE, AND INTEREST INTERMEDIATION
IN BRITISH COLUMBIA

by

Paul Rose,

B.A., Bishop's University, 1984

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS
IN THE DEPARTMENT OF
POLITICAL SCIENCE.

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August, 1993

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ISBN 0-315-91311-8

Canada

A P P R O V A L

NAME: Paul Rose

DEGREE: Master of Arts

TITLE OF THESIS: "Aboriginal Communities: The Sechelt
Self-Government Agreement, The State
and Interest Intermediation in
British Columbia"

EXAMINING COMMITTEE:

Chairperson: Dr. David Lavcock

~~Dr. Michael Howlett~~
Senior Supervisor

Dr. Patrick Smith
Second Supervisor

Dr. Hari Sharma
External Examiner
Sociology & Anthropology Department
Simon Fraser University

Date Approved: _____

David Lavcock 19/03

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Paul Rose

(name)

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(date)

A B S T R A C T

There has been only one piece of legislation enacted in regard to aboriginal peoples by the Province of British Columbia since B.C. entered Confederation in 1871. This is a rather astonishing fact, considering the tumultuous debate that has surrounded native issues in B.C. over the last twenty years.

The question that will be asked and answered in this work is; was the Sechelt Self-Government Agreement a watershed in the aboriginal policy agenda, or was the Sechelt Act a dead end, a mere anomaly in a complicated process involving many different and highly organized interests?

It is important that the information stemming from the Sechelt Agreement neither be missed nor discounted. First, because it is an important part of B.C. history, and second because Sechelt could have been a process begun by the federal and provincial governments to control the pace of

the land claims issue in B.C., either forestalling or stopping the negotiation of costly land claims. Last, the Sechelt Agreement could be the bare minimum all parties could agree to at the time and thus, with institutionalization of the land claims process through the Federal Provincial Treaty Commission on Land Claims, the Sechelt process may be stuck in history.

TO AGNES CARPENTER OF BELLA BELLA, B.C.

*You never stopped trying and
you kept everything together*

ACKNOWLEDGEMENTS

I would like to thank Dr. Michael Howlett, my first supervisor, for his thoughtful guidance and excellent suggestions throughout the course of my research. Without Dr. Howlett's help, this work would not have been completed.

I would also like to express my heartfelt thanks to Dr. Patrick Smith, my second supervisor, for his invaluable assistance during the long road to a completed thesis. Dr. Smith helped me to find the light at the end of the tunnel countless times -- unfortunately in my case it was usually a train.

I would like, too, to express sincere gratitude to Dr. Howard Adams, a decent man and a true leader among his people, for his insights and the help he provided me when I asked.

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CHAPTER ONE

ABORIGINAL COMMUNITIES --

THE SECHELT SELF-GOVERNMENT AGREEMENT,

THE STATE, AND INTEREST INTERMEDIATION

IN BRITISH COLUMBIA

The thesis of this work is that the Sechelt self-government agreement was not a watershed in the history of aboriginal politics in British Columbia. This work will demonstrate that the political and economic processes associated with comprehensive claims in B.C. favoured agreements akin to Sechelt. The methodology used to advance this thesis reflects the ideas of John Kingdon and his work on policy windows.¹ As Kingdon states, "The policy window is an opportunity for advocates of proposals to push their pet solutions, or to push for attention to their special problems."² Sechelt resulted from such a window and, as such, is important because of the processes that led to its

¹See. John W. Kingdon. Agendas, Alternatives and Public Policies, (Boston: Little, Brown and Co., 1984). Chapter 8 and pages 212 and 213.

²Ibid. p. 173.

creation. It is important to understand these dynamics as they have again risen to the fore with the advent of land claims negotiations being formalized in a federal provincial first nations treaty claims commission in British Columbia.

This work will examine how the Sechelt Self-Government Agreement is related to the political economy of British Columbia in the following fashion. The present chapter will introduce the thesis itself and provide a short discussion of the relevance of policy windows to the Sechelt Agreement. The second and third chapters will place the Sechelt Agreement in a historical context by discussing the history of aboriginal title in B.C. Chapter Two will discuss the legal history of land claims and aboriginal title in B.C., including all relevant court cases. Chapter Three will examine the political history of aboriginal issues from land claims and self-government to the notion of pre-existing aboriginal rights.

In Chapter Four, the historical perspective of private industry regarding aboriginal title questions will be examined. The selected examples will come from the resource or staples producing sector of B.C.'s economy, specifically forestry and, to a lesser extent, mining. Many of B.C.'s

rural communities are single industry towns whose economies are governed by either mining or forestry. Since these communities are engaged in basic staples production, the methodology that has been used to explain their economies is the staples theory of resource development.³ This paper will not delve into the argument over whether B.C. as a whole has a staples economy or not, but rather the position that many rural communities and hinterland regions seem to be in the declining years of a classic staples economy will be advanced. It will be argued that in B.C. these notions have an important bearing on any land claims self-government agreement, including Sechelt.

The fifth chapter will include an in-depth analysis of the Sechelt self-government agreement and its ancillary legislation, both provincial and federal. Also, this chapter will speculate on some of the broader implications of the agreement in the context of the times and how the political economy of B.C. is reflected in the agreement itself. A short descriptive and demographic profile of Sechelt will also be offered. Further, Chapter Five will illustrate the

³Melville Watkins. A Staples Theory of Capitalist Growth, Paper presented at the Three Nations Conference in New Zealand, November, 1980.

Sechelt Indian Band's new governing procedures, and how these procedures relate to Canada's three levels of government. This chapter will also engage in some speculation on what the Sechelt Act may mean for the application of provincial law on Sechelt Band lands in the future.

Chapter Six contains material gained from interviews conducted by this researcher with individuals involved in both the negotiations and processes that were instrumental in bringing the talks to a successful conclusion. On the federal side, key interviewees include Mike Sakamoto, principal negotiator for the Department of Indian Affairs and Northern Development (D.I.A.N.D.), under the leadership of Audrey Doerr, head of the federal negotiating team.

Also interviewed concerning his part in the negotiations was Fred Walchli, then regional head of D.I.A.N.D., and chairperson of D.I.A.N.D.'s Sechelt Self-Government Steering Committee. These are the principal interviews of this work, concerning the federal position on Sechelt.

Also interviewed for their perspective from the federal side were Vince Hart, B.C. Regional Policy Spokesperson on self-government; Mike Feury, B.C. Regional Claims Negotiator; Eileen Overend, B.C. Regional Claims

Coordinator; Audrey Stewart, B.C. Regional Comprehensive Claims Chairperson; John Leslie, National Head of Historical Research and Treaty Claims; Gary Shann, B.C. Regional Head of Finance for Comprehensive Claims; Ian Potter, Director-General for Comprehensive Claims; and Dennis Madril, policy spokesperson on comprehensive claims in B.C.

From the Sechelt band the three principal negotiators were interviewed. They include former Chief Stan Dixon, band financial advisor and accountant Gordon Anderson (non-native), and band legal advisor Graham Allen (non-native). Also interviewed was the present Chief, Gary Feschuk, for his perspective on what has been achieved with self-government.

Input from First Nations groups in B.C. was provided by Saul Terry, head of the Union of B.C. Indian Chiefs, and his research assistant Dan Goodson (non-native). Also interviewed was Beryl Harris, Head of Comprehensive claims for the Aboriginal Council of B.C.; and Roland Pangowish, Head of Comprehensive Claims for the Assembly of First Nations. Rosalie Tizya from the United Native Nations offered her unique perspective on the struggle for Native self-government. Ms. Tizya is responsible for assisting each

First Nations group and band in B.C. to prepare their claims. Herb George, hereditary chief of the Gitksan Wet'Suwet'en was interviewed, as well as Leonard George of the Burrard Indian Band. Lastly, land claims researchers Pat Berenger and Myrtle McKay, from the Musqueam Indian Band offered their perspective.

The provincial perspective on the negotiations was provided by the following individuals. The official view on Sechelt for the province of B.C. was provided by Mark Stevenson, Policy Spokesperson for the government on Sechelt and B.C.'s chief negotiator on land claims and resource sharing agreements for the Ministry of Aboriginal Affairs with the Sechelt Band. Kelly-Anne Speck and Gina Delamari, the former and current head respectively for the self-government unit of B.C.'s Ministry Aboriginal Affairs also provided a unique perspective on the processes and results of the Sechelt self-government negotiations. Eric Denhoff, the former Assistant Deputy Minister for Justice under Attorney General Brian Smith, and who was also a key figure in the Ministry of Aboriginal Affairs and, later (1990), Deputy Minister was interviewed. Mr. Denhoff played a key role in the Sechelt negotiations, but is still deciding on whether or not to reveal certain controversial information.

Chapter Seven contains the conclusions advanced throughout the text; that there exists a strong and distinct link between the political process governing land claims negotiations in B.C., and the political economy of the province. Sechelt will be shown to be neither a harbinger of things to come nor a great watershed in native/non-native relations here in B.C., but rather the result of particular inter-linked economic and political processes operating in the province. Further, Sechelt will be shown to have resulted from a fortunate collection of circumstances akin to the notion of 'policy windows' advanced by John Kingdon in his work, Agendas, Alternatives, and Public Policies. In this light, individuals like David Crombie, the Federal Minister of Indian Affairs, and Brian Smith, the Attorney General of British Columbia at the time of Sechelt, will be seen not as Machiavellian co-conspirators but as 'policy entrepreneurs.'⁴ Before proceeding further it is necessary to explore in more depth the notions of 'policy windows' and 'policy entrepreneurs' as Kingdon has

⁴See John W. Kingdon. Agendas, Alternatives, and Public Policies, (Boston: Little, Brown & Co., 1984). Chapter 8 and pages 212-213.

described them.⁵

As Kingdon (1984) has suggested, a policy window is a fortuitous event or opportunity brought about by a favourable convergence of circumstances. This opportunity then becomes ripe for politicians and government bureaucrats to apply their preferred solutions to the problems at hand. Often an 'open window' will have a decided effect on the government's decision agenda. Kingdon asserts that the governmental agenda is a list of subjects that occupy the attention of people in and around government at any given point in time.⁶ Within the governmental agenda there are a number of items and policies that are scheduled for imminent decision, hence the government has a decision agenda.

Kingdon⁷ states that there is a difference between agendas and alternatives, and cites what he terms three policy process streams to illustrate his notions. The three streams are policy problems, the political stream and the

⁵See Ibid. p. 212.

⁶See Ibid. p. 173.

⁷See Ibid. p. 176.

policy stream.

Agendas are affected more by the problems and political streams, while alternatives are affected more by the policy stream. Basically, a policy window will open due to a change in the political makeup of any states governing institution, the 'political stream' as Kingdon calls it. This change can be reflective of elections or appointments, changes in administration or personnel, crises of governance, change in the national mood, ideological shifts in government, or merely because a new problem has arisen, demanding immediate attention.

Kingdon asserts "Once the window opens, it does not stay open long."⁸ This reflects the fact that while ideas come and go, opportunities are often missed as there is no irresistible momentum to complete a particular initiative. 'Policy windows' may shut for any number of reasons. For example political opposition, opposing coalitions of entrenched interests, technical problems, or institutional inertia are all guaranteed window closers. When these situations arise, policy planners are often unwilling to invest

⁸John W. Kingdon. Agendas, Alternatives, and Public Policies. (Toronto: Little, Brown & Co., 1984). p. 177.

more valuable time and energy on a losing proposition.

An important notion in Kingdon's theory of the policy window is his idea of coupling.⁹ The notion of coupling suggests that, in the policy stream of ideas, solutions float in and around government waiting to become attached to problems or political events that will facilitate their adoption. As Kingdon asserts, "These proposals are constantly in the policy stream but then suddenly they become elevated on the governmental agenda because they can be seen as solutions to a pressing problem."¹⁰ Also politicians may well find the sponsorship of a certain solution politically expedient.

Thus it can be argued that there would be two types of windows, political windows and problem windows. Kingdon argues ¹¹ that if bureaucrats think a problem is pressing, they cast about in the policy stream for an alternative that would make a palatable solution. Kingdon further argues that politicians view the world through

⁹See Ibid. p. 180.

¹⁰See Ibid. p. 181.

¹¹See Ibid. p. 182

problem windows, dipping into the policy stream to find proposals to serve their re-election. When a window opens, therefore, advocates of proposals jump at the chance to place their solutions on the decision agenda of the government.

For the successful adoption of any solution by senior levels of government it is necessary for there to be a coupling of the three streams of problems, policies, and politics. If the coupling is not made the window closes.

Another crucial notion in Kingdon's theory is that of the policy entrepreneur.¹² "This individual functions as a lobbyist for various solutions and is instrumental in creating institutional coalitions to cause certain solutions to be adopted. A policy entrepreneur may lobby for a particular solution for diverse reasons, often specifically for his own political aggrandizement. Often policy entrepreneurs will look for problems that can be solved with solutions that are readily available. Two other notions become important to policy entrepreneurs. These notions are

¹²See Ibid. p. 188.

'occurrences of windows' and 'spillovers'.¹³ Policy windows seem to be more the result of special circumstances than regular events. This suggests that not only are they less than predictable, but policy windows are difficult to create. Occurrences of policy windows would seem to be based more on chance, while spillovers, which are attempts to attach successful solutions to a host of problems, are almost always seen to result.

As Kingdon argues, "The appearance of a window for one subject often increases the probability that a window will open for a similar subject."¹⁴ These spillover effects can then be used to leverage policy changes in other related areas. A policy window that generates a successful solution often engenders a dramatic spillover effect, whereby policy entrepreneurs attempt to rapidly transfer not only the solution but the coalition itself to any related issue.

To sum up Kingdon's arguments then, it is evident that policy windows open either through the manifestation of

¹³See Ibid. p. 200.

¹⁴John W. Kingdon. Agendas, Alternatives, and Public Policies. Boston: Little, Brown & Co., 1984). p. 200.

politically contentious problems or through changes in the political arena. Thus, there are 'problem windows' and 'political windows'.¹⁵ The government agenda is generated by the problem or the political steam and the alternatives come from the policy stream. Hence, according to Kingdon (1984) for any solution to be accepted, a 'policy window' must open, the three 'policy streams' must be coupled, and there must be a policy entrepreneur to facilitate this whole process.

The notion of the 'policy window' is an important concept to the study of the Sechelt self-government agreement for the following reasons. First, in the entire history of the relationship between native and non-native in B.C. from the 1800s to the present, no agreement other than Sechelt has been signed. This is suggestive of a very special set of circumstances that led to Sechelt's success in getting an agreement. Second, there must have been a certain amount of issue linkage, or coupling, among the parties involved, otherwise given the temper of the times in B.C. during the late 1980s, it is unlikely that both the federal and provincial governments would sit down to negotiate

¹⁵See Ibid. p. 204.

self-government with an Indian band.

Lastly, given the state of disarray in D.I.A.N.D. and the province of B.C. throughout the 1980s¹⁶ regarding aboriginal policy it is unlikely the Sechelt self-government agreement would have been negotiated without the brokerage skills of major policy actors getting the concerned parties on side. A good example of this was David Crombie, the newly-elected Federal Minister of Indian Affairs, who acceded to the Sechelt demands in 1984.

Before demonstrating that Sechelt was a 'one off' agreement resulting from a 'policy window' it is necessary and proper to establish the historical context in which the agreement occurred. Failure to do this would then not fully demonstrate why the 'policy window' opened. Thus, it is necessary in the next chapter to discuss the legal history of land claims and aboriginal title in B.C., and the second part of Chapter Two will discuss the political history of land claims in B.C. In this fashion, Kingdon's (1984) notions of 'problem streams' and 'policy streams'

¹⁶See Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). Chapters 15, 16, and 17.

'coupling' will be given credence.¹⁷ Also important political figures who could have acted as policy entrepreneurs will be described.

In short, if the idea of a 'policy window' is relevant, the historical context of the Sechelt Agreement will reveal the people and circumstances that created a self-government 'policy window' for the Sechelt people.

¹⁷See John W. Kingdon. Agendas, Alternatives, and Public Policies. (Boston: Little, Brown & Co., 1984). Chapter 8 and pages 212-213.

CHAPTER TWO

HISTORICAL CONTEXT OF THE SECHELT AGREEMENT

PART ONE:

The Legal History of Land Claims in British Columbia

At this juncture it is necessary to describe two principal points of law concerning what is commonly known as Aboriginal title. The arguments concerning these two points are simple and straightforward, yet they have engendered a storm of controversy over twenty-five years in B.C.

The first point of law concerns whether or not Native societies held 'preexisting' title to their land during the establishment of British and French colonies in Canada. In short, did pre-contact use and occupancy by the various First Nations result in land ownership? This point is of crucial importance, for if there is no 'preexisting' title then subsequent provincial and federal governments are not constrained in terms of (Crown) sovereignty over the land.

The second point of law concerning Aboriginal title is really contingent upon the first. Basically, there has been a running legal battle between Native groups and the

federal and provincial governments over the continuity of any 'preexisting' Aboriginal title under successive colonial and Canadian governments and over whether or not title must be explicitly extinguished. If Aboriginal title is viewed as a philosophical anomaly in common law, and subject to whims of the elected government, then any action by governments contrary to Aboriginal title as a continuing and unchanged legal right may serve to void it. If this is the case, extinguishment does not have to be explicit in nature.¹⁸

In most parts of Canada, treaties and other explicit actions are taken to be proof of extinguishment. This does not, however, prove that Aboriginal title was a 'pre-existing' legal right. In B.C. the province generally is not under treaty. For British colonial justice concerning Aboriginal rights, the Royal Proclamation of 1763 was used in decisions coming from the Judicial Committee of the Privy Council. Basically the notion was that Aboriginal rights could continue under colonial regimes until explicitly extinguished.¹⁹

¹⁸See Paul Tennant. Aboriginal People and Politics. (Vancouver: U.B.C. Press, 1990). p. 213.

¹⁹Bruce Clark. Native Liberty, Crown Sovereignty.

The Royal Proclamation of 1763 regarding treaties with Canada's indigenous people stood unaltered until a case in Ontario in 1888 involving the St. Catherines Lumber and Milling Company. The Judicial Committee of the Privy Council decided that Aboriginal title had no pre-existence but that the British government had created it themselves through the Royal Proclamation.²⁰

In 1919, in a case in the Rhodesian colony, Lord Sumner in England decided for the Judicial Committee of the Privy Council that, although he agreed with pre-existence and continuity, for Aboriginal title to continue the land title had to be held individually as opposed to communally.²¹ In 1921 in England, however, Viscount Haldane ruled for the Judicial Committee of the Privy Council that in fact communal or tribal title could continue under British rule in the colonies -- in this case dealing with the situation in Nigeria.²² The Allied Tribes of British Columbia imme-

(Toronto: James Lorimer Co. 1990.) Chapter One.

²⁰See Paul Tennant. Aboriginal People and Politics. (Vancouver: U.B.C. Press, 1990). p. 214.

²¹See Bruce Clark. Native Liberty, Crown Sovereignty. (Toronto: James Lorimer Co. 1990). Chapter One, and Brian Slattery. The Land Right of Indigenous Canadian Peoples. (Oxford: Oxford University Press, 1979). Chapter Two.

²²Ibid. Chapter One.

diately seized upon Haldane's ruling as the precedent to have their land claims negotiated. However, in 1927, Parliament outlawed claims related activity among Natives and this statute would not be repealed from the Indian Act until 1951.²³

After the repeal of the statutes prohibiting Native claims activity in 1951 many British Columbia Native groups began to discuss the issue of claims once again. According to Tennant, the provincial government of the day was worried that at some future date the courts would uphold pre-existing title in the absence of explicit extinguishment.²⁴ Lawyers for the province of British Columbia developed two mutually supporting contingency arguments to preclude this scenario. Extrapolating from the St. Catherines decision of 1888, provincial lawyers argued that Aboriginal title could only have been created by the Royal Proclamation. But in B.C., it was further argued that Aboriginal title had no continuity as the Royal Proclamation did not apply in the province.²⁵

²³See Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). p. 215.

²⁴Ibid. p. 216.

²⁵Ibid. p. 216

This argument was based on a phrase within the edict stating that the Royal Proclamation applied only to those "Indians with whom we are connected."²⁶ The idea being that since the British administration at the time was not in contact with any Indians west of the Rocky Mountains the proclamation did not apply in British Columbia.

The merit of this argument, however, has flaws as no statute can be considered as applying in the present tense only, as otherwise much of the Canadian Constitution would be imperiled. It would also seem that royal edicts were prospective, otherwise as each new colony was conquered, new imperial legislation would be required to govern it.

According to Tennant, "The action advanced as serving to extinguish any continuing title was the colonial legislature enacting land use legislation that ignored Indian title."²⁷ The B.C. government adhered to the principle that to ignore title, therefore, was to extinguish it. Implicit extinguishment would occur through the day-to-day administration of the British colonial government. This

²⁶Ibid. p. 216.

²⁷Ibid. p. 217.

position was tested in the courts over the next four decades.

In 1963 two members of the Nanaimo Indian band, Clifford White and David Bob shot several deer on land which the colonial administration had purchased from the band two hundred years previously.²⁸ Part of the original purchase agreement stated the Indians were to retain their hunting rights. The two men, however, were arrested for having no hunting permit and possessing game out of season. Tom Berger, the band's lawyer, argued that the land purchase had been a treaty and that it established both pre-existing Aboriginal rights and continuing title.²⁹

The provincial government argued in the White and Bob case that the land purchased was simply a real estate deal between the band and the Hudson's Bay Company. Government lawyers also argued that the Royal Proclamation never applied to B.C. In the B.C. Court of Appeal, a five-judge panel voted three to two to acquit White and Bob, conclud-

²⁸Ibid. p. 218.

²⁹Michael Asch. Home and Native Land. (Toronto: Methuen, 1984). Pages 47-67.

ing the agreement was truly a treaty.³⁰ Mr. Justice Tom Norris however was the only judge to argue that pre-existing and continuing legal title were valid at law in B.C. The province lost the appeal in the Supreme Court of Canada, however, the court stuck to the treaty issue without expressing any opinions on either Berger's or Norris' arguments.³¹ Nevertheless, the effect of the decision was to renew the issue of Aboriginal rights in British Columbia and Canada as well.

The White and Bob case led to a landmark legal battle over the notion of continuing Aboriginal title. The Nisga'a Tribal Council hired Berger in 1969 to attempt to win recognition from the province that their Aboriginal title to their tribal lands has never been extinguished. In what became known as the Calder case, the court was being asked to recognize pre-existing title as a legal right and to establish that extinguishment requires explicit action.³²

³⁰David W. Elliot, Aboriginal Title, in Bradford W. Morse. Aboriginal Peoples and the Law. (Ottawa: Carlton University Press, 1989) pages 50 - 121.

³¹Ibid. pages 50 - 121.

³²Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). p. 219.

The year 1969 saw the Supreme Court of B.C. ruling simply that the Royal Proclamation did not apply in the Calder case and, subsequently, no Nisga'a title had been created.³³ The court also concluded that even if such a title ever existed, it had been extinguished implicitly by the institution of a registered land title system established before 1871. In the British Columbia Court of Appeal the original Calder decision was upheld. In short, the court found that the Royal Proclamation could be the only source of Aboriginal title and that it did not apply to B.C. The court also accepted the notion of implicit extinguishment without question. The Supreme court of Canada agreed to hear the appeal.³⁴

The Supreme Court of Canada's panel of justices was composed of seven justices. One Quebec justice, Mr. Justice Louis-Philippe Pigeon ruled against the Nisga'a on procedural grounds, holding that the Nisga'a had failed to follow the B.C. governments Crown Procedure Act in bringing the case to court.³⁵ The Act states that any party

³³Bruce Clark. Native Liberty, Crown Sovereignty. (Toronto: James Lorimer Co. 1990). p. 12 - 57.

