A Tale of Two Visions for Canada:
The Trilateral Agreement versus the Land Claims Policy

In Canada there are currently close to 100 First Nations groups attempting to reach a final settlement regarding their lands and resources through the Comprehensive Land Claims Policy (CLCP).[1] The CLCP is a federal policy that was introduced to settle all outstanding grievances relating to unceded First Nations lands. Canada cites the sheer number of ongoing land claims negotiations as evidence of the policy's success. But while the CLCP is designed to resolve matters over the traditional territories of First Nations peoples that were not subject to historical treaties, it will do so at the cost of Aboriginal rights and title to these lands. Through the CLCP, these special legal rights that recognize the distinct relationship First Nations have to their homelands and to the Crown, are transformed from a nation-to-nation relationship with the federal government into a set of circumscribed practices and regulations that fall under provincial and municipal jurisdictions. First Nations collectively held territories, which both embody and produce the social, political, and ecological relations of each nation to their lands, are also transformed through the policy into an individualized form of land ownership. Determined to avoid this fate, the Algonquins of Barriere Lake (ABL) are among a number of communities who have refused to negotiate under the CLCP policy, and among an even smaller group who have put forth their own comprehensive plan for resolving land grievances with the state.

Insisting on a very different kind of process to resolve overlapping jurisdictional claims with federal and provincial state authorities over their lands and resources, the Algonquins of Barriere Lake developed a sophisticated and viable alternative to the land

In, *Aboriginal History: A Reader, 2nd Edition,* Kristin Burnett and Geoff Read, eds., (Oxford, UK: Oxford University Press, 2016).

claims policy that could mark a new path of co-existence between settler Canadians and Indigenous peoples. Their vision involves a tripartite agreement for resource co-management between the federal, provincial and Algonquin governments. This agreement proposes a solution that would guarantee the Algonquins the final decision over resource extraction on their territory, protect their traditional ways of life, and offer them a modest share of the revenues extracted from their lands, so they are able to develop and independently run cultural programs and generate socio-economic opportunities appropriate for their community.

In 1991, under the Trilateral Agreement, Canada and Quebec agreed to such an arrangement. However, due to growing concern that the Trilateral Agreement would call the CLCP into question, setting it as a dangerous precedent for other bands to consider, the settler governments failed to honour the agreement. As one high-profile government official put it, the development of alternate models like the Trilateral Agreement might lead other bands to ask "why bother negotiating a land claims agreement" when they can obtain jurisdictional control over their lands and resources without extinguishing their Aboriginal rights and title?[2]

The Trilateral Agreement can teach us a great deal about serious problems with the CLCP, as well as provide a powerful reconstructive vision for co-existence in Canada between Indigenous peoples and settler society. This chapter sets out to examine some of the core forms of extinguishment of Aboriginal rights that are embedded in the CLCP and the ways in which the Algonquins developed the Trilateral Agreement as an alternative in response to this process. I examine both the unique features of the Agreement and the coercive force exercised by the federal and provincial governments to terminate their

obligations of resource co-management on Algonquin territory. The refusal of settler governments to implement the Trilateral Agreement and the coercion they have exercised to push the Algonquins into the CLCP process demonstrates the common goal of state policy to extinguish Indigenous jurisdiction over lands and resources in Canada.

The Land Claims Policy

To fully understand the political implications of the tripartite vision for co-existence that Barriere Lake proposed, we must first place it in the context of the policy solution the First Nation rejected. Here I focus on the principle and most controversial element of the CLCP – the *extinguishment* requirement of all final modern treaty agreements – as will be explained below.

Four decades ago the modern treaty process was ushered in with some excitement. It emerged as a result of the considerable efforts of First Nation peoples to gain formal recognition of their jurisdiction over their traditional territories. The CLCP was the Government of Canada's response to a ruling handed down by the Supreme Court of Canada in a case brought by the Nisga'a tribal council (hereafter referred to as *Calder*) against the government of British Columbia (BC) in 1967.[3] The Nisga'a asserted that they had never surrendered their lands or their authority to govern them, despite the imposition of Crown sovereignty and the province's claims that its establishment in 1871 made it the *de facto* authority over land. But the lower courts were not able to grasp the concept Indigenous land ownership; Chief Justice Davey stated that First Nations peoples were far too primitive to have any notion of private property – the sign of civilization – and therefore must be denied any right to claim underlying title.[4] However, the Supreme

Court of Canada found otherwise. Although a split decision of 3:3:1 (three in favour of the plaintiffs, three against, one dismissal based on a technicality), it opened up the possibility of "Aboriginal title" in BC and on unceded lands nationwide. Emmett Hall, the most outspoken Supreme Court judge, recognized that the Nisga'a's title pre-existed Confederation and argued that it was never extinguished and could still be asserted.[5] Hall urged the Court to adopt a progressive view of Indigenous peoples and not be bound by outdated notions of "Indians" from the past.

