

The Section 87 Tax Exemption gets a lot of discussion. Those who can benefit from this exemption are fairly limited, due to the economic situation on most reserves, plus the courts are restricting limiting its application, and would like to phase out the exemption over time.

Editorial Note: On July 21/11 the Supreme Court of Canada issued two decisions running counter to recent cases in lower courts, affirming a broader and more contemporary interpretation of the s.87 exemption.

Under the Indian Act, the Band Council has limited law-making authority, but all laws are still subject to approval by the Ministry of Indian Affairs. When I say the “status quo”, I mean staying with the Indian Act . The best thing about it is that it’s familiar - your administrators have learned to work with it to attract funding and programs. A treaty would shift the governing authority from the federal government to your own new ‘Namgis government. This new fiduciary duty would go to the ‘Namgis government, giving you greater control over your lives, your community and resources, and how you spend your money.

Staying with the status quo doesn’t mean that things will always stay the same - currently there are some changes happening with the Indian Act such as more allocation of block funding to First Nations to allow more local control over spending – so it is evolving to some extent.

Question: I hear that the National AFN is looking at scrapping the Indian Act in three to five years. We should keep our eyes on that, see what that means for us.

We can keep our fingers crossed that there will be some positive institutional changes that will benefit First nations – however this is not the first time that there have been attempts to amend the Indian Act or to replace it, and I think it will take some time yet to move to an agreement in principle and then the next level of negotiation to a final agreement. I agree we need to monitor this process and evaluate it from time to time.

Question: I have a niece who is registered Nisg’a and her status card was taken away – is that what is going to happen to us, we’ll al get taxed, and become not Indians anymore?

Part of the purpose of the Treaty for most bands is to get out from under the Indian Act, and so post treaty, you would not be governed by the Indian Act, you would have your own laws and constitution, and your community leaders would be responsible to you.

Question: What about prescriptions? Will we have to pay for them? I have had to pay for some of them myself.

The fiscal arrangements will be handled by your government under Treaty and they will also decide what services you will provide to your members, and what arrangements you’ll make with existing institutions, such as school boards and hospitals and prescriptions. The intention is that you’d enjoy the same benefits

under Treaty that you now enjoy, to be able to enhance and better tailor the programs to meet your communities' needs.

Question: It seems we have to give up too many things for Treaty – the block funding is going to decrease – and our needs will increase. And what about our settlement ands, the province and the union's role in setting up reserves – this is in the Constitution, our reserves are too small, the government stole land from us, how will we be compensated for that?

Based on your past experience you'd be able to predict your community needs over some time and then you'd negotiate sufficient financial resources to meet those needs. Like any negotiations they are never perfect, there are always compromises, but at the end of the day you would be more involved with the financial resources and you'd have far more control over how they can be spent.

In terms of the union and reserve settlements, there are a lot of questions around the province's role. The major provincial representative involved in the post-war years, around 1924 and that period, who was involved in the establishment of reserves in B.C., was also the Director of Soldier Settlement, and he had what I'd argue the conflicting duty to free up land for returning soldiers and for First Nations. I think he took that responsibility a lot more seriously than that of providing adequate lands for First Nations. That's a matter of record, there are political arguments, and there may be some constitutional arguments at a high level that the Crown has not met it's legal obligations, but you are not going to change things through arguing those sorts of things now.

2. 'Namgis /Canada Bilateral Initiatives

The second option to Treaty is making agreements between a band and the federal government of Canada. This falls into two broad areas.

a) Self government

The Government of Canada has recognized the right of some First Nations to self-government. This includes some form of delegated authority through an act of legislation that allows First Nations to assume certain authorities such as development control on their land, or creating tenures on the land. Two examples are the West Bank and Sechelt First Nations. There is some delegated authority from the Minister.

