

CONCEPTS PRESUPPOSED IN FIRST NATION LAW

1. ABORIGINAL RIGHTS (PRACTICE PRE-SOVEREIGNTY):

**ABORIGINAL TITLE (exclusive occupation at sovereignty)
LAND USE RIGHTS EG. HUNTING, FISHING ETC.
CUSTOMARY LAW
INHERENT RIGHT TO SELF-GOVERNMENT**

2. TREATY RIGHTS (REPLACE UNCERTAIN ABORIGINAL RIGHTS):

**TERMS OF THE TREATY: WRITTEN OR ORAL
ANNUITY PAYMENTS
RESERVE LANDS
SERVICES: HEALTH, EDUCATION, ETC.
HUNTING FISHING TRAPPING RIGHTS**

3. INDIAN ACT (REPLACED FOCUS ON TREATY AND ABORIGINAL RIGHTS):

**ADMINISTRATIVE DOCUMENT
REGULATES INDIANS AND RESERVE LAND
NOT AN INDIAN RIGHTS DOCUMENT
NOT AN INDIAN GOVERNMENT DOCUMENT**

4. FIRST NATION CONCEPTS ARE SUI GENERIS (UNIQUE)

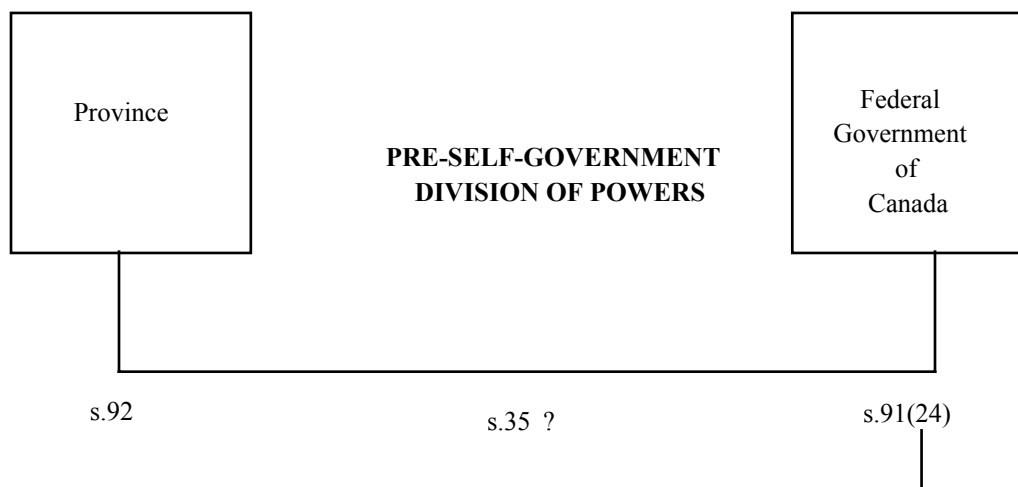
**FIDUCIARY RELATIONSHIP (CROWN/FIRST NATION RELATIONSHIP)
CROWN HAS DUTIES THAT STEMS FROM ABORIGINAL AND TREATY RIGHTS AND ROYAL PROCLAMATION, 1763**

INDIAN TREATY NOT A CONTRACT OR INTERNATIONAL TREATY

ABORIGINAL TITLE: NOT LEASEHOLD INTEREST OR FEE SIMPLE

GOVERNMENT NOT MUNICIPAL OR PROVINCIAL.

