



# Centre Quarterly

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## Ten Years Later: Celebrating the Delgamuukw/Gisday'wa Decision

December 11th, 2007 marked the tenth anniversary of the Supreme Court of Canada's historic *Delgamuukw/Gisday'wa* decision. The ruling was the first time that the Court recognized the existence of the concept of Aboriginal title. By clearly recognizing and accommodating our rights under the law, as well as the Crown's legal obligations, this victory has been an integral element in First Nations advancing their own particular rights on their lands, in their communities, in the courts and at the negotiating table.

NCFNG President Satsan believes the decision was a watershed moment: "For far too long, the spirit in the land was not respected. Our traditions were not respected. We, as the original inhabitants of this land, were not respected. With this decision we have finally won the recognition that we rightfully deserve. And with this recognition, we will continue to instill memories of hope and a legacy of victory into our future generations of First Nation leaders."

The *Delgamuukw/Gisday'wa* decision ultimately rejected the Crown's longstanding views on many fronts, and provided all First Nations with several tools to use in restoring the balance in their relations with government. Three of the most important principles to emerge from the decision are outlined below.

*The decision paved the way for First*



The land of *Delgamuukw*

*Nations to have their Aboriginal title recognized by Canadian courts. No longer do we have to stand by and watch as our traditional territories are being sold, infringed upon and misused. The Court ruled we have the Inherent Right to our lands, meaning that since time immemorial we have occupied and used those lands and have the right to decide what is done with them. With *Delgamuukw* as a precedent, in November the British Columbia Supreme Court released its decision in the *Tsilhqot'in Nation* case, the first time in which a court has concluded that the evidence before it proves Aboriginal title over specific lands.*

*The courts defined the duty to consult and accommodate. This duty means that First Nations must be meaningfully engaged at the highest strategic levels of planning. A letter advising First Nations of an infringement is no longer acceptable – First Nations must have a*

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## inspire...

**The youth will take their  
rightful place as national  
leaders... the youth of our  
Nation should not be  
looked at as an expense,  
but rather an investment.**

**Kevin McKay,**  
Chairperson, Nisga'a Lisims  
Government  
(see Nisga'a story, page 4)

Our traditional knowledge of governance is alive in our communities in ways that sometimes we don't even realize.



I re-learned this lesson recently when a woman shared a story of how her brother fell on hard times and was not able to look after his son. Her community did not have an agreement with the province to assume responsibility for the child who was at risk of being apprehended. What could she do?

She asked her family to meet. So they met in a circle, burned sage and held an eagle feather. Her parents shared their traditional laws, roles and responsibilities for raising a child. Eventually, the family agreed that this woman would take the child as his auntie in accordance with *Anishinaabe* customs until her brother was ready to assume his role as father.

Three years later, the child was returned to his father and it was a great day of celebration. Her family saved this child without the federal or provincial government, or waiting for anyone's permission. They simply came together, and made a decision to act.

Her story is also a powerful example of how a First Nation can exercise its inherent right of self-government by simply taking action, in this case, in the area of child protection using its customary laws. As our President Satsan, Herb George, always reminds us, we already know how to govern ourselves because we know our language, our laws and our culture; we don't have to wait for anyone to give us permission; we can go forward and start implementing our inherent rights of self-government today.

To this woman, for sharing her powerful lesson, I say in Nisga'a *T'yook sim neen* – thank you for sharing your story.

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## NCFNG work owes much to Delgamuukw

seat at the negotiating table, otherwise the court can nullify any transactions that have occurred on the lands in question.

*With the decision, the Supreme Court stated unequivocally that oral history could now be used to prove Aboriginal title and provided instructions to other courts about how to use oral history as evidence.* The stories of our elders and the immense knowledge carried in those stories is now recognized as qualified evidence in land claim negotiations. Our oral traditions have assisted us to preserve our rich cultural history. They have helped to define who we are; they told stories of hope and

documented our past. Just as we have always honoured the value of those traditions, now the courts will as well.

These are just some examples of how the Delgamuukw/Gisday'wa decision helps us rebuild our nations. The ruling was also a crucial catalyst in the establishment of the NCFNG. As Satsan puts it, "we proudly base the work that we do on many of the principles outlined in that landmark case and the subsequent court judgements that emerged from the decision."