Specifically, he defined Aboriginal title as a pre-existing form of land-holding to assertions of sovereignty by the Crown. He famously wrote that, "the fact is that when settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries."[6] This conclusion shocked Prime Minister Pierre Elliot Trudeau, who confessed, "Perhaps you [First Nations peoples] had more legal rights than we thought you had." Trudeau was forced to reverse his denial of special rights for First Nations peoples as articulated in the Department of Indian Affairs' 1969 White Paper.[7]

But as Johnny Mack writes, while the *Calder* decision marked a step away from the harsh denial of First Nations rights represented by the White Paper, it was also a movement towards a "soft imperialism," "characterized by a rejection of a colonial apartheid/assimilation mode of operation in favour of one marked instead by integration and selective toleration of indigenous difference."[8] This soft imperialism was signaled by the introduction of a settlement process for outstanding land grievances. Within six months of the *Calder* decision, a new policy to deal with all Indigenous nations that had not signed treaties was introduced. In August of 1973, the federal government issued a

'statement of policy' demonstrating a willingness to negotiate for land with Indigenous peoples and acknowledging its obligations under the Royal Proclamation.[9]

The Supreme Court first heard *Calder* the same year that Premier Bourassa announced the James Bay hydroelectric project in Quebec. Gravely concerned over the potential impact of hydroelectric development on their territory, the James Bay Crees and Inuit of Quebec took the government to court, ordering a halt to the massive construction project that would damage their lands and ways of life. While Quebec first denied Indigenous peoples had any such rights of claim to the land, the *Calder* decision forced the province to reach a settlement as quickly as possible with the Cree and Inuit so that the hydroelectric project could proceed.[10] The James Bay and Northern Quebec Agreement (JBNQA) was signed in 1975 and was the first land claim settlement signed in Canada signed since 1930. The JBNQA was not signed under the CLCP, but it set a crucial framework in place that continues to set the precedent for negotiations. Article 2.1 of the JBNQA reads:

> In consideration of the rights and benefits herein set forth in favour of the James Bay Crees and the Inuit of Quebec, the James Bay Crees and Inuit of Quebec hereby *cede, release, surrender, and convey* all their Native claims, rights, title, and interest, whatever they may be, in and to land in the territory.[11]

All Indigenous parties negotiating "modern treaties" from that day forth have been forced to extinguish "their Native claims, rights, title, and interest" over their lands.

This requirement was made even clearer under the CLCP policy statement released in 1981. The revision stated that the policy's objective was "to exchange undefined aboriginal rights for concrete rights and benefits," calling for the "*extinguishment of all aboriginal rights and title as part of a claim statement*."[12] The

requirement of Indigenous nations to extinguish their land rights upon settlement was met with protest from the start, but a pattern persisted of policy revision without substantial reform to the extinguishment clause for decades to come.[13]

The federal government has tinkered with the language of the policy, but has never changed the underlying extinguishment requirement. This feat is quite significant, given the constitutional, judicial, and international developments around Indigenous rights that have unfolded since the CLCP was first introduced. In 1982, under section 35(1), Aboriginal and treaty rights were "recognized and affirmed"[14] in Canada's patriated *Constitution.* Extinguishment, on the other hand, is the antithesis of the recognition and affirmation of Aboriginal rights under section 35(1). On the judicial front, the Supreme Court of Canada recognized Aboriginal title as an Aboriginal right protected under section 35(1)[15] when the court in *Delgamuukw,* ruled that, "Aboriginal title is a right to the land itself."[16] The recent *Tsilhqot'in Nation v. British Columbia* (2014) ruled that timber on Aboriginal title lands can no longer be considered Crown timber; the implications here are that provinces across the country have lost – to a hereto-unknown extent – exclusive legislative jurisdictional authority over vast amounts of natural resource development, empowering First Nations to assert their authority to govern in the face of extinguishment policies.[17] In the international arena, the United Nations (UN) and other human rights bodies have passed protocols that protect ancestral Indigenous lands from state expropriation.[18] UN human rights bodies have further advised Canada that they need to stop requiring Indigenous peoples to surrender or extinguish their land rights.[19] It is not an exaggeration to state that these substantial

improvements in the scope of recognition for Indigenous rights have not affected the CLCP at all.