PRE-TREATY CONSTITUTIONAL RELATIONSHIP

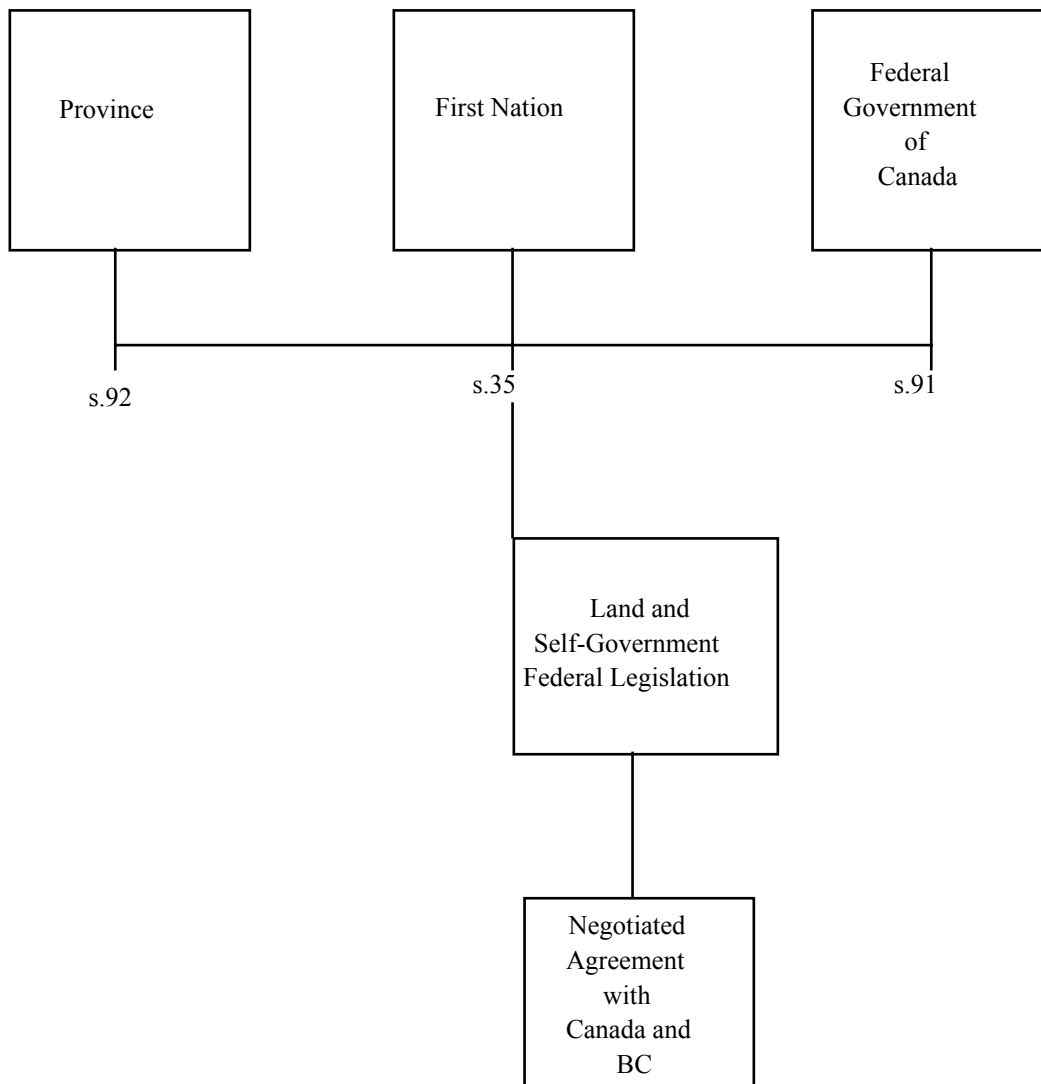


INDIAN ACT

- s. 2 Interpretation
- s. 3 Administration
- s. 4 Application of the Act
- ss. 5-16 Registration of Indians and Band Lists
- s. 17 New Bands
- ss. 18-19 Reserves
- ss. 20-29 Possession of Lands on Reserves
- ss. 30-31 Trespass
- ss. 32-33 Sale or Barter of Produce
- s. 34 Roads and Bridges
- s. 35 Appropriation of Reserve Land for Public Purposes
- s. 36 Special Reserves
- ss. 37-41 Surrender/Designation
- ss. 42-52 Descent of Property, Wills, Intestacy, Management of Estates and Guardianship
- s. 53-60 Management of Reserve, Designated and Surrendered Lands
- ss. 61-69 Management of Indian Moneys
- s. 70 Loans to Indians
- s. 71 Farms
- s. 72 Treaty Money
- s. 73 Regulations
- ss. 74-80 Election of Chief and Band Councillors
- ss. 81-86 By-Law Powers of Band Councils
- ss. 87/90 Tax Exemption
- s. 88 Provincial Jurisdiction and Legal Rights
- ss. 89/90 Exemption from Seizure
- ss. 101- 124 Administration of the Act and Miscellaneous Matters