³⁴Ibid. p. 12 - 57.

³⁵Paul Tennant. Aboriginal Peoples and Politics.

wishing to sue the provincial Crown must first obtain the government's permission to do so. Justice Pigeon did not speculate on the Nisga'a claim. The other six judges ruled unanimously in favour of the Nisga'a, holding that in fact preexisting Aboriginal title was an applicable legal right.

Three judges found the Royal Proclamation, applied to B.C. Also, they concluded that pre-existing Aboriginal title was a legal right.³⁶ Mr. Justice Emmett Hall was the voice behind this opinion. Mr. Justice Wilfred Judson led the remaining three judges in finding that although the proclamation does not apply to B.C., Aboriginal title did not stem from this Act. Judson felt that Aboriginal title reflected the fact that Natives had lived in B.C. for centuries and had their own societies, laws, and customs before contact with European civilization.³⁷ In short, the Supreme Court of Canada ruled that the Nisga'a held title to their territory when British colonial administration was created in 1858.

(Vancouver: U.B.C. Press, 1990). p. 220.

³⁶Peter Cummings. Native Rights in Canada (2nd edition). (Vancouver: U.B.C. Press, 1990) p. 220.

³⁷Bruce Clark. Native Liberty, Crown Sovereignty. (Toronto: James Lorimer Co., 1990). p. 12 - 57.

The most important question remained, however. Did the Nisga'a still hold title to their land in 1973? Justice Hall concurred with Viscount Haldane, arguing that Aboriginal title can continue intact until the contrary is proven.³⁸ He felt that as there had not been any explicit extinguishment of the Aboriginal title with regard to the Nisga'a lands, they must still hold title. Three judges held, therefore, that implicit extinguishment is not enough, while three other judges, with Justice Judson expressing the main opinion, felt that implicit extinguishment had already taken place and was in fact sufficient. The result was that the Nisga'a narrowly lost their appeal and the notion of continuing title was rejected. The province of B.C. had lost the argument over pre-existing Aboriginal title however, and now felt its stand on Native land claims jeopardized.³⁹

The Native position on Aboriginal title in B.C. was further buttressed by the Guerin decision concerning 162 acres of the Musqueam Reserve leased to the Shaughnessy Golf Club.

³⁸Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). p. 221.

³⁹Bruce Clark. Native Liberty, Crown Sovereignty. (Toronto: James Lorimer Co., 1990). p. 12 - 57.

The Department of Indian Affairs had instigated the lease arrangements in the late fifties.⁴⁰ In 1970, however, Delbert Guerin, Musqueam's Chief was made aware that not only were the terms of the lease overly favourable to the Golf Club, but that the band was never given all the relevant information with regard to the true value of the property assessment. In 1975, the Musqueam band sued the federal government for breach of trust and was awarded ten million dollars by the Federal Court.⁴¹ The Federal Court of Appeal, however, overturned the decision on the grounds that through the Indian Act the government could do as it wished with reserve land and was under no legal obligation to uphold Musqueam's interest. The Supreme Court of Canada, however, upheld the award and based its findings on Aboriginal title as per the Nisga'a decision.⁴²

Chief Justice Brian Dickson spoke for the court in November 1984. He expanded on the verdict rendered in the Nisga'a case, stating clearly and emphatically that Aboriginal title is a legal right rendered by Native occupation and

⁴⁰Paul Tennant. Aboriginal Peoples and Politics.

⁴¹Ibid. p. 222.

⁴²Ibid. p. 222.

ownership of tribal lands. This had the immediate effect of establishing pre-existing Aboriginal title as a legal right in Canadian law. Another crucial point is that Justice Dickson had extended pre-existing Aboriginal rights to tribal lands on lands outside reserves.⁴³ Aboriginal title could now truly be viewed as pre-existing rather than being established by statute. Hence, bands could litigate to re-establish various rights off reserve land.

The Guerin decision had a tremendous impact on claim activity in British Columbia. The Clayoquot and Ahousaht bands soon entered the fray, claiming that Meares Island was on their traditional tribal territory, demanding in court both an injunction to halt MacMillan Bloedel's proposed logging and a recognition that traditional tribal lands were beyond the domain of the province.⁴⁴ The case known as the Nuu-Chah-Nulth Tribal Council versus Attorney General of British Columbia went to court in late 1984. A B.C. Supreme Court judge was asked to grant the injunction. The province of B.C. advanced its historic argument against Aboriginal title. MacMillan Bloedel argued that an injunc-

⁴³Bruce Clark. Native Liberty, Crown Sovereignty. (Toronto: James Lorimer Co., 1990). p. 12 - 57.

⁴⁴Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). p. 224.

tion would destroy B.C.'s resource economy. The justice hearing the case interpreted the Nisga'a decision of 1973 to mean that there was no continuing Aboriginal title in B.C., and refused to issue an injunction.

The British Columbia Court of Appeal agreed to hear the case. The court split three to two in support of the appeal, with the minority also giving some support to the Natives.⁴⁵ The court essentially based their decision on the split in the Nisga'a case. The justices felt quite strongly that the issue of continuing Aboriginal title had never been correctly addressed by the provincial government of B.C. and hence there were questions of land tenure that remained unresolved.

With the advent of a new Canadian Constitution in 1982, Aboriginal rights were given some constitutional footing when Section 35(1) of the new constitution stated that "the existing Aboriginal and treaty rights of Aboriginal peoples of Canada are hereby recognized and affirmed."⁴⁶ This does not establish, however, whether unextinguished title

⁴⁵Ibid. p. 224.

⁴⁶Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). p. 225.

is a continuing Aboriginal right. Up until 1989, no court in Canada had used Section 35 in deliberating on Aboriginal title.⁴⁷ This changed when the Sparrow decision dealt with the matter of Aboriginal fishing rights in non-treaty areas.

Ronald Sparrow of the Musqueam reserve was charged with being in breach of federal regulations while fishing in the Lower Fraser River. He was far from the reserve and no treaties applied in this area.⁴⁸ After hearing the case in 1986, the B.C. Court of Appeal ruled unanimously that Section 35(1) meant that B.C.'s Native people had Aboriginal food fishing rights anywhere in the province.

Chief Justice Nemetz sought to decouple the right to food fish from the continuity of Aboriginal land title by arguing food fishing was always an Aboriginal right while it has not been determined whether the continuity of land title should be so recognized. The province of B.C. became

⁴⁷Bruce Clark. Native Liberty, Crown Sovereignty. (Toronto: James Lorimer Co., 1990). p. 35.

⁴⁸Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). p.225.

involved in the Sparrow case to preclude the further establishment of Aboriginal rights.⁴⁹

It has still not been proven or disproven however that Section 35(1) could be important for comprehensive land claims cases. It is argued by some that Section 35 will not become an issue relating to Aboriginal land title, as either it will be proven that B.C. or the colonial administration lacked the mandate to extinguish title or that explicit extinguishment is necessary.⁵⁰ Neither notion falls into the scope of Section 35. Nevertheless, after 1989 the courts have spoken affirmatively on whether Natives held title to their lands before the colonial administration was put into place, and have decided that Aboriginal title was a preexisting legal right.⁵¹

The next important land claims case involved the Gitksan-Wet'suwet'en First Nation. It would attempt to answer, according to Tennant, whether or not explicit extinguishment of Aboriginal title is necessary or if implicit

⁴⁹Ibid. p. 225.

⁵⁰Bruce Clark. Native Liberty, Crown Sovereignty. (Toronto: James Lorimer Co. 1990). p. 35.

⁵¹Ibid. p. 35.

extinguishment is sufficient.⁵² The land title case brought by the Gitksan-Wet'suwet'en set the stage for the B.C. Supreme Court to decide whether Aboriginal title continues in the absence of explicit extinguishment.

In the 1991 decision Delgamuukw versus the Attorney Generals of B.C. and Canada, as the Gitksan title case was known, the courts answered the challenge posed by seeking confirmation of their complete ownership and inherent jurisdiction over approximately 22,000 square miles of their traditional territories.⁵³ In March of 1991, Chief Justice Allan McEachern dismissed the claims of the Gitksan and Wet'suwet'en hereditary chiefs.

Chief Justice McEachern concluded among other things that: "Aboriginal title and rights were extinguished by the colony of B.C. before Confederation." McEachern asserted that the key constitutional instrument "... as the source of Aboriginal title ... the Royal Proclamation of 1763 does

⁵²Paul Tennant. Aboriginal People and Politics. (Vancouver: U.B.C. Press, 1990). p. 226.

⁵³Justice Allan McEachern in Delgamuukw versus A.G., B.C. Reasons for Judgement. (Smithers: Supreme Court of B.C. #0843. June 30, 1990).

not apply in British Columbia."⁵⁴ This notion is somewhat of a setback when viewed alongside the Calder decision, where three justices saw the Royal Proclamation as applicable to B.C.

The notion that has emerged in the Delgamuukw case is that Aboriginal title, environmental preservation and B.C.'s economic development may all be mutually more and more contradictory over the long term. Chief Justice McEachern was adamant on this point in his decision. "It must be recognized that most of the reserves in the territory are not economic units ... not likely they can be made so without serious disruption to the entire area ... not in the best interest of anyone, including the Indians."⁵⁵ Chief Justice McEachern also dropped some broad hints as to how he felt about the comprehensive land claims question: "Eventually the Indians must decide the advantages of reserves ... in the larger economy ... but it is obvious they must make their way off the reserves."⁵⁶ What Justice McEachern is suggesting is that Aboriginal rights

⁵⁴Ibid. p. 300.

⁵⁵Ibid. p. 300.

⁵⁶Ibid. p. 300.

should reflect land use, not land title.

The Gitksan and Wet-suwet'en Indian launched an appeal of Justice McEachern's decision in October of 1991. The B.C. Court of Appeal appointed a panel of five judges to hear the case. Justices John Taggart, Douglas Lambert, Henry Hutcheon, Alan Macfarlane and Wilfred Wallace were appointed to hear the appeal.⁵⁷ In a three to two decision, the Appeal Court varied Justice McEachern's original decision on the question of the Gitksan's exclusive title to their tribal lands. McEachern had decided that the Gitksan's Aboriginal rights were lawfully extinguished. The Appeal Court found that the Gitksan and Wet-suwet'en have unextinguished, non-exclusive Aboriginal rights. The court was firm in stressing that Aboriginal rights do not mean a property right conferring ownership rights of resource-rich areas.⁵⁸ Hence, the Gitksan may have vanquished the notion of implicit extinguishment, yet they cannot use their Appeal Court victory to claim sovereign jurisdiction, nor to use it to establish self-government in their tribal territories.

⁵⁷"Panel of Judges." Vancouver Sun. Saturday, June 26, 1993. p.B.9.

⁵⁸"Panel of Judges", Vancouver Sun. Saturday, June 26, 1993, B.9.

CHAPTER THREE

HISTORICAL CONTEXT OF THE SECHLT AGREEMENT

PART TWO:

The Political History of Land Claims in British Columbia

In its most recent incarnation, British Columbia's long-standing refusal to even discuss Native land claims stemmed from the ideological position of the Social Credit Party which was the dominating force in B.C. politics for forty years. According to Paul Tennant (1990) there has been a strong ideological component to the problem.

Tennant argues that:

The N.D.P. sees society as composed of unequal groups and classes; it has little difficulty with notions of group rights and group benefits ...
... expects government to help underprivileged groups. Social Credit sees free and enterprising individuals as the key element in society ...
rejects the notion that individuals should receive rights or benefits because they belong to a particular group.⁵⁹

Tennant (1990) further argues that the Social Credit Party has inherited many of the positions and beliefs of the

⁵⁹Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1991), p. 228.

province's early legislators -- men such as James Douglas and Joseph Trutch, who refused to even consider the concept of a Native land claim. They viewed land claims as having been created by non-Native missionaries and academics with ulterior motives.⁶⁰

According to Tennant (1990) the main problem in B.C. is that non-Natives have failed to understand or accept that Natives held their land in communal fashion. Non-Natives have usually also assumed that Natives had and have no real conception of private property. Provincial politicians from the turn of the century to the present day have always accused the Department of Indian Affairs of curtailing the opportunities of Natives to enter modern society.⁶¹ These ideas stem from the policies of early B.C. legislators such as Trutch and Douglas, but are also particularly reflective of Social Credit.

Perhaps the most strongly held belief among Social Credit politicians was that Natives had only come to believe in Aboriginal title since contact, not before. Thus, Social

⁶⁰ibid. p. 230.

⁶¹Ibid. p. 230.

Credit leaders such as Bill Bennett hinted the land claims issue was a clever ruse by the Natives to gain enormous sums of money as compensation for past injustices. ⁶²

Brian Smith, as Minister of Justice in the Social Credit cabinet during the early 1980s, offered the classic example of the views that Social Credit party members hold on Natives. Smith asserted that Indians don't want to throw anybody off the land, they just want billions and billions of dollars.⁶³ Even the idea of a 'land claim' was seen by Smith to be a borrowing of European ideas as he argued Natives had no concept of land ownership until colonial society was established. Despite the fact that throughout Canada from the Yukon to Quebec, Natives, the provinces, territories, and the federal government had been negotiating claims from 1975 to 1991, successive B.C. Social Credit governments remained unmoved on the land claims issue Premier Vander Zalm only agreed to reconsider his position and, with the federal government and First Nations groups, set up the B.C. Task Force on Native Claims in December of 1990.

⁶²Ibid. p. 230.

⁶³Ibid. p. 230.

Despite this development, Garde Gardom, an important member of the Social Credit cabinet during the 1980s, genuinely seemed to believe that B.C. First Nations people were seeking to achieve a measure of economic and political control over non-Native citizens.⁶⁴ Another basic sticking point that Social Credit members have refused to accept is the notion of pre-contact title. Mr. Gardom and others truly believed Natives received this notion from white academics and invited Natives to publicly own up before any negotiations began.

The basic Social Credit position under both Bennetts and William Vander Zalm was that there could be no such thing as Aboriginal title. If it did exist it was extinguished and if still existing it was solely a federal responsibility under the terms of the Treaty of Union between Canada and British Columbia of 1871. An unspoken fall back position according to Tennant (1990) is that non-Native citizens of B.C. will never accept a major land claims agreement such as James Bay, so that there is little

⁶⁴Ibid. p. 232.

political risk in ignoring the issue for time to come.⁶⁵ In essence, Social Credit assumed the bulk of B.C. society had an interest in the status quo being preserved. They also assumed their legal arguments would hold up and, if not, the public could be relied upon to pre-empt any negotiations Natives might wish to initiate, as public opinion in many staples communities had always seemed hostile to Native land claims.⁶⁶

Basically, Brian Smith's argument rested on section 81(24) of the British North America Act which holds that Canada is responsible for Indians and lands reserved for Indians. This argument was spoiled by the Calder decision of 1971 which held among other things that Aboriginal title involves the status of land not the ethnic origin of the claimants.

Both Smith and Gardom were utterly sure that under Article One of the B.C./Canada Terms of Union of 1871, Canada was responsible for any debts and liabilities engendered by the colonial government. As Gardom bluntly stated: "If unextin-

⁶⁵Ibid. 232.

⁶⁶Ibid. p. 234.

guished Aboriginal title exists in B.C., if there is any liability upon the colonial government, Canada is fully responsible, not B.C.⁶⁷ There is a basic flaw in this logic, however. As Tennant (1990) points out: "If Aboriginal title was unextinguished at union, there was no government liability related to it. Only if Indian title had been extinguished before union, but not yet paid for, would there have been a debt or liability at union."⁶⁸ Aboriginal title in itself does not necessarily give rise to government liability. Sanders (1989) argues that liability arises only when the property right is actually taken.⁶⁹ Apparently the Bennett administration chose to ignore the case of James Bay in Quebec where the Cree Naskapi of Ruperts Land had accepted delegated self-government from Quebec and the federal government in return for extinguishing their aboriginal title and rights. Bennett had hoped the Constitution of Canada would offer immunity from legal proceedings as in the Treaty of Union of 1871, Canada is assumed to have taken responsibility for Natives

⁶⁷Ibid. p. 234.

⁶⁸Ibid. p. 234.

⁶⁹Douglas Sanders. "The Aboriginal Title Question in British Columbia". Vancouver: Continuing Legal Education Society of British Columbia, 1986, p. 15.

in British Columbia.

With the advent of the Vander Zalm administration in 1986, Social Credit softened its stance somewhat. Smith and Gardom had departed and the Ministry of Native Affairs was expanded with Bruce Strachan as Minister. Jack Weisgerber, took over from Strachan in 1989, and Eric Denhoff, became the deputy minister. All these individuals took the traditional Social Credit party line on land claims negotiations while heading the ministry. The change from previous administrations was that they all frequently met with Native groups to defend and discuss policy.⁷⁰ Natives were now seen as legitimate interest groups and Bud Smith, the new Attorney General, was also willing to sit down with Native leaders.

Of particular note were two conferences at Whistler and Penticton in 1989. These conferences were organized by Bill Wilson of the First Nations Congress and former Social Credit Forest Minister Tom Waterland of the British Columbia Mining Association. The first conference was geared to educating industrial interests about claims, the

⁷⁰Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990) p. 235.

second was to develop specific policy issues such as resource management and access. Industry had come to the conference hoping to get a handle on why there seemed to be endless Native blockades resulting in court injunctions, such as occurred at Meares island in 1986, halting resource development in the province. It seemed to the resource industry (forestry and mining) that resource extraction would be jeopardized until the Aboriginal title question was settled.

In 1989, Premier Vander Zalm set up a Native affairs advisory council, known as the Premier's Council on Native Affairs, which did have some First Nation representation. The council then began to tour the province, visiting various tribal groups. Most First Nation groups submitted briefs to the council concerning land claims demands.⁷¹ Premier Vander Zalm hinted at the time that it might now be appropriate to negotiate land claims with B.C. Native peoples. In August of 1990, the Premier's Council on Native Affairs recommended in the wake of Oka, "that the Government of British Columbia should move quickly to establish a specific process by which Aboriginal land claims may be

⁷¹Ibid. p. 236.

received and placed on the negotiating table.⁷² Premier Vander Zalm concurred and in the same month agreed to negotiate, as well as immediately joining the Nisga'a negotiations then in progress since 1975.

On December 3, 1990, the British Columbia Task Force on Native Claims was established by agreement of the Government of Canada, the Government of British Columbia, and representative leadership of B.C. First Nation Groups.⁷³ This task force was to set the scope and mandate of the forthcoming comprehensive claims negotiations in B.C.

Although Prime Minister Brian Mulroney articulated the goal of achieving workable settlements of the claims of First Nations in B.C. by the year 2000, the newly-elected N.D.P. government of Mike Harcourt had some difficulties with the report of the B.C. Claims Task Force.⁷⁴

Previous to March of 1992, both Premier Harcourt and N.D.P.

⁷²British Columbia Claims Tax Force. (Vancouver: June 28, 1991). p. 15.

⁷³Ibid. p. 15.

⁷⁴Building A New Relationship with First Nations In British Columbia. (Ottawa: Indian Affairs and Northern Development, 1991). p. 2.

Aboriginal Affairs Minister Andrew Petter had expressed concern about the scope and general principles of cost-sharing and negotiating land claims in British Columbia.⁷⁵ However, this was rectified with an agreement between the two governments to begin negotiations on cost-sharing in the same month.

Premier Harcourt's government must have accepted land claims negotiations as inevitable at this point, as on March 20, 1991 a Framework Agreement detailing the structure and process of claims negotiations was signed between B.C., the Nisga'a Tribal Council, and the Federal Government.⁷⁶ This represents the first time in British Columbia history that both the province and the federal government will be sitting down with a Native group to negotiate a comprehensive land claim.

On June 21, 1993, a Memorandum of Understanding (M.O.U.) was signed by Federal Indian Affairs Tom Siddon and B.C. Aboriginal Affairs Minister Andrew Petter that ended the

⁷⁵Canada/British Columbia. News Release March 4, 1992. p. 1.

⁷⁶Nisga'a Tribal Council Comprehensive Land Claim. (Ottawa: Indian & Northern Affairs Canada. Information Sheet No.31, May 1991) p. 3.

difference over cost-sharing for claims negotiations. Under the M.O.U, the federal government agrees to pay at least 75% of the cash costs of settling claims, while B.C. will provide the bulk of the Crown Land with cash payments totaling 10 to 25% of the settlement, third-party compensation will be shared on an equal basis.⁷⁷ It would seem that the government of B.C. has come full circle from an utter refusal to discuss land claims under the Social Credit government of Bill Bennett, to their provisional acceptance under the N.D.P. and Premier Mike Harcourt.

At this juncture it is necessary to examine the history of land claims, Aboriginal rights, and Native self-government from a business perspective. It is unimaginable that Premier Vander Zalm's Social Credit government entered into self-government negotiations with the Sechelt band without considering the B.C. resource industries interests. In a province such as B.C. with a major segment of many rural communities being staples production, Premier Vander Zalm would have wanted to have a very clear idea of what he was agreeing to.

⁷⁷Canada/British Columbia. News Release. June 21, 1993. p.3.

In this light a general examination of the concerns of the forest industry will be offered in the next chapter.⁷⁸ Many of the areas of B.C. under claim have important forest-related industries operating on them.⁷⁹ The next chapter will situate Sechelt in this economic context by highlighting the attitudes toward Aboriginal title claims of this important provincial industry in modern times.

⁷⁸A.L. Peel (Chairman), Forest Resources Commission, (Victoria, Ministry of Finance and Corporate Relations, 1992). p.16, 35, 36 and 38.

⁷⁹Price-Waterhouse, The Forest Industry. (Vancouver: Price-Waterhouse, 1989). p.3.

CHAPTER FOUR

LAND CLAIMS, RENEWABLE AND NON-RENEWABLE RESOURCES

AND THE FIRST NATIONS OF BRITISH COLUMBIA

PART ONE:

Resource Industry Practices

In B.C. the economy and hence the viability of many small interior and coast communities is almost entirely dependent on logging and related industries. Many communities such as Castlegar and Cranbrook have shown themselves to be particularly vulnerable to worldwide changes in price and demand for wood products. In order to truly appreciate the link between the development of B.C.'s political economy and the Native struggle to arrive at comprehensive claims settlement this work will present a brief history of the growth of the resource sector with regard to forestry and mining, and the part played by Natives in these industries.

In the early 1800s, Natives worked both as labourers and independent contractors in the resource industry.⁸⁰

⁸⁰Frank Cassidy and Norman Dale. After Native Claims. (Halifax: Institute for Research on Public Policy, 1988). p.

During this time Natives became a part of the wage labour force. During the 1920s not only did the demand for B.C.'s resource products increase, but the structure of the industry changed. The skyrocketing American demand for pulp and paper to service the rapidly expanding domestic market for newsprint and paper products led to substantial foreign direct investment and corporate concentration in B.C.'s forest industry. Many other factors also began to change, such as technology, marketing, and Crown land leasing. All these factors changed to favour larger firms.