However, they are only limited to reserve lands. They can be changed or taken back at any time – it is not constitutionally protected, so another government can amend it or even revoke it. Under a treaty, this authority would be protected by the constitution and so is not open to the Crown to unilaterally change it. It does require special legislation and a tremendous amount of political will to come about. Both West Bank and Sechelt were involved in a long struggle to get their legislation through. There is not a lot of political will in the federal government to develop special legislation for bands, so that option might not be as available as it has been in the past.

b) First Nations Land Management Act

This is an act of federal Parliament, and again, applies only to Reserve lands. Again, it is a form of delegated authority and allows a band to enact a First Nation Land Code to manage their own lands. The Code effectively replaces certain provisions in the Indian Act and supplements them.

It can be coupled with a First Nation administered property tax regime, where the First Nation gets to choose property tax under the Indian Act section 83 by-law, or the First Nation Fiscal and Statistical Management Act, meaning the band can take on these responsibilities.

Question: I am just trying to understand all of this – this doesn't mean a lot to me, so if you are going to really outline what the options are, it would be great to see examples of what these would look like for our people. This doesn't have to happen today, but some examples, like what the Six Nations are doing, or what a band on the mainland is doing – I am trying to understand what all that means, what would it mean for us, for our daily lives and choices?

As you move along in the Treaty negotiation process I think there will be lots of examples and time to talk about what each of these things will mean for the 'Namgis. None of these options frankly have any dramatic potential to really change your lives, as they are changeable at any time by the Crown. On the other hand, they are valuable initiatives for many communities.

3. 'Namgis / Province of British Columbia Bilateral Initiatives

The third option is making agreements between a First Nations and the province. They fall into two broad areas.

a) Strategic engagement agreements/ reconciliation agreements

Musqueam, Haida, Central Coast and North East BC are precedents in B.C. What many of them do is set out a formal process where the Crown meets its obligations to consult and accommodate. Sometimes it's on a specific sector like forestry, and sometimes it's more comprehensive and crosses a number of sectors. No two of them look exactly alike.

These agreements are also driven by political considerations, and it is hard to know how they will evolve. The Haida agreements arose over litigation around Forestry activities in their territory. They are very politically driven – if the province wants something from you, for example, oil and gas, they'll talk to you about it – the industry has led those as they want to get First Nations on board to get at these resources.

They appear to have some potential in providing a structure for the Crown to work on these issues with First Nations – one concern is that they came out of recent court cases when Gordon Campbell was Premier – it remains to be seen with the change in leadership what the Clark government does.

Question: When we go to Treaty, would we have the right to go back to another band, after it is legal?

That's up to the individual. What we have said to our membership is that there will be no loss of rights to anybody, we won't diminish our rights to go to Treaty.

The comfort that we all should have is that we will not sign an agreement until all those questions are answered.

Question: I am trying to wrap my head around this – what are the chances of putting something together in layman’s terms, something with pictures and language that we can access. Part of the problem is that we have only 40 or 50 people here, if we had a package that tracked the treaty process that people could go and pick up and understand it so far would be really useful.

As you move towards an agreement in principle there will be more communications packages, there will be more meetings where people can ask specific treaty questions and also one-on-one opportunities for people who might not feel comfortable speaking in a group.

Right now things are changing quickly and we are continuing to do work on information packages that will help spell out the options, what will things look like under Treaty and under the Indian Act.

This meeting however is about alternatives to treaty, this is something that people have asked for, so this meeting is not about treaty tonight.

b) Other sectoral agreements

My last point is to talk about Incremental Treaty Agreements (ITA) - these are an early delivery of some treaty benefits in anticipation of a full treaty happening later. There are not many of these. For example, if a First Nation wanted to get access to a specific parcel of land. You need to be fairly well advanced in the Treaty process to negotiate one.

Theoretically you could negotiate anything that falls under a treaty with an ITA, however, they come at a high price: the band must agree to not contest any activities of the Crown by way of asserting their rights and title.

Question: Is it true that I can sell my house on reserve after treaty – or my kids could sell it after I die, to anyone?

That will be something that will be covered by your constitution. It might be possible – it might not. Most First Nations would have a concern about selling and outside the community but ultimately it is up to you to decide.

(Note: this response speaks to post treaty: currently the Indian Act governs disposition of lands, and limits an individual’s ability to transfer their residence on reserve, by will, or otherwise.)