What did change in the policy was the language used to require extinguishment. A language of "modification" and "exhaustion" was adopted in the Nisga'a Final Agreement – the first treaty signed in BC under the CLCP (more specially, under the regional form of the CLCP, the British Columbia Treaty Process (BCTC)) – in May 2000.[20] The concept of this new language was that Aboriginal rights were being modified, but not extinguished. What is sometimes called "certainty language" by negotiators substitutes the languages of "modification" and "non-assertion" for "cede, surrender, and release," but like extinguishment, requires full cession of Aboriginal rights and title in exchange for narrowly and exhaustively defined "treaty rights."[21]

Perhaps the most troubling aspect of current negotiations is that the government refuses to release an exact and accurate description of the policy. The federal government recently announced that in the coming months, the first policy revisions would be introduced in almost 25 years. Interim policy statements contain, in the meantime, no mention of its core elements, such as the transformation of collective, *sui generis,* Aboriginal title land into fee simple (private) property.[22] The formula for the government's final terms of offer must instead be discerned by combing through signed agreements to calculate average land and cash settlements, non-negotiable items, and other key perimeters for negotiation.

Factoring in all the modern treaties, agreements in principle, and final agreements prepared to date, we can state conclusively that Indigenous peoples must give up their constitutional protections, however undefined, in exchange for ceding approximately 95

percent of their lands.[23] The band also becomes a new legal entity, as one analyst explained: "[t]he 'corporation' will replace the First Nation as the land holding entity, and this will formally break the link between the First Nation and its Aboriginal title."[24] These privately held lands (by the corporation or by individual members) become part of the provincial land system and are subject to taxation. The cash component of agreements is tied relative to land: the more land, the less money, and vise-a-versa. This money is referred to as "compensation" though it is not tied to past losses or to a substantive figure representing the current economic value of resources on the land. Rather, it is a fixed amount of approximately $45,000 per person.[25]

For a band the size of Barriere Lake, the one-time payout would be around $1 million in exchange for Aboriginal rights and title forever. Compare that sum to the $100 million of resources extracted from the territory on an annual base, or to the $1.5 million in annual resource revenue sharing laid out in the Trilateral Agreement. In this light, the CLCP represents a substantial discount for governments on Indigenous land value.

The Trilateral Agreement anticipated these failures and shortcomings of the federal policy. It was carefully designed to avoid the pitfalls of state models of recognition for Indigenous lands. While this strength has ultimately become its liability (from the governments' perspectives), the Trilateral Agreement offers a viable alternative to a widely criticized state solution of dealing with unceded Indigenous lands.

The Trilateral Agreement: An Economy of Inherent Jurisdiction

Clear-cut logging had decimated Barriere Lake's traditional territory for decades before a campaign of logging road blockades finally brought the governments and forestry

companies to the table. In the shadow of the Oka Crisis in 1990, with politicians anxious the insurgency could spread, government negotiators finally agreed to allow the Barriere Lake Algonquins to have a say in resource management on their lands. In August 1991, the Trilateral Agreement was signed. The Royal Commission on Aboriginal People report called the Trilateral Agreement a model for co-existence, commending the fact that it upturned the common insufficient conventions of co-management.[26] Rather than simply institutionalize a joint management plan over a particular region and species, the Trilateral laid the groundwork for cooperation between parties to develop an integrated resource management plan over 1 million hectares of land covering a major portion of Barriere Lake's traditional land base.[27]

The Trilateral Agreement is technically a study and recommendation process agreement, referred to in the agreement text as a "pilot project." Though the agreement clearly states that it is without prejudice to Aboriginal rights and brackets the issue of title outside of negotiation parameters, in a mediator report in 1993, Quebec Superior Justice Rejean Paul acknowledged that the Agreement would likely be recognized to have "treaty-like" status if challenged in the courts.[28]