Techniques based on sustained yield forestry became popular with the industry and with the public in general. Large firms, it was felt by the government of the day, had the necessary capacity and managerial experience to implement these sorts of techniques. In fact, the B.C. forest industry was altering its silviculture techniques, not entirely to reflect more modern practices, but to rationalize the industry in terms of demand. The American and world markets demanded wood pulp and semi-finished saw logs and the B.C. forest industry altered its production and

management techniques accordingly.⁸¹

From 1900 to 1930 a great degree of corporate concentration had occurred in the resource sector.⁸² A nascent Native bourgeoisie was stillborn as small Native logging contractors were forced out or died due to a lack of access to loans and capital or unfavourable government licensing practices. Between 1930 and 1950 the resource royalty and licensing structure was changed to gradually favour larger and larger firms.

The depression of the 1930s pretty well destroyed what was left of the Native resource industry. What remained between 1930 to the advent of the Second World War was an industry inexorably integrated into the American market, dominated by oligopolistic arrangements between a few large firms.⁸³ With the advent of World War Two, Natives (both men and women) flooded back into the resource sector, as wage labour, but also as private contractors. This

⁸¹Jamie Swift, Cut and Run. (Toronto: Between The Lines Press, 1983). p. 98.

⁸²G.W. Taylor, Timber. (Vancouver: J.J. Douglas, 1975). p. 98.

⁸³Patricia Marchak, Green Gold. (Vancouver: U.B.C. Press, 1983). p. 21.

phenomenon was due in part to an expansion in productive capacity, but mostly to the fact that most young white males between 18 and 30 were serving in the armed forces. Many Natives also served, however the industry was able to recruit from among those Natives with previous forest industry experience.

Two great factors came into play during this period. The first was an increasing capitalization of B.C.'s resource industries by foreign (mostly American) capital and a major corporate restructuring facilitated by this to favour large, multi-national firms. The lure of direct foreign investment had caused both government and industry after the war to alter logging permits. This was done in such a way that only the largest firms could post the sureties, buy the necessary insurance or table a large enough budget to manage a tree farm license. This resulted in another nascent Native entrepreneurial class being terminated for all practical purposes. In terms of Native wage labour in the mills many were let go, with the returning veterans given preference.⁸⁴

Structurally the industry had changed for good. After World

⁸⁴G.W. Taylor. Timber. (Vancouver: J.J. Douglas, 1975). p. 183.

War II, American financial capital markets rapidly sought investment outlets for inflated and over abundant American dollars.⁸⁵ At the same time in the U.S. there was a construction boom, necessitating an escalation in productive capacity in B.C. mills. The modernization and rationalization of B.C.'s resource sector resulted with capital being substituted for labour and a state of dependency on external markets (principally American) truly beginning. It was at this juncture in B.C.'s resource and state development when the connection to the American market was truly institutionalized in the forestry sector of the B.C. economy. This has relevance for Aboriginal issues in B.C. as public policies dealing with resource and Aboriginal issues are often seen to have bearing on how B.C.'s resources are extracted and processed. It could be argued, therefore, that such external linkages may effect questions concerning Aboriginal title.

It is the responsibility of the federal government to manage Indian reserve forest lands under the Indian Act.⁸⁶ This responsibility is detailed under the Indian

⁸⁵Jamie Swift. Cut and Run. (Toronto: Between The Lines Press, 1983). p. 99.

⁸⁶Richard H. Bartlett. Resource Development and Aboriginal Lands. (Calgary: University of Calgary, 1991). p. 140.

Timber Regulations outlined in the Indian Act. D.I.A.N.D. has paramount authority in regard to the forestry resources on Indian reserves. Even resident Natives require permits to cut timber for their own use. D.I.A.N.D. also may issue harvesting permits to non-Natives but the band council has a right to be consulted. To this day there is an ongoing controversy between First Nations people regarding the government's moral and legal right to manage the forest resources on Native treaty and traditional lands.

For instance, the Nuu-chah-nulth Tribal Council on West Vancouver Island has charged the companies operating under D.I.A.N.D. permits have both neglected and discriminated against Natives while continuing to extract resources in First Nations communities. D.I.A.N.D. has tried to resolve these contradictions by establishing an Indian Forest Lands program.⁸⁷ Most bands in B.C. are attempting to institute forest management programs of their own.

The difficulty is D.I.A.N.D. cannot or will not delegate

⁸⁷Frank Cassidy and Norman Dale. After Native Claims. (Halifax: Institute for Research on Public Policy, 1988). p. 109.

its authority over 'Indian lands or lands reserved for Indians' until bands officially receive self-government over resources through legislative statute. Until such a time D.I.A.N.D. can claim it is legally bound to continue its administration of the Indian forest lands under the Indian Act and also because Indian land remains federal Crown Land. Thus First Nations have only gained a Hobson's choice in that if they don't sign a self-government agreement, even cursory access to their own forest resource will be denied them. On the other hand, a self-government agreement does not provide enough policy leverage to fully control the pace and nature of development on Indian reserve lands.

According to the Constitution Act of 1982 and in fact, since the signing of the Mineral Resources Transfer Act of 1943, the province of B.C. has complete responsibility for land based resources.⁸⁸ Section 4 of the B.C.'s Ministry of Forests Act lists the policy orientations of the provincial ministry. In an encapsulated form they are as follows: to ensure the greatest possible social and

⁸⁸Richard H. Bartlett. Subjugation, Self-Management, and Self-Government of Aboriginal Lands. (Kingston: Queens University Institute of Intergovernmental Relations, 1986). Chapter 3. Also, Richard H. Bartlett, Aboriginal Water Rights in Canada. (Saskatoon: University of Saskatchewan, 1990). Chpt.8.

economic gains from forestry are realized; the coordination and management of multiple use forest strategies; to promote and protect the activities of the processing sector and reaping of economic rents (taxes and royalties).⁸⁹ It seems then that elements of corporatism are present in B.C. as the state is actively assisting and promoting the process of capital accumulation in conjunction with industry.⁹⁰ In fact, through licensing agreements, the state may be seen as directing the process of capital accumulation to a certain extent.

The aforementioned reasons are why the province of British Columbia might have preferred a limited federal municipal model in any negotiations of a self-government agreement. The province of B.C. feels all too fully the weight of its powers and responsibilities, that stem from the provincial government's managerial position in the global hierarchy of economic extraction. To fully reap the economic benefits of surplus production from resource extraction the hierarchy

⁸⁹Frank Cassidy and Norman Dale, After Native Claims, (Halifax: Institute for Research on Public Policy, 1988). Chapter 5.

⁹⁰Richard H. Bartlett, Resource Development And Aboriginal Lands, (Calgary: University of Calgary, 1991). Chapter 2.

of property rights may be modified but not substantially altered by settlements with B.C.'s First Nations. This is to say that there exists in B.C. (as in any state) specific forms of managing, administering, taxing, selling and regulating resources. Any agreement arrived at between the government of British Columbia and a First Nations society would have to take into account third-party interests which are protected at law. It is clear, therefore, that land claims settlements and/or self-government agreements would engender both compensation and new legislation by the government of the day.

Pursuant to this reality there are five major policy concerns of the B.C. government regarding land claims and self-government agreements.⁹¹ They are as follows: Native control would mean not only a decrease in efficient production, but a decrease in the full use of provincial resources; B.C. as a whole would lose out on important economic and social benefits; a plethora of different standards and resource management regimes would arise making multiple use management and coordination of resource

⁹¹Frank Cassidy and Norman Dale, After Native Claims. (Halifax: Institute for Research on Public Policy, 1988). p. 147.

activities with third parties (business interests) and other government departments all but impossible.

The Council of Forest Industries of B.C. is more blunt, if not a little racist in its views: "Native employees do not react quickly to new approaches. They are quick observers rather than aggressive reactors to change. Conflict is experienced because of different cultural perspectives on what is valuable in terms of work skills and life styles."⁹² Other concerns include the B.C. government's argument that: Native controlled forest companies would not possess either the capital or the expertise to compete successfully on the world timber market; the provincial governments would lose substantial resource returns thereby diminishing their ability to govern; Native band would demand unfair rents out of proportion to their size or capability to manage resource revenues of this magnitude.

Finally, faced with unfair land claims settlements, trans-national firms such as MacMillan Bloedel could stage an investment strike, or simply take their business to more accommodating countries. Lastly, the provincial government

⁹²R.A. Shelbeare in William F. Sinclair (ed) Native Self-Reliance. (Vancouver: Hemlock Printers, 1984). p. 118.

argues that resource protection services would be difficult to deliver to areas of sovereign Native jurisdiction. Such services include pest and fire control, disease prevention techniques and silviculture.

There are many more pressing questions engendered by the land claims self-government debate. Because B.C. has organized the process of capital accumulation in the form of leaseholds, British Columbia is worried about its potential liabilities if any Crown lands are transferred under comprehensive claims agreements.

It seems accurate to say that the interests of Natives and that of the resource industry and government are diametrically opposed: "The industry, for the most part is dominated by large, heavily capitalized, corporations. The exploration and development ... is viewed as environmentally disruptive and sometimes poses a threat to the living resources on which Natives have traditionally depended. In many cases, Natives perceive non-renewable or even renewable resource development as being inconsistent with their cultural values."⁹³ B.C. has agreed to

⁹³Frank Cassidy and Norman Dale, After Native Claims (Halifax: Institute for Research on public Policy, 1988). p.

different forms of tenure and contractual agreements with various third-party interests.

Not only is the province concerned about the moral and financial obligations to compensate business for land claims/self-government agreements, but also what kind of signal this would send nationally and internationally about the business climate in B.C., and the security of capital investment in renewable and nonrenewable resources. In short, the government of B.C. feels that all-encompassing, precedent-setting land claims agreements would jeopardize the state and the economic system that has come to support it.

One only has to examine the nature and structure of administration in the resource sector to realize the depth of partnership between business and government in B.C. The government is more willing to encourage and assist Native bands and enterprises to seek resource tenure in the resource sector through various permit and licensing agreements.

CHAPTER FOUR

LAND CLAIMS, RENEWABLE AND NON-RENEWABLE RESOURCES

AND THE FIRST NATIONS OF BRITISH COLUMBIA

PART TWO:

Resource Industry Attitudes

To say that the resource industry is concerned is an understatement, it is horrified by claims: "as a senior vice-president of one of the largest forest companies in B.C. observes, the economy in the province is a zero sum game, for there are no uncommitted lands and resources that have economic value. In a confidential report prepared by Price Waterhouse for the federal government in 1990, it was established that the cost of not settling claims might add up to close to \$1 billion. According to the study 70% of the companies that were surveyed and that had planned major capital projects on land most likely to be affected by claims, except delays or cancellations because of unresolved claims."⁹⁴ It is abundantly clear that the mere idea of comprehensive claims causes industry to halt

⁹⁴Frank Cassidy. Reaching Just Settlements. (Lantzville: Oolichan Books, 1990), p. 17.

investment.

In terms of licenses, three basic ones are available;⁹⁵ Tree Farm Licenses. Forest Licenses and Woodlot Licenses. A Tree Farm License gives 25 years of exclusive harvesting rights on Crown, public, and private land, and is renewable every ten years. Forest Licenses are 25 year agreements to harvest on the Crown's publicly managed sustained yield territories coupled with the lessees obligation to own or build a timber processing facility. Woodlot Licenses are short term permits to exclusive cutting rights on 400 hectares or less.⁹⁶ Several things become clear from these licensing agreements. First there is a symbiotic and often an incestuous or patronage relationship between government and business in B.C. In fact often B.C. does not even call for tenders on these licenses, preferring to negotiate the best socio-economic packages among interested corporations. Second, most Native bands and companies will not be able in the near future to put forward either the capital or the expertise under current conditions to win

⁹⁵Ibid. p. 19.

⁹⁶Forest Resources Commission. The Future Of Our Forests. A.L. (Sandy) Peel, Chairman. (Victoria: Government of B.C., 1991). p. 33 - 36.

one of these licenses from the provincial government.⁹⁷
In all likelihood, D.I.A.N.D. would not be supportive of their efforts to do so as there still exists a legal responsibility to manage Indian forest lands under the Indian Act.

The government of B.C. seems to favour Native participation in the forest industry through affirmative action programs and at best Woodlot Licenses,⁹⁸ rather than through comprehensive land claims agreements that suggest some form of sovereign jurisdiction in the resource sector on traditional lands. Resource industry spokespeople are quite blunt:

As the B.C. Chamber of Commerce has asserted Native land claims are creating uncertainty among Native Indians and among the population at large and the uncertainty is having a detrimental effect on possible industrial and commercial projects.⁹⁹

This is a broad hint to industry opinion.

⁹⁷Frank Cassidy, Reaching Just Settlements. (Lantzville: Oolichan Books, 1990). p. 19.

⁹⁸Ibid. p. 20.

⁹⁹Ibid. p. 147

The Council of Forest Industries of B.C. is even more specific:

The political and legal debate surrounding Indian land claims and Aboriginal title in B.C. has already had serious consequences for the B.C. forest industry ... Since 1985, a growing number of companies in B.C. have faced disrupting of logging operations, suspension of logging activities, the need to pursue costly litigation to protect harvesting rights and growing uncertainty about the security of long term tenure and access to Crown-owned timber.¹⁰⁰

B.C. hopes to integrate Natives and Indian lands into the forestry resource licensing structure and hence the province's economic hierarchy rather than negotiate as one sovereign government (B.C.) to another (Native).

What B.C. did not want to see during the 1980s was new political arrangements.

A new range of bureaucratic structures such a project review boards and sectoral as well as integrated resource-management, units ... their activities will be 'bureaucratized' as a result of such measures ... concern that resource conflicts will continue as before, with the only real change being that they will be institutionalized and perpetuated.¹⁰¹

¹⁰⁰Ibid, p. 17.

¹⁰¹Frank Cassidy and Norman Dale, Reaching Just Settlements. (Halifax: Institute for Research on Public Policy,

Cassidy and Dale are suggesting here that B.C. hopes to integrate Natives and Indian reserves politically into a position like a federal municipal enclave between the federal and provincial government, with federally delegated powers and provincially enfranchised laws.

Thus, there is at least some evidence that B.C. preferred integration rather than negotiation during the eighties. B.C. deemed the threat to the state posed by comprehensive claims too great, causing as it would the disruption of the current political order founded on the hierarchical economic processes of resource extraction and their attendant global economic linkages and patterns. The price B.C. pays for making policy choices that are inimical to the interests of their business partners in the resource sector is often exorbitant. Witness the amount of money paid by the Government of Canada and the Government of B.C. to Western Forest Products in order to create a national park on the Queen Charlotte Islands. The company was more than amply compensated for a marginal timber operation, while the Haida Indians were no better off.

1988). p. 17 - 19.

Much the same thing occurred on Vancouver Island, where MacMillan Bloedel received approximately: "\$25 million dollars" to retire a forest license.¹⁰² Business interests in the resource sector were serving notice to the government of B.C.:

As the president of one mining company has put it:

"Our company feels very strongly that so-called third parties, which can have a substantial stake in land claims should be part of any negotiation that does proceed. In short, negotiations solely between Native groups and the federal government would not in our opinion be acceptable."¹⁰³

All parties have therefore been served notice that any comprehensive land claims negotiations will be tough and protracted.

First Nations communities want to enjoy economic and political participation in the resource sector. When they speak of co-management through comprehensive claims they mean at the very least shared jurisdiction.¹⁰⁴ Natives

¹⁰²Ibid, p. 19.

¹⁰³Ibid, p. 19.

¹⁰⁴Frank Cassidy and Robert L. Bish, Indian Government. (Lantzville: Oolichan Books, 1989) p. 140-145. Frank Cassidy, Reaching Just Settlements. (Lantzville: Oolichan Books, 1990). Chapters 1 and 2. Frank Cassidy and Norman Dale, After Native Claims. (Halifax: Institute for Research on Public Policy,

also fear that the pace and nature of development is exhausting resources at such a rate that comprehensive claims agreements may deliver little more than expanded reserves, barren of any marketable resources. As a councillor from the Nisga'a Tribal Council (N.T.C.) graphically put it: "The Nass valley has changed from a rich, forested area to a sea of rotten stumps."¹⁰⁵ Natives are not inherently anti-development as some members of the forest industry claim, yet what they do want is joint participation and community development. Natives are starting to fear any kind of government-sponsored industry or training program they do not run themselves.

The recent case of South Moresby Island in the Queen Charlotte Islands provides a good example of both business, government, and even environmentalists, failing to fully consider the First Nation's point of view. Rayonnier, and subsequently Western Forest Products, held T.F.L. #24 on South Moresby Island.¹⁰⁶ The Haida Indians initiated a challenge based on their unextinguished Aboriginal title

1988). p. 140-147.

¹⁰⁵ Frank Cassidy and Norman Dale, Reaching Just Settlements. (Halifax: Institute for Research on Public Policy, 1988). p. 19.

¹⁰⁶ Ibid. p. 140 - 147.

that went to the B.C. Supreme Court, where the Haida lost. The issue was taken up by a coalition of environmental groups and in response, the province formed a Wilderness Advisory Committee (W.A.C.).

What had originated as a comprehensive claims dispute between a transnational coalition involving B.C., the federal government, and multi-national forest interests against the Haida became cast as an environmental dispute. The Haida's comprehensive claim was hijacked and their agenda changed by their supposed coalition partner.

There was talk of making South Moresby a World Heritage Site. The final outcome was that the province agreed with the W.A.C. and the site became a national park. There was no comprehensive claim settled, or even considered, in the final process. The forest company and B.C. were compensated richly for their interests in order as not to jeopardize or challenge federal environmental review legislation or the federal government's fiduciary relationship with the Haida. Now it will be doubly difficult for the Haida to regain control over a national park through comprehensive claims negotiations. In the end the environmentalists were not on the side of the Haida's articulated interests.

In a dispute that is still ongoing, Meares Island was being claimed by the Nuu-Chah-Nulth Tribal Council. MacMillan Bloedel holds the forest license. In January of 1985 the B.C. Supreme Court upheld MacMillan Bloedel's harvesting rights. The judge cited several important reasons. First and foremost the judge did not want to set any legal precedent leading to economic chaos; the inference being Natives demanding and getting similar injunctions through the province.¹⁰⁷ Second, and most important, the judge held that the province can and did extinguish Native rights through the terms of Confederation.¹⁰⁸ Once again, it was a coalition of First Nations and environmentalists who were granted an injunction in the B.C. Court of Appeal. The idea being that Meares Island could become a provincial park.

Despite the often adversarial nature of the relationship between Natives and the resource industry, industry, specifically the logging sector, wants land claims agreements to establish the rules of the game.¹⁰⁹ If claims

¹⁰⁷Frank Cassidy and Norman Dale, Reaching Just Settlements. (Halifax: Institute for Research on Public Policy, 1988). p. 53.

¹⁰⁸Frank Cassidy. Reaching Just Settlements. (Lantzville: Oolichan Books, 1990). p. 19.

¹⁰⁹Ibid. p. 15 - 19.

are not settled, according to some members of the forest industry what will occur is an investment strike or flight, harming the financing and viability of silviculture and capital equipment over the long term. Conflicts such as South Moresby, Meares Island, Deer Island, Stein Valley, and the Hazeltons, have all retarded the process of resource extraction for the forest industry in those locations.

It seems there are two major and pressing questions for forest industry executives.¹¹⁰ Firstly, they want to see the rules of the game established. What this means is the long term regulatory regime they will have to deal with. As Mike Apsey, president of the B.C. Council of Forest Industries stated, "The stability of the business climate for B.C. forest companies remains uncertain."¹¹¹ Apsey made this statement upon learning of a three to two split among justices hearing the Gitskan appeal, granting the Natives unextinguished, non-exclusive Aboriginal rights in their territory. He went on to state that "we still have no

¹¹⁰Ibid. p. 15 - 19.

¹¹¹"Forest Group To Face More Uncertainty," Vancouver Sun, Saturday, June 26, 1993. p. B. 9.

clear answer about the extent of Aboriginal rights.¹¹² Meanwhile, a 1990 Price-Waterhouse study found that "... uncertainty about Aboriginal rights has cost B.C. about \$1 billion in foregone investment, and about 1,500 jobs.¹¹³

Thus, the forest industry generally remains dubious about Native land claims. It is now necessary to examine the Sechelt Self-Government Agreement itself, along with its ancillary legislation both provincial and federal. In this way it will be shown in what fashion, if any, the Sechelt Agreement addressed the concerns of government and the resource sector in the province of British Columbia. The next chapter will analyze the Sechelt Self-Government Agreement in terms of both content and context.

¹¹²Ibid. p. B. 9.

¹¹³Ibid. p. B. 9.

CHAPTER FIVE

CONTEXT AND ANALYSIS OF THE SECHELT SELF-GOVERNMENT AGREEMENT

PART ONE:

Background and Scope of the Act

Sechelt is located on the Sechelt Peninsula in British Columbia, 58 kilometers northwest of Vancouver. The name 'Sechelt' means place of shelter from the sea. The whole district is popular and quite well developed with "the District of Sechelt having a non-Native population of 6,123."¹¹⁴ The band has "32 reserves with about 1,000 hectares or 2,532 acres in the Sunshine Coast Regional District."¹¹⁵ There is a great deal of development, mostly in the retirement and second home industry. In terms of a demographic profile the band population: "is about 703 persons, of which 568 live on Sechelt lands." In 1986 when the Sechelt Act was passed the band lands were home to 500

¹¹⁴Statistics Canada, Profile of Census Division and Sub-Division in British Columbia Part A. (Ottawa: Supply and Services Canada, 1992). (1991 Census of Canada. Cat. No. 95-384). p. 220.

¹¹⁵Ibid, p. 220.

non-Indians for a total population of approximately 1,000 people living on reserve land."¹¹⁶ It is clear then, that with land leasing and retirement home construction, there already existed a high degree of integration socially, economically and politically between the Sechelt and non-Native community.

Sechelt band lands are becoming more valuable as time passes due primarily to their location on the Sunshine Coast an area prized for its recreational opportunities by Vancouverites.¹¹⁷ In fact, Sechelt self-government may be viable because of the particular nature of its material assets:

Sechelt possesses a rich land and resource base, the band is engaged in land development specialty forest products manufacturing, gravel extraction, forestry, agriculture and also has a controlling interest in a commuter airline, 'Thunderbird Air'".¹¹⁸

After the Sechelt Act was passed by the Federal Parliament

¹¹⁶Ibid. p. 220.

¹¹⁷John P. Taylor and Gary Paget Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes, (ed). Aboriginal Peoples and Government responsibility. (Ottawa: Carleton University Press, 1989) p. 305.

¹¹⁸Ibid. p. 305.

in May of 1986, the band began to plan a marina/hotel complex, along with condominiums. To date this development has not been started as the Department of Fisheries in Ottawa has some objections and, when interviewed, band members would not discuss it. Individual band enterprises are planned to support these developments.

The Sechelt Self-Government Agreement represents the result of fifteen years of negotiations and has both the federal and provincial statutes mandating the ambit of its powers. On May 3rd, 1986 Bill C-93, the Sechelt Indian Band Self-Government Act, was passed federally. On October 9th, 1986 it was proclaimed. On July 23rd, 1987, B.C. passed the Sechelt Indian Government District Enabling Act, and this enabled Sechelt to function as a municipality under the Canadian Constitution.¹¹⁹ It was later proclaimed by Order in Council, Regulation No. 1466.