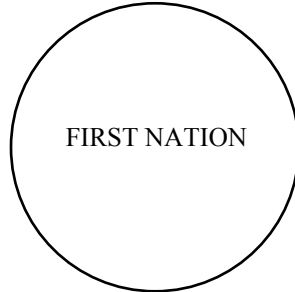
POST-TREATY CONSTITUTIONAL RELATIONSHIP

SELF-GOVERNMENT ALLOWS FOR A
THIRD ORDER OF GOVERNMENT
WITHIN THE CANADIAN CONSTITUTION

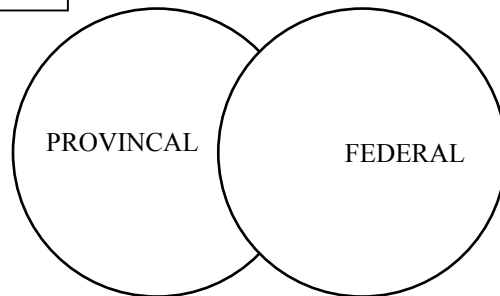


TREATY FIRST NATION HISTORY OF JURISDICTION

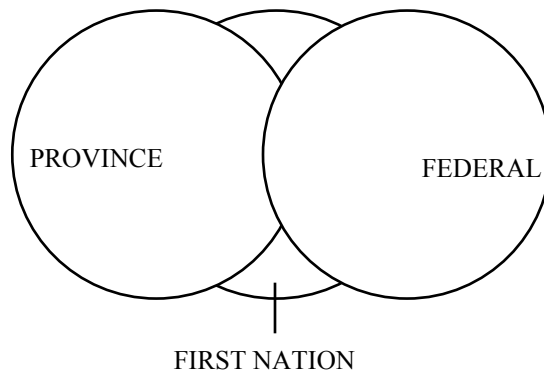
1. PRE-CONTACT



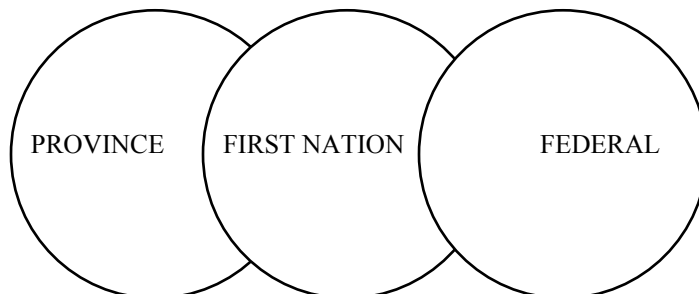
2. CONFEDERATION
1871 BC ONT



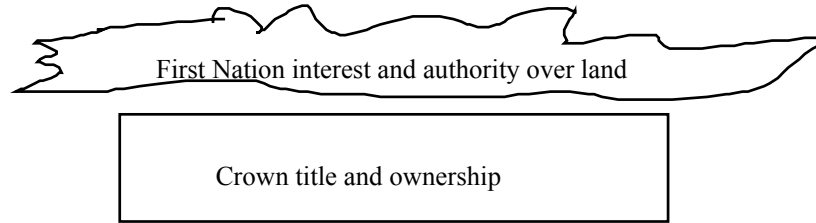
3. INDIAN ACT AND RESERVE



4. TREATY: SHARED LANDS, JURISDICTIONS AND RESOURCES

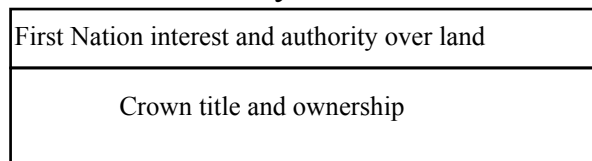


ABORIGINAL AND TREATY RIGHTS AND TREATY MAKING



The uncertainty regarding aboriginal title, rights and jurisdiction over traditional lands creates uncertainty as to the use of these lands.