This treaty agreement was designed to give the community a decisive voice in the management of 10,000 square kilometers of their traditional territory, protect Algonquin land uses, and grant them a share in the resource-revenue from natural resource development on their land. But what made all the difference between the Trilateral Agreement and other resource co-management agreements (and the land claims policy, especially) was the funding the Algonquins secured under the agreement to undertake traditional land use and occupancy research and mapping. In general, the lack of

financial, administrative, and technical capacity in Indigenous communities erodes their ability to negotiate for land on level playing fields with governments and industry. Likewise, without detailed maps of traditional land use, having a "say" at the table over resource management would mean undertaking lengthy consultations with elders for each individual proposal to log or engage in resource extraction, which would be quickly dismissed as unworkable. With the financial resources to collect, correlate, and map the community's traditional knowledge of their land, the Barriere Lake Algonquins possessed a blueprint for how the territory could be collectively managed, based on a transparent, easily referenced, common base of ecological understanding and knowledge of the territory. In article 3 of the Agreement, Quebec and the Algonquins agreed to share the costs of the study and recommendation phases, and Canada further agreed to pay all of Barriere Lake's costs.

According to the Trilateral, the collection, inventory, study, and analysis of data about renewable resources and their uses constituted the first phase of the Trilateral Agreement. The preparation of a draft Integrated Resource Management Plan (IRMP) was the second phase. The IRMP was the outcome of thousands of hours of interviews with land users, in particular elders whose education was derived almost exclusively from the bush.

There is one component of phase one in the Agreement worth singling out to give a sense of the sophistication of this arrangement. The Indigenous Knowledge agenda of the Trilateral Agreement involved individual and joint interviews with harvesters, elder field trips, and extensive date collation and analysis. For example, elders identified each tree species found on the territory, then described to what ends they were best used, in the

construction of which specific implements, the season to harvest their bark, and how best to undertake this harvest. This work overlapped with Sensitive Area Studies mapping for the (second) IRMP phase of the research, which also relied on extensive interviews and field trips. Scholar Sue Roark-Calnek produced three major reports – on family narratives, toponymy, and social custom – that formed the major ethnographic synthesis of the data. For example, her toponymy report presents a complex geo-morphology of historical ecological knowledge, including information on family traplines, territorial boundaries, animal life, and medicines. The collation of this research data was equivalent to binding an encyclopedia of oral knowledge of the territory.[29]

The third phase of the Trilateral research – which was only ever partially completed due to interference by settler governments – would have involved the formulation of recommendations for carrying out the draft plan of Phase 2, including IRMPs and a plan for resource revenue sharing. Although the Trilateral set the schedule for completion of the plan by 1995, because of delays in the agreed upon process, caused first by Quebec (1991-1993) and then by Canada (1996-1997), the 1995 goal was not reached. Although Barriere Lake believed that the signing of this Agreement, for which they had fought and sacrificed so much, was the end of their struggle to protect the forest, they soon discovered it was only just the beginning.

Breaking Treaty

The Trilateral specifies that the Agreement is between parties from "within their respective jurisdictions."[30] The fact that the Algonquins are implicitly recognized as being under their own jurisdiction is a respectable basis for negotiation. But the new

relationship the Algonquins had hoped would restore ecological integrity and social harmony to their lands quickly disintegrated. Algonquin input on Quebec's Action Plan for Trilateral work was mostly ignored, cut plans went forward in sensitive and sacred forested areas without Algonquin consultation, and funding from the federal government was not forthcoming for the traditional land use studies, meant to be completed in the first phase of the Trilateral process.[31] Quebec refused to acknowledge what they considered "outside interference" to their ministries by Barriere Lake's insistence on participation in forest management and the province's Special Representative repeatedly made promises and assurances he did not keep.[32]

An exchange in 1992 between Chief Jean Maurice Matchewan and the Quebec Minister of Native Affairs is telling of what jurisdiction meant to the Algonquins compared to provincial land management, where the exercise of provincial jurisdiction was resulting in widespread ecological destruction on Barriere Lake's lands. Customary Chief Jean Maurice Matchewan wrote:

> our authority derives from the traditional knowledge of our elders which has been passed down from generation to generation and accumulated over hundreds of years of occupation of our lands. It derives from our sense of responsibility to the land and forests and wildlife and our desire to maintain the integrity of those things so that we may continue to benefit from them in our traditional pursuits.[33]

The letter urged a mutual respect of views on the matter of jurisdiction and authority, concluding that the parties had seemingly reached an impassable section of the road. Chief Matchewan proposed that Quebec and the Algonquins move forward through a mediation process, overseen by a Quebec Superior Court judge.

