

Alternative Governance Model

“Gitxsan Reconciliation”

Submitted by

Gitxsan Treaty Team

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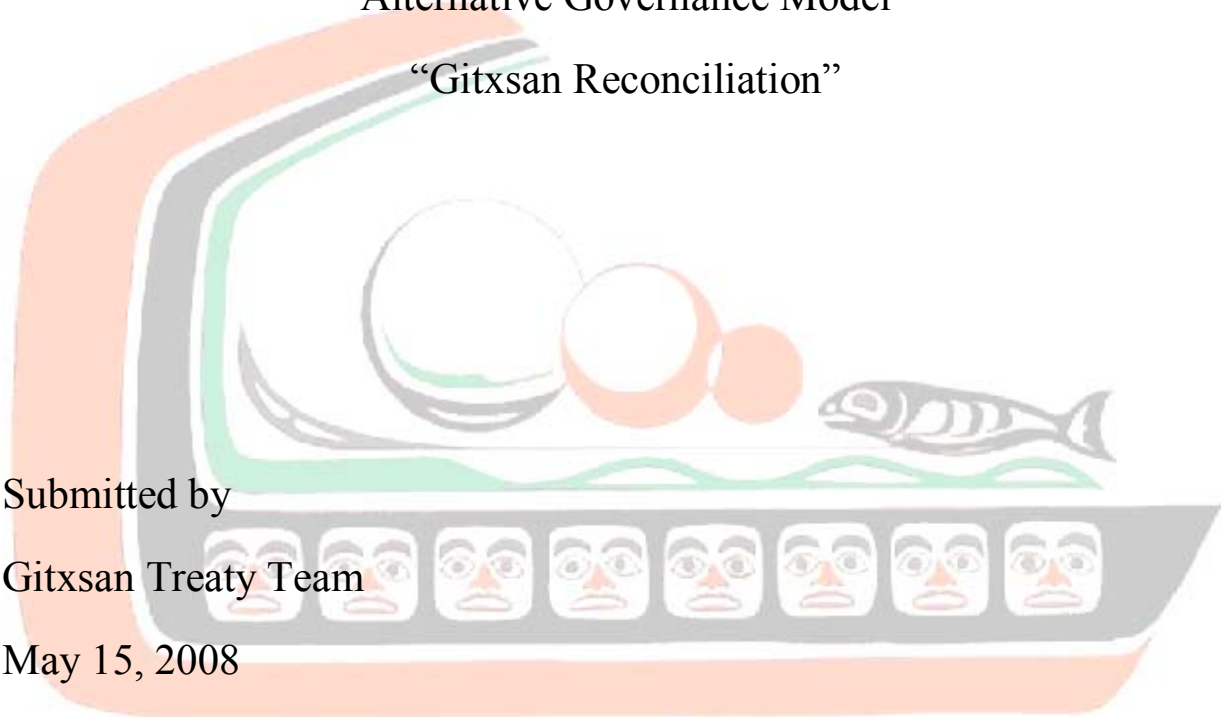
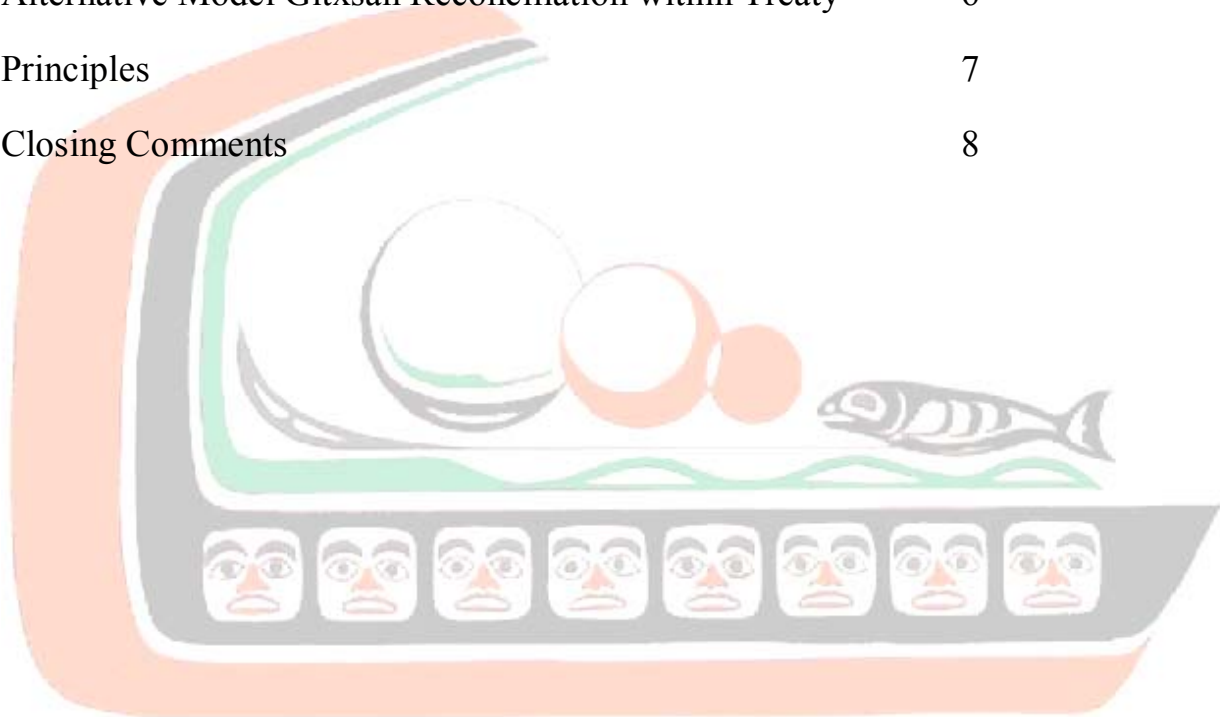