This process represented an end to the frustration the band felt at not being able to develop band lands. Sechelt's band council had always felt crippled by the Indian Act and felt also that they lacked control over their economic life

¹¹⁹Ibid. p. 305.

and hence their destiny. Nevertheless Sechelt's band council had achieved the maximum permissible Indian Act authority under Bill C-52; an amendment to the Indian Act dealing with a band's capacity for financial self-management.¹²⁰

The Sechelt band did not want to wait for the constitutional entrenchment of the right to self-government. They opted for a negotiated and legislated form of self-government which would yield the benefits of political and economic integration without the loss of special status. Former Chief Stanley Dixon articulated the Sechelt position: "the acceptance of responsibility for our community's well being to increase both community and individual opportunity, to work with our neighbour communities to improve the quality of life for all citizens."¹²¹ This statement seems to be a strong attempt to allay the fears of non-Natives, resident in the Sunshine Coast Regional District.

There are three main components to the Sechelt Indian Band

¹²⁰Ibid. p. 305.

¹²¹Ibid, p. 308.

Self-Government Act legislation. They are as follows:

- (i) the Sechelt Indian Band Self-Government Act (Canada);
- (ii) the Sechelt Band Constitution; and
- (iii) the Sechelt Indian Government District Enabling Act (B.C.) and ancillary legislation.

There is also (from B.C.) The Land Title Amendment Act (1988) and the Sechelt Indian Government Home Owner Grant Act (1988).

In terms of the Sechelt Indian and Self-Government Act of June 17, 1986, the purpose of the Act:

... is to enable the Sechelt Indian Band to exercise and maintain self-government on Sechelt lands and to obtain control over the administration of the resources and services available to its members. The Act establishes the Sechelt Indian Band as the primary governing body on Sechelt lands. It specifies that the powers and duties of the band are to be carried out in accordance with a band constitution the contents of which are specified and which must be approved by referendum of the band and the Governor in Council."¹²²

The Act provides a further transfer of band powers to a

¹²²Sechelt Indian Band Self-Government Act Bill C-93, (Ottawa: Statutes of Canada. Queens Printer, 1986) p. 944, Section 4.

quasi-local government body, the Sechelt Indian Government District, but only if the transfer is approved by a referendum of the band and only if the Legislature of B.C. has passed legislation relating to the District. This is in deference to provincial responsibilities and powers in the fields of local government, property and civil rights.¹²³

The Indian Act on Sechelt applies, except to the extent that it conflicts with the Sechelt Indian Band Self-Government Act, the constitution of the band or the law of the band. The band might override the Indian Act in certain circumstances and the federal government can also disallow certain portions. As the Act states: "The Sechelt Indian band is a federal creature, Section 37 indicates that all federal laws of general application in force in Canada are applicable to the band, its members and its lands."¹²⁴ Since Native and non-Native relations have usually been a zero sum game in B.C. the question remains, has the Act given Sechelt effective control of its lands?

¹²³John P. Taylor and Gary Paget Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed) Aboriginal Peoples and Government Responsibility (Carleton University Press, 1989). p. 312.

¹²⁴Sechelt Indian Band Self-Government Act, Bill C-93. (Ottawa: Statutes of Canada. Queens Printer, 1986). p. 952.

The Sechelt band has the authority to dispose of band lands under the constitution created by the Sechelt Self-Government Act provided a referendum is held. Section 31 of the Act states that Sechelt land is still Indian land under the Indian Act but the band can enfranchise provincial laws if they so wish.¹²⁵ Under Section 33 of the Sechelt Self-Government Act the Minister of the D.I.A.N.D. with cabinet permission may grant bloc funding for special projects.¹²⁶ Hence Sechelt now has more money and control for development and public services. Section 3 of the Act expressly states that it does not apply to other bands, or comprehensive claims agreements.¹²⁷ Yet it is difficult to say at this juncture, whether the Sechelt Act poses a threat to Native rights or not.

The Sechelt band constitution (Sections 10-11) created by the Sechelt Self-Government Act has more latitude than Indian Act bands but is still a form of delegated federal authority. One important power is the capacity to establish

¹²⁵Ibid. p. 952

¹²⁶Ibid. p. 952.

¹²⁷Ibid. p. 942.

a membership code which means the band can define itself in tribal terms.¹²⁸ In this fashion, key economic decisions can remain in Native hands through the band council. It also can be a tool to keep a large part (Sechelt's band lands) of the local economy under Native control. The Sechelt band constitution deals with the following matters: composition of band council, terms, tenure, electoral franchise, financial measures and accountability, tribal membership code, rules for referenda, rules, dispositions, rights for lands, legislative powers of council as per statute and other matters.¹²⁹ The result of this is crucial. Since the Sechelt band is operating under delegated federal authority, the laws it passes have the status of federal laws.

The Sechelt Indian Government District Enabling Act of July 23, 1987, is an important (B.C.) companion piece to the federal legislation. It is important because it recognizes the Sechelt Indian Government District and clarifies the province of B.C.'s powers in regard to the Sechelt band, under the Constitution Act of 1867. These powers are

¹²⁸Ibid. p. 943 - 944.

¹²⁹Ibid. p. 943 - 944.

S.92(2) direct taxation; S.92(8) municipal institutions; and S.92(13) property and civil rights. The Enabling Act also establishes an appointed advisory council and ensures B.C.'s laws apply, through the advisory council and by the fact that the Sechelt Indian Government District enacts by-laws under the authority of the Enabling Act. The Enabling Act suspends direct B.C. property taxation, plus it enables delegation of provincial responsibilities such as taxation to the band. Finally it recognizes a federally mandated Indian government as having jurisdiction over band lands plus non-Native leaseholds and non-Native people on a reserve.¹³⁰

The Sechelt Act's greatest break with tradition is the idea that Natives will have some authority over non-Natives and their leaseholds. Previously it was the federal government that had authority over 'Indians and lands reserved for Indians', and the province would have the authority over non-Natives and their leaseholds on Indian lands.¹³¹ This

¹³⁰John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed.) Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989). p. 316.

¹³¹Robert Exell, B.C. Native Communities, in Menno Boldt and Anthony J. Long (eds) Governments in Conflict. (Toronto: University of Toronto Press, 1988). p. 101.

addition of power to the Sechelt band is limited, however, since the band council cannot expand its power or jurisdiction over non-Natives and their leaseholds beyond direct taxation for the provision of municipal services.¹³²

Sechelt and its band council operate at the discretion of the Governor in Council with regard to legislation involving public policy since only the federal statute delegates law-making power. However, it may be argued that the provincial government has substantially increased its powers over Natives on Sechelt lands, at no cost to itself, given that it now has a direct fiscal and political relationship with Sechelt where before there was none.¹³³ In reality B.C. through its proxy, Sechelt, still has the same administrative control over non-Natives and their leaseholds on Sechelt band lands. The Sechelt Indian Government District is not forced to follow the B.C. Municipal Act, but can enact laws under the Enabling Act that carry the force of the provincial statute in question, as long as these laws are mandated to the band by both the

¹³²Sechelt Indian Government District Enabling Act. (Victoria: Government of British Columbia, 1987) Sections 1 - 3.

¹³³Menno Boldt and Anthony J. Long, (eds) Self-Government in Governments in Conflict. (Toronto: University of Toronto Press, 1988) p. 49.

federal and provincial acts.¹³⁴

It is of the greatest importance for the Sechelt Indian band that the federal statute provides that the federal cabinet cannot declare sections of the Sechelt act relating to the District in force or transfer powers, duties or functions of the band council to the district, unless the B.C. legislature passes legislation to that effect.¹³⁵ What the federal government has done is to ask B.C.'s permission to create the Sechelt Indian Government District and give it municipal powers and jurisdiction. Under B.C.'s tutelage non-Native leaseholds may be in a better position now than when they existed at the discretion of the federal government and the band council, because now they will receive services in the event municipal taxes are imposed by the Sechelt band, as well as enjoying equity through long-term leaseholds.

So that the province of British Columbia may have a window on the process of governance in the Sechelt Indian Govern-

¹³⁴Sechelt Indian Band Self-Government Act Bill C-93. (Ottawa: Statutes of Canada, Queens Printer, 1986). Sections 15,22. p. 947 - 948

¹³⁵Ibid. Sections 21-22. p. 947 - 948.

ment District, non-Natives have been given representation in the Sechelt government process. An advisory council is created by the Sechelt Indian Government District Enabling Act (Sections 2/2) and is appointed initially by the provincial cabinet of British Columbia and is elected on rules put forth by cabinet.¹³⁶ Despite the fact that Sechelt would seem to have more leeway from B.C. and the Sunshine Regional District, the existence of the provincially mandated advisory council (plus Section 4 of the Enabling Act which states Sechelt will function and be treated as any other B.C. municipality), plus the quid pro quo financial arrangement between the province (Section 4) and the band make it impossible for Sechelt to radically alter the established political or economic structure of the region.¹³⁷ Sections 2 - 4 mentioned above will be explained later in more detail below through a discussion of the creation of the Sechelt Indian Government District.

The Sechelt Indian Government District Enabling Act has a twenty year life span and will be repealed on June 30, 2006, unless a referendum of the band and B.C.'s provincial

¹³⁶Sechelt Indian Government District Enabling Act. (Victoria: Government of B.C., 1987). Section 2. p. 2.

¹³⁷Ibid. Section 4. p. 4.

cabinet renew it.¹³⁸ The only new power Sechelt has is the opportunity to negotiate a new Sechelt/B.C. fiscal regime (Section 4 of the Enabling Act), not a new economic structure. Sechelt is still operating under delegated federal authority with B.C.'s consent through the Enabling Act. Sechelt is now party to B.C.'s Land Title Amendment Act of 1988 which provides for registration under the Land Title Act of the title to Indian lands granted or held in fee simple, thereby creating equity financing and borrowing arrangements using land as security.

Now, both Natives and non-Natives on Sechelt Lands may borrow money against their leaseholds. This was impossible before under the Indian Act. While increasing the value of the land and stimulating the economy, this measure may contribute to the eventual disappearance of Sechelt as a distinctly Native community, culture and society, however the band has emphasized only leased lands will be registered in the provincial system, and they have argued all Indian lands are subject to the Constitution of 1867. With the establishment of B.C.'s Torrens' Land Registration system, Sechelt residents now qualify for the British

¹³⁸ Ibid. Section 8. p. 8.

Columbia Home Owner Grant,¹³⁹ which will be discussed later.

There are four linked government units administering the Sechelt area, they are as follows:

- (i) the Sechelt Indian Band Council;
- (ii) the Sechelt Indian Government District Council;
- (iii) the B.C. Advisory Council; and
- (iv) the Sunshine Coast District Regional Board.

The first two are federally mandated institutions, the last two are provincially mandated institutions. These governmental units will be discussed later in more detail. It seems there is a complex but workable division of powers between the different levels of government.

The Sechelt band has "The capacity, rights, powers and privileges of a natural person."¹⁴⁰ Hence, now Sechelt can enter into contractual relationships between local

¹³⁹John P. Taylor and Gary Paget Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed) Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989). p. 320.

¹⁴⁰Sechelt Indian Band Self-Government Act, (Ottawa: Statutes of Canada, Queens Printer, 1986), p. 943, Section Six.

governments, businesses, non-Natives or Natives. There are only two inviolate band council rights, control of band membership and the authority for the disposition of the rights and interests in Sechelt lands.

Any jurisdictional conflict that now exists in the ambit of powers between B.C. and the Sechelt band previously existed between B.C. and the federal government; such as the application of provincial laws which may have effected band members in their capacity and status as Indians, (re: the Indian Act).¹⁴¹ These conflicts were to be dealt with under the enfranchisement clause of Section 88 of the Indian Act which closely resembles Section 37 of the Sechelt Act.¹⁴² The real power of the Sechelt band includes collecting property taxes and expropriating band lands. To transfer any band powers to other bodies requires a band referendum plus enabling legislation from B.C. This is to say that the Sechelt Self-Government Act has given the Sechelt Indian Band a measure of actual legislative power to control their on-reserve economy and finances that other Indian bands do not enjoy.

¹⁴¹ Donna Lee Hawley. The Annotated 1990 Indian Act. (Toronto: Carswell, 1990). p. 93, Section 88.

¹⁴² Sechelt Indian Band Self-Government Act Bill 93. (Ottawa: Statutes of Canada. Queens Print, 1986) p. 953. Section 37.

CHAPTER FIVE

CONTEXT AND ANALYSIS OF THE SECHELT SELF-GOVERNMENT AGREEMENT

PART TWO:

Administration and Governance

Sechelt's new political structure is set out in the Sechelt Indian Band Self-Government Act (Canada) and the Sechelt Indian Government District Enabling Act (British Columbia). As was mentioned previously, this structure is made up of four separate units. The two federally created units, the Sechelt Indian Band Council and the Sechelt Indian Government District Council, are paramount. The Band Council has a broad range of legislative powers but is mandated to transfer certain powers to the District Council.¹⁴³ Thus, there is a workable division of powers between band and local government.

The Sechelt Indian Band Council under the Sechelt

¹⁴³Sechelt Indian Band Self-Government Act Bill C-93. (Ottawa: Statutes of Canada. Queens Printer, 1986). p. 943 - 948, Sections 6,14-22.

Self-government Act replaces the old Indian Act band, as previously mentioned. This new entity is a corporate one, with all the rights and powers of a natural person.¹⁴⁴ The Band Council exercises the following powers: residence permits, zoning, expropriation, construction, public works, municipal taxation, property management, education, welfare services, health, natural resource management, fish and wildlife, testate or intestate band members' property, alcoholic beverage regulation by-law enforcement, band elections, band finances and good government.¹⁴⁵ Since it seems there is a mixture of federal, provincial and municipal powers, provincial powers would also seem impinged upon in the matters of health, education, and welfare. However, the Indian Act already deals with this conflict under Section 92(24) of the Constitution Act (or British North America Act) of 1867.¹⁴⁶ As mentioned previously, the Governor in Council may transfer powers from the Band Council to the District Council.¹⁴⁷ The two powers

¹⁴⁴Sechelt Indian Band Self-Government Act Bill C-93. (Ottawa: Statutes of Canada, Queens Printer, 1986). p. 943, Section 6.

¹⁴⁵Ibid. p. 945, Section 14.

¹⁴⁶Constitution of Canada (B.N.A. Act 1867).

¹⁴⁷Op. Cit. p. 947. Section 21(2).

that remain inviolate are important, the band membership codes based on Sechelt First Nation heritage and disposition of Sechelt lands. Hence, self-government is protected as only the Sechelts themselves can determine who is a legitimate member of their society and, hence, who will be allowed political franchise and the benefits of band membership. The transfer of other powers mentioned is subject to band referendum and B.C. passing relevant legislation.

With the proclamation of the Sechelt Indian Government District Enabling Act (B.C.) on July 23, 1987, a referendum was passed by the band, transferring certain powers to the Sechelt Indian Government District. The powers transferred were as follows: general government, zoning and land use, regulation of building, tax assessment of real property (and taxation of same), regulation of animals, roads, regulation of business and the imposition of fines for by-law intervention.¹⁴⁸

An important feature of note contained in Section 14(3) of the Sechelt Indian Band Self-Government Act provides for

¹⁴⁸John P. Taylor and Gary Paget Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes.(ed). Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University, 1989) p. 324.

the adoption of any B.C. provincial statute that the District council may require to fulfill its mandate.¹⁴⁹ Thus, uniform provincial standards and services will be maintained where otherwise non-Natives or Natives might set up businesses and attempt to escape provincial regulations. Also, B.C. will have one less worry as the Sechelt Indian Government District will maintain the same services as other B.C. municipalities in the region.

In Section 2(2) of the Sechelt Indian Government District Enabling Act, the provision is made for the Provincial Cabinet to establish an Advisory Council to represent all residents of the Sechelt Indian Government District.¹⁵⁰ This Council is not covered in the Sechelt Indian Band Self-Government Act as it is an attempt by B.C. to give a form of franchise to non-Native residents of the Sechelt Indian Government District who are prevented from either holding office or voting for office in the Band Council or District Council.¹⁵¹ The Advisory Council has no

¹⁴⁹Sechelt Indian Band Self-Government Act Bill C-93. (Ottawa: Statutes of Canada. Queens Printer, 1986). p. 946. Section 14(3).

¹⁵⁰Sechelt Indian Government District Enabling Act. (Victoria: Government of B.C., 1987). Section 2(2). p. 2.

¹⁵¹Ibid. p. 2, Section 2(2).

legislative powers and may only petition the District council on the following subjects; planning for programs, costing programs, recommending programs, and petitioning for services or programs to be created.

The last governmental unit in the region is the Sunshine Coast Regional District. The Regional District is an upper-tier local government providing region-wide public services to both municipal and rural affiliates, as well as local services to rural communities in the region.¹⁵² The Sechelt Indian Band Council requested that the Sechelt Indian Government District become a member of the Sunshine Coast Regional District.

On June 16, 1988, B.C. used the authority available to the province under the provisions of the Sechelt Government District Enabling Act and made the Indian Government District a member of the Sunshine Regional District. Hence, when the Sechelt Indian Government District adopted this new statute of B.C. into its constitution, the Sechelt Indian Band may participate in the governance of the region

¹⁵²John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes, (ed). (Ottawa: Carleton University Press, 1989). p. 32.

without fear of prejudicing its Aboriginal rights. Despite the fact that non-Native residents of Sechelt band lands appear to be politically disenfranchised with regard to the process of governance in the region, the Sechelt band is fully integrated politically and economically in the Sunshine Coast Regional District and, hence, unlikely to abuse the rights of non-Native residents.

The Sechelt Indian Government District Council is exactly similar to a typical B.C. municipal council in theory and practice except non-Natives are exempt from service. The council applies B.C. standards and practices the same as any other municipal council. Actually this rationalizes problems present previously under the Indian Act where reserve land was often a provisional law-free municipal haven for non-Natives and non-Native corporations.

The Advisory Council is listed under Section 2(2) of the Sechelt Indian Government District Enabling Act. This advisory council is provincial creature which is not recognized in the federal statute. The Council is B.C.'s guarantee to non-Natives on the reserve that their concerns will be dealt with. There is to be an initial board of four persons resulting from ward elections by Native and non-Native electors on Sechelt. This body has no legis-

lative powers and can make recommendations only on the following: planning of services; costs of services; service programs and petitions for services to district council.

There has been both a policy succession and a historical dimension with regard to self-government and the Native land claims process. The first treaties could be characterized as military pacts for reasons of strategy and warfare. In the early 1800s they reflected a containment strategy involving reserves and the maintenance of a traditional life style.¹⁵³ In the late 1800s the treaties were quasi-assimilationist in nature involving the attempted institutionalization of agriculture pursuits on reserves up till the 1950s.¹⁵⁴ The modern treaties beginning with the James Bay and Northern Quebec Agreement of 1975 and the Sechelt Act of 1986 reflect a legislated form of delegated authority and mutual coexistence, along with a resource oriented, semi-autonomous traditional development orientation.¹⁵⁵ In other words if Natives wish to maintain a

¹⁵³Sally Weaver, "A New Paradigm in Canadian Indian Policy for the 1990s." Canadian Ethnic Studies, 22, No. 3. (1990): 8-18.

¹⁵⁴Ibid. p. 818.

¹⁵⁵Norman K. Zlotkin. "Post-Confederation Treaties". in Aboriginal Peoples and the Law. ed: Bradford Morse. (Ottawa: Carleton University Press, 1985). p. 333 - 358.

semblance of their traditional life style they must trade resources for autonomy to get a modern treaty.

In terms of what was negotiated between the province, the federal government and the Sechelt band:

The Sechelt Indian Band Self-Government Act of 1986 indicates no B.C. interest in surrendering any powers. Any title transferred to the band is subject to the Mineral Resource Transfer Agreement of 1943 and reservations of 1929. The 1943 agreement applies on Sechelt. The Act thereby provides for continued constitutional entrenchment of the power of the province and of the role of the Indian agent in managing reserve lands.¹⁵⁶

With the Sechelt Act of 1986, B.C. does not have to worry about the Sechelt Band Council attempting to gain control of sub-surface resource extraction as, technically, the 1943 Agreement precludes this.

The Sechelt Indian Band Self-Government Act was given royal assent on June 17, 1986, and the goal of the Act was stated to be: "... an attempt to enable the Sechelt band to establish and maintain self-government and obtain control

¹⁵⁶Richard H. Bartlett. Indian Reserves and Aboriginal Lands in Canada. (Saskatoon: University of Saskatchewan, 1990). p. 162 - 165, and Chapter 8.

over administration and resources."¹⁵⁷ Although the Act seems to be based on demands articulated by the Natives of Sechelt, the Act stems truly from Bill C-52 the Indian Self-Government Act and the Cree-Naskapi of Quebec Act.¹⁵⁸ The former gives the enabling legislation, the latter, the ambit of powers.¹⁵⁹

Sechelt is actually a weaker form of self-government than the Cree-Naskapi Act in the opinion of Richard Bartlett in Indian Reserves (1990):

The jurisdiction of the federal and provincial government is continued. The Indian Act, the Indian Oil and Gas Act and all federal laws of general application are applicable to band members except as is inconsistent with the Act ... the same provisions for provincial laws of general application.¹⁶⁰

Section 38 of the Sechelt Act like Section 88 of the Indian

¹⁵⁷Sechelt Indian Band Self-Government Act, Bill C-93. (Ottawa: Statutes of Canada, Queens Printer, 1986). p. 941.

¹⁵⁸Menno Boldt and Anthony J. Long. Governments in Conflict. (Toronto: University of Toronto Press, 1988) p. 48.

¹⁵⁹Ibid. p. 49.

¹⁶⁰Richard H. Bartlett, Indian Reserves and Aboriginal Lands in Canada, (Saskatoon: University of Saskatoon, 1990), p. 143.

Act recognizes and extends provincial administration to Sechelt band lands.

It is important to consider that neither Bill C 52 the Indian Self-Government Bill of 1984 which died in Parliament, nor the Cree-Naskapi Act of 1984, pretend to mandate the application and extension of provincial jurisdiction over Native lands. Because both federal and provincial laws apply on Sechelt, the Natives have received merely a more autonomous form of band council. For instance:

The Act affirms provincial interest and powers with respect to the lands and resources of Sechelt. It states the band title to land and its powers regarding resources are subject to B.C.'s interest in reserve minerals and the provinces powers of management as affirmed by the B.C. Indian Reserves Mineral Resources Act of 1943.¹⁶¹

What the Sechelt Indian Self-Government Act does as well, is to preserve the B.C. conveyances of 1929 regarding water rights, construction materials, highways and expropriation. The Sechelt Act does not require that the province surrender these powers.

The Sechelt Indian Self-Government Act provides for the

¹⁶¹Ibid, p. 144.

transfer to the band of title in fee simple to the Sechelt lands subject to the provincial interest. The lands do remain 'lands reserved for Indians' as per Section 91(24) of the Constitution Act 1867. In order to facilitate the registration of the title under the provincial land titles system many of the structures of the Indian Act can no longer apply. Provisions of the Act relating to management, possession, inalienability, surrender and exemption from seizure are all declared inapplicable.¹⁶²

Subject to existing interests the Sechelt band may dispose of lands, rights or interests in land, in accordance with the rules and procedures found in the Sechelt band constitution. This process must, however, be approved by the Governor in Council. The band has obtained the power over the day-to-day administration of its land, subject to the powers held by B.C.