After a protracted struggle with Quebec, Justice Réjean Paul of the Quebec Superior Court was finally brought in to mediate, forcing the province back to the table.

Justice Paul was shocked by the conditions in which negotiations were unfolding. He wrote, "[t]he Algonquins of Barriere Lake have, from their own Band budget and to the detriment of their other programs, unilaterally funded certain anthropological studies and have produced maps of an excellent quality indicating, among other things, their sensitive zones and their sacred territories … *It is David and not Goliath who is attempting to sustain the Agreement*."[34]

In spite of the mediator's report, Quebec unilaterally withdrew support for the Agreement again in 1993, and the process nearly collapsed.[35] Quebec continued to allocate logging permits and sensitive and sacred areas continued to be logged without regard for the Algonquins. Against overwhelming odds, Barriere Lake continued their fight to force the province to implement the agreement. They invited human rights and religious organizations to tour the logging camps on their territory, as well as the National Chief of the Assembly of First Nations. Media were also invited to attend. Just when it seemed that the Trilateral Agreement was on the brink of collapse, the government relented. Public support was on the Algonquins' side, and as a result of ongoing logging blockades, the increasingly litigious industry pressure on government negotiators was mounting.[36] This temporary act of government reprieve reveals, as well, how constitutive *accommodation* can be of settler colonial structures of domination as modes of *coercion*.

Work began in earnest on the measures to harmonize forestry operations with Algonquin land use. For possibly the first time in Canadian history, Indigenous knowledge was being integrated into land use management plans and natural resource operations by non-Indigenous authorities. Although Trilateral protocols are still in use at

times on the territory by logging companies and the province,[37] twenty years of disruption have marred the legacy of the Agreement. A Bilateral Agreement, signed in 1996, temporarily resolved Quebec's earlier interference, though the Algonquins to this day are still in talks with the province to see it fully implemented.[38] Generally speaking, it was Canada that became the major barrier to the implementation of the Trilateral Agreement, though Quebec certainly played its part.

In 2001, Canada signed a follow-up agreement in the form of a Memorandum of Understanding (MOU) in an effort to reconcile the financial, political, and emotional devastation of the federal government's role in dishonouring the Agreement. Specifically, the MOU followed federal interventions into Barriere Lake's customary leadership selection process in 1994. This political intervention led to a major derailment of Trilateral work and pointed to Canadian attempts to coerce Barriere Lake into land claims negotiations under the CLCP. It took years for evidence to surface confirming Barriere Lake's conviction that the 1994 coup d'etat and other leadership interventions that placed dissident factions who were against the Trilateral Agreement into power were in part the product of Canada's change of heart regarding the Trilateral Agreement. In 1999, in relation to a labour dispute at Barriere Lake adjudicated by Madame Justice Tremblay, a matter of fact in her ruling stated that Indian Affairs was advising a group of dissidents on how to seize power.[39] Another indication of the government's prerogative followed a few years later. In 2002, Barriere Lake received a letter from Prime Minister Jean Chrétien's office in response to concerns raised by Barriere Lake's Special Representative at the time, Michel Gratton, questioning the federal government's commitment to the Trilateral process. Chrétien blatantly expressed his preference for the

land claims process as a "solution" to the crisis. He wrote: "I am… confident that a positive long-term solution can be found, specifically through negotiations concerning global territorial claims."[40]

More definitive evidence of such federal concern surfaced in a "protected" document brief released accidentally through court disclosure in another matter. A high-profile government official acknowledged the threat the Trilateral could pose as an alternative to an unpopular land claims policy. Former diplomat Marc Perron counseled the Minister of Indian Affairs at the time, Chuck Strahl, to reject the terms Barriere Lake continued to set for negotiation:

> The former Chief clearly indicated that the ABL [Algonquins of Barriere Lake] had no interest in comprehensive claims. They hoped to maintain Federal responsibility (and their obligations) and to obtain rights and co-management on the territory (including royalties)… A question we could ask: why bother negotiating a land claims agreement when we can obtain benefits (at least partially) through a partial accord like a trilateral agreement? Other First Nations would be justified in questioning this matter. *And it's the current overall comprehensive lands claims and self-government negotiations which could be questioned*.[41]

This document exposes an alarming admission that a central threat the Trilateral poses is its insinuation of an alternative to the CLCP.