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Introduction

At this point in our discussions, the Gitksan wish to step back from what has gone before, setting that aside for the moment and opening a new and possibly more productive initiative.

Governments have long said that settlements must respect local conditions and traditions. We agree, and in that spirit propose a specific Gitksan approach to our future relationship with the governments of Canada and B.C.

Gitksan Response to Crown Principles

Our discussions so far have been based on the standard B.C. Treaty model which involves treaty settlement land and a new form of Indian government which would replace Indian Act Bands and Councils, but would continue to administer a third order of government concerned with such matters as education, housing, welfare, core infrastructure, economic development and so on. While this approach may be right for some people, the Gitksan feel this approach in our circumstances raises unnecessary and costly questions of complexity, capacity, perpetual inter-governmental negotiations and perpetual funding. We would prefer to avoid this.

We understand a government preference for a model which you have developed over the years and into which you have invested a great deal of legal effort and political capital. We do not criticize this. We say only that for us, there is a better way, and we ask you to join us in exploring that road.

As was noted in our April “Response for Clarification”, “It would be inconvenient and costly for the Gitksan to set up law making structures (like a legislature) only for compliance to laws already made.” Canada and British Columbia have adequate laws for the Gitksan as long as they are interpreted to accommodate our interests. In a like manner, the Gitksan feel it would be costly and unreasonable to continue existing Band Council services or set up new agencies to provide services already provided routinely to all British Columbians by Canada and B.C.

In addition we have no wish to receive coercive power over our members, or to engage in a separate level of taxation. We claim only the right of all Canadians to

benefit from the services paid for by taxes paid by us and others to those two governments.

Analysis of Standard Treaty Model

As we have analyzed the discussion to date, we sense that a lack of clarity re the above may have coloured the governance positions taken by Canada and B.C.. As we see it, the federal and provincial government concern with Indian government (IG) constitutions arises from at least three usual conditions contained in the standard treaty model:

1. An assumption that the IG will have control into the foreseeable future over substantial funds contributed by federal taxpayers, and/or raise revenues by taxation of persons on IG lands. As a result of this assumption taxpayers expect the usual controls of accountability and transparency, which in the virtually unanimous Canadian view must ultimately be exercised by democratically elected officials.
2. An assumption the IG will have law-making powers with coercive enforcement mechanisms that will impact the lives of all persons on the lands. Again, such powers in general are considered to require democratic control. (There are exceptions – the rules of landlords in shopping malls, for example.)
3. An assumption the IG will be delivering services of such enormous importance to the lives of individuals (e.g. health, education and welfare) that the resulting bureaucracy must be controlled by a democratic structure.