As the Sechelt Indian Self-Government Act states:

The governor in council has approved the inclusion in the Sechelt constitution of the power to: make by-laws, access; residence; zoning; land use

¹⁶²The Sechelt Indian Self-Government Act Bill C-93. (Ottawa: Statutes of Canada, Queens Printer, 1986). p. 945 - 950, Sections 14,23-24.

planning; expropriation for community purposes; use and construction of buildings and roads; protection and management of fur bearing animals; fish and game on Sechelt lands; taxation for local purposes of interest in Sechelt lands and of occupants and tenants of Sechelt lands; administration and management of property belonging to the band, the preservation and management of natural resources on Sechelt lands and matters related to the good government of the band, its members or Sechelt lands.¹⁶³

This long list of powers appears to be both substantial and extensive but is in fact quite cosmetic when one examines the federal and provincial resource legislation included in the Sechelt Act. The Sechelt Act is quite similar to the 1984 Cree-Naskapi Act of the James Bay and Northern Quebec Agreement as it is local and municipal in nature and leaves Sechelt utterly within the confines of the B.C. resource management structure. Sections 37, 39, 40 and 41 of the Sechelt Indian Self-Government Act force Sechelt to adhere strictly to the federal/provincial Mineral Resources Transfer Act of 1943, which states half of any royalties accruing from mineral exploration accrue to the province, the other half to D.I.A.N.D, in trust, for the band in question.

¹⁶³Sechelt Indian Band Self-Government Act, (Ottawa: Statutes of Canada, Queens Printer, 1986), p. 943, Section Six.

The powers respecting the management of natural resources, expropriation, taxation and good government were not conferrable under the Indian Act. The power with respect to natural resources is a sham because of the ambit of provincial powers and interest.¹⁶⁴ The power to make laws for good government is restricted by both the Canadian (as per any municipality) and Sechelt constitutions. The Sechelt band is quite restricted in this capacity. The power to levy local property taxes is important, however it is much like the power conferred on the Cree and Naskapi bands. There is one important difference between the Sechelt Act and the Cree/Naskapi Act. The Cree and Naskapi bands must have the approval of their band regulations by the Governor in Council, not Sechelt which has the federally delegated authority to pass by-laws on the subjects mandated by both federal and provincial acts. For Sechelt, however, the approval to levy property taxes must be given by the Governor in Council upon consideration of the band constitution.

According to Bartlett:

¹⁶⁴Richard H. Bartlett. Indian Reserves and Aboriginal Lands in Canada. (Saskatoon: University of Saskatchewan, 1990). p. 146.

Approval of the Governor in Council was conditional on the province withdrawing suspending taxation of non-Indian tenants and leaseholds. On Sechelt lands B.C. will suspend the taxation of tenants where Sechelt will provide municipal services. Since there are 350 non-Indian leaseholds the band may now tax property only. The Sechelt constitution expressly prohibits income style tax.¹⁶⁵

B.C. utterly rejected giving Sechelt any taxing power beyond property taxation and only really acknowledges Sechelt as municipality for financial and infrastructural reasons.

Bill C-52, the Indian Self-Government Bill of 1984 would have given all Native bands more powers vis a vis the environment, property rights and taxation than the Sechelt Act, but through ministerial approval. Such powers would again have been subject to the agreement and disallowance of the Governor in Council (Canada).¹⁶⁶ For the Sechelt Act the Governor in Council has no power of disallowance. Nor can the constitution of Sechelt be revoked, but the Province of

¹⁶⁵Richard H. Bartlett, Indian Reserves and Aboriginal Lands in Canada, (Saskatoon: University of Saskatoon, 1990), p. 146.

¹⁶⁶Menno Boldt and Anthony J. Long in Governments In Conflict. (Toronto: University of Toronto Press, 1988). p. 47.

B.C. has the right to renegotiate the Sechelt Indian Self-Government District Enabling Act on June 20, 2006.¹⁶⁷ Sechelt does not have extensive powers and what is important is the lack of federal superintendence.

Once the Governor in Council (Canada) has approved the constitution Sechelt is free to begin passing by-laws. In regard to this, Bartlett has suggested that, "The ambit of powers which could be conferred under the Sechelt Act ... is not unimportant yet the affirmation of provincial power over the lands and resources plus the limited ambit of the power to tax suggests self-management (limited) rather than self-government."¹⁶⁸ In the end of things all modern treaties suggest the trade of resources for autonomy. The policy network regarding resource extraction is restricted in B.C. by strong linkages with external actors (trans-national interests) which often influence the way policy planners perceive their own society.¹⁶⁹ It could be

¹⁶⁷The Sechelt Indian Government District Enabling Act. (Victoria: Government of British Columbia, 1987). p. 1, Section 1.

¹⁶⁸Richard H. Bartlett. Indian Reserves and Aboriginal Lands in Canada. (Saskatoon: University of Saskatchewan, 1990). p. 147.

¹⁶⁹Jeremy Wilson, Wilderness Politics in B.C. in W.D.

argued that the B.C. government would be quite willing to sign other self-government agreements akin to Sechelt as the Sechelt Self-Government Agreement has reinforced provincial control over resources rather than challenged it. The Secheltes got a measure of autonomy regarding local government in return for enshrining the 1943 Mineral Resources Transfer Act in the Sechelt Self-Government Agreement.

Section 88 of the Indian Act, the Indian Forestry Regulations, the Indian Mining Regulations and the Indian Oil and Gas Regulations all enfranchise provincial laws.¹⁷⁰ The Sechelt Indian Band Self-Government Act contains a provision which is identical to Section 88 of the Indian Act (Section 24).¹⁷¹ In the past federal and provincial agreements constitutionally entrenched federal and provincial power on Indian reserves. The province of B.C. used its jurisdiction over public lands to exercise control over

Coleman and Grace Skogstad eds. Policy Communities and Public Policy in Canada. (Mississauga: Copp Clark Pitman Ltd., 1990). p.141-169.

¹⁷⁰Op. Cit. Chapter 8.

¹⁷¹The Sechelt Indian Band Self-Government Act Bill C-93. (Ottawa: Statutes of Canada, Queens Printer, 1986). p. 949, Section 24.

Indian reserves. B.C. provides the strongest case, whereby provincial administration of mineral resources was entrenched, revenue from mineral development on reserves went to B.C. and many other provincial laws were enfranchised by Section 88.

The Sechelt Indian Band Self-Government Act gives the Sechelt band the right to manage and dispose of band lands as they see fit. This is quite similar to the James Bay and Northern Quebec Agreement, it seems both provincial governments (B.C. and Quebec) may have been concerned with resource extraction on band lands. These powers are regulated by the application of federal and provincial laws concerning taxation, access, mineral development and the environment, among others. The Sechelt Act does suggest the concept of a homeland for Sechelt in principal but not in practice. The pattern of modern treaties from the James Bay and Northern Quebec Agreement to the Sechelt Act suggests that self-government agreements in practice will reflect limited autonomy and community government based on accepted forms of municipal arrangements.¹⁷²

¹⁷²Menno Boldt and Anthony J. Long in Governments in Conflict. (Toronto: University of Toronto Press, 1988). p. 49.

Native people in B.C. and throughout Canada have argued that what the federal and provincial governments have done is to normalize Sechelt within the B.C. municipal government structure as a junior form of government.¹⁷³ What most Native leaders claim to be seeking however is a third level of government with an independent jurisdictional base.¹⁷⁴ What the federal government and British Columbia have demonstrated however is that a concrete form of Native self-government can be achieved without constitutional entrenchment and in B.C.'s case without the province having to negotiate comprehensive land claims agreements.

Bill C-93, the Sechelt Act is not supposed to have any bearing on the comprehensive claim filed by the Sechelt band. What Bill C-93 does, however, as a practical reality, is to separate the process through which claims may be resolved from self-government negotiations. As Boldt and Long argue, the Sechelt self-government process of 1986 represents: "... a strategy which to a significant degree detaches land and treaty matters from self-government

¹⁷³Saul Terry. Our Land is Our Future. (Vancouver: Union of B.C. Indian Chiefs, 1990). p. 1- 3.

¹⁷⁴Double Speak of the 90s. Position Paper. (Ottawa: Assembly of First Nations. August, 1990). p. 1 - 30.

issues."¹⁷⁵ Thus the Sechelt agreement has been a win/win situation for the federal government and the province of B.C. Sechelt is now a federal municipality within the normal framework of the Canadian government structure, while at the same time other bands know they can get the benefits of self-government without the costs and delay associated with comprehensive claims settlements.

To fully understand the implications of the Sechelt Self-Government Model, it is necessary to examine the financial and service structure provisions of the Sechelt Indian Government District. This will be done through an examination of four separate concerns which are:

- (i) federal fiscal relations;
- (ii) provincial fiscal relations;
- (iii) the Sechelt Indian Government District Service Structure;
- (iv) Sechelt lands.

Generally, the financial relationship between an Indian band and the federal government is run on the basis of grants or direct funding for projects administered through

¹⁷⁵Menno Boldt and Anthony, J. Long (eds). Governments in Conflict, (Toronto: University of Toronto Press, 1988), p. 42.

D.I.A.N.D. This has been said to have created an efficient state of financial accountability in D.I.A.N.D., but little flexibility.¹⁷⁶ Hence, if Sechelt self-government was to operate free from D.I.A.N.D. supervision and be accountable to band members, different funding arrangements were needed. Some Indian bands, including Sechelt, have experimented with Alternative Funding Arrangements (A.F.A.s). An A.F.A. allocates federal monies to set a range of expenditures over five years with the provision that monies can be used on other services if required.¹⁷⁷ Funding for the Sechelt band is somewhat more flexible even than standard A.F.A.'s. Section 33 of the Sechelt Indian Band Self-Government Act provides for an open-ended style of A.F.A.¹⁷⁸ It is structured along the following lines.

In 1986 a special five-year agreement was negotiated with D.I.A.N.D. The payments started at \$2.3 million dollars a year, and for the fiscal year of 1992 start at \$2.5 million

¹⁷⁶John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed). Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989) p. 329.

¹⁷⁷Ibid. p. 329.

¹⁷⁸Ibid. p. 329.

dollars annually.¹⁷⁹ This funding covers six types of expenditure: administration, public infrastructure, welfare, health, education, and economic development. Health, education, and welfare must be maintained at minimum levels. In the other categories the Sechelt Band may budget to meet current or projected needs. It would seem that the Sechelt style A.F.A. is only slightly more flexible than an A.F.A. for any other Indian band. In fact, it seems to be a way for D.I.A.N.D. to provide for the welfare of band members, should the Sechelt Self-Government fail.

To make local self-government viable for the Sechelt Indian Self-Government District, the band and the province of B.C. had to agree to a very clear set of fiscal relations. B.C. agreed to rescind its rural service levy (the Taxation [rural areas] Act) on non-Native tenants on Sechelt lands. This provision is contained in Section 4 of the Sechelt Indian Government District Enabling Act.¹⁸⁰ Further, and most important, the province of British

¹⁷⁹Department of Indian Affairs and Northern Development Annual Report. (Ottawa: Minister of Supply and Services, 1991). p. 66.

¹⁸⁰The Sechelt Indian Government District Enabling Act. (Victoria: Government of B.C., 1987). p. 4, Section 14.

Columbia agreed to act with Sechelt in the same fashion as any other B. C. municipality. Hence, Sechelt became eligible for grants from the Provincial Revenue Sharing Program and the Provincial-Municipal Partnership Program.¹⁸¹ Hence, given these two provisions, Sechelt may tax all its tenants to recover the costs of public services, yet at the same time provide better and more expanded services than would have previously been possible when D.I.A.N.D. and British Columbia solely occupied the fiscal field.

Sechelt, for its part has undertaken to apply all normal and regional property and service taxes that are usually levied in B.C. municipalities. Hence, both Native and non-Native alike pay taxes such as residential school tax, the regional district tax, the regional hospital tax, and the B.C. Assessment Authority levy. Previous to this, non-Natives would have paid these taxes and might not have received the service, while Natives would have paid no tax and received no services. Sechelt, therefore, is unlike any other Indian band in its relationship with B.C.

¹⁸¹John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (eds). Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989), p. 331.

One of the most important realities governing the public service structure of the Sechelt Indian Government District stems from the Sechelt Indian Band Self-Government Act which has made the band and District Council corporate entities at law. Hence, with their new status, Sechelt government units can make contracts with other local government entities for public services.¹⁸² The Sechelt Indian Government District currently provides for general government services, roads, municipal planning, sewerage, recreational facilities and economic development. Other services such as sewage treatment, water supplies, and fire fighting are provided by the Sunshine Coast Regional District.¹⁸³ Hence it seems the main theme promoted by both federal and provincial legislation governing Sechelt is integration for the provision of services. The best example of this is in the field of education where the Sechelt Indian Government District levies both the B.C., non-residential school tax and the school district

¹⁸²The Sechelt Self-Government Act Bill C-93. (Ottawa: Statutes of Canada, Queens Printer, 1986). p. 943, 947, s. 6, 18.

¹⁸³John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed.) Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989), p. 332.

residential tax remitting the former to B.C. and the latter to the Sunshine Coast Regional School Board. The Sechelt Indian School District is treated like any other, receiving operating grants from B.C. Both non-Natives and Natives resident on Sechelt lands pay these taxes and are then allowed to vote in district school board elections, something that was impossible in the past.

With regard to the Sechelt band lands, the band holds title to its lands in fee simple, through the Sechelt Indian Band Self-Government Act.¹⁸⁴ The Band Council does not issue certificates of possession for band lands to band members as many other reserves do, the intention being that any economic development arising from land leasing will accrue communally rather than individually. Under the Sechelt Indian Band Self-Government Act, the band constitution entitles the band to hold a referendum on the sale of land, the caveat being a seventy-five percent majority is necessary.¹⁸⁵

Land development is on a leasehold basis with the average

¹⁸⁴The Sechelt Indian Band Self-Government Act. (Ottawa: Statutes of Canada, Queens Printer, 1986.) p. 948-50, S. 23-27.

¹⁸⁵Ibid, p. 943, s. 10 and p. 948-50, s. 23-27.

term being ninety-nine years. So, in essence, the land is inalienable for all practical purposes while still being able to generate both revenue and equity.¹⁸⁶ This was, perhaps, the cornerstone of the band's economic policy with regard to self-government. Since land is Sechelt's prime money-earning resource, true self-government could only work and be economically viable if this resource is controlled by the band. It is also unlikely that any future band council would be able to sell off the Sechelt land base without majority approval.

There are many implications of the Sechelt model. The Sechelt band has a certain autonomy of action from the federal government vis a vis the Sechelt land base. It has the delegated power (federal) to govern what appears to be a traditional or ethnically-based government, but what in reality is public municipal government.¹⁸⁷ Non-Natives are represented through an advisory council. Sechelt is not a third level of government in the sovereign sense but more

¹⁸⁶John P. Taylor and Gary Paget in David C. Hawkes (ed) Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989). p. 336.

¹⁸⁷Frank Cassidy and Robert L. Bish. Indian Government, Its Meaning and Practice. (Lantzville: Oolichan Books, 1989.) P. 143.

or less a federal municipal district, meaning local government stems from delegated federal authority and federal legislation. Sechelt is completely integrated into the local municipal/provincial political and economic structure of British Columbia.

Sechelt may benefit from the comprehensive claims process and the constitutional entrenchment of Aboriginal right. In theory the Sechelt Act does not affect any of this, however in reality Aboriginal inherent jurisdiction may have been diminished.¹⁸⁸ For the Government of Canada, the Sechelt Indian Band Self-Government Act can be seen as an outgrowth of the Cree-Naskapi settlement of 1975 and the Inuvialuit Claim settlement of 1984. The federal government has proven that self government can be decoupled from the comprehensive claims process while reassuring business and the provinces that self-government need not change the political and economic realities of B.C.¹⁸⁹ Meanwhile the federal government has lost neither jurisdiction nor control and they will not spend any more money on Sechelt

¹⁸⁸Menno Boldt and Anthony J. Long in Governments in Conflict. (Toronto: University of Toronto Press, 1988) p. 49.

¹⁸⁹Keith Penner "Their Own Place" in Menno Boldt and Anthony J. Long. Governments in Conflict. (Toronto: University of Toronto Press, 1988.) p. 36.

than they were previously when they were reimbursing B.C. for various municipal services. If anything B.C. has increased input and control on Sechelt lands at the expense of the Natives rather than the province. This is the case for example in regard to education and health whereby Sechelt is taxing for these purposes and remitting monies to the relevant governmental authority.

Sechelt as a self-government agreement can also be seen as a process open to other bands with the federal government as a broker. The province of B.C. might have viewed this agreement as the way of the future to solving the self-government/comprehensive claims, Aboriginal rights policy problem linkages. This notion will be explored further in the next chapter.

Sechelt was integrated with a certain amount of autonomy at no cost or change to the political and economic hierarchy of B.C. Basically the federal government and B.C. have come to tolerate each others occupation of the legislative field since the federal government has delegated authority while Sechelt can't do certain things without B.C.'s compliance and funding. B.C. does not get full control but what it has is practical control through various municipal arrangements.

Although B.C. has a perceived loss of jurisdiction over non-Native leaseholds, it gained a fuller control of the field through municipal arrangements (tax and fiscal programs). B.C. got a win/win agreement between it and the federal government. Local governments are very happy as they can rationalize service delivery in the Sunshine Coast Regional District. Other Indian bands in B.C., however, are critical of municipal arrangements and do not want self-government through legislation. What they would prefer is constitutional entrenchment of inherent jurisdiction.¹⁹⁰ B.C. bands claim Sechelt undermines tribal governments and newly adopted municipal/provincial laws change the relationship with the Federal Crown.¹⁹¹

Sechelt can be viewed as a federal creature yet in practical terms it is B.C. holding the leash. The Sechelt Act represents an evolution in policy that both the federal and provincial governments wish to make. It is a real practical form of autonomous ethnically-based First Nation

¹⁹⁰Saul Terry, Our Land Is Our Future. Vancouver: Union of B.C. Indian Chiefs, 1991.) p. 1-15.

¹⁹¹Double Speak of the 90's. Position Paper. (Ottawa: Assembly of First Nations, August, 1990.) p. 1-35.

self-government that in no way affects the administrative political or economic structure of resource extraction in the province. This modern treaty is the most innocuous form of coexistence yet legislated and represents complete integration economically and politically for Natives and non-Natives, except the reserve is still almost inalienable. Despite its measure of autonomy Sechelt is not a third level of government. Rather, it seems to be a federal municipality (since it has delegated federal authority) with a normal municipal relationship with B.C., except that it has the right in matters involving land to disenfranchise non-Natives.

So far, this work has advanced the notion that the Sechelt Indian Government District is an anomaly that was created by a fortuitous set of circumstances and individuals that, for diverse reasons, came together to negotiate its creation. In other words, a 'policy window' opened up and certain key individuals took advantage of this.¹⁹² Sechelt represents an anomaly for two reasons. First, because the Sechelt Indian Government District Enabling Act

¹⁹²John W. Kingdon, Agendas, Alternatives, and Public Policies. (Boston: Little, Brown & Co., 1984) Chapter 8, p. 212-213.

represents the only piece of legislation involving Native people the government of B.C. has ever passed from the 1871 Act of Union with Canada to the present day. Second, it has proven difficult for scholars to decide if Sechelt represents true First Nation-based self-government, in fact a third order self-government,¹⁹³ or whether Sechelt is actually a federal municipality whose powers are brokered by the province of British Columbia.¹⁹⁴

It is necessary at this juncture to introduce interview material gained from some of the participants in the Sechelt process in order to decide whether Sechelt is truly an anomaly resulting from a policy window opening, then closing.

¹⁹³John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed) Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989), p. 341.

¹⁹⁴Menno Boldt and Anthony J. Long. Government In Conflict. (Toronto: University of Toronto Press, 1988.) p. 49.

CHAPTER SIX

THE PARTICIPANTS' PERSPECTIVES

ON THE

SECHELT SELF-GOVERNMENT NEGOTIATIONS

This chapter will present interview material gained through the research of this work from June of 1992 to June of 1993. While it was possible to interview only five of the participants actually at the table, the other interviews represent individuals who were either actively involved in the Sechelt Self-Government process or who had a direct interest in the movement for self-government in B.C. The five individuals directly involved in the negotiations include from the federal side Mike Sakamoto one of the Department of Indian Affairs and Northern Development (D.I.A.N.D.'s) principal negotiators on Sechelt, and Fred Walchli regional head of D.I.A.N.D. and head of the federal governments Sechelt Self-Government Steering Committee.

From the Sechelt side, with the kind cooperation of the band and the individuals involved, the three principal negotiators were interviewed. They include Stan Dixon, the Chief of Sechelt before and after the negotiations; Graham

Allen, the bands' legal counsel; and Gordon Anderson, the band's financial advisor.

This chapter will present the interviews in the following fashion. Firstly interviews will be presented in the order of which they occurred: that is, all the federal (D.I.A.N.D.) personnel will be dealt with first; Sechelt band members and members of Native associations will follow; and individuals from the province of B.C.'s Ministry of Aboriginal Affairs will be dealt with the last. This is a valid way of proceeding as in each interview it was possible to build incrementally on the knowledge gained in the others. This order of interviews also reflects the order of negotiations which were trilateral and ad hoc with the federal government negotiating first with Sechelt and then Sechelt negotiating directly with the province, and lastly Sechelt negotiating with the Sunshine Coast Regional District. Hence, the order of interviews reflects how the notion of Sechelt Self-Government might have evolved over the course of the negotiations and how a 'policy window' might have opened.¹⁹⁵ A complete list of interviewees is contained in Chapter One, pages seven to twelve of this

¹⁹⁵John W. Kingdon, Agendas, Alternatives and Public Policies. (Boston: Little, Brown and Co., 1984). Chapter 8, p.212-213.

work.

This interview material gained from first and second hand sources will establish whether or not Sechelt is the result of a 'policy window' that occurred in the bureaucratic processes surrounding the Self-Government issue in D.I.A.N.D. To explore these issues and to generate some discussion around the possible hidden agenda (on the part of federal and provincial governments) concerning the Self-Government process in the 1980s, eight basic questions were asked of each of the interviewees. These questions were as follows:

- (i) During the course of negotiations was there a great difference between what the people of Sechelt wanted and what the federal/provincial governments offered?
- (ii) Why did the federal government go ahead with the Sechelt Agreement while other bands have made little progress?
- (iii) Was a twin track policy in effect to separate land claims from Self-Government, while showing bands there was something to be gained by signing?
- (iv) Did resources issues play any part in the negotiations and did the federal/provincial governments insist on keeping in its entirety the 1943 Mineral Resources Transfer Act with regard to Native communities as a condition for signing the Agreement, since it is mentioned twice?
- (v) Was the Sechelt Agreement ever considered framework legislation by either the federal or provincial government?
- (vi) Was Sechelt a watershed for the land claims/Self-

Government process, a one-time deal or is the notion of federal municipalities still a preferred option?

(vii) To your knowledge were/are the Sechelt's satisfied generally with the Agreement?

(viii) Does the Agreement accurately reflect what the federal/provincial governments wanted at the time?