Rather than implement this landmark agreement promoting co-existence between Indigenous and settler governments, Canada spent years trying to destroy the credibility of the community. Some of these tactics include defunding the process and engaging in leadership intervention, but many others were pursued. There were sexual abuse allegations and fruitless investigations; the criminalization and incarceration of community spokespeople and leadership; and there were claims of financial misconduct,

followed by the imposition of external accountants for debts accumulated due to Trilateral defunding. The list goes on interminably.[42]

Conclusion

One vision of resolving the jurisdictional overlap between Indigenous and settler claims to land is represented here by Canada and Quebec. It is by all accounts a dishonourable vision; one that does not recognize Indigenous forms of authority, or actively works to dismantle them. The preference of governments is that bands living on unceded lands settle their outstanding claims through the federal land claims policy. This policy treats Indigenous land rights precisely as 'claims' against federal and provincial authority, disregarding domestic and international law that speaks, to the contrary, to the prior territorial ownership and proprietary interest of Indigenous nations.[43]

The governments' perspective further degrades inherent Indigenous authority to land, based on the terms Chief Matchewan described as the accumulation of knowledge and responsibility born of centuries' occupation, sustenance, and not incidentally, a deep love of the land. To force Indigenous peoples to cede responsibility to 95 per cent of their lands and extinguish Aboriginal rights and title to these lands is an act tantamount to genocide to many Indigenous peoples contesting the policy. This is what colonialism looks like in Canada, quips Russell Diabo, a Mohawk policy consultant, who worked with the community for over 25 years to see the Trilateral Agreement implemented.

The Algonquins of Barriere Lake and their Trilateral Agreement represent another vision for resolving conflicts over land. The Trilateral Agreement allows for sustainable

development of their traditional territories as defined by extensive land use and occupancy studies – the encyclopedic knowledge of peoples inhabiting those lands since time immemorial. The diplomatic arrangement of co-management is the embodiment of a wampum agreement between the French, British, and Algonquins made in the eighteenth century that first inspired the elders' vision of the Trilateral Agreement. It depicts three figures in white against a purple background – the Anishnabe in the middle, with French and British representatives on either side – a white Christian cross to the left of the figures. The belt depicts an understanding, under the sign of the cross, but through an Indigenous protocol of alliance, that no interference would be made into the local Anishnabe ways of life. Reinterpreted in 1991 as a partnership between Canada, Quebec, and the Algonquins, the community has been a honourable partner in their treaties and tenaciously awaits the settler governments to be the same.

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[1] For a full list of the "Aboriginal groups" participating (there is considerable variation in the number of Aboriginal communities participating in each "group"), see Aboriginal Affairs and Northern Canada here: http://www.aadnc-aandc.gc.ca/eng/1346782327802/1346782485058

[2] Marc Perron, "Report by Special Ministerial Representative to the Algonquins of Barriere Lake," submitted to the Honourable Chuck Strahl, Minister of Indian and Northern Affairs Canada, December 20, 2007, 5, *emphasis added*. See also, Martin Lukacs, "Top Diplomat's Report to Minister Laid Out Strategy for Government Subversion of Algonquin Community," *Znet*, <http://www.zcommunications.org/top-diplomat-s-report-to-minister-laid-out-strategy-for-government-subversion-of-algonquin-community-by-martin-lukacs>, August 21, 2009.

[3] *Calder v. British Columbia (Attorney General)* [1973] S.C.R. 313, [1973] 4 W.W.R [Hereafter, *Calder*].

[4] Thomas R. Berger, *A Long and Terrible Shadow: White Values, Native Rights in the Americas, 1492-1992* (Vancouver; Toronto: Douglas & McIntyre, 1991), 140-156.

[5] Berger, *A Long and Terrible Shadow,* 154.

[6] *Calder* at para 328.

[7] Canada, Indian and Northern Affairs. *Statement of the Government of Canada on Indian Policy.* Ottawa: Department of Indian and Northern Affairs, 1969. Accessed on May 1, 2013: <http://epe.lac-bac.gc.ca/100/200/301/inac-ainc/indian_policy-e/cp1969_e.pdf> Trudeau's line is quoted in J.R. Miller, "Great White Father Knows Best: Oka and the Land Claims Process, *Native studies Review* 7: 1 (1991), 38. The full quote ends with the phrase: "when we did the white paper." The "white paper" of 1969, introduced by Trudeau's government, attempted to erode Indigenous peoples' distinct status in Canada, for example by scrapping the Indian Act and reserve system, under the auspices of liberal equality.

