



A New Relationship?

An analysis of jurisdiction through non-treaty agreements in British Columbia

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Introduction

In 2005, the province of British Columbia, along with BC First Nations leadership, developed a **New Relationship Vision** that was based on three core tenets:

- 1) Respect, recognition and accommodation of rights and title;
- 2) Respect for each other's laws and responsibilities;
- 3) The reconciliation of Aboriginal and Crown titles, and jurisdictions.

This Vision, along with judicial direction to settle sovereignty issues outside of the courts, were the basis for a new set of negotiated agreements within BC that engage First Nations who were not interested in the BC treaty process, and remain uninterested. These new 'Reconciliation' Agreements seek to:

- 1) Facilitate ongoing reconciliation of Crown and Aboriginal Titles and rights;
- 2) Develop and maintain joint and shared decision making and management;
- 3) Create a negotiation framework for further Government to Government agreements.

In 2015, the BC government, BC Assembly of First Nations, and Union of BC Indian Chiefs reaffirmed their commitment to this new government to government relationship.

Study Objectives

The goal of this study is to conduct a qualitative document analysis on current Reconciliation Agreements, and Reconciliation Framework Agreements, to determine their ability to meet the following three interests of First Nations governments:

- 1) To cooperatively manage the natural and cultural resources within an asserted territory with the Province in an environmentally and culturally appropriate manner
- 2) To benefit from the resources within asserted territory
- 3) To obtain legal rights to key cultural significant areas of the territory for social and/or economic benefit

A policy brief, funded by a grant from the Rural Policy Learning Commons, will be used to further disseminate information from this study to better inform First Nations governments and Tribal Councils on the content, purpose and possibilities offered through these resource and environmental management institutions.