CHAPTER SIX

THE PARTICIPANTS' PERSPECTIVES

ON THE

SECHELT SELF-GOVERNMENT NEGOTIATIONS

PART ONE: Federal Interviews

Eileen Overend, the regional coordinator for B.C. comprehensive claims, was interviewed twice. Overend hinted that during the eighties there had been a certain amount of internal dissent in D.I.A.N.D. in Ottawa and in the B.C. regional office as well regarding the direction in which the Ministry should have been moving on claims policy in P.C. She did not elaborate further, but stated categorically that there never had been any twin-tracks policy on the part of the federal government to decouple land claims from self-government issues or to offer one for the other. She declined to comment on the Sechelt negotiations themselves. Audrey Stewart the regional director of comprehensive claims in B.C. declined to comment on most of the questions asked feeling it was more the place of individuals such as Mike Feury, Mike Sakamoto and Fred Walchli to provide their input. Stewart too, however, was firm in denying the federal government ever had a

twin-track strategy regarding claims and self-government.

John Leslie, National Director for Treaty Claims and Historical Research, also felt there never had been a twin-track policy on the land claims/self-government issues. Leslie argued it had always been the reticence of B.C.'s successive Social Credit governments that created the enormous obstacles around the self-government process in B.C. He pointed out that D.I.A.N.D. had always hoped that comprehensive claims would be settled first, and then the self-government issue would take care of itself. Leslie did not comment directly on Sechelt, but did hint that D.I.A.N.D., under John Munro of the Liberals and David Crombie of the Conservatives, did experience great internal dissent both regionally and in Ottawa. Leslie did not name the issue nor the individuals involved, other than to say Fred Walchli, B.C.'s Regional Director at the time (1982-1984), had been forced out over this.

Dennis Madril a policy spokesperson on claims and self-government issues in B.C. felt that at one point a self-government-for-claims policy might have been considered but was quickly dropped in the face of the enormous push among Natives in B.C. to litigate their claims in the courts. Madril pointed out that the great

dissent occurring in D.I.A.N.D. at the time in B.C. involved factions with different Native client groups fighting over different ideas of where the Ministry should be going. Madril did not elaborate further other than to suggest this dissent may have cost Fred Walchli his job. Gary Shann, B.C.'s Regional Head of the Financial Unit of Comprehensive Claims, did not discuss any issues relating to claims or self-government policy and did not want to elaborate on issues pertaining to D.I.A.N.D.'s internal workings. Shann felt however that generally throughout the eighties the great issue he had been aware of regarding claims or self-government was a costing mechanism and funding protocols, otherwise it was felt issues would forever bog down as the three parties involved (the federal government, B.C., and Native bands) would forever argue over who was to pay compensation to whom for settlements.

Ian Potter, the Director General of Comprehensive Claims for B.C., would not address any of the issues but he did direct Doreen Mullins, current Regional Director of D.I.A.N.D. in B.C., to allow local employees to respond to these questions. Potter also felt that perhaps at one time there might have been an issue surrounding a trade-off of self-government for land claims but that this was quickly discarded in the early eighties and was never seriously

considered as a policy option. Gay Reardon, a senior negotiator of comprehensive claims (formally of the Nisga'a claim) out of the B.C. regional offices, also did not want to explore too deeply past policies or internal issues. She felt that there never was any stated link on the part of D.I.A.N.D. regarding land claims, self-government or any other process and simply pointed out that D.I.A.N.D. B.C. region would have been happy during the eighties with incremental progress on any issue, claims, self-government or otherwise.

Mike Feury, a senior negotiator of Comprehensive Claims (formally of the Nisga'a claim), when interviewed outlined what he felt were misunderstandings on the part of Natives and the general public regarding the British Columbia land claims and self-government processes. Feury pointed out that the notion of a twin-track policy to separate land claims from self-government or to offer one for the other is in itself erroneous. The idea throughout the eighties was to move incrementally on issues where progress was being made whatever they were, while at the same time keeping B.C. at arms length, so as not to create problems where there were none on the claims issue.

Feury pointed that throughout the eighties B.C.'s Social

Credit governments were loath to become involved in either the land claims or any self-government process. Feury also stated that most Natives and non-Natives read too much into self-government and land claims as these notions he feels have nothing whatsoever to do with the real problems facing Native people. The real issues, Feury felt, are socio-economic, and nothing is to be gained by instituting forms of co-sovereignty with the expensive duplication of public services that this would entail.

Vince Hart, a policy spokesperson for D.I.A.N.D. B.C. regional office also stated that, to his knowledge, there is no and were never any linkages between land claims policy and the self-government process in B.C. As far as rumored internal dissent on policy options surrounding these issues Hart did in fact point out that there had been a great deal of tension before and after the Sechelt Agreement and this had been within the region and had extended all the way up to the Deputy Minister of D.I.A.N.D. in Ottawa. Hart declined to specify the issues but did acknowledge that they had led to the ouster of Fred Walchli as B.C. Regional Head of D.I.A.N.D.

To deal directly with the notion that the Sechelt Self-Government Agreement was an anomaly stemming from the

opening of a 'policy window' it is necessary to examine the first hand view of Fred Walchli, Regional B.C. Head of D.I.A.N.D. (1982-1984) and Chairperson of the Sechelt Self-Government Steering Committee. When interviewed on the issues surrounding Sechelt, self-government and land claims in B.C. Fred Walchli said the following.

According to Walchli, Sechelt is partly rooted in the history of the aforementioned issues. Under the auspices of then Liberal Indian Affairs Minister John Munro in 1981-1982, there was a parliamentary committee mandated to discuss Indian self-government. The result was the Penner Report of 1983.¹⁹⁶ This resulted in Bill C-52 the Indian Self-Government bill which died on the parliamentary order paper in 1984 when the Liberals fell. According to Walchli, Sechelt had been sceptical of the extent of Bill C-52 support among other Native groups and had refused to support it. Walchli feels history has proved Sechelt right on this matter, and after Bill C-52 died Sechelt decided it was time to move on the issue themselves.

According to Walchli, from 1982-1986 there were horizontal

¹⁹⁶Keith Penner, Indian Self-Government in Canada. (Ottawa: Supply and Services, 1983).

and vertical splits in D.I.A.N.D. with the vertical split extending right up to the Deputy Minister level in Ottawa. At the time within the D.I.A.N.D. bureaucracy in Ottawa was utterly opposed to any band moving ahead of others on the self-government issue when a national policy was being developed. During the spring of 1983 John Munro met specifically with the Sechelt band on these issues, he was sympathetic according to Walchli but nothing had happened by the time the Liberal government fell in early 1984. Throughout this time period, according to Walchli, the split was worsening between Ottawa and the B.C. regional office on the self-government issue. Walchli stated that he personally was opposed to a national policy on self-government and was opposed to the then (unnamed) Deputy Minister who, according to Walchli, wished to use self-government as a sort of modified paternalism. Hence, the heart of the problem was the two different notions of what a local self-government agreement should contain. Under John Munro's tenure as Minister of Indian Affairs (82-84) these issues were not resolved, and tensions grew.

Stan Dixon, then (1984) Chief of the Sechelt band, decided to force the issue and in the summer of 1984 presented the new Conservative Indian Affairs Minister David Crombie with a complete proposal. According to Walchli, Crombie readily

agreed to lobby for it in Cabinet. Walchli also claims that at the outset of negotiations in 1985, the Sechelts tried to involve B.C. but were rebuffed by the Social Credit government of Bill Bennett. At the same time a split had developed in the B.C. regional office within the self-government unit itself. Walchli stated that the split was between the financial unit and the rest of the regional office, but that the concerns were technical rather than philosophical, involving cost of negotiations and who would finance the result. Of note is Walchli's assertion that Crombie initially was deeply enthusiastic about Sechelt's proposal but did not know what he was really agreeing to as he originally didn't concern himself with the specifics of the proposal or investigate the profound split in his ministry. Later, Walchli hinted Crombie was not happy with the outcome of his acceptance of the Sechelt's proposal.

Walchli stated categorically that there never was or has been a twin track policy on the land claims self-government issues as the Assembly of First Nations (A.F.N.) has argued over the years.¹⁹⁷ This is because D.I.A.N.D. realized since the 1970s that Native groups will always see these

¹⁹⁷Double Speak of the 90s. Position Paper. (Ottawa: Assembly of First Nations, 1990). p 1- 35.

issues as one package. In fact Walchli asserts it was the Sechelt band itself who decoupled self-government from land claims in 1986 by agreeing to legislated self-government.

Walchli further asserts that the entire Ottawa office of D.I.A.N.D. was utterly opposed to the Sechelt Self-Government Agreement, but were told emphatically to get on side by David Crombie. Walchli went on to state that even Dr. Audrey Doerr, the Director General of the self-government and prime exponent of Indian Affairs national self-government policy was dead set against the Sechelt Agreement or in fact any band specific self-government model. Walchli asserts that throughout the talks Dr. Doerr was a major stumbling block, always raising numerous objections until she was told to get on side by the Minister. It is Walchli's considered opinion that in 1986 the political leadership of the day triumphed and that the Sechelt Agreement has more to do with this than any bureaucratic machinations.

Walchli also had some other interesting comments. Sechelt in the end of things Walchli feels is a triumph of political will on the part of the band and Minister David Crombie with the effective support and assistance of the Ministry of Justice. From 1982 to 1988 Walchli asserts the

Ottawa bureaucracy of D.I.A.N.D. was pushing hard for national legislation on self-government. After the failure of Bill C-52 1983/84, D.I.A.N.D. felt at the time it was faced with two choices. According to Walchli, D.I.A.N.D. at the time could have either continued to go with a national approach to self-government or switch to a band by band approach. Walchli also points out that there were other problems influencing D.I.A.N.D.'s thinking at the time. National Native organizations were mounting heavy lobbying pressure to entrench constitutionally (first ministers conferences (in '82, '83, '85, '89) Aboriginal rights to self-government.¹⁹⁸

Native groups, such as the National Indian Brotherhood (N.I.B.) and the A.F.N., appeared before the Parliamentary Standing Committee on Self-Government to oppose legislated Self-Government arrangements akin to the proposal for Sechelt.¹⁹⁹ Walchli points out that in the end the A.F.N. was so fiercely opposed to the Sechelt Agreement that not even a personal appearance before the committee by Sechelt

¹⁹⁸Canadian Arctic Resources Committee. Aboriginal Self-Government and Constitutional Reform. (Ottawa: C.A.R.C., 1988) p.1-25.

¹⁹⁹Ibid. p. 1 - 25.

Chief Stan Dixon could assuage their opposition in 1987.

It is clear from Walchli's account that notions of Aboriginal Self-Government were very much on the 'governmental agenda' as was outlined in the first chapter of this work. The report of the interview with Mike Sakamoto should also shed some light as to why band-specific legislated Self-Government went from the 'governmental agenda' to the 'decision agenda'. From Walchli it is evident that the movement came strictly from the 'political stream'. This was due to the fact that there was a change in the bureaucratic administration eg: a new Minister of Indian Affairs (David Crombie 1984), and there was a shift in the political ideology of the government from the Liberal party (pre 1984) to the Conservative party (post 1984). It may have even had something to do with a shift in the national mood regarding Native issues as argued by Mike Sakamoto later in this chapter.

Regardless of the root cause of the Sechelt proposal being elevated to the 'decision agenda' it is clear from Walchli's account that David Crombie became a dynamic 'policy entrepreneur' of paramount institutional importance as he sought to put his stamp on the ministry. Crombie, Walchli points out, was able to 'couple' a proposal, solu-

tion and a problem, from Kingdoms three 'policy streams' operating in and near government.²⁰⁰ That is to say, newly appointed Indian Affairs Minister David Crombie dipped into the problem stream, the political stream and the policy stream then used his entrepreneurship to sell cabinet on the Sechelt Self-Government proposal. It is now necessary to examine the opinions of the principal negotiator on the Sechelt Claim, Mike Sakamoto to judge whether Crombie truly opened a policy window.

According to Mike Sakamoto, the drive for Self-Government by the Sechelt First Nation preceded any Self-Government policy on the part of D.I.A.N.D. Mr. Sakamoto asserted that Sechelt's political agitation even preceded the establishment of D.I.A.N.D.'s Self-Government branch, which he inferred was set up primarily in response to Sechelt's demands. At that time (early 1980s) D.I.A.N.D. was going to attempt to create a new Indian Act, and Sakamoto further asserted that the federal government always had a twin-track policy of decoupling land claims from the constitutionally entrenched inherent right to self-government, but not for Machiavellian reasons. It was simply assumed

²⁰⁰John W. Kingdon, Agendas, Alternatives, and Public Policies. (Boston: Little, Brown & Co., 1989). Chapter 8.

that the issues were so contentious that wherever there was a breakthrough, policies could be adjusted accordingly. Mr. Sakamoto went on to point out that the Sechelt band always had been a maverick band, and this was partially due to their fortunate position as holders of valuable land.

At that time (1984) the Sechelt band, according to Sakamoto already had as much authority as could be given Indian bands under Sections 53 and 60 of the Indian Act. The band's greatest concern at the time was economic development versus the alienation of band lands.²⁰¹

John Munro, the Federal Minister of Indian Affairs in John Turner's short-lived Liberal government, tried to sponsor a private members' bill regarding Sechelt self-government. When the Conservatives, under Brian Mulroney, defeated the Liberals in 1984, David Crombie became Minister of Indian Affairs. The Sechelt band (according to Mike Sakamoto) simply gave David Crombie a complete and detailed proposal of exactly what they wanted. Crombie accepted it on the spot and offered to immediately take the proposal to

²⁰¹John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed) Aboriginal Peoples and Government Responsibility. (Ottawa: Carleton University Press, 1989.) p. 332.

cabinet. Thus, the Sechelt Act was purely a local initiative out of which grew notions of community-based Self-Government and attempts (federally) to take bands out of the Indian Act through new legislative arrangements.

At the same time nationally there was a constitutional conference (1982) on Aboriginal rights. Sechelt was seen to be going against the grain by other Native groups, and actually diminishing Native rights by accepting legislated Self-Government, and so there was a great amount of bad feelings against Sechelt.²⁰²

Many Native groups, such as the N.I.B. and the A.F.N., as well as the Union of B.C. Indian Chiefs, felt that Sechelt had deserted the side during the great battles for constitutional entrenchment of Aboriginal rights.²⁰³ Sakamoto speculated that perhaps this is where Sechelt's reputation as a federal stalking horse comes from. Sakamoto pointed out the key fact to remember is that it was Sechelt who approached the federal government, not the other way

²⁰²Saul Terry. Our Land Is Our Future. (Vancouver, The Union of B.C. Indian Chiefs, 1990.) p.1-15.

²⁰³Canadian Arctic Resources Committee. Aboriginal Self-Government and Constitutional Reform. (Ottawa: C.A.R.C., 1988) p.1-25.

around.

In a sense, Sechelt is perhaps an outgrowth of the Penner Report (1983) proposing Self-Government as a solution to the problems of many First Nations.²⁰⁴ According to Mike Sakamoto, the federal government wanted to entrench Aboriginal rights in the constitution, but they wanted to do other things as well. He felt it was important to remember the political climate of the time, when most of these issues created great controversy in British Columbia.

According to Sakamoto, D.I.A.N.D. was hoping to make the whole self-government process proposal-driven but, given the constitutional climate, no politician in the country (especially from B.C. or Quebec) wanted to empower Native groups to do things that were not clearly defined at law, as during the 80s there was a lot of litigation that was land-claims driven around resource projects in these provinces, (see Chapter 3 of this work). As far as community-driven proposals for self-government go, most bands are leery of the process, preferring not to get

²⁰⁴Keith Penner. The Penner Report. (Ottawa: The Ministry of Supply and Services, 1983.1).

tarred by the Sechelt brush.²⁰⁵ The exception is the Gitksan who have a twin-track policy of their own. On the one hand the Gitksan pursue local Self-Government initiatives based on their traditional tribal house system and, on the other hand, they are suing the federal and provincial governments for the right to administrate their traditional territories.

Most Natives, however, have thrown their support behind the Assembly of First Nations (A.F.N.) and their drive to entrench Aboriginal rights in the constitution. The province of British Columbia had chosen not to recognize many of these issues during the Bennett administration and was not interested in participating in Sechelt's negotiations with D.I.A.N.D. Sechelt preferred to pursue bilateral negotiations with the province after the federal government had fully accepted Sechelt's self-government proposals. According to Mike Sakamoto, Sechelt preferred to negotiate with the three existing levels of government on a completely separate basis. Hence, Sechelt alone managed the interfaces with the municipal (Sunshine Coast Regional District), provincial, and federal governments concerned;

²⁰⁵Saul Terry. Our Land Is Our Future. (Vancouver: Union of B.C. Indian Chiefs, 1988). p.1-15.

without the other parties being privy to any other stage of negotiations.

In essence then, any twin-track policy on land claims by the federal government was simply an outgrowth of the first minister's conferences on Aboriginal rights, and the entrenchment of Section 35 (Aboriginal rights) in the Constitution as the government sought to develop a national policy on self-government that would be acceptable to both the provinces and the Native groups.²⁰⁶

Generally, the Assembly of First Nations (A.F.N.), which mostly represents bands already under treaty protection, lobbies for greater Native rights. B.C. Natives are not under treaty, so their lobbying efforts tend to be treaty-driven. With regard to existing legislation concerning Native bands in the province of B.C. such as the Mineral Resources Transfer Act of 1943, Sakamoto asserted that there never was any interest on the part of any of the participants to negotiate other things. The 1943 Act governing resources was considered too tough, and too contentious, and would have forced province-wide negotiations with other bands. Sechelt wanted to achieve self-government

²⁰⁶Brian Schwartz. First Principles, Second Thoughts. (Montreal: The Institute for Research On Public Policy, 1986).

for themselves, but without regard to other bands so as not to prejudice their interests.

Sakamoto argued that during this time period (1978-1986) (the Bennett administration) the government of B.C. had no interest in Aboriginal affairs except in a reactive manner. It was felt that only the federal government had any fiduciary responsibilities to Natives. For instance, in 1986 there was no provincial bureaucracy to deal with Native affairs. There was just one individual who would advise any ministry concerned. Later the Social Credit government of the time under Premier Vander Zalm, had a micro perspective; there was no policy on self-government or anything else. The province would react to certain events, but nothing else.

Sakamoto argued that the Social Credit government of Bill Vander Zalm wanted no issue linkage and no precedent with regard to the Sechelt Indian Self-Government District Enabling Act. Cabinet was given the go-ahead to pass the Sechelt enabling legislation period. Sakamoto is hinting that Vander Zalm wanted no discussion and no bureaucratic machinery put in place -- rather he wanted to see how it would play politically with Natives and the public in B.C. Sakamoto feels that whether or not the Social Credit

cabinet had other perspectives on the issue is indeterminate, and will likely remain so.

According to Sakamoto, Sechelt played the political game perfectly. The band lobbied each level of government separately, and each in turn. In this fashion, when Sechelt sat down first with the Province, then with the Sunshine Coast Regional District, the agreement was already a done deal federally. In this fashion no opposition to the agreement ever materialized. Sechelt and the federal government felt the best way to success was to compartmentalize the negotiations in this fashion and there would be no issue linkages that would spark opposition to the agreement. It should be noted that Fred Walchli does not fully agree with this statement.

Issues like the Mineral Resources Transfer Act of 1943 would have been beyond the sphere of control of both Sechelt and the federal government. Other bands in B.C., and the province itself would have to have been included right from the start, resulting in lengthy, acrimonious and protracted negotiations. Sakamoto also pointed out that the Sechelt option was never one for other bands anywhere. At best, D.I.A.N.D. hoped to develop a range of models in association with the self-government branch of Indian

Affairs. All self-government agreements were supposed to have been community-driven right from the beginning. Sakamoto claims this was the philosophy of D.I.A.N.D. at the time. It is completely erroneous therefore, according to Mike Sakamoto, for other B.C. Native bands to accuse Sechelt of being a Trojan horse for the federal government.

Another piece of misinformation, according to Sakamoto, is the idea that Sechelt is a federal municipality. While it is true that Sechelt's powers flow from federal legislation, the band has power over education and child care, areas ordinary Canadian municipalities cannot be involved in, in the manner Sechelt is. That is to say, they cannot make decisions regarding health, education, welfare or land on a tribal or racially exclusionary basis.²⁰⁷ Hence, Sechelt is not the same as the three other levels of Canadian government. Each Self-Government agreement was supposed to fit exactly the community that originated it.

It should be understood right from the start Sakamoto feels that Sechelt was never meant to be framework legislation, a federal municipality, nor a watershed in land claims/self-

²⁰⁷Sechelt Indian Band Self-Government Act. (Ottawa: Statutes of Canada, Queens Printer, 1986). p.945-947, s.14.

government negotiations. It was a one-time deal and to a certain extent Fred Walchli's comments bear this out.

According to D.I.A.N.D. officials in the self-government branch, Sechelt seems to be satisfied with both the governing arrangements, joint ventures, and development projects engendered by the agreement. The federal government doesn't really know how Sechelt is doing economically as D.I.A.N.D. is out of the daily lives of the band. D.I.A.N.D. no longer approves any political or financial decisions made on Sechelt lands.

In the end, Sakamoto feels that what self-government really means is having control over your daily life and political problems. The chief and band council are now accountable to the people who elect them, not D.I.A.N.D. Mike Sakamoto claims this is what a good self-government arrangement should deliver.

Mr. Sakamoto concluded that we are living in an era that will be a harbinger of change in relations with Canada's First Nations people. There is a great groundswell of change which he feels is societally driven due to the fact that we are distanced from the sins of the past, meaning

non-Natives are now capable of looking objectively at their relationships with Native people and divorcing it from feelings of a paternal or racial nature.

Canadians can now look at the problems of Natives intellectually. Also of importance is the increasing political abilities of Aboriginal leaders. Sakamoto feels that it is important to remember that in B.C. for most people it is only the third generation of Natives and non-Natives who live together. Hence, a mutually satisfactory relationship is only now being worked out. Sakamoto theorizes that in Canadian society today there is a great upheaval in governing institutions that reflects the tensions and contradictions in our society. Perhaps new arrangements with Native peoples are a reflection of this groundswell of change, he feels.

Regardless of this, Sakamoto asserts that D.I.A.N.D. is now staffed with people who are knowledgeable, committed, and ready to change, rather than faceless bureaucrats trying to maintain a state of clientism towards Native people that caused so many of the social and economic problems faced by First Nations people today.

It is clear from the information rendered by both Mike

Sakamoto and Fred Walchli that the new Minister of Indian Affairs (1984) David Crombie found the sponsorship of the Sechelt self-government proposal politically expedient. It is also clear that band specific solutions to self-government was a notion that was floating in the policy stream in and around the government of the day. It seems clear as well from what Walchli and Sakamoto have stated that a change in administration and the arrival on the scene of a dynamic new minister (Crombie) acting as a 'policy entrepreneur' elevated band specific legislated self-government to the 'decision agenda' in the ministry because Crombie saw the opportunity to 'couple' a problem with a solution that would meet his own political needs. Although Sakamoto admitted this was speculation on his part.