Presentation by Robert C. Freedman

4. Litigation as an Alternative to Treaty

One of the alternatives to Treaty is to go to court. My background is I come at this from two perspectives – I have worked with First Nations and litigation for 18 years. I have clients in Alberta, Saskatchewan, BC and the Yukon. I am also one of the treaty negotiators for the Ditidaht and Pacheedaht First Nations.

I am here tonight not to sell you on one option or the other, I am here to present both sides as best I can.

I'd like to talk about the hard reality of taking stuff to court, some of the major litigation cases and what the First Nations have and have not won by spending millions of dollars in court; and the recent Ahousaht case around water and fisheries, as it has some applications to the 'Namgis as well.

When I talk about litigation what I mean is essentially going to white court and legally proving the rights you are claiming. I am not talking about your rights, your laws and traditions based on your own legal system and understandings, as the person you have to convince is usually a white, older judge, usually male, and probably doesn't have a clue what your laws and traditions are. That's the game you are playing when you go to court.

There are two types of cases that people bring to court: aboriginal title and aboriginal rights. There are also consultation cases which I will discuss a bit later.

Aboriginal title is a right (exclusive or non-exclusive) to use lands for a variety of purposes including the carrying out of traditional activities, modern forms of those activities, and for economic purposes.

The big difference between aboriginal rights and title is that if a First Nation could ever get a court to say they had aboriginal title, - and no one ever has - it applies throughout your traditional territory. It contains both an economic aspect and a traditional use aspect.

Aboriginal rights are more site-specific rights to carry on traditional activities or modern forms of those activities. Rights differ from title in the sense that rights are site-specific – you might be able to prove a right to hunt or fish in a specific area - whereas title can be practiced in broader areas of the Traditional Territory.

There are three general steps if you go to court:

I am going to focus mainly on title cases, as that's the main alternative to treaty.

First - the First Nation has to prove that they have the right they are claiming in court. The courts have set some tests around this, so even though you know that these are your customs, practices and traditions, you have to sell this to the courts.

Next, the second stage is called the "infringement stage" – in plain English, this means that after proving that they have a specific right, the First Nation has to prove that the government has infringed on that right. This is probably the easiest part of the case to prove – you well know all the things the government has done that have infringed on your rights.

The third stage is called the "justification stage - here, the government has to come to court and "justify" all the stuff they've done to you. The thing that is tough about this is that there are a number of ways that the government can argue for justifying the infringement – such as conservation for limiting fishing rights. They can also argue in some cases that what they are doing is valid because of regional economic "fairness". The key point is that the courts have set out many bases for governments to justify infringing your rights.

The government also has to show that they properly consulted with you and that they gave priority to your rights over others. If they can show that they have consulted with you or given priority to your rights then the infringement may be seen as justified. There is more litigation around consultation right now than anything, because the government pretends that they consult but they don't do a very good job.

I. Proving Aboriginal Title

The main aspect of litigation to consider is that essentially your culture and traditions get put on trial, not the governments' bad behaviour. Having band members, elders, and youth, testify in court can be a brutal process, and it can get very nasty. The government is trying to tear down your rights, and usually the courts do not understand your culture and don't really care about it.

The other thing to understand is that even if you got a judge to declare that you have aboriginal title, that same court system can decide that certain uses of the land are contrary to aboriginal title, according to a judge who does not understand your title. It is another way of the courts saying that even if you can prove title, we are going to keep shrinking it to limit what you can actually do.

Establishing Title:

To establish aboriginal title over an area of land, the claimant must prove that the group had *exclusive occupation* of the land prior to the assertion of Crown sovereignty or shared exclusive possession. [Delgamuukw]. This means historical occupancy – dwelling places, seasonal uses of the land, showing active use of your territory. This is a major element to prove.

This really has 5 parts.

1. The First Nation must prove that it is a descendant of an organized society that is the right bearer. You must be able to show a direct lineage and connection to your ancestors.
2. The First Nation must prove that it occupied the land claimed as Aboriginal title land at the date of sovereignty [1846]. By "occupation", the courts mean "physical occupation," such as village sites.
3. The First Nation must prove that its occupation of the land was exclusive or shared exclusive in 1846. That is, the First Nation must prove that it *effectively controlled* the land and that the First Nation could have excluded any outsider from its lands if it had wanted to. It is also possible to have shared exclusive title. Non-exclusive occupation may establish aboriginal rights that fall "short of title".
4. If the First Nation is relying on current occupation of an area to prove that it has Aboriginal title, the First Nation must prove that it continually occupied the land between 1846 and today.