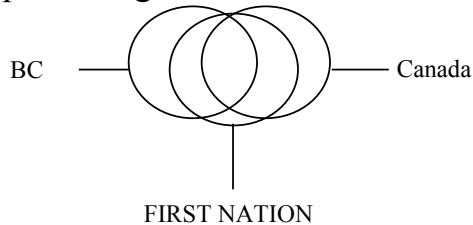
Treaty



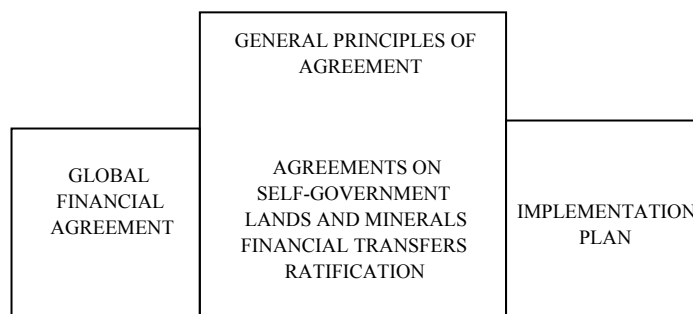
Certainty in treaty making involves four basic components:

1. recognition of each party's rights by all the parties to the treaty;
2. implementation or exercise of rights to lands and resources,
3. definition of rights and interest to lands and resources,
4. enforcement of rights and interest to lands and resources,

The Tripartite Agreement Process and Certainty



COMPONENTS OF SELF-GOVERNMENT AGREEMENT



**WHAT SOVEREIGNTY MEANS WITHIN THE CONTEXT OF
NEGOTIATING TREATIES IN BC**

**In-SHUCK-ch CANNOT REALISTICALLY THINK THAT IT CAN BE
INDEPENDENT OF BC OR CANADA**

**JUST AS CANADA IS BOUND BY INTERNATIONAL LAW AND BC IS BOUND
BY CANADIAN LAW IN-SHUCK-CH IS BOUND BY CANADIAN AND BC
LAWS**

**NO NATION IS SOVEREIGN IN THE SENSE OF BEING INDEPENDENT OF
OTHER GOVERNMENTS, EG. TREATIES**

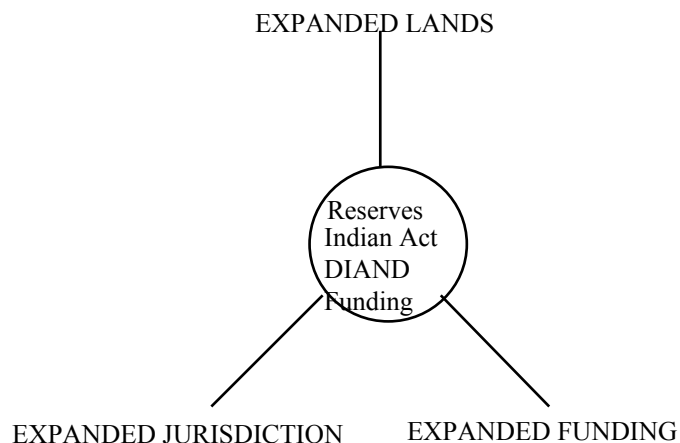
**DOING NOTHING AND RELIANCE ON THE COURTS IS NOT THE
STRATEGY TO USE FOR ACHIEVING SOVEREIGNTY**