[8] Johnny Mack, "Hoquotist: Reorienting through Storied Practice," *Storied communities : narratives of contact and arrival in constituting political community*, Hester Lessard, Rebecca Johnson, and Jeremy Webber, eds. (Vancouver: UBC Press, 2011).

[9] Department of Indian Affairs and Northern Development, "Statement Made by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People," *Communiqué*, 8 August 1973. The policy was reaffirmed in *In All Fairness: A Native Claims Policy – Comprehensive Claims*, Department of Indian Affairs and Northern Development, Ottawa, 1981.
[10] Paul Rynard, "'Welcome In, but Check Your Rights at the Door': The James Bay and Nisga'a Agreements in Canada," *Canadian Journal of Political Science*, 33:2 (June 2000): 211-243.
[11] James Bay and Northern Quebec Agreement, Section 2: Principal Provisions, 2.1, *emphasis added*. Accessed online May 1, 2013: <www.gcc.ca>
[12] Government of Canada, *In All Fairness: A Native Claims Policy – Comprehensive Claims*, Department of Indian Affairs and Northern Development, Ottawa, 1981, *emphasis added.*
[13] Government-commissioned policy reviews include: Hon. A.C. Hamilton, "Canada and Aboriginal Peoples: A New Partnership," Ottawa: Minister of Indian Affairs and Northern Development, 1995; and, "Honouring the Spirit Of Modern Treaties: Closing the Loopholes, Interim Report: Special Study on the implementation of comprehensive land claims agreements in Canada," Standing Senate Committee on Aboriginal Peoples, May 2008. Indigenous critiques of the policy were also largely ignored. Key reports include: Assembly of First Nations, "Doublespeak of the 90's: A Comparison of Federal Government and First Nation Perception of Land Claims Process," 1990; and, Russell Diabo, "Harper Launches Major First Nations Termination Plan: As Negotiating Tables Legitimize Canada's Colonialism," *First Nations Strategic Bulletin*, 10.7-10, (June-October 2012): 1-9.
[14] *Constitution Act, 1982* (Schedule B to the *Canada Act, 1982*, (U.K.) 1982 c. 11), Part II: "Rights of the Aboriginal Peoples of Canada." Subsections 35(1) reads: (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
[15] For a good summary, see: AFN, *Executive Summary of Memorandum Regarding Canada's Comprehensive Claims Policy*, Prepared by Mark L. Stevenson and Albert Peeling for the Delgamuukw Implementation Strategic Committee, February 15, 2002.
[16] *Delgamuukw*, supra note 1 at para. 140.
[17] Tsilhqot'in Nation v. British Columbia, 2014 SCC 44.
[18] For the best example of these international developments, see the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 8.2: "States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources." Canada voted twice against the UNDRIP, once as a member of United Nations Human Rights Council on June 26, 2006 and once at the United Nations General Assembly on September 13, 2007. However, Canada endorsed the declaration on March 3, 2010 in Prime Minister Harper's *Speech from the Throne*, then issued a Statement of Support endorsing the UNDRIP on November 12, 2010. Canada is also a signatory to the International Labor Organization's Convention 169, the UN Committee on the Elimination of Racial Discrimination, and the Convention on Biological Diversity.
[19] Canada is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty adopted by the UN General Assembly. The BC-based Indigenous Network on Economies and Trade submitted a shadow report on Canada's performance regarding their treatment of Indigenous peoples in 2007 and Canada responded that they no longer require Indigenous groups to extinguish their Aboriginal rights and title upon settlement. However, the Special Rapporteur of the Commission on Human Rights responded by saying that, "the inclusion of clauses in land claims agreements requiring Aboriginal peoples to 'release' certain rights has led to serious concerns that this may be merely another term for extinguishment" (UN Committee on Economic Social and Cultural Rights (CESCR) Concluding Observations on Canada," 2006, cited in INET to Olga Nakajo – CERD Secretariat, "Consideration of State Reports: Canada," Feb 19, 2007).
[20] Para 2.23 of Nisga'a Final Agreement reads: "This Agreement *exhaustively* sets out Nisga'a section 35 rights, *the geographic extent of those rights*, *and those limitations to those rights*, to which the parties have agreed, and those rights are: a. the aboriginal rights, including aboriginal rights, including aboriginal rights, *as modified by this Agreement*, in Canada of the Nisga'a Nation and its people in and to Nisga'a Lands and other lands and resources in Canada; b. the jurisdictions, authorities, and the rights of Nisga'a Government; and c. the other Nisga'a section 35 rights" *(emphasis added*).
[21] As Aboriginal Affairs and Northern Development explain, certainty over ownership is a key goal of the CLCP. To accomplish this task, modification and non-assertion clauses are necessary: "Under the modified rights model, aboriginal rights are not extinguished, but are modified into the rights articulated and defined