5. The title must be unextinguished. The Crown may argue that aboriginal title was extinguished prior to 1982. An example is non-continuous occupation or lack of use of lands.

Proving Aboriginal Title - Evidence

Very specific and detailed evidence is needed to establish aboriginal title. The government will try to prove that the current members of a First Nation are not connected to the ancestors who lived on that territory pre-contact. You would think that this would be obvious, but the government will go to great lengths to prove otherwise – digging up church records, genealogists and researchers. This is a strategy to side track what you want to talk about and cost you hundreds of thousands of dollars to prove who you are you say you are.

In the Tsilhqot'in case, the First Nation spent millions of dollars and gathered and presented evidence from archaeologists, anthropologists, hydrologists, wildlife ecologist, ethnobotanist, historical geographers, biologist, legal historians, historians, forester, economist, linguist, ecological community modeler, elders, and community members, among others. Plus putting chiefs and community members on the stand. The costs are huge, it takes years of preparation, and most First Nations do not have millions of dollars to spend on this.

Despite all the money that has been spent, the evidence presented in the Tsilhqot'in, the Delgamuukw and the Ahousaht cases, NO group has yet established Aboriginal title in the courts. So – no First Nation, despite years of trying and millions of dollars has yet gotten a court to agree they have title. The real reason isn't that the First Nation doesn't have the evidence, it's that the courts are so scared of granting title that they find every way possible to get around it.

Even if you did manage to win title, the courts can still limit it, in two ways:

There are **2 limitations** on the content of Aboriginal title, *even if it is proven*:

1. Aboriginal title is subject to an ultimate limitation against using the land in a way that is irreconcilable with the nature of First Nation's attachment to the land.

What does that mean? Who decides what is "irreconcilable? It is not the First Nation – it is white courts, who have a certain image of how they think First Nations should use the land. For example, lets say you wanted to build a shopping centre – the courts might say, that is not an appropriate use of that land. So – even if you win a title case, the courts can still decide what you can do with it.

2. The scope of Aboriginal title also depends on how easily the Crown can justifiably infringe the title. The Supreme Court of Canada has indicated that the range of ways the *Crown can limit uses* of Aboriginal title lands is quite broad, including such objectives as the development of agriculture, forestry, mining,

and hydroelectric power, and the general economic development of the interior of British Columbia. This is another way of the court saying that even if you could prove title, we'll shrink it as much as possible.

So, even if you get a declaration of title, someone else can limit it, such as the federal government. A declaration of title limits what you can do with the land, whereas with a treaty, you choose what you do with the lands and water in your territory. It is you making the choice, it is not the government making the choice.

II. Proving Aboriginal Rights

Aboriginal rights is a more limited, less costly type of case. There have been some successes here – for example, in the Gladstone case, the Heiltsuk First Nation won a commercial right to fish herring spawn on kelp. The government before would not talk to them and now they have that right. However, that case was won in 1996 and they are still fighting with DFO to work out the details years later.

To be an aboriginal right, what is being asserted must be a part of an identifiable practice, custom or tradition that was integral to the distinctive culture of the Aboriginal claimant at the date of contact with Europeans. [Vanderpeet]

This has 5 parts.

1. The First Nation must prove that it is a descendant of an organized society that is the right bearer. As noted above, this is regularly challenged by British Columbia and Canada.
2. The First Nation must prove that the ancestral practice, custom or tradition claimed as the right is integral to the distinctive culture of the group. This requires the First Nation to prove that the practice is of “central significance” to its culture [Sappier]. Many claims for an aboriginal right to control resources have failed on this criteria. [Pamajewon]
3. The First Nation must prove that the practice, custom or tradition existed prior to contact with Europeans. For the Ahousaht on Vancouver Island, this was held to be 1793.
4. The First Nation must prove continuity between the present practice and the pre-contact practice. The practice can “logically evolve” over time, but “the activity must be essentially the same” as the pre-contact activity.
5. The right must be unextinguished.