Fred Walchli and others in the B.C. regional office mindful of the divergence of views on self-government within D.I.A.N.D. saw in Crombie's ascension an opportunity to have their own proposals accepted as solutions and elevated to the governments decision agenda. It is now necessary to examine why the 'policy window' closed, so that Sechelt became an anomaly and also why the Sechelt agreement did not generate any 'spillover' effects for any other related issues in D.I.A.N.D.'s decision agenda of the day. Interview material from those concerned but outside the Sechelt negotiations will now be examined.

CHAPTER SIX

THE PARTICIPANTS' PERSPECTIVES

ON THE

SECHELT SELF-GOVERNMENT NEGOTIATIONS

PART TWO: First Nations Interviews

Saul Terry who heads the Union of B.C. Indian Chiefs refused a personal interview however he did direct his deputy Dan Goodson (non-Native) to respond to some of these issues for him. According to Goodson, Chief Terry has sharply criticized the municipal type of arrangements governed by provincial legislation that make up the Sechelt Act. Terry feels that Sechelt cannot really be described as an ethnic local form of Aboriginal self-government with a high degree of autonomy as Taylor and Paget (1989) have described it.²⁰⁸ Goodson pointed out that Sechelt has valuable lands along the Sunshine Coast that are particularly suited for housing development as well as being home to many non-Natives. Chief Terry therefore questions who

²⁰⁸John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed:), Aboriginal Peoples and Politics. Ottawa: Carleton University Press, 1989).

the Sechelt Act serves. Goodson further argued that Sechelt's form of self-government with its linkages to the province and other municipalities has normalized fiscal and governmental relations between the province and the Sechelt band not as one sovereign government to another but as a lower level of government to a higher one.

Chief Terry is accusing the federal government of trying to terminate or municipalize Native self-government. Chief Terry euphemistically refers to legislated self-government as the 'buffalo jump' of the nineties whereby Native societies would extinguish their inherent rights to self-government in return for the provision of provincial public services.²⁰⁹ Terry feels this is an incremental strategy on the part of D.I.A.N.D. to erode Native rights in general and destroy their sovereign government to government relationship with the British Crown established by the Royal Proclamation of 1763. Goodson claims all the membership of the Union of B.C. Chiefs (approximately 147 bands) feels Ottawa does have a twin track policy to trade land claims for legislated self-government and that this was the case throughout the eighties up until the establishment of

²⁰⁹Saul Terry, Our Land is Our Future. (Vancouver: Union of B.C. Indian Chiefs, 1990). p. 1-15.

the B.C. Treaty Claims Commission in 1990.

Beryl Harris, spokesperson on comprehensive claims for the Aboriginal Council of British Columbia, did not want to comment on any issue that dealt specifically with Sechelt. Harris felt however that throughout the eighties whether Natives have been dealing with B.C. or Ottawa the problem has been in getting either of the two levels of government to recognize that Native people in B.C. have unextinguished Aboriginal rights concerning self-government, fishing and land that must be recognized irrespective of any legislated arrangements.

Rolland Pangowish, spokesperson on self-government and comprehensive claims for the Assembly of First Nations, stated emphatically that the A.F.N. is unhappy with the Sechelt Agreement and that this view is shared by the leadership and members alike. Pangowish feels that the only saving grace in regard to the Sechelt Agreement is that no other band became interested in commencing similar negotiations. He agreed with Beryl Harris of the Aboriginal Council of B.C. that throughout the eighties there were grave problems with Ottawa's approach to land claims and self-government. He felt it was reasonable to argue that the federal government would certainly have preferred to

trade legislated self-government for land claims during the 1980s.²¹⁰ Further, Pangowish argued that this was readily demonstrated by the federal government's various attempts to defeat through litigation (eg: Calder, Sparrow, Delgamuukw) along with the government of B.C. various questions concerning Aboriginal rights.

In the end, Pangowish wished the Sechelt band well but remained dubious about Ottawa's stated intentions concerning the B.C. Land Claims Treaty Commission. Pangowish stated flatly that Ottawa and B.C. must come to the table prepared to negotiate land claims and self-government as one package and on a nation to nation basis rather than have the courts decide on what Aboriginal title means in practical terms.

Herb George Hereditary Chief of the Gitksan Wet'Suwet'en nation in B.C. did not wish to comment on another Native (Sechelt) bands' business feeling each Native nation must take its own road. George agreed in substance with the comments of Beryl Harris (A.C.B.C.) and Rolland Pangowish (A.F.N.) that both Ottawa and the province of B.C. refuse

²¹⁰Double Speak of the 90's. Position Paper. (Ottawa: Assembly of First Nations, 1990). p. 1-35.

to take seriously the notion of an inherent right to self-government.

Leonard George, elected chief of the Burrard Indian Band also would not comment on any issues surrounding Sechelt feeling again that each Native nation must make its own decisions regarding self-government. He also however, articulated the sentiment that the inherent right to self-government was just that and could not be negotiated for other things or litigated in a court of law. George also felt it was both the government of B.C., and Ottawa's greatest mistake to refuse to recognize this.

Pat Berenger and Myrtle McKay, comprehensive claims researchers for the Musqueam band, felt that the question of unextinguished Aboriginal title in B.C. has never been attended to or even taken seriously by the province or Ottawa. Berenger and McKay were somewhat hopeful regarding the B.C. Treaty Commission but wanted to see some concrete results first. Neither women would comment on Sechelt, but did feel Ottawa had always had a twin track policy to uncouple the land claims self-government package that Native groups want but that this may be changing.

Rosilie Tizya, the person in charge of assisting Native

bands in B.C. prepare their comprehensive claim submissions to Ottawa, did not wish to discuss the Sechelt issue in depth, feeling it was perhaps not a good agreement for Natives in B.C. Tizya hinted that given the state of Native, non-Native relations in B.C. it is unlikely Sechelt set a precedent and even more unlikely that it would be repeated. With regard to the comprehensive claims/self-government issue Tizya felt Natives would have no choice but to pursue all avenues from litigation to direct action to get comprehensive claims and self-government to the negotiating table as one package.

In essence Tizya argues that Ottawa, and even B.C. under Premier Mike Harcourt, has still not acceded to the United Native Nations (U.N.N.)/A.F.N. point of view on the inherent right of self-government in their tribal territories. It would seem that at least part of the reason the 'policy window' closed for band-specific self-government legislation after the Sechelt Self-Government Agreement was due to the fierce resistance by Native groups documented here. This would also explain the lack of 'spillovers' on other issues surrounding self-government.

CHAPTER SIX

THE PARTICIPANTS' PERSPECTIVES

ON THE

SECHELT SELF-GOVERNMENT NEGOTIATIONS

PART THREE: Sechelt Interviews

Since it was the Sechelt Indian band themselves under the leadership of Chief Stan Dixon who brought their proposal to the attention of David Crombie in the first place, it is vital to understanding how the Sechelt Self-Government Agreement came into being, to examine the views of the three principle negotiators for the band. These views should also either support or negate the views of the federal participants thereby establishing whether or not Sechelt is an anomaly in the relationship between British Columbia and the provinces native communities. To begin this discussion, the views of Gordon Anderson, the band's financial advisor for twenty-five years will be examined; followed by Graham Allen, the band's long time legal consul; and, lastly, the perspective of Chief Stan Dixon, who was involved for seventeen years in the struggle for self-government in Sechelt, will be examined.

According to Gordon Anderson, the Sechelt band held an all-band assembly in 1983, and worked out a broad framework self-government proposal. They began to lobby the Minister of Indian Affairs, John Munro, to let them out of the Indian Act. When the Liberals fell, and David Crombie became the new Minister of Indian Affairs, Sechelt Chief Stanley Dixon again renewed the demand to be let out of the Indian Act. Crombie agreed and the Sechelt negotiators arrived at the table with a proposal (essentially the band's constitution) that was almost identical to what was agreed upon.

The original Sechelt proposal covered "600 specific concerns." Thus, external bilateral negotiations commenced between Sechelt and the federal government. The greatest concern on the part of Sechelt was to restrict negotiations to what the federal government was constitutionally mandated to deal with. Hence, Department of Justice lawyers were always present.

According to Anderson, the agreement needed about "fifteen re-drafts" so the Justice Department was satisfied that, constitutionally, there were no problems of jurisdiction or lack of authority. Also, according to Anderson, David Crombie was very supportive throughout the negotiations.

Anderson asserts there was never any ill will on the part of any of the participants and good progress was made all along. The only problem that arose was with the Federal Treasury Board, which the self-government branch of D.I.A.N.D. had to lobby on Sechelt's behalf. The Treasury Board was concerned that a self-government agreement could spawn a fiscal nightmare if many agreements were negotiated, and could drag the federal government into a taxation squabble with the provinces.

Anderson feels that at this time there was a split in D.I.A.N.D. One group led first by Munro, and later Crombie, wanted to follow the recommendations on self-government espoused by the Penner Committee (1983). Another group within the ministry wanted to maintain the paternalistic bureaucracy and a client style administration. So, Anderson argues, there were those in the federal government who had an interest in seeing Sechelt fail. Anderson believes that at the time, Sechelt was very much a watershed for this reason.

According to Anderson, there were "14 Justice Department lawyers negotiating various points concerning the land transfer." The government wanted a caveat concerning the inalienability of band land before they would transfer the

title in fee simple. The band wanted unencumbered title. Sechelt was able to overcome the Justice Department objections through the enshrinement of severe restrictions on land sales. Anderson asserts that Sechelt came out with all their major demands unaltered.

With regard to points of jurisdiction concerning both the federal and provincial government, lawyers for the three parties met to preempt any difficulties. Bilateral negotiations only began with the provincial Crown concerning taxation, land registration, and the structure of the Sechelt Indian Government District after the federal legislation was finalized and the Act passed. The provincial Crown in constitutional talks had always opposed self-government, but in this case there was no opposition, although Anderson did not fully explain why this was so.

Essentially, Anderson asserted the problem facing Sechelt was how to create and keep an Indian government that, for the purposes of economic development, would need to interface extensively with non-Indians. The solution was to create the Sechelt Indian Government District. B.C. agreed to vacate taxation and pass enabling legislation that allows Sechelt to function as a municipality, but without provincial interference, within the Indian Government

District on matters the band's Constitution is mandated to deal with.

An advisory council was also created as fifty percent of the Sechelt population is non-native. Election to the Advisory Council is open to anyone, the idea being non-Natives will accept an advisory role in place of their loss of political franchise. Election to the Chief's office and band council is for Natives only, and only Natives can vote. This is to ensure that an ethnic native self-governing body administrates the Sechelt Indian Government District, a homeland in essence. The Chief and Council then become the head of the Sechelt Indian Government District.

According to Anderson, the Advisory Council was actually created at the request of Sechelt to defuse non-Native opposition to the fact that non-Natives were being politically disenfranchised on Sechelt lands and suffering taxation without representation. Oddly enough, Anderson asserts that the principal Social Credit politicians concerned, Premier William Vander Zalm, Attorney General Brian Smith, and former Attorney General Allan Williams were unconcerned about this reality, and maintained good relations with the band.

In essence then, Anderson feels that on Sechelt there is participatory democracy for Natives and somewhat less so for non-Natives. Sechelt does however, for all practical purposes, function very much like an ordinary B.C. municipality, despite the special ethnic nature of its governing body. The band council. Sechelt has the same tax assessment as any B.C. municipality, plus the same home-owner's grant, as well as having lands held in fee simple, registered under the Land Titles Act.

Mr. Anderson was very forthcoming on some of the philosophical issues surrounding Sechelt. He explains, most people are happy to be out from under the Indian Act, as they always felt stymied by faceless bureaucrats. Expectations on economic development rise with the responsibilities that come with self-government. There is very good and enthusiastic participation in band meetings and, despite conflicts, people feel more in control of their lives. Mr. Anderson, (a non-native) feels that there is movement in this country sponsored by white academics, lawyers, the constitutional industry (meaning the plethora of constitutional conferences in the last ten years), and people making money off Natives, telling people (Natives) to go beyond what they can accomplish, goals which have no foundation in reality. In other words, Anderson is hinting

that a homeland hinterland strategy is unworkable, and that managed integration models akin to Sechelt point the way.

Sechelt, Mr. Anderson feels, is reality. Anderson claimed to be tired of the horror stories concerning Natives and felt it was time to put aside the constitutional crusade and return to the grass roots community perspective to improve life for the average native. The great achievement of Sechelt is that it gives responsibility back to the people.

Mr. Anderson had some interesting information to offer on the 1943 Mineral Resources Transfer Act. Anderson claims that prior to the Sechelt self-government negotiations, B.C. offered to drop the Act and that it was Allan Williams of the Social Credit party who instigated the talks. Anderson further alleged that nine years ago, British Columbia wanted to begin negotiations to rescind the 1943 Agreement, but Ottawa was not interested. Anderson claims the federal bureaucrat charged with the Act's administration did not want to deal with it as he was close to retirement. This seems to be hearsay, but Anderson was adamant on this point.

Anderson points out that Sechelt has requested that the Act

be removed in its land claim and asserts there will be no sub-surface mineral development until this occurs. However, obviously, past and present B.C. governments would not drop the 1943 Act if it became a part of land claims without a mechanism to resolve disputes, already in place, as Mark Stevenson suggested. For Gordon Anderson it was B.C., rather than the federal government, who never wanted land claims and self-government linked.

Mr. Anderson pointed out that right from day one, Sechelt has always offered to protect and compensate third-party interests through full and frank negotiation. Anderson does not believe that many policies stemming from Aboriginal issues have changed under the new N.D.P. government. In fact, Anderson argues that the N.D.P. Aboriginal policy is very similar to Social Credit policy, in that they do not wish to negotiate land claims at all because the government does not know what it will cost. There is some evidence both for and against this, as the N.D.P. originally ordered its lawyers to fight the Gitksan appeal in the B.C. Court of Appeals, but also produced the Task Force on Native Claims (1991), which suggested the time had come to negotiate claims.

According to Anderson, what the present and past govern-

ments have wanted in B.C. is for the federal government to establish a treaty claims process that will pacify Natives, while dragging the issue out over many years while objectives and mechanisms are established. Since the signing of a Memorandum of Understanding between British Columbia and Ottawa regarding costs under the Treaty Commission, it would seem Anderson's views are stuck in history.²¹¹ That is to say Andersons arguments had some merit, but it appears the N.D.P., under Mike Harcourt, will be negotiating land claims/self-government questions in the near future. Mr. Anderson was wary of delving too much into dissent with the Agreement on Sechelt, or even attaching that much importance to it. He feels that, among young people, the tension engendered by the agreement reflects the great dichotomy in any native community, how to restore what has been lost, but be part of the modern world at the same time. It is impossible to turn the clock back, Anderson feels, but the band must develop economically so there is no choice but to integrate.

Anderson feels the band members realize this and that self-government means dealing with this dichotomy. The

²¹¹Memorandum of Understanding. News Release. Ottawa: Department of Indian Affairs, June 21, 1993.

right to dissent in any society is natural and comes from human nature. Hence, in Sechelt, after 125 years of being treated as second order citizens, Anderson feels the people of Sechelt are beginning a healing process, and preparing to establish relationships with the world they are a part of.

It would appear that Anderson has advised the Sechelt band that this agreement is as good a trade-off between ethnic Indian government and economic development as they are likely to get. Anderson was an important figure in the negotiations, given his long relationship with the band, and given his stated like and respect for the Social Credit administration, it seems there is some convergence of his views with those of certain Social Credit politicians such as Premier Vander Zalm, Brian Smith, and Allan Williams.

For Graham Allen, the Sechelt band's long-time legal counsel, the key to the successful negotiation of the Sechelt Self-Government Agreement was the relationship that the band developed with David Crombie, the Minister of Indian Affairs in 1984. Allen asserts that Sechelt Chief Stan Dixon went for a drive in the rain with Crombie in the spring of 1984, gave him the Sechelt proposal and Crombie immediately agreed to it. Allen also feels that the deal is

a personal testament to David Crombie's political lobbying skills and personal dedication. Allen also feels that Dr. Audrey Doerr was a great asset to the talks, always interested, always enthusiastic and certainly on side.

Allen's account on this point is in direct conflict with Fred Walchli's remembrance of the negotiations. According to Allen, Chief Stan Dixon was also instrumental in the success of the negotiations. Dixon had, along with former Chief Clarence Joe, persisted in fighting for self-government since 1969. Allen argues the Sechelt's have always demanded the right to self-government and the right to own their own land.

Allen also states categorically that in the eighteen years of his involvement with the band, it (the Sechelt Agreement) comes down to a good combination of circumstances and individuals such as Stan Dixon and Gordon Anderson who lobbied D.I.A.N.D. right from the start. Allen points out that certain Aboriginal rights were entrenched in the Constitution Act of 1982 and in practical terms he argues this has led to nothing.

After 1978 Sechelt as a band decided that if need be they would move by themselves, without waiting for other native

groups. In 1983 Sechelt representatives met with the Penner Committee and demanded both entrenched and legislated self-government. Allen claims Penner agreed. Allen asserts that Sechelt always had a great relationship with the province and he pointed out that Stan Dixon himself is a member of Social Credit.

Allen further argues that in his opinion there will be no repeat of self-government models based on Sechelt. He also feels the Section 35 Aboriginal rights clause in the Constitution of Canada bodes nothing for self-government nationally. In the end, Allen feels the Sechelt Self-Government Agreement was a practical agreement that was community driven and, hence, already part of existing realities.

Allen also points out the Sechelt Self-Government Agreement was part of a grander plan that includes Sechelt's land claim which proposes a fifty-fifty split on resource royalties with the province. While Allen characterizes Sechelt's relationships with Attorney General Brian Smith and Minister of Native Affairs Jack Weisgerber as having been excellent, he did feel that throughout the eighties the Social Credit party was diametrically opposed to Aboriginal title questions. In fact, it is Graham Allen's opinion that Premier Vander Zalm was ousted because he agreed to negotiate land claims in 1990, Allen also

questions the N.D.P.'s commitment to negotiating claims, however, and points out that despite the signing of a cost-sharing agreement on claims by Andrew Petter, B.C.'s Aboriginal Affairs Minister and Tom Siddon, Federal Minister of Indian Affairs and despite the acceptance of the Treaty Commission's findings by the N.D.P., the province has withdrawn from all specific claim negotiations.

Allen, who is a member of the N.D.P., claims that the government is attempting an exercise in public relations by seeming to go along with negotiations. However the N.D.P., Allen claims, is afraid of public opinion and afraid of the unknown cost of claims. Allen suggests that the N.D.P. strategy is to wait for a second term before moving on these issues. However, he offered no further corroborating evidence. He then stated he has given up his party card (N.D.P.) because of what he believes the present (Harcourt) government is doing.

Allen still has some complaints regarding the Federal Government. He claims the Ministry of Fisheries and Oceans has intervened in Sechelt's "Marina Condominium Project" under certain environmental statutes. He feels that questions of paternalism over native sovereignty are still

involved. In sum, Allen agrees with John Taylor (who negotiated the Sechelt Indian Government District Enabling Act along with Ruth Montgomery) that Sechelt is a third order of government and that the band has gone as far as they can²¹² Allen argues that the crux of the agreement is the band's capacity to take title to their land in fee simple. He pointed out that this was the major sticking point in negotiations with the Federal Justice Department lawyers, who insisted that the band would lose their lands.

Sechelt hired Douglas Saunders of the University of British Columbia's Law School to give a seminar to the Federal Government on why Indians could take title to their land in fee simple and the Ministry acquiesced to his arguments. Allen never had any fear the talks would fail. The only other problem that occurred was when Social Credit Attorney General Brian Smith demanded a solution to the fact that non-native residents of the Sechelt Indian Government District were deprived of the opportunity to vote or run for the two principle bodies of government (Band and District Council) in the community. Allen claims that Smith

²¹²John P. Taylor and Gary Paget, Federal/Provincial Responsibility and the Sechelt, in David C. Hawkes (ed.) Aboriginal Peoples and Government Responsibility (Ottawa: Carleton University Press, 1989) p.342

suggested the Advisory Council as a solution to his concerns. In sum, Allen feels the Sechelt Self-Government Agreement perfectly reflects the desires of the whole community.

To return briefly to the methodology being used to discuss the Sechelt Self-Government Agreement, it is necessary to sum up how all the participants discussed feel about the person who this work has labelled as a 'policy entrepreneur' (David Crombie). Graham Allen thought well of both David Crombie and Dr. Audrey Doerr. Fred Walchli claimed Crombie was enthusiastic at the start, then not at all during the negotiations. He felt Audrey Doerr was a major stumbling block. Graham Allen was also positive about all the provincial politicians and bureaucrats he dealt with. Mike Sakamoto thought Crombie a good Minister and felt the band had excellent leadership. Gordon Anderson thought Crombie was a good Minister, yet accused the Federal Government of 'foot-dragging' during the Sechelt talks. He thought the Social Credit leadership excellent, however. In sum, it appears that without David Crombie's leadership the Sechelt negotiations would have failed for lack of a stable coalition, as all of the participants in the process had interests that, if not divergent, were certainly conflicting.

To gain additional insight, however, into what Sechelt wanted from the negotiations and what they got, this work will now examine the views of former Chief Stan Dixon who led the band throughout the negotiations. The current Chief of Sechelt, Gary Feschuk, declined to comment on the negotiations, the results, or the state of affairs today, rather delegating any responses to Gordon Anderson. Chief Dixon feels David Crombie did a good job but was probably more interested in his own political gain than the self-government issue. All things considered, Chief Dixon felt both sets of negotiations went very smoothly. Dixon feels the most important gains in the Agreement come with Section 4 of the Sechelt Indian Government District Enabling Act, whereby B.C. gives over its taxing power on non-native leaseholds to Sechelt.²¹³ Chief Dixon feels this is a paper gain which might lead to substantial economic development although he says this has not yet happened.

In essence then, Dixon feels the most important elements of the Agreement are the title to land in fee simple plus the option to negotiate with B.C. on a bilateral basis without D.I.A.N.D. The province at the time (1986), Dixon states,

²¹³Sechelt Indian Government district Enabling Act. (Victoria: Government of British Columbia, 1987). Section 4.

was very receptive to these ideas.

As far as the Federal Government having a hidden agenda on self-government, Dixon feels there always was a twin track policy of trading forms of self-government for land claims. He did not speculate if this applied to Sechelt or if he felt that B.C. had been involved in this supposed policy. Chief Dixon did not state if he was, or is, a member of Social Credit, but rather that the party always had an attitude problem regarding native issues. He states that despite this he was able to personally convince Premier Vander Zalm of the worth of his proposals and that Vander Zalm went on to completely change his mind about native issues after he received the report on claims/self-government from his Native Advisory Council (1990). Dixon also speculated that this change of heart did not reflect the opinions of Social Credit and may have contributed to his being ousted. With regard to the newly elected N.D.P. Government (1992) of Mike Harcourt, Dixon feels that the party is dubious about land claims and the withdrawal from negotiating specific claims is strategic to prolong the process until some end cost is known.

Natives, Chief Dixon argues, did not like the Neilson Report (1985) feeling that federally mandated notions of

self-government were being rammed down Native throats and that D.I.A.N.D. was deliberately trying to erode Aboriginal rights through legislated self-government as opposed to the constitutionally entrenched inherent right to self-government. He also pointed out that previous to the Sechelt Self-Government Agreement being signed the band was bankrupt from 1981-83.