Acknowledgements



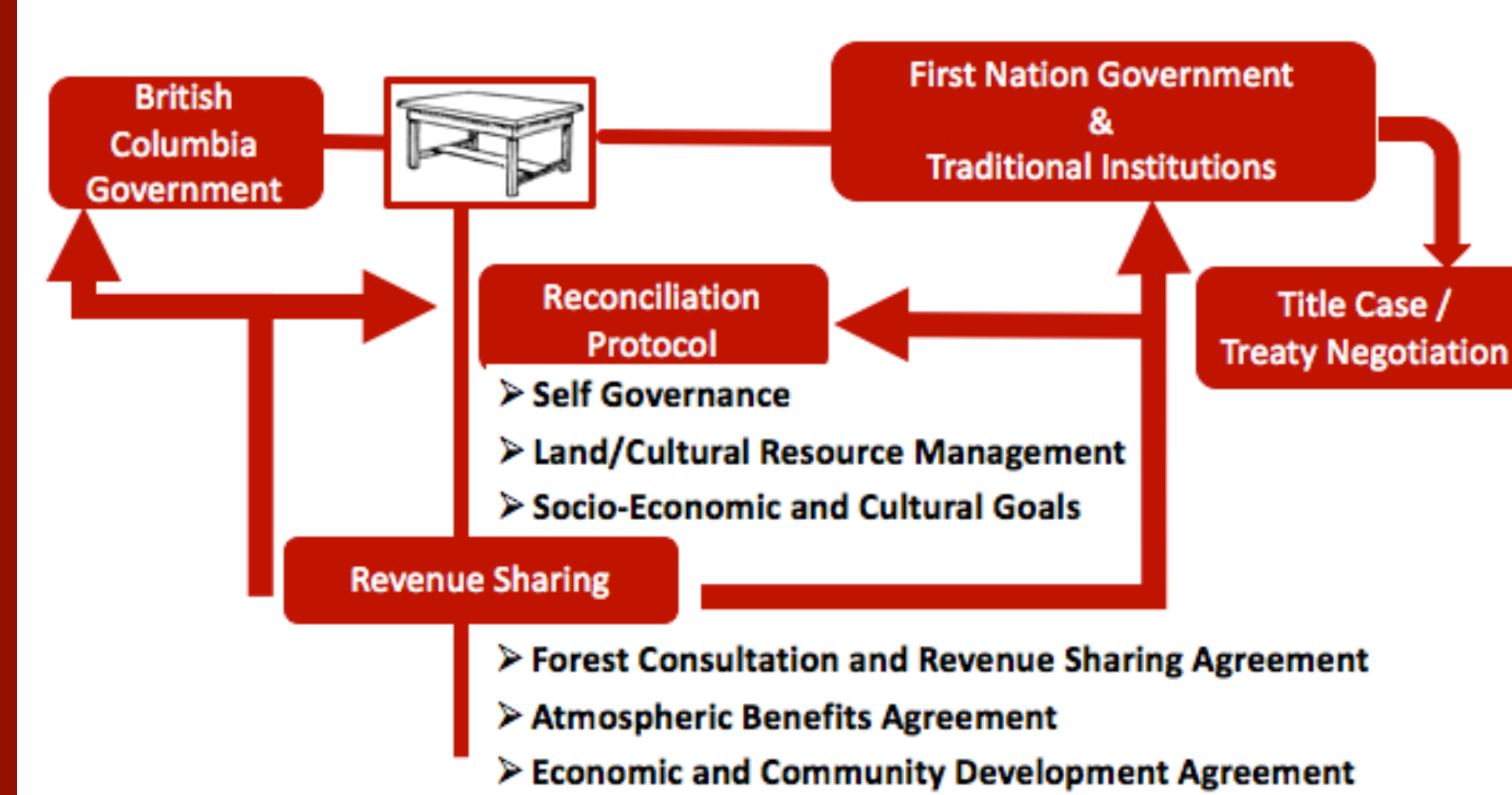
Methods

- Conducted a qualitative document analysis on current reconciliation agreements, protocols, and framework agreements between the Province of BC and First Nations
- Analysis reviewed **15 agreements** made between 2012 to 2016
- Agreements cover the jurisdiction of **35 nation or band governments**.
- Key themes for comparative analysis include: purpose and objectives, reconciliation provisions, implementation structure, funding and revenue, dispute resolution protocol and land management outcomes.



Results

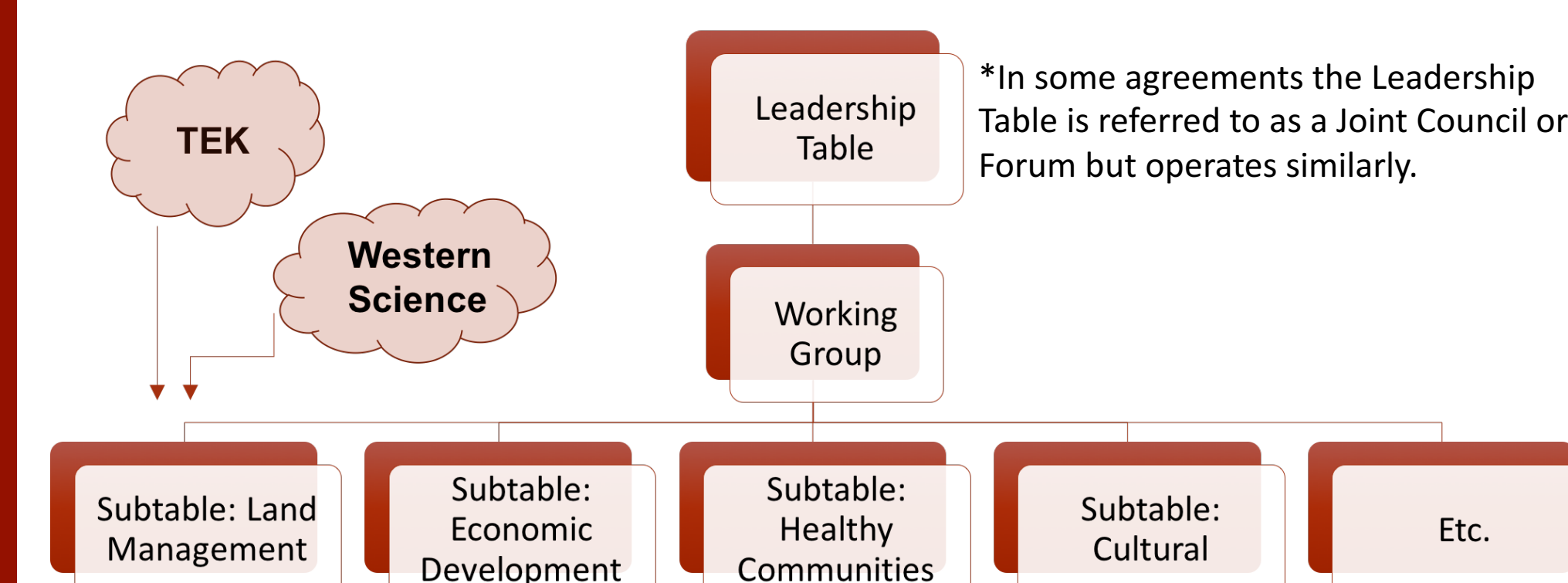
Negotiation Process and Revenue Flow



Agreement Implementation Structure

This example provided by the Nenqay Deni Accord (Tsilhqot'in Nations) outlines the implementation structure of Reconciliation Agreements.