The Ahousaht Decision

I'll talk about the Ahousaht case now, as there are questions coming up and it is an important case. It is one of the bigger fishing cases.

Five of 14 *Nuu-chah-nulth* First Nations took an aboriginal fishing rights case to trial, as well as a title argument to court – title to water. They were saying that their ancestors controlled the rivers and ocean waters in their territory.

They won from the court a right – not title - to harvest fisheries resources within 9 miles of shore, and to sell various quantities of fish. The courts said that the right is more than a right to barter but less than a right to sell fish commercially. What the court avoided is after ten or twelve million dollars – they avoided dealing with the issue of aboriginal title which is what they went to court for.

They also argued successfully that their rights had been infringed by the government, as the government did not take First Nations rights into consideration in their management decisions. These are two big things to win.

That case went to the BC Court of Appeal, which upheld the first decision – they said the First Nation had won parts one and two, and now the government can try and justify these infringements – the third phase of the litigation process. The court gave the government and the First Nations two years to work out a deal, and the Court of Appeal extended it.

So – as of now, they have no more fishing rights than you do.

Question: Can you please clarify the differences between rights and title?

Title means if you look at your territory, it means your ability to manage and use everything in that area.

Rights are more restricted, either to specific parts of your territory, or focused on one specific thing, like fishing rights.

They are still negotiating with DFO – the same DFO they have been arguing with. They do have stronger leverage at the negotiation table, but the Crown will argue about each species they bring to the table. The Crown will raise issues like conservation concerns for each fish species that is brought to the table. If they can't negotiate a solution, there will be this justification trial, costing more time and money, and it will probably become a court-imposed negotiation around how much of every species can the First Nations take and how much can the government manage.

Here you have a court case that cost millions and millions of dollars, was years in the making, and one of the key questions that the First Nations wanted the court to decide on – the water title issue – got knocked off the table – frankly because it was too hard to go there for the Court.

Question: I was reading that two other Nuu-chah-nulth bands have already negotiated with DFO for 30% of the commercial catch this year. They were not part of the court case – they are expecting a good return in the Somass River this – so they'll be able to take a good percentage of that. If these two bands can do it without being part of the court case, why can't we get an allocation for commercial catch up here?

In the Canadian court system, all First Nations have different customs and histories – the courts see them as all different. So – unless you win a case in

court, the rights will not apply to you. The Ahousaht case will not directly apply to anyone other than the five First Nations who went to court.

A lot of evidence went into that case from other First Nations trade relations. However there is no rule that says if someone else wins a case, you also win. In the Sparrow case, the Musqueam won the right to fish salmon for ceremonial purposes. The federal government looked at that and they came to the obvious conclusion that since other aboriginal people fish salmon for those reasons, they won't make everyone go to court to win that right. It really depends on what species it is and what the issue is as to whether or not you would benefit from victories in court by other First Nations.

An important point in these cases is about leverage. So if the *Nuu-chah-nulth* survive all the negotiations and court cases, they should have a stronger ability to get their rights recognized "on the ground" or "in the water". At the same time, there has never been a situation where the courts will say – DFO shouldn't be managing the fishery. They may say they do it badly or they should do it differently, but the view is that DFO should manage it.

It comes down to how much fish you can take and what limits are put on you – you will have that fight whether you are in the Treaty process or not in treaty.

To wrap up, if you decide that litigation a good option to treaty, you need to realize that if you go to court, you must be prepared to have your culture, your history and traditions put on trial and judged by the white legal system.

The second point is – do you have reasonable alternatives – not perfect alternatives, but reasonable ones. With the Nations I work with on the Prairies who have no treaties, there are often cases where the government won't sit down and consult with them – so there is no other alternative but to go to court. The BC Treaty process has far more to offer than the historic, numbered treaties. When you look at the Treaty process and what it can and can't deliver – it is still a big negotiation. If you go to court, the court case will not do a similar type of putting a broad range of issues on the table for negotiation – it is not designed to look at broad issues.