Despite his mistrust of the Federal Government he felt legislated self-government is better than nothing. Chief Dixon pointed out that Ovide Mercredi staked everything on the Charlottetown Accord (which Dixon feels was a strategic mistake) and lost some political momentum when the referendum was defeated (1992). Chief Dixon argues if self-government is an inherent right you should not subject it to a referendum.

As for the Sechelt model of self-government, Chief Dixon feels it is good and very workable but the principles have yet to be applied. He argues that the Indian Act is a jail and that there are 595 other bands in jail, Sechelt Chief Dixon says these bands are free to leave but don't want to go. Culture, the Chief states, can only survive on a full stomach. Dixon argues similarly to Gordon Anderson that Natives and their affairs remain an industry to

non-Natives. He feels that joint ventures such as Sechelt's marina and condominium project are bad ideas since the native end of the partnership gives up the land and will be stuck with the debts if the project is not marketable. In Chief Dixon's words, Sechelt's self-government arrangements have led to them getting hoodwinked by unscrupulous non-Native land developers and businessmen. Chief Dixon states categorically that Sechelt is buying into poverty as they have only gained title to 75 acres in an area with 23,000 non-Natives living on it. How, the Chief wonders, can you generate fair joint ventures when the balance is so weighted against Sechelt?

Regardless of his bitterness, former Chief Dixon asserts that the Sechelt Self-Government Agreement is still workable as legislatively both the Federal and Provincial Governments are mandated by the two Acts to continue funding certain programs such as health, education and welfare. The key, Dixon feels, is in the non-native leaseholds who are not being made to pay fair market value for what they use. If this was not the case, Dixon feels, Sechelt would be self-financing. In the end of things, Chief Dixon feels Sechelt was a good agreement but Natives did not adapt because they are still psychologically living in a welfare state of mind, brought about by the enforced paternalism of

D.I.A.N.D. Sechelt, Dixon feels, remains trapped in a welfare culture while the Sechelt Self-Government Agreement demands an entrepreneurial spirit.

Chief Dixon was heartened by the resolution of the funding differences between Ottawa and B.C. that were holding up the final stages of the Treaty Commission before active negotiations can take place. Chief Dixon also feels that of late environmentalists have been using Natives as a political vehicle and that this is quite improper as the interests of the two groups do not really coincide. The welfare system is what has done the most harm to native people, former Chief Dixon argues, and he had hoped that the Sechelt Self-Government Agreement was a start to undoing some of that harm.

CHAPTER SIX

THE PARTICIPANTS' PERSPECTIVES

ON THE

SECHELT SELF-GOVERNMENT NEGOTIATIONS

PART FOUR: Provincial Interviews

At this juncture it is necessary to examine the provincial perspective on the Sechelt self-government issue. The two principle provincial negotiators, John Taylor and Ruth Montgomery, were not available to be contacted. However, Taylor has been cited extensively. At the time of writing Eric Denhoff, the former Deputy Attorney General at the time (1986) of the Sechelt Agreement, had not yet decided upon his contribution to this work. The B.C. Ministry of Aboriginal Affairs gave permission to the following three individuals to respond to the issues surrounding Sechelt self-government: Mark Stevenson, chief negotiator and spokesperson on Sechelt and resource sharing agreements with Aboriginal Affairs; Kelly Anne Speck, the former Director of the B.C. Self-Government Unit of Aboriginal Affairs after the Sechelt Agreement; and Gina Delamari, who was also recently a Director of the Self-Government Unit of Aboriginal Affairs. These individuals, although not at the

table in 1986, shed some light on the proceedings and the aftermath of negotiations.

Mark Stevenson argues that the Sechelt Agreement is actually part of a self-government project that has two stages. Firstly, there is the Sechelt Agreement that establishes a political regime, and secondly, there is Sechelt's comprehensive land claim to expand and solidify Sechelt's land base and finance their First Nations government. Stevenson claims the basic issue for Sechelt was always one of governance, and that they had always wanted out of the Indian Act and felt that their failure to develop economically was the fault of Indian Affairs in Ottawa. Stevenson argues that it is the municipal nature of Sechelt's governing arrangements that has allowed them freedom from the authority of D.I.A.N.D.

Stevenson has a certain amount of mixed feelings for the Sechelt band. On the one hand, he says that they have a special relationship with B.C. through the Sechelt Indian Government Enabling Act (B.C.), as well as having the most advanced comprehensive claim proposal, but this does not mean this relationship will lead to more gains for the Sechelt band in any future negotiations with British Columbia. Stevenson states that as far as the Treaty

Commission goes, Sechelt will be first out of the starting blocks even though the Sehelts have never expressed that much faith in it to him. Sechelt, Stevenson says, has always wanted to go their own way irrespective of other bands.

The problem with Sechelt as things now stand, Stevenson asserts, is that contained in its comprehensive claims proposal to British Columbia is a 50/50 split resource revenue sharing claims proposal.²¹⁴ While Stevenson asserts that the Ministry is sympathetic to these arguments the problem is firstly that Sechelt wants a split of gross revenue from stumpage, not net revenue, which he feels is not feasible. The second problem is that Sechelt does not necessarily want to go through the Treaty Commission as it could take years to resolve its claim.

Further, Stevenson argues that in the case of forestry, of which there is some marketable timber on Sechelt lands, if all the stumpage revenue B.C. receives yearly is counted the amount averages around \$1 billion a year, but the net

²¹⁴Graham Allen and Robert C. Strother, Aboriginal Law (Vancouver: Legal Education Society of B.C., 1990) p.3.1.07-3.1.27

figure is much smaller.²¹⁵ Stevenson argues therefore that the Sechelt efforts to finance self-government through land claims are laudable but misguided. So, in essence, despite the Sechelt Self-Government Enabling Act, there is a divergence in view between B.C. and Sechelt involving both policy and process. According to Stevenson, this began right after Premier Vander Zalm inaugurated the Treaty Commission in 1990. Aboriginal Affairs feels now and at the time (1986) that this is and was the way to go to avoid problems. According to Stevenson, Sechelt strongly disagrees, but he is ready any time to sit down with Sechelt on any issue they care to discuss.

As far as the Sechelt Self-Government Agreement itself, B.C., Stevenson maintains, has no view except to say that it is a good agreement and very underrated. Even with the Federal/Provincial Treaty Claims Commission, Stevenson hints, Natives might not get any more powers. The problems he feels is Natives' lingering fear of legislated self-government eroding Aboriginal rights.²¹⁶ Stevenson also

²¹⁵Price-Waterhouse. The Forest Industry in B.C. (Vancouver: Price-Waterhouse, Vols. 1986/7/8/9 et al.) p.2-15

²¹⁶Saul Terry. Our Land is Our Future (Vancouver: Union of B.C. Indian Chiefs, 1990) p.1-15

hints that the general view at the Ministry of Aboriginal Affairs is that local governance arrangements or local government boards in regional or municipal government models have a lot to offer. Sechelt is not such a model for others, he states, but it could be. So, in essence, Stevenson feels there is no single model for Indian government being planned in B.C. There will probably be a variety of models but it is difficult to say as there is no finalized process to achieve these ends. The Treaty Commission (1993) has not dealt with these matters yet, Stevenson points out.

Mark Stevenson emphatically stated that Sechelt was a 'one off' agreement and that this process was not likely to be repeated. So in essence, while Sechelt does in one way represent an end of the past, it is also an anomaly. B.C., he claims, under the auspices of the Treaty Commission, is now ready under a new N.D.P. Government to accept Natives' inherent right to self-government plus a separate land claims process. In other words, Stevenson hinted that indeed there had been a twin-track policy of exchanging land claims for self-government, both federally and provincially. But with the advent of the Treaty Commission (1990) this was finished.

Stevenson felt that it was premature to discuss the Mineral Resource Transfer Act of 1943 contained in sections 24 and 39 of the Sechelt Indian Band Self-Government Act.²¹⁷ He felt that eventually everything would be on the negotiating table as soon as the proper negotiating mechanisms have been put in place by the Federal/Provincial Land Claims Treaty Commission. Stevenson hinted, there is a lot to be dealt with and incremental progress on a co-management agreement, rather than broad-based land claims, are more likely the way of the future. When questioned on these issues Gina Delamari, the former Director of the Self-Government Unit within B.C.'s Ministry of Aboriginal Affairs, had nothing further to say on any of these issues, preferring to let Mark Stevenson outline the B.C. Government's current positions.

Kelly Anne Speck, who was Director of the B.C. Ministry of Aboriginal Affairs Self-Government Unit after the Sechelt negotiations (1987-89), had some views of her own on issues surrounding the Sechelt Self-Government Agreement, but tended to support the comments of Mark Stevenson. Speck feels in reality the whole Sechelt self-government process

²¹⁷Sechelt Indian Band Self-Government Act. (Ottawa: States of Canada, Queens Printer, 1986) p.949,953, 2.24, 39

was band directed and internal rather than externally directed. B.C. had nothing to do with these processes. The goal of Sechelt was to develop (in 1986) a working relationship with the Province that would allow them to develop economically. After the Sechelt Agreement was signed, B.C. disinterested itself and Sechelt was on its own. The only concern B.C. had at the time was that the Sechelt Indian Government District Advisory Council was functioning well.²¹⁸ That is to say that the Advisory Council was mandated to address the concerns of non-Natives disenfranchised from the Sechelt Band Council and B.C. wanted to ensure it worked. Any other contact was initiated by the Sechelts themselves.

Speck feels that Sechelt was representative of a policy window that opened because of the failure to entrench the inherent right to self-government in the constitutional process of 1982/83.²¹⁹ Speck argues that essentially Sechelt stands alone but the 'Enabling Act' process could be made available to other bands. Speck asserts there was

²¹⁸Sechelt Indian Government District Enabling Act, (Victoria: Government of B.C., 1987) S.2(2). p.1-2.

²¹⁹Brian Schwartz. First Principles, Second Thoughts. (Montreal: The Institute for Research on Public Policy, 1989) Chpt.5.

never, up until the Treaty Commission (1993), any provincial policy on self-government and even now it will only truly evolve with the Commission. Speck further asserts that this is proved by Sechelt being an anomaly among all the other bands in B.C. who have no relationship with the Province. Up until now (1993), Speck states, self-government has not been a policy priority for the province.

The participants in the Sechelt self-government process seem very much in accord on three major points. Firstly, the Sechelt Self-Government Agreement was an anomaly arising out of special circumstances, unlikely to be repeated. Secondly, the political leadership of David Crombie was paramount to the successful conclusion of negotiations. Lastly, the text of the Sechelt Self-Government Agreement was band directed with no Federal or Provincial initiative. It remains to sum up and link these notions in the concluding chapter of this work.

CHAPTER SEVEN

SECHELT -- WATERSHED OR WATER UNDER THE BRIDGE

From the interview material contained in the previous chapter several things have become clear. Firstly, band specific self-government was an alternative floating in the 'policy stream' in and around the Department of Indian Affairs in both Ottawa and British Columbia at the end of the 1980s. Up until 1985 within the D.I.A.N.D. national headquarters in Ottawa, it had not been the solution of choice in regard to the self-government question.

It is clear from evidence presented throughout this work that both bureaucrats and legislators, up until the mid-1980s, favoured a national policy on self-government. What elevated band specific solutions to the Government's 'decision agenda' was firstly a change in administration (from Trudeau's Liberals in 1984 to Mulroney's Conservatives in 1984), and the arrival on the scene of David Crombie a dynamic new Minister anxious to prove himself and commence a national political career. It is important to note both Mike Sakamoto and Fred Walchli have pointed out,

it was the newness of a minister with political capital to spend, rather than any minor change in the policy direction surrounding the self-government issue in D.I.A.N.D. at the time that fostered a successful conclusion to the Sechelt Self-Government negotiations. Crombie functioned as the 'policy entrepreneur' for the Sechelt's self-government proposal, building a coalition of some unlikely political partners such as the Sechelts themselves and the more traditional bureaucrats at D.I.A.N.D. Hence it was a coalition of fortuitous circumstances and individuals that created Sechelt rather than any preconceived plan on the part of Ottawa or B.C.

In summation, this work has demonstrated that there are three crucial realities to explain the signing of the Sechelt Self-Government Agreement. Firstly, the idea of 'band specific' self-government solutions were percolating up through the D.I.A.N.D. bureaucracy under the sponsorship of the B.C. Regional Director, Fred Walchli. Secondly, the change in administration resulting in an influx of new personnel to the Ministry -- specifically David Crombie, the new Minister of Indian Affairs. Lastly, the fact that David Crombie was successfully able to both lobby his Federal Cabinet colleagues while keeping his own bureaucratic personnel in line and effectively selling the

Sechelt's self-government proposal in and around Government.

In short, Crombie was the only individual among the parties involved who could have functioned as an effective 'policy entrepreneur' to couple both a problem and a solution regarding the Aboriginal self-government issue. The fact that the Sechelt Self-Government Agreement is an anomaly is testament to the fact that even with ministerial clout backing the initiative at the outset, there were no 'spill over' effects and no other takers among bands in B.C. or elsewhere.

It is also clear that Sechelt is an anomaly for those same reasons previously mentioned. From the interview material, especially that of Fred Walchli, it is clear that while the solution of band specific self-government was in the 'policy stream' in and around the ministry, the upper echelons of D.I.A.N.D. were hostile to it. That is clear from the accounts of both Fred Walchli and Gordon Anderson, one of Sechelt's principle negotiators. Hence there was definitely no initiatives to make Sechelt an example for other bands in B.C. or in fact in Canada. Despite the stated fears of groups such as the A.F.N. and the Union of B.C. Indian Chiefs, Ottawa would never have brooked the

outright hostility of these same groups towards legislated self-government despite the strong hints of how D.I.A.N.D. thought the self-government issue would play nationally (as per Bill C-52, of 1984).

Not enough credit is given to the Sechelt's themselves, as per the interview material, specifically that of Mike Sakamoto, the Federal Negotiator, who pointed out that in fact it was the Sechelt's who approached Ottawa with a complete proposal not the other way around. Also, with such divergent and often mutually hostile positions among all the interested parties, it required all the political capital of a new minister to bring the parties to the Sechelt negotiations to the table. As was demonstrated throughout the text heavy criticism of the Sechelt Self-Government Agreement was immediately launched among scholars and Native groups, after its successful conclusion.

The reason perhaps why scholars such as Bartlett (1990), Penner (1988) and Boldt and Long (1988), as well as the Assembly of First Nations (1987, 1989, 1990) and the Union of B.C. Indian Chiefs (1987, 1990) have lobbed such heavy criticism at the Sechelt Self-Government Act were worries over what it would become, not what it is. People such as

the Union of B.C. Indian Chiefs, head Saul Terry, have referred to the Sechelt Self-Government Agreement as a 'Federal Trojan Horse', or as the thin edge of a wedge driven between Natives and their sovereign relationship with the Crown.²²⁰ Sechelt, as this work has demonstrated, has little effect on any Aboriginal issues of any kind. There is a lack of federal superintendence on the part of Indian Affairs and at the same time an expanded relationship with the province of B.C., with regard to public works where before there was none. All of these new realities have amounted to very little given the contentious nature of notions of Aboriginal title and rights outlined in this work. Thus, it is clear that the Sechelt Self-Government Agreement has not led to either an erosion of an inherent aboriginal right to self-government nor created a solution to Ottawa's problems with the issue.

The crux of the issue for scholars such as Boldt and Long has been whether or not the Sechelts have actually achieved genuine First Nations government.²²¹ The basic argument

²²⁰Saul Terry, Our Land is Our Future. (Vancouver: The Union of B.C. Indian Chiefs, 1990) p.1-15.

²²¹Menno Boldt and Anthony J. Long in Governments in Conflict (Toronto: University of Toronto Press, 1988) p.38-56.

is that the Sechelts have not instituted a third order of government but rather have had a quasi-municipal status imposed by the federal government, effectively giving both the federal and provincial governments types of relations with Sechelt that they would not have had under the Indian Act. What is meant by this is that an institutional assimilation of the Sechelts has taken place whereby the province of B.C. is now providing services to Sechelt while at the same time receiving tax revenue from the band. Hence, having some say in how the band manages itself. From the Native perspective the argument runs that Ottawa no longer treats with Sechelt as one sovereign nation to another, but as a junior form of government. Hence, Sechelt can no longer claim a special relationship with the Crown and hope to maintain the inherent Aboriginal rights that flow from it. Obviously, as former Sechelt Chief Stan Dixon pointed out in this work, this has not happened. In point of fact, very little has happened. What this means is that legislatively Sechelt has done little (beyond instituting municipal taxation for services) to challenge or acknowledge the lack of both federal and provincial superintendence.

Evidence presented in Chapters Two and Three of the text suggested that with regard to issues of land claims and

self-government in B.C., key individuals both federally, provincially and in the forest industry would have preferred self-government models akin to Sechelt. It was also clear from the summary of court cases stemming from claims related and treaty driven, political activity by B.C. Native groups that neither the federal nor the provincial governments were likely to succeed in uncoupling land claims from self-government. Native groups feel that these issues are so deeply intertwined that they must be negotiated as one package.²²²

Sechelt has not amounted to a watershed in the history of Aboriginal politics as B.C. itself has shown little if any interest in pursuing this type of agreement. As Kelly Anne Speck, the former Director of the Self-Government Unit of Aboriginal Affairs, pointed out. Infrastructurally it seems that B.C. has not made vast inroads into the day-to-day administration of the band as Boldt and Long (1988) would have us believe. Rather, Sechelts' relationship with the Province has dealt with more mundane matters such as sewage and water treatment.²²³ It is clear that all the various

²²²Federal Government's Land Claims Process (Position Paper) (Ottawa: Assembly of First Nations, 1990). p.1-43.

²²³Gary P. Taylor and John Paget, Federal/Provincial Responsibility and the Sechelt, in David L. Hawkes (ed.) (Ottawa: Carleton University Press, 1989). p.333.

factions party to the Sechelt self-government debate expected more to result from the Sechelt Self-Government Agreement.

The previous notion that the Sechelt Self-Government Agreement boded greater things was true at the conclusion of the negotiations, but is not true today. Both the Minister of Indian Affairs, David Crombie, and the Sechelts themselves expected grander results from the Sechelt Self-Government Agreement. David Crombie assumed a successful agreement would result in a political windfall for himself and one for the Department as well, with other bands being attracted to the negotiating table. The Sechelt band had hoped that by leaving the Indian Act their new corporate status and enhanced relationship with B.C. would result in large-scale economic development. As Stan Dixon has pointed out, both these aspirations have gone badly astray.

After the agreement between the federal government and the Sechelt band was signed (1986), Crombie was greeted with approbation by many groups from the B.C. Native

Responsibility and the Sechelt, in David L. Hawkes (ed.) (Ottawa: Carleton University Press, 1989). p.333.

community.²²⁴ B.C. Native bands saw the Sechelt Self-Government Agreement, not as a way out of the Indian Act, but as a plot on the part of the federal and provincial governments to diffuse the land claims issue and erode Aboriginal rights at the same time.²²⁵ The Sechelts themselves, as Stan Dixon, Graham Allen and Gordon Anderson have pointed out in Chapter Five, have felt the heavy burden of added administrative responsibility rather than reaping any windfall profits from a new ability to manage non-Native leaseholds as the band sees fit.

It is clear that surrounding the Sechelt Self-Government Agreement in 1986, there were both grander hopes and grander fears, neither of which has materialized. Sechelt is an anomaly in Native/non-Native relations in British Columbia. It is neither a harbinger of things to come nor a legacy of things past. The political window of opportunity that opened for the Sechelt band did so for some very special reasons involving the political ability of certain key individuals like the federal Minister of Indian Affairs, David Crombie (1984-88) and the Sechelt Chief at

²²⁴Saul Terry. Our Land is Our Future. (Vancouver: Union of B.C. Indian Chiefs, 1990). p.1-15.

²²⁵Ibid. p. 1 - 15.

the time (1986), Stan Dixon. This 'policy window' could have led to what either certain federal and provincial bureaucrats hoped (a broad range of self-government models in exchange for land claims) or what the Assembly of First Nations feared (a total separation of the issue of the inherent right to self-government from the land claims issue).

These instances did not occur at all and the 'policy window' closed almost as rapidly as it opened on the alternative of band specific legislated self-government. This happened for two reasons. Firstly, there was intractable opposition from many Native groups such as the A.F.N., who wished to pursue the constitutional entrenchment of the inherent right to self-government. Secondly, there was instability within the bureaucratic coalition in D.I.A.N.D. brought together by David Crombie and his B.C. Regional Chief, Fred Walchli, on the Sechelt Self-Government Agreement and band-specific legislated self-government as a policy option. This is clear from the interview material as Fred Walchli and Stan Dixon have clearly stated that many Natives groups and civil servants in D.I.A.N.D. strongly pushed for the Sechelt Self-Government Negotiations to be terminated.

Sechelt is an anomaly, therefore, for several reasons. First, because originally the Sechelt's proposal was a community driven proposal that arrived in the 'policy stream' almost at the same times as the new Minister of Indian Affairs, David Crombie, began his administration. Secondly, Sechelt was alone among bands in B.C. in asking for delegated federal authority. Lastly, in terms of the D.I.A.N.D. national agenda, band specific self-government was not to be offered anywhere but B.C. where it was under consideration but against the wishes of the national administration.

Up until Crombie, band specific self-government was also against the wishes of the federal Liberal party, who were disappointed at the failure to entrench the Aboriginal right to self-government in the 1982 Constitution Act. This reality, coupled with the fall of the Liberals and the death on order paper of Bill C-52 (1984), the Indian Self-Government Bill left D.I.A.N.D. at loggerheads with itself on the self-government issue.

In terms of the Provincial point of view, this work has outlined both the political and legal history of Aboriginal title claims in B.C., and has demonstrated how the B.C. Government was actively litigating on questions of

Aboriginal title and rights, right up to the establishment of the Premier's Advisory Council on Native Rights by Premier Vander Zalm in 1989. During the first half of the 1980s there was no Ministry of Aboriginal Affairs to speak of and thus no official government line on Aboriginal issues other than the view that such issues were not the business of the province of B.C.²²⁶

Hence, there was no great momentum in 1986 among the Social Credit Party members to involve the government in matters which, at the time, were considered entirely the constitutional responsibility of the federal government. Sechelt, for Social Credit, was a happy accident and since, as Kelly Anne Speck and Mark Stevenson have argued, there was no bureaucratic machinery in place, nor desire to create another Sechelt Agreement, the Government of the day wished to leave things as they were, hoping any attraction would result by example rather than a campaign.

Sechelt is an anomaly. It is not a third order of government, nor is it quite a federal municipality. What this work has shown Sechelt to be is a form of Federally

²²⁶Paul Tennant. Aboriginal Peoples and Politics. (Vancouver: U.B.C. Press, 1990). Chapter 17.

mandated community-based self-government where political franchise is based on ethnicity. It has some aspects of governance such as the ability to pass laws regarding health, education and welfare that make it not dissimilar to a Swiss Canton which are small (or large) self-governing communities based on ethnicity, situated in a federal state (Switzerland). Sechelt's powers are not as extensive as that of a Canton, but the idea is similar.

Sechelt is First Nation government but of a very restricted nature, and as such it reflects neither the hopes nor the fears of B.C. and Canada's Native communities. The Sechelt Self-Government Agreement will also not be repeated as it was the result of unique political circumstances, not D.I.A.N.D. policies or processes, nor a political movement from Natives agitating for this kind of agreement. Sechelt is an anomaly.

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