in the treaty. Under the non-assertion model, Aboriginal rights are not extinguished, and the Aboriginal group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Aboriginal rights" (Canada, Resolving Aboriginal Claims, 2003).
[22] The long lag in policy revisions is particularly problematic due to the widespread changes to the policy itself, such as the inclusion in 1995 of Self-Government provisions.
[23] Rudolph C. Rÿser**,** *Indigenous Nations and Modern Nation States: The Political Emergence of Nations Challenging State Power,* (New York; London: Routledge, 2012), 85.
[24] Algonquin Nation Secretariat AFN Briefing, "Briefing Note: Comprehensive Claims Policy and Process," April 18, 2002, 4.
[25] See: supra note 22.
[26] Claudia Notzke, "The Barriere Lake Trilateral Agreement," A Report Prepared for the Royal Commission on Aboriginal Peoples – Land, Resource and Environment Regimes Project, (Barriere Lake Indian Government - October 1995) 21.
[27] Notzke, "The Barriere Lake Trilateral Agreement," 21.
[28] The Honourable Rejean F. Paul, "Mediation Report," Longeuil, September 14, 1992.
[29] Core data sets included: Scott Nickels, "Traditional Knowledge of the Algonquins of Barriere Lake, Volume 1 and 2," Report. Prepared for the Trilateral Secretariat, Algonquins of Barriere Lake, August 1995, and Terry Tobias' data on household and cabin cluster composition, trapping partnerships, and moose hunting task groups.
[30] Canada, Quebec, Algonquins of Barriere Lake, "The Trilateral Agreement," August 22, 1991, 2.
[31] Algonquins of Barriere Lake, "Declaration and Petition," November 26, 1992.
[32] Clifford Lincoln (Special Representative, ABL) to Secrétaire general associé, Secretariat aux Affaires autochtones, Letter, March 22, 1992.
[33] Christos Sirros (Quebec Minister Indian Affairs) to Jean Maurice Matchewan (Chief, ABL), July 22, 1992.
[34] Justice Paul, "Mediation Report," 1992, 8, *emphasis added*.
[35] Boyce Richardson, in collaboration with Russell Diabo, "Canadian Hunters Fights for the Forest: The Algonquins Striving for Territory and Good Management," in *Forests for the Future: Local Strategies for Forest Protection, Economic Welfare and Social Justice*, ed. Paul Wolvekamp (Zed Books, 1999), 209.
[36] Notzke, "The Barriere Lake Trilateral Agreement," 2.
[37] On June 5, 2012, Barriere Lake community member Norman Matchewan went to court on indictable charges of mischief and trespass on his lands for informing loggers that there would be no cutting on the territory without Algonquin consent. The charges were dropped that day, but the remarkable aspect of the trial is revealed in the discrepancy between the court's interpretation of the Trilateral Agreement versus the government's spin on Barriere Lake's "utopic" fantasy that the Trilateral still exists. *All the interim measures of consultation were evaluated by the court based on the terms of the Trilateral Agreement.* Furthermore, as per the Trilateral, the forestry company had obtained a permit from Quebec, submitted a cutting plan, and obtained approval from MNR about where they could cut, all of which should have been based on "measures to harmonize" with Algonquin land use.
[38] There are ongoing negotiations with the province.
[39] *Mitchikanibikok Inik v. Michel Thusky* [1999] Federal Court of Canada, T-1761-98, at paras 5 and 6.
[40] Jean Chrétien (Prime Minister of Canada) to Michel Gratton (Special Representative for Barriere Lake), August 29, 2002.
[41] Perron, "Report by Special Ministerial Representative to the Algonquins of Barriere Lake," 5, *emphasis added*.
[42] For a full account of this history, see my dissertation: Shiri Pasternak, "Jurisdiction and Settler Colonialism: The Algonquins of Barriere Lake Against the Land Claims Policy," Dissertation, University of Toronto, 2013.
[43] See, for example, in the recent *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, para 69, where Justice McLachlin submits that *terra nullius* never existed in Canada.