



Legal Concepts and General Provisions in the Final Agreement

THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY

Huu-ay-aht First Nation | Ka:'yu:'k't'h'/Chek'tles7et'h' First Nations

Toquaht Nation | Uchucklesaht Tribe | Ucluelet First Nation



Where do Maa-nulth rights apply?

- Maa-nulth Treaty identifies First Nation rights throughout the entire traditional territories (ha-houlthee) of each Maa-nulth First Nation



Legal Nature of Treaty Land rights

- First Nation own Treaty Lands in “fee simple” (plus)
- Fee simple is the highest form of ownership know in Canadian
- Maa-nulth fee simple differs from fee simple elsewhere in BC:
 - We have constitutionally protected law-making authority
 - We own the subsurface resources under the land
 - Maa-nulth fee simple is protected under the Constitution of Canada
 - Maa-nulth fee simple cannot be expropriated except as provided in the Treaty



How does this affect aboriginal title?

- Courts have said that aboriginal title “co-exists” with interest of federal and provincial Crown
- Aboriginal title is said to be a “burden” on the interest of the Crown
- Crown can infringe upon and extinguish aboriginal title if consultation and accommodation takes place
- Maa-nulth Treaty recognizes entire Ha-houlthee and defines the rights that Maa-nulth will continue to have throughout our territories



Does the Treaty extinguish aboriginal rights?

- Aboriginal rights become defined treaty rights
- Both are protected under section 35 of the Constitution
- The Treaty “modifies” aboriginal rights into treaty rights which continue to be protected under the Constitution and therefore, are not extinguished



Do we still have rights outside the Treaty?

- Maa-nulth First Nations citizens continue to have the same rights as all other aboriginal people in Canada re: accessing existing programs and services
- For example: health care, education, financial assistance programs
- We retain status cards to identify and confirm our entitlement to access these programs and services



What does “full and final settlement” mean?

- Negotiations defined and quantified our constitutionally protected rights and defined our relationship with other governments
- Up to now our aboriginal rights have been undefined and subject to historic abuses
- Our rights and powers as self-governing peoples are now acknowledged and protected under the treaty and are beyond the reach of federal or provincial legislation

... certainty for us



Is the Treaty frozen in time?

- The treaty is a “living” agreement that permits relationships to grow over time to ensure that objectives under treaty are met
- Treaty calls for a “periodic review” that requires that the parties conduct a review of the Treaty every 15 years



Legal Status of First Nation Governments

- Constitutionally protected (unique in Canada)
- Not Bands or municipalities created by another government
- Powers and jurisdictions arise through our rights, not delegated from another government
- Authorities of Maa-nulth governments cannot be overridden by another government unless the Treaty specifically provides for that ... and then only in a very limited way





Thank you

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