We welcome you to visit our web site at [www.fngovernance.org](http://www.fngovernance.org) to find out more about us and the work we do with those nations who choose to organize and exercise their true rights and their jurisdiction outside the Indian Act.

» read more; search for "Delgamuukw" in our web library:

[fngovernance.org/resources/librarysearch.htm](http://fngovernance.org/resources/librarysearch.htm)

## NCFNG/UVIC announce courses

The NCFNG and the University of Victoria's School of Public Administration have announced the delivery of two new courses for First Nations managers and administrators in February and March 2008. The courses are part of a pilot project for developing a credit Certificate in First Nations Governance, Administration, and Management.

The aim of the proposed Certificate is to provide the education, training and skills to further build and sustain real progress in First Nations governance. The first course, "Traditional and Contemporary First Nations Governance", will give participants an appreciation of the new governance realities for First Nations and assist them in identifying the essentials of effective governance.

The second course, "First Nations Governance, Administration and Management", will provide a broad introduction to strategic management within a governance context in First Nations communities.

The two five-day courses will be offered on-campus at UVIC in the week of February 18 to 22, 2008 and in the week of March 17 to 21, 2008. Instructors and guest speakers will include First Nations leaders and administrators. This intensive format will provide the opportunity for participants to gain new knowledge and skills, to work on projects that make a difference in their home communities and to network in a diverse and rewarding atmosphere.

» more on this story:

[fngovernance.org/services/prod.htm](http://fngovernance.org/services/prod.htm)

» program web site:

[publicadmin.uvic.ca/dips/first\\_nations/first\\_nations.htm](http://publicadmin.uvic.ca/dips/first_nations/first_nations.htm)

# First Nations across the country share strategies to re-establish Aboriginal fisheries

**A**t the 3 Fires Confederacy Meeting, held in Ontario at the Garden River First Nations this past August 2007, First Nations from across Canada shared expertise and insight as the Mig'maq of Eastern Canada met with the Heiltsuk First Nation of British Columbia to discuss growing participation in fisheries, harvesting and natural resources management. For generations, fishing and harvesting has been a staple to many First Nations, but it was not until the *Marshall Decision* by the Supreme Court of Canada in 1999 that Aboriginal rights and title to fishing and harvesting was recognized and upheld.

The history of fishing in Atlantic Canada has been a long period of struggle for the Mig'maq and Maliseet, which culminated in the Burnt Church incident in 2001, when commercial fishermen began to target and attack local aboriginal fishing gear and vessels. According to Peter Metallic of the Mig'maq Listiguj First Nation, local Mig'maq fishermen have been struggling since the 1980's, when Quebec and federal conservation agents tried to limit access to fishing on the basis of depleting fish stocks. "The administration was fed up," says Peter Metallic, "there was no (fisheries) agreement." The Mig'maq decided to set up their own fishery, with the provincial and federal governments eventually accepting the Mi'gmaq- developed *Fisheries Management Plan*, the basis of a co-management agreement.

"We just did it". Metallic said. The

## 2 significant Court cases affecting Aboriginal resource rights:

**1 R. v. Marshall (1999) »** The Court held that oral agreements are as much a part of a treaty as the written terms. The historical and cultural contexts have to be taken into account in ascertaining what constitutes the treaty. In this case, a Crown promise in 1760-61 to establish truck houses (trading posts) necessarily implied a Mig'maq right to acquire natural products, such as fish, for trade. The judgement affirmed First Nations access to crown lands that were traditionally First Nations for the purposes of subsistence resource gathering such as fishing and forestry.

**2 Gladstone v. Canada (2005) »** In 1996 the Heiltsuk Nation in British Columbia proved that they have an Aboriginal right to take and sell herring spawn on kelp in commercial quantities. This was reaffirmed on appeal to the Supreme Court of Canada in 2005. In effect, the court recognized the right of First Nations to commercial access to fishing in fair competition with the rest of Canada.

First Nations of Eastern Canada have learnt from these experiences and developed their own aboriginal run fisheries and natural resources management that have relied on mutual co-operation between various First Nations and the federal and provincial governments, who have shared training with the Big Cove First Nation in New Brunswick and the Ranger program of Burnt Church First Nation.