Question: Ten million dollars is a huge amount of money – that seems a bit far-fetched, and who has that kind of money to spend?

I wish I was making this up – these are hard facts. For a title case, that is what it is costing people.

Question: Where are the younger generation who will be dealing with this stuff 50 years down the road? There are only a few of us here from the community – where is everyone?

Treaty meetings have been happening for a while now, on a monthly basis, we have been holding them on specific topics like education and forestry and governance. So questions can be asked and we are not jumping around between all these topics. They will continue in the fall.

Question: We talk about good faith in negotiations in treaty, but it seems to me we are the only ones negotiating in good faith, being bound by that. We have spent thousands of

dollars on the fishing chapter – as an example – and then this government can just come and take it away just like that, at no risk to them.

Where do we draw the line with negotiating in bad faith? Will they be paying back the funds that we borrowed because they are breaking the rules?

I agree with you 1000 % about the bad faith issue – they talk about “ the honour of the Crown” - it’s nice to say it but it doesn’t mean a whole lot. If it meant something, we’d be in a very different world with First Nations.

In terms of the money issue, there is something bizarre about a process where the one that has stolen your land and resources is charging you to negotiate to get it back. If you do decide to go to treaty, whatever loans you have taken out, the settlement gets increased so you can pay it back with money that isn’t part of the treaty. In other words, your settlement gets increased magically by the amount you owe.

Question: What would happen if we left the treaty process - would the government ask us to pay back the money?

If you decided to walk out of treaty and the government decides to call in the loan – I think they would have a hard time collecting. The practical answer is that they probably would pull the money out of the services and funding allocated to the band.

Question: You said that no First Nations have ever won aboriginal title. Does that mean that no First Nations has ever won a Supreme Court decision?

No – there are many Supreme Court cases that have been won, just not on the issue of aboriginal title. Some Supreme Court cases have been won on aboriginal rights, and some consultation cases as well as Reserve-based cases and taxation cases

Question: The treaty process is very complicated and it is a huge deal for us. Tell us in plain words – what good is coming out of that treaty – what’s good and what’s bad?

This meeting is about treaty alternatives – there will be many other meetings to talk about treaty and chances to ask questions.

Representative Aboriginal Rights Cases

- In *Vanderpeet* and in *NTC Smokehouse*, the First Nations proved a limited right to fish for subsistence, social and ceremonial purposes, but failed to prove that they had a commercial right to fish.
- In *Côté*, the First Nation proved an aboriginal right to fish for food, social and ceremonial purposes within a specific area, but Court held that the Crown’s use of controlled zones did not infringe the right.
- In *Sappier*, the First Nations proved they have a right “to harvest wood for domestic uses as a member of the aboriginal community” but not to harvest wood for other purposes.
- In *Lax Kw’alaams*, the First Nation proved it has a right to trade one species of fish, but it did not establish a right to trade fish generally.

Claims of Aboriginal Rights in Water

Water title is very hard to deal with: There is no precedent in Canada that addresses the existence of aboriginal title to water or submerged lands – as you can imagine, it is hard enough for the courts to deal with land claims – water is something they don't want to go near.

Comment: I have been to many meetings over the past ten years. We have limited funding and resources on our reserve – we have a small land base, we can't lease our land to big companies like in Vancouver or Victoria. I don't think the other alternatives to treaty that you have presented are the way to go for us. To me, when I look at treaty, I see all of our lands, active logging, squatters, and what is happening to it? We need to be ready, to manage our own health, housing and resources in our valley, and our watershed, which is the most important thing. We need to manage these things ourselves. In the past ten years this is what I have come to understand. I think we need to work together, we might not all agree but we need to be respectful of one another, but we need to work towards a common goal and with each other.

You mentioned squatters out at Woss – the best way to assert and document your rights is to go out and use them – get out on the traditional lands – the better it is for asserting your rights down the road.

Question: Thank you for coming and helping us understand this. Can you give us an update right now on where we are in the Treaty process? What is being negotiated, what sections are being negotiated?

Another question I have and have had from the beginning of the treaty process is how are we addressing the social impacts of our history, our changes, and is there sections that really take that on?