- **The Leadership Table:** elected Chiefs of the First Nations & the Provincial Ministers meet on an as needed basis to develop work plans and monitor progress on implementation, perform any high level problem solving if necessary, and to negotiate further agreements.
- **Management Level or Working Group:** senior representatives of each party will meet quarterly or as needed to oversee and manage implementation, including disputes that may arise at the technical level.
- **Technical Team(s) or Sub-tables:** technical representatives of each party will meet on an as needed basis to address technical aspects of the implementation of the protocol and to deal with specific projects at the discretion of the Working Group. This level provides the opportunity for the incorporation technical western science as well as traditional ecological knowledge (TEK) from the community.



Dispute resolution protocols

Stage 1: If a dispute arises at the technical level, parties will meet and attempt to resolve the dispute, exchanging a full written description of the dispute with their concerns and proposed actions that could be taken to address the dispute.

Stage 2: If the technical team is unable to resolve the dispute, it will be brought to more senior levels, first the Working Group, and then the Leadership Table if it remains unresolved.

Stage 3: If the Leadership Table is unable to resolve the dispute, parties may choose to mediate the dispute, or jointly select another approach in reaching dispute resolution.

Final decision making power rests with provincial authorities, and thus often disputes that cannot be resolved involving rights or title infringement will be dealt with judicially.

Land Management Outcomes

Declared Title – Tsilhqot'in Example

Category 'A' lands:

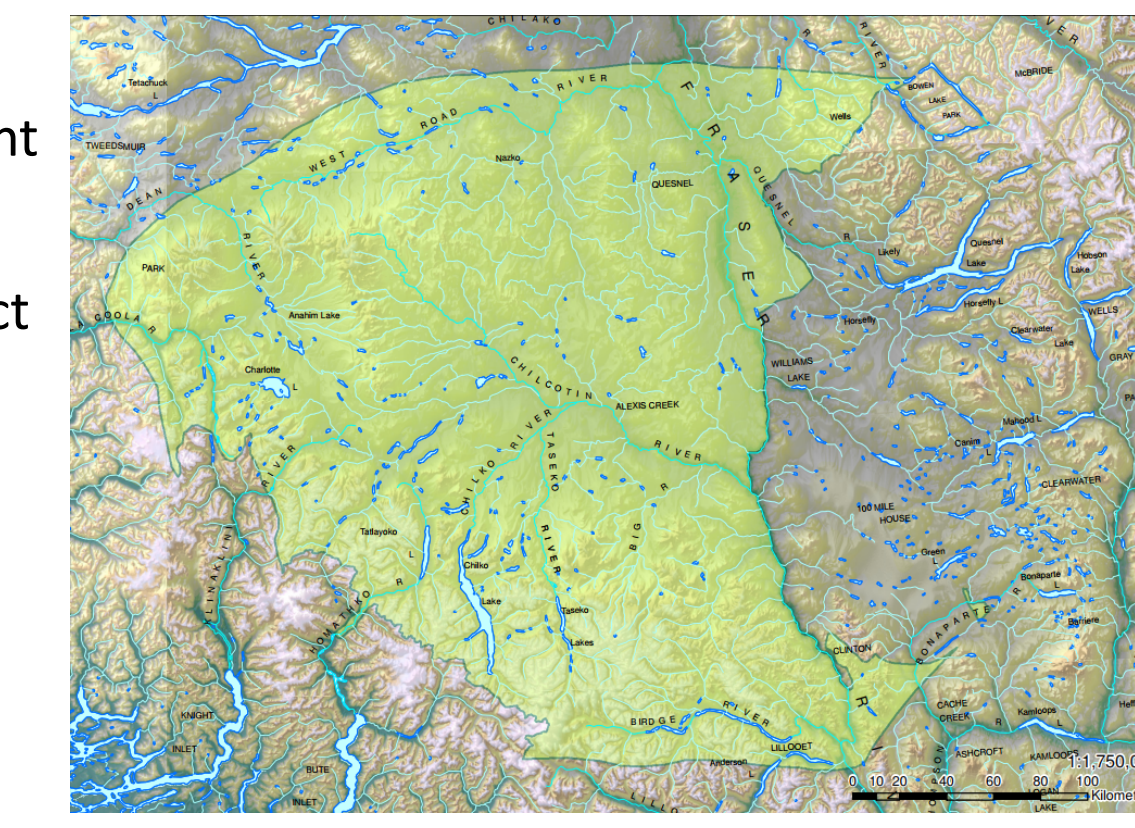
Declared Title Area – Territory under Tsilhqot'in ownership and management

Provisional Cat. 'A':

Negotiable Title Area - Parties joint fact find and negotiate specific areas that should receive Cat. 'A' designation

Category 'B' lands:

Co-managed Area – Land within claim area that is available for traditional practices but has not received title designation, subject to joint management plan.