All of these assumptions indeed do apply to IGs constituted in the standard B.C. Treaty model. Thus it is natural that governments are pre-occupied with the specifics of IG internal democracy.

However, if it is the case that none of the three assumptions are true in the Gitksan approach, then most of the reason for government concern disappears. There may still be a residual political belief that the standard western democratic model is not only the right one but the only valid one, but unless delegated powers of coercion or taxation are involved, this issue becomes the business of the Gitksan and no one else's.

To be specific on this, the Gitksan do not wish to continue to receive taxpayers' money from Ottawa (assuming adequate other arrangements can be made based on the local economy), nor to tax persons within Gitksan territory. Therefore Assumption 1 does not apply.

The Gitksan do not wish any of the sort of law making power conferred in the standard treaty model, having no interest in controlling the lives of non-Gitksan on the one hand, and having an existing internal social governance system for their own members. Therefore usual Assumption 2 does not apply.

Finally, the Gitksan have no wish to establish (or to continue, if already established) parallel service organizations to deliver the usual services of the federal and provincial government, except by agreement and under contract, in which case the accountability would be provided by way of the contracting party. (Child services might be an example.) If that is the case, Assumption 3 does not apply, and the argument becomes strong for a traditional governance model which is what the Gitksan people want.

For us, the sole purpose of Gitksan governance is internal for the management of collective Gitksan assets and the preservation of traditions. Our current governance system demonstrably does this adequately now, and has since time immemorial.

If there is still a wish for a significant added aspect of democracy to the governance model, we would be prepared to discuss the addition of an elected group of observers over our traditional government of Hereditary Chiefs, with rights to full information and a right of veto under certain circumstances. Gitksan law already makes provision for the replacement of unsatisfactory Chiefs. Therefore the Hereditary Chiefs could carry on as a present in all normal circumstances, continuing their normal duties with no added powers as a result of any settlement we make with Canada and B.C.. That seems to us absolutely reasonable. We ask for no change in powers and wish no change in responsibility.

Alternative Model Gitxsan Reconciliation within Treaty

This matter of governance is illustrative of our different approach to the larger question of an overall settlement package. We propose a new plan, for the Gitxsan circumstances, which we believe would be very welcome to our neighbours and the Canadian public generally. Below we list some of our positions underpinning our proposal. All of the below are, of course, conditional on achieving an agreement acceptable to all.

A. The Gitxsan are prepared to pay income and sales taxes just as other Canadians.

B. The Gitxsan are not interested in the “parallel society” concept which drives the standard treaty model. Instead the preference is for governmental services to be delivered by governments (mostly provincial) as is usual in most of Canada. (It would be normal that the funds currently sent to Bands for this purpose by Ottawa would in future be sent instead to the provincial government to help fund the services and also to help guarantee an adequate delivery standard. This would presumably be part of negotiations.)

Any agreement must of course end the application of the Indian Act, including the Band governance structure imposed under that law, with respect to which, as we noted in our April Response, “The Gitxsan are yet to accept band councils and reserves...” The laws and services currently supplied by Indian Act Councils can be better and more efficiently provided by federal and provincial entities as for all other British Columbians. (We will naturally expect a voice in the mode of delivery to the Gitxsan, but we accept the management and infrastructure in place.)

C. The Gitxsan are not interested in the concept of “treaty settlement lands”. Rather we wish to maintain a relationship with the entire 33,000 square kilometres of traditional territory. The economic value of our collective inherited interest (which is neither “fee simple” nor sovereign but is certainly real, court-ordered and subject to definition) is to be realized by the process of “accommodation” articulated by the Supreme Court of Canada. In practical terms this will presumably be effected by a combination of own investment, arrangements with

external investors, and revenue sharing agreements with governments, especially the provincial in the case of resources.