A main thing we have been working on is communication issues – we are working hard at this. We are focused on getting to an agreement in principle. Some of our members have asked about what alternatives are out there and so we had these gentlemen present them tonight.

What I have heard tonight is the same thing that I have heard all over the country – that court cases just lead to more negotiations and expense and don't really help the community.

I was just at a meeting in Niagara Falls about economic development in the territories. Elijah Harper was at one of our caucuses, he talked about court cases not being worth the paper they are printed on, as they are not protected by legislation. The only legislation that I see that protects rights is the Nisg'a, which is protected under their constitution.

Other Factors to Consider

The Crown/Government puts your rights, culture, history and people on trial when you go to court. They will use any tactics they can to drag out cases and make your costs higher. White judges essentially will be deciding your rights and your culture in court.

Expense: Title cases can cost millions of dollars; rights cases hundreds of thousands to low millions of dollars, and in the end, you could be in no better position that you're in at Treaty, because courts like negotiations – so even if you win, they will do things like restrict the right for two years to work it out.

Litigation is extremely time-consuming – cases take years to bring to court, and with appeals can go on for a decade or more. The Crown/Government will use any tactics they can to drag out cases - they use court procedure and rules to fight at every step of the litigation process, raising costs higher. A win in court does not require the Crown/Government to reimburse all costs paid by the First Nation.

Judges are not experts in these issues: “courts have sufficient difficulty determining what happened a few months or years ago, never mind a few centuries ago” [Ahousaht]

The law is always changing in aboriginal rights and title cases, and can be a moving target. Decisions usually push for negotiation and on far more narrow issues than in treaty process.

Courts are reluctant to upset the status quo, and are reluctant to impose actual concrete solutions.

Litigation is adversarial and often has no meaningful outcome. Litigation is normally used where no alternatives exist, and can sometimes increase leverage for negotiations, but litigation makes the Crown less likely to be reasonable.

Questions and Comments:

Comment: Litigation seems crazy – it is the last resort and we should take it off the table. – we need to look at all the economic opportunities in our territory. I have spoken with business people in Tofino and Victoria and they want to come and build here – we have this pristine wilderness with so many resources. In Tofino, they are building a \$30 million dollar lodge with the Ahousadht people, they did not put up a dime but they are partners in the development and they'll be working there as well. We should be doing this in our valley – we have so many lakes and valleys – inviting people in to build resorts. The provincial government did an economic study of our valley – they know the economic benefits that are here. That's why they want 80% of our and – we should have at least a 50 – 50 partnership. Revenue sharing, co-management, be partners with everyone in the valley with us in control.

Comment: The social issues are huge and need to be talked about – there was a stabbing in our community last night – this needs to be talked about and dealt with. We need to deal with this and move forward as a people, stop re-hashing the same old stuff at every meeting. The social issues are killing our people. But it is not just the chief in council – it is all of us – we are all adults, we have families, how are we helping? We need to consider ways to all help. Get people out on the territory, fishing our salmon, out on the land – as

families – we are doing a ceremonial fisheries in the next few weeks, everyone should come out.

We've got to get on with this, everyone needs to be part of this, we all need to take responsibility for this whole treaty process, we have talked about going door-to-door – explaining to families what treaty is and what it will mean to us all. Otherwise – we will keep coming back to this – a few of the same people at the meetings all the time with no real movement forward. If we said no to treaty tomorrow – which would probably be the case, then where are we as a people? Where would we be? I think we need to take this smaller and go door to door – face to face with people, that will be the only way to reach everyone.

Facebook – I see that as the biggest, blackest mark on our people today, it's a place where people can complain and criticize others and they cant even defend themselves because its not face to face. Technology like that is the worst thing for our people. We need to celebrate all the good things we have, the Aw'akwas, the boardwalks, our heritage. Those are the things I want to celebrate, not just trying to find something wrong all the time. I say this with the utmost respect, and thank you all for being here tonight.

Minutes will be taken of all the meetings, and posted or mailed out. Past minutes are on the Facebook and the web site.

Meeting adjourned at 9:15 PM