Land Use Management Zones – Gitanyow Example

Indicators and targets within Gitanyow traditional territory are set out by management objectives in:

- water (including riparian zones);
- biodiversity (both plant and wildlife);
- cultural heritage resources;
- timber resources;
- objectives for special management zones and areas to be protected.

The agreement also outlines measures to be taken by the Province to ensure that land use actions in the territory align with the Gitanyow Land Use Management objectives.

Reconciliation Provisions Typically Found

Action Areas:	Community Development Goals
Strong Governance	<ul style="list-style-type: none"> • Recognize and reconcile respective jurisdictions, governance, laws and responsibilities • Ability to self govern and create law pursuant to that Nations governance structures, laws and values
Language and Culture	<ul style="list-style-type: none"> • Increase awareness, appreciation, understanding and fluency of that Nation's culture, history and language • Preserving language beliefs and oral histories
Healthy Children and Families	<ul style="list-style-type: none"> • Develop health indicators and provide adequate support delivered and managed by Communities with laws and values based in self-governance
Healthy Communities	<ul style="list-style-type: none"> • Standards of living on par or exceeding non-Aboriginal communities in BC, (housing, infrastructure, roads, and access to clean water) • Economic self-sufficiency
Justice	<ul style="list-style-type: none"> • Access to appropriate education and support related to the criminal justice system • Engage in options to improve policing • Creation of a culturally appropriate First Nations court
Education and Training	<ul style="list-style-type: none"> • Education funding and outcomes on par/exceeding non-Aboriginal communities • Education programs developed and delivered by communities • Meaningful opportunities for Nation citizens for post secondary education and training
Lands and Resource Management	<ul style="list-style-type: none"> • Negotiate lands and resource management in the areas of watershed, wildlife, fisheries, forestry • Environmental assessment improvements
Economic Development	<ul style="list-style-type: none"> • Set up protocol to negotiate further revenue sharing regimes and consider future community economic opportunities

Types of Non-Treaty Agreements

Strategic Engagement Agreements: establish mutually agreed upon procedures for consultation and accommodation to allow for resource development engagement procedures.

Reconciliation Agreements: Collectively these initiatives embody government's commitment to closing the socio-economic gaps that exist between Aboriginal people and other British Columbians. Additionally, they attempt to reconcile Aboriginal rights and title and establish new relationships based upon respect and recognition through setting mutual goals.

Revenue Sharing Agreements:

First Nations Clean Energy Business Fund Revenue Sharing Agreements: provide revenue sharing opportunities for clean energy projects.

Forest Consultation & Revenue Sharing Agreements: provide First Nations communities with economic benefits that return directly to their community based on harvest activities in their territory.

Atmospheric Benefit Sharing Agreements: enable First Nations to sell carbon credits. Specifically, these agreements clarify First Nations ownership and the right to sell tonnes of carbon in local or international markets. These agreements can only be entered into if the First Nation has signed a Reconciliation Protocol agreement.

Economic & Community Development Agreements: agreements between Government and First Nations for sharing the direct mineral tax revenue on new mines and major mine expansions.

Conclusions

- 1) RA's / RFA's set out a process for collaborative decision-making, incorporating traditional knowledge and laws. First Nations representatives are involved in every aspect of implementation, from information sharing and collaborative fact finding at the technical level, to the higher level decision-making tables that create work plans and resolve disputes.
- 2) The process for negotiation helps to facilitate future revenue sharing agreements between BC and First Nations governments. The Leadership table and working groups negotiate revenue sharing initiatives, set aside funding for carbon emission reduction feasibility studies for Atmospheric Benefit Agreements, and maintain a collaborative decision making framework for mineral development, energy projects, and other economic strategies within the territory.
- 3) These agreements may be effective interim co-management tools, but **they do not lead to sovereignty and decision-making authority** over asserted lands and resources.

Considering these conclusions and that several participating Nations have submitted and are continuing their own title cases (ex. Haida, Gitanyow, Secwepemc), it would be prudent to continue to build a strong title case.