We look forward to discussing with you the details of “accommodation”. We understand the importance of this issue, and that the resolution must not only be fair to all concerned, but also transparent and efficient, so that once the parties have agreed upon the policies, regulations and oversight, government bureaucrats can get on with day to day management with certainty for themselves and for the economic agents they deal with.

We take encouragement from the fact that we have working models in place known to all parties at the table, which are the result of just such accommodation. We refer to the STFA (forests), the Carbon Credits plan and the GWA (watersheds), and of which encompass the whole of our traditional territory and all of which operate in a responsible fashion.

D. Ratification, properly done (which is essential for both political and legal reasons) may pose some complexities, and require explicit recognition by the federal and provincial governments that the eight local “Bands” and the concept of “Gitxsan” are not identical ideas. Some members of these Bands are non-Gitxsan, and some reserve residents are non-Indian. Since ratification of a settlement should be done by Gitxsan alone (and as we are the title holders, that is the logical approach) and since the settlement itself will apply to Gitxsan alone, some provision will be required for the non-Gitxsan currently under the authority of band governments, which governments will disappear. We suggest that this is an appropriate responsibility for Canada, as the architect of the current Band structure.

Principles

With the foregoing in mind, we wish to table a set of principles that will assist the Gitxsan in our discussions with you.

1. We come to the table as committed Canadians, paying our taxes and contributing to the country. We seek no special status nor any parallel society. We wish to live as ordinary Canadians in our own way in a multicultural society. Further, we wish to pay our own way.

2. While history has given us a special relationship with the Crown and the federal government, we wish to take our place as full citizens of British Columbia, paying for and receiving health, education and social services from the province in the same way as any others. We believe that the federal government should transfer money formerly given to Band governments for these purposes, to the provincial government upon acceptance by the Province of those responsibilities.

3. Our claim, and our only distinct claim, is to the inherited collective rights of our ancestors including those confirmed by the Supreme Court of Canada in Delgamuukw.

All Canadians have the right to inherit property. So do we. Our inheritance is an interest in the lands making up our traditional territories. That interest entitles us to a shared decision making in the development of that territory and a share of the wealth it generates, as well as fair treatment by governments in all matters. The detail of this is what we wish to negotiate.

4. The result should be far less complex than the standard Indian government model. We have no wish to duplicate existing service organizations. At the same time, we stand ready to perform local services for ourselves and our neighbours under contract and by agreement when that is the most logical way to proceed. We have working models in place in forestry and watershed management as examples.

5. We understand that this is different from the standard B.C. Treaty policy. We have no views on what is right for others and wish all parties well according to their own needs. Our approach is what we believe is right for us, and for our neighbours.

Closing Comments

The Gitksan governance system has evolved over many centuries. Our civilized approach to taking care of our community has not simply come out of a piece of legislation. The Ayookw (or the laws) that guide the Gitksan people have a solid foundation of fairness, honour, respect, truth, openness, inclusiveness, accountability, and responsibility. The underlying principle of democracy as espoused by JS Mill, Aristotle, Plato, Machiavelli, and others from across the pond

is the same as what Delgamuukw, Guksan, Sakumhiigookw, Dinimget, Gitludaalth, and many other Gitxsan thinkers defend.

The Gitxsan Governance system is taught continually to all citizens. Every child is taught about their responsibility to themselves, to family and to community. When a Gitxsan child is born they are referred to as guests and are treated as guests. Every Gitxsan person is taught about responsibilities to the family. As a child reaches certain stages they are expected to exercise their free will and either assume more responsibility or leave the responsibility to others. As they advance in the Gitxsan governance system they learn to leave their personal interests aside. People who become Simghiighet and assume the positions that hold title they no longer have personal interests. The Simghiighet are charged with the responsibility of maintaining the histories, laws, customs, names, territories, resources, songs, and other treasures as their main mission in their lives.

The only way Reconciliation will occur is if the Gitxsan and the Crown finally talk about fundamental issues of ownership, jurisdiction, and governance. The Crown does not have to be scared to have these discussions – the Gitxsan do not want to be a burden on the Crown, we want to live free as Gitxsan people in Gitxsan territory. We want to participate fully in Canadian society.