**IN-SHUCK-CH HAS NO TIME TO WASTE AS ITS LANDS AND
JURISDICTIONS ARE BEING ALIENATED TO THIRD PARTIES**

GIVEN THE ABOVE

**WE CANNOT SET THE CLOCK BACK TO PRE-1492 BUT WE CAN ACHIEVE
SOVEREIGNTY WITHIN REASONABLE LIMITS**

**SOVEREIGNTY FOR In-SHUCK-ch MEANS NEGOTIATING AS MUCH LAND,
JURISDICTION AND TRANSFER MONEYS AS POSSIBLE**



THE BENEFITS OF TREATY

<p>Problems with the Reserve system, Indian Act administration and unclear aboriginal rights</p>	<p>In addition to the rights enjoyed by Canadian citizens and BC residents (eg. health, education, social services old age and EI benefits) First Nation citizens will enjoy Constitutionally Protected Treaty Rights. Indian Act replaced by the First Nation Act</p>
<p>1. Reserve Land Owned and managed by the Crown for the use and benefit of the First Nation</p>	<p>1. First Nation land First Nation owned/managed Land/Resources Treaty rights over the traditional territory. Increased amounts of land.</p>
<p>2. Indian Act First Nation Council Powers are delegated to the band council. Limited to ss. 81, 83 and 85.1 by-laws and some land management. All major decisions made by Minister. Accountable to the Minister. Less than a municipal government.</p>	<p>2. Treaty Government Legislative, executive and possibly judicial Increased jurisdictions and powers Accountable and Sovereign government -- Distinguished from municipal government.</p>
<p>3. Role off Reserve Unclear aboriginal rights to hunt, fish and gather, etc.</p>	<p>3. Role off-First Nation lands Clear rights re: fish wildlife, minerals, etc. Because of the effect on First Nation rights First Nation's tie to traditional land base is protected by having co-management.</p>
<p>4. Stewardship of Fish and Wildlife None</p>	<p>4. Stewardship Model re: fish, etc. First Nation's role beyond the management of the entitlement to enhancement and restoration.</p>
<p>5. Intergovernmental Relations None</p>	<p>5. Intergovernmental Relations First Nation and the Regional Districts have a framework for future relations.</p>
<p>6. Water No special rights outside of Water Act licenses</p>	<p>6. Water Reservations of domestic, commercial, hydro.</p>
<p>7. Service Delivery to First Nation citizens off-First Nation Land None</p>	<p>7. Service Delivery to First Nation citizens off-First Nation Land The delivery of services under First Nation jurisdiction will be extended to First Nation citizens live off-First Nation lands so that all citizens have treaty benefits; eg. health, etc.</p>
<p>8. Housing and infrastructure Limited to formula funding</p>	<p>8. Housing and infrastructure Side deals, implementation and transfer payments to address housing needs and start up</p>

9. Funding DIAND band support and capital management based on reserve population	9. Funding Transfer Payments to provide for agreed to expenditures/jurisdictions. Cash settlement.
10. Economic Development None	10. Economic Development Cash settlement -- Trust fund Jurisdiction that could promote business Start up moneys.

CHAPTERS ADDRESSED IN A MODERN TREATY

Preamble Interprets treaty in light of First Nation values, culture and history.

General Provisions the basic rules for treaty making; eg. Certainty without extinguishment, fiduciary/liability principles, status of TSL, application of laws.

Definitions The general concepts are defined.

First Nation Government capacity powers and privileges of, but not limited to, to natural person should have: legislative, executive, judicial powers.

First Nation Lands First Nation will own and have jurisdiction over TSL.

Minerals First Nation will own and have jurisdiction over minerals on TSL.

Fiscal Payments consider: IC's responsibilities, socio-economic objectives, the operation of the treaty, efficiency, population, own source revenue, etc.

Taxation IC has direct taxation powers. First Nation Capital and land is not taxed. Settlement Trusts, NPOs and municipal status will prevent tax leakage.

Enrollment All persons: on band list or of IC ancestry or adopted or an [aboriginal] married to a citizen and enrolled may vote on the treaty.

First Nation Court Jurisdiction: review administrative decisions, prosecution of IC laws, civil disputes arising between citizens; will be the BC courts.

Police Services 4 options for delivering policing: police service under the Agreement, a designated policing unit, policing agreement or a combo.

Community Correctional Services IC can deliver community correctional services on TSL subject to BC standards and in a manner sensitive to IC.

Other Jurisdictions re: any miscellaneous powers of the First Nation.

Land Titles BC Torrens system used if IC applies to have TSL in the system.

Culture IC culture and language recognized; IC laws to preserve and protect.

Environmental Management Canada/BC laws apply but IC has the ultimate say in preventing a project on TSL.

Intergovernmental Relations facilitates practical, cooperative relationships.

Water IC will manage domestic, agricultural, industrial, and power reserves.

Liability IC has the protections, immunities, limitations in respect of liability, remedies over and rights provided to a Municipality.

Education K-12/Post Secondary First Nation's jurisdiction over all persons on TSL. IC's laws must be consistent with BC education standards.

Health IC laws must be consistent with Canada/BC standards.

Child Protection Services comparable to BC's and will respect IC culture.

Parks/Protected Areas IC participates in management plans. Exercise treaty rights in parks within SOI.

Forestry IC will own and have jurisdiction over all forestry resources on TSL

Wildlife/Fisheries IC's stewardship includes restoration, enhancement and a wildlife and fish allocation.

Migratory Birds IC's harvest rights within the SOI prior to those of others.

Access is central to the In-SHUCK-ch treaty.

Land Use covers decisions regarding future land use affecting TSL.

Economic Development to insure self-sufficiency.

Formal components of the Treaty: Approval of the AiP, Indian Act Transition, Amendment, Implementation Plan, Ratification, Final Agreement, Dispute Resolution.