For John Bolton Sr. of the Heiltsuk First Nation in B.C., the experience of meeting Peter Metallic, which was sponsored by the NCFNG, was a 'turning point' in the quest of the Heiltsuk to set up their fisheries program. The recent *Gladstone Decision* of 2005 reaffirmed aboriginal access to fisheries, and it is on this basis that the Heiltsuk

began work into the development of their fishery.

"I didn't realize the *Marshall Decision* affected that number of First Nations communities," said Bolton. "The implications are a little bit different. We could use how they got access and model some instances. Reconciling (*Marshall* with) *Gladstone* doesn't have to just be about marine resources." Bolton sees the Ranger program of Burnt Church First Nations as being beneficial to his community, who are looking to expand their horizons. The Bella Bella (Heiltsuk) Native Band has recently requested to work further with the NCFNG to share information about how First Nations across the country are asserting their inherent rights to resources.

**SHARING RESOURCES: The NCFNG is mandated to share and provide access to suitable research, technical support, information or advisory services for First Nations to improve their current situation or to pursue their own inherent rights.**

## Nisga'a and New Aiyansh Youth Take Control of Their Destinies



Members of Nisga'a Youth Advisory Council and NCFNG

From December 8th to 10th, 2007, the Nisga'a Youth Advisory Council and New Aiyansh Youth Council convened to develop a strategic plan that will guide them into a new direction. Wishing to move beyond activity and recreation planning, the young leaders of these two Nisga'a communities, located in the Nass Valley, are seizing the opportunity that will lead to a leadership role in their community, and ultimately, all levels of the Nisga'a Lisims Government (NLG).

"The youth will take their rightful place as national leaders," says Kevin McKay, Chairperson of the Nisga'a Lisims Government, "the youth of our Nation should not be looked at as an expense, but rather an investment."

The Centre assisted in the strategic planning by facilitating sessions using methods such as Collective Mind Map, World Café and Interview Matrix. These methods allowed for all participants to be offered the opportunity to express their ideas and have meaningful input into the plan.

"Thank you for coming to our little corner of the world," says NLG Youth Organizing Youth Coordinator, Paul Mercer, "You left an impression on our youth... not many presenters make that kind of connection in such a short period of time."

The NCFNG is committed to working with the Nisga'a Youth to assist them achieving their objectives.

"Our team [consisting of Brenna Latimer, Pawa Haiyupis and Geraldine King] was excited to connect with Nisga'a Youth and help them plan for their ongoing involvement with the Nisga'a Lisims Government," says NCFNG Youth Engagement Officer, Brenna Latimer, "we will certainly keep in touch with

this community to learn of their progress towards implementing their strategic vision."

The Centre recognizes youth engagement as an integral component to attaining effective self-governance. Ultimately, the youth will be the ones to carry on the prosperous legacies of First Nation communities.

» for more on this story, and photo gallery:  
[fngovernance.org/news/nisgaayouth\\_1207.htm](http://fngovernance.org/news/nisgaayouth_1207.htm)

## The Algonquin Nation Asserts Rights

In 1992, the Algonquin Anishinabe First Nations of Abitibiwiinni, Eagle Village, Kitigan Zibi, Lac Simon and Long Point voluntarily decided to unite in the creation of the Algonquin Anishinabeg Nation Tribal Council (AANTC), with the Algonquin Anishinabe communities of Kitcisakik and Wahgoshig being admitted later.

The Algonquin Anishinabe recognized the need to unify the leadership to strengthen their inherent right to self government, to continue ownership of lands and natural resources; protect hunting, fishing, trapping and gathering rights; enhance economic opportunities; and promote Algonquin culture. To this aim they have contacted the NCFNG to facilitate the creation of a new constitution which separates the executive branch of government from the legislative branch, effectively streamlining their government and reasserting the Algonquin Nation in modern society.

» for more:  
[fngovernance.org/news/algonquin.htm](http://fngovernance.org/news/algonquin.htm)

## Prairie regional office opens



Prairie staff and attendees: January 10th Open House

» for story and photo gallery:  
[fngovernance.org/news/prairie\\_open.htm](http://fngovernance.org/news/prairie_open.htm)