

Shared Territories/Overlap Resolution

BC First Nations - All Chiefs' Forum
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“ALL OUR RELATIONS” DECLARATION

- “All Our Relations” is a Declaration of the First Nations of British Columbia, November 29th, 2007
- In the Declaration, First Nations declared that:
 - “We acknowledge the interdependence we have with one another and respectfully honour our commitment with one another where we share lands, waters and resources. We commit to resolving these shared lands, waters and resources based on our historical relationship through ceremonies and reconciliation agreements...”
- First Nations need to develop a plan to give effect to this Declaration. The resolution of shared territories/overlaps is primarily an issue to be addressed by First Nations, with capacity resources provided by the Crown

SHARED TERRITORIES/OVERLAPS

- The issue of shared territories/overlaps is one that all First Nations in BC, to varying degrees are faced with
- The term typically refers to situations where more than one First Nation asserts Aboriginal title to a particular geographic area
- For both the Province and First Nations, there is an increasing urgency to resolve issues of shared territory or overlaps.

RESOLVING SHARED TERRITORY ISSUES

- The predominant understanding from a non-Aboriginal perspective, of the shared territories/overlap issue is that it is a “map drawing” exercise to identify boundaries where the territory of one Nation ends and another begins. This is problematic and reflects a common law and Eurocentric concept of what the issue is and what it means to resolve it
- First Nations did not historically manage complex interrelations through clarification and adoption of borders on a map. Rather, this was done through a range of mechanisms

INDIGENOUS TITLE vs. ABORIGINAL TITLE

Indigenous Title:

- Is the inherent and sovereign title that a First Nation holds according to Indigenous law. Indigenous title cannot be understood or defined through reference to either constitutional or common law. It is a legal relationship to the land which is defined by those Indigenous laws and legal systems which have governed First Nations since time immemorial

Aboriginal Title:

- Aboriginal title is a legally recognized interest in land as defined by constitutional and common law. It is a legal construct that is defined as being in relation to the Crown's asserted sovereignty and interest in the land

INDIGENOUS LAWS - THE TOOL FOR RESOLVING THE SHARED TERRITORY ISSUE

- Resolving the shared territory/overlap issue can be understood as the process of applying and implementing Indigenous laws to guide how First nations' Indigenous Titles intersect and interact
- In this respect, the act of resolving the shared territory/overlap issue is an exercise of sovereignty and autonomy, which will then guide the understanding and evolution of how Aboriginal title is defined and understood under the common law

EXISTING MECHANISMS & PROCESSES

- Currently there exists no established method of dealing with the shared territory/overlap issue and Canadian Courts are generally ill equipped to address the issue and are often an expensive route
- The diversity of First Nations requires a diversity of approaches to resolve the shared territory/overlap issue. There is no “one size fits all” process to be employed
- Several approaches have been proposed or employed in Canada and elsewhere

COMMON ASSUMPTIONS

In determining which process to implement, it is assumed that First Nations share common assumptions including:

- Since time immemorial, First Nations have applied and implemented traditional laws
- First Nations are engaged in a common struggle to achieve recognition and respect of their sovereignty, governments, laws, Title and Rights, and
- First Nations will suffer when the Crown is given the opportunity to exploit divisions resulting from shared territory/overlap issues

OPTIONS

Examples of proposed or employed mechanisms to address the shared territory/overlap issue include:

1. **Joint Working Groups:** directly negotiating through mutually acceptable processes, making recommendations for resolution and working from a joint set of principles that guide the work of the group
2. **Elders Council:** to facilitate process, provide guidance on Indigenous Laws, and help guide a consultative process towards agreement
3. **New Institutions:** create neutral Indigenous Institutions to inquire into overlap disputes, hear information and work with parties to discuss and develop optional agreements
4. **Binding Agreements:** create template agreements that the parties can employ and would result in a binding decision (e.g. Overlap Claims Resolution Agreement as provided by the National Native Title Tribunal of Australia)

INDIGENOUS TITLE COUNCIL

- An example of a potential new institution could be a body such as an “**Indigenous Title Council of British Columbia**” (or some other such name)
- The intent is for such a body to be a neutral, non-affiliated, Aboriginal institution to provide dispute resolution services and support to First Nations seeking to resolve overlaps
- Such a body would have core internal capacities, but would also likely draw on the external expertise of individuals to assist in areas such as dispute resolution

INDIGENOUS TITLE COUNCIL: ROLES & RESPONSIBILITIES

The general roles of such a body would include the following:

- Research, design and development of template processes for the resolution of shared territory/overlap disputes
- To facilitate the development and implementation of a process of shared territory/overlap resolution, at the request of First Nations
- At the request of First Nations, play a neutral role within shared territory/overlap resolution process, including mediating, and where appropriate, arbitrating
- Depending on the nature of the process, and at the request of the Nations, the body may play a binding decision-making role

CONCLUSION

- While it was never their choice, First Nations in BC have been divided into “Indian Bands” under the *Indian Act*. It is understood and acknowledged that the process of reconstituting First Nations’ governments and sorting out territorial issues is part of the process of decolonization
- While the resolution of shared territories/overlaps is primarily an issue to be addressed by First Nations, it requires a commitment by the Crown to provide resources to support the process