

# Government-to-Government Agreements with British Columbia & Canada

## Wet'suwet'en Recognition & Reconciliation Framework Agreement Negotiation



Prepared for: Chief & Council Review - December 2016

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# Gov't-to-Gov't Mission Statement

First, we must have our **authority recognized** in order to exercise our responsibility to protect the land...we must have the **power to manage** all human activity that brings change to the land, air or water on all our territories ...to enable **each House to provide for its members** and all those living in their territory.

The **Chiefs must have control** over the local economy by **managing natural resource** allocations within their territories. This would include licensing, leasing and permitting. As well as royalties and taxation payments, resource use on our territories must be paid to us."

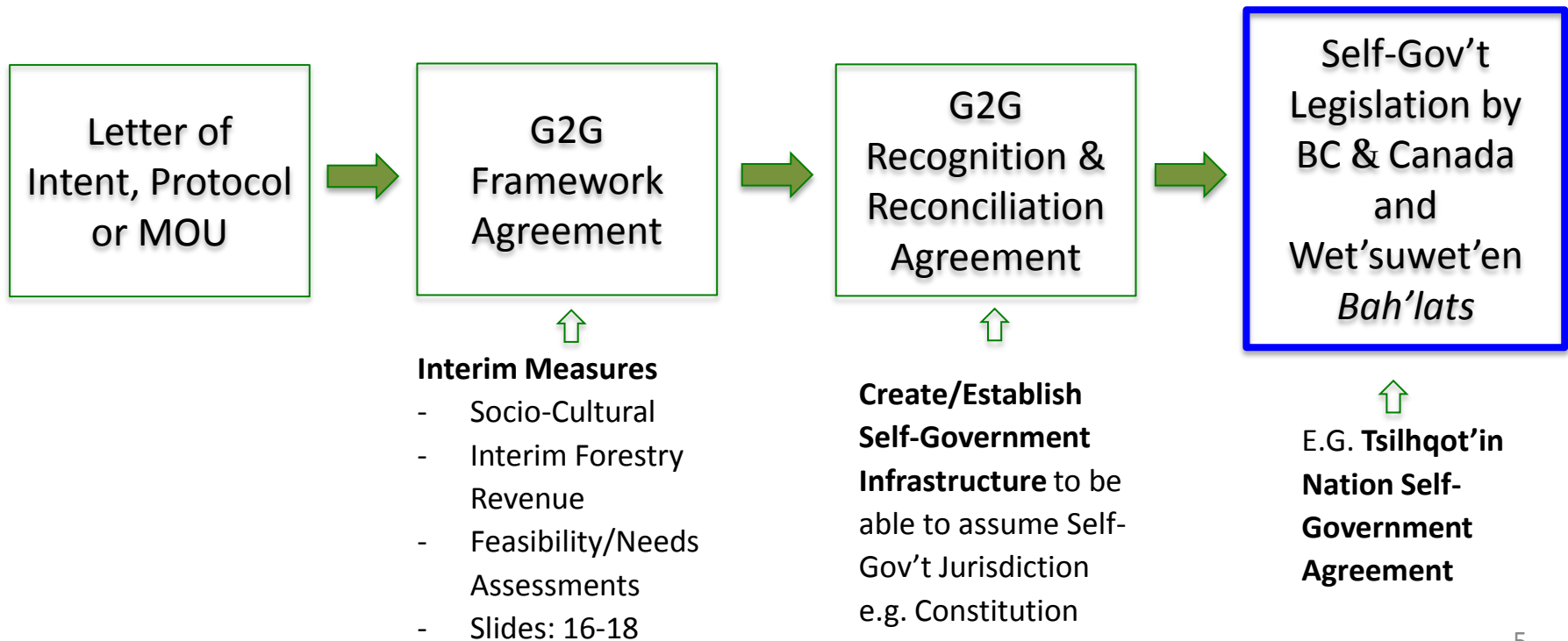
*Closing statements by dini ze' Gisday'wa, Dr. Alfred Joseph*  
May 14, 1990

# What is a Gov't-to-Gov't Agreement?

- Legal agreement to facilitate the recognition & reconciliation of Aboriginal Title & Rights with asserted Crown sovereignty & for, “closing socio-economic gaps that separate Aboriginal people from other British Columbians,” & creating, “measures that result in “X” First Nation members benefitting economically from the use of the Territories”; are 3-5 years **funded** by BC
- BC states **Aboriginal Title** is established by court declaration or agreement and, subject to certain inherent limits, includes the right to decide how the land will be used, the right to exclusive use and occupation of the land, the right to possess the land, the right to the economic benefits of the land, and the right to pro-actively use and manage the land.
- Canada confirmed (November 10, 2016) commitment to Non-Treaty self-government measures that may include: self-government recognizing jurisdiction in children & families, citizenship, fisheries & land use management

# What is a Gov't-to-Gov't Agreement?

- Agreements are often preceded by Litigation, MOU's, Protocols & Framework Agreements that set out negotiation elements, commitments, agreements & early implementation funding (e.g. language, skills training, education)
- The process can look like:



# Agreement Components

**Gov't-to-Gov't Agreements have the following elements, initiatives & associated agreement commitments:**

1. Recognition of Aboriginal Rights & Title
2. Consultation Referral Process
3. Shared Decision-Making & Collaborative Environmental Management
4. Interim Forestry Revenue Sharing Agreements (i.e. \$, Forest Licenses)
5. Comprehensive Forestry Agreements (20 – 25 years)
6. Natural Gas Pipeline Accommodations (3 Agreements)
7. Mining, Water & Other Resource Development Agreements
8. Land-Transfer Agreement Commitments
9. Socio-Cultural: Language, Education & Skills Training
10. Economic Development & Diversification Feasibility Studies
11. Cultural, Burial & Sacred Site Protection Agreements

# Agreement Funding Examples

| Agreement Type (Fiscal Year: 2015-16)   | Negotiate/Implement  | Early Initiatives | Feasibility/Other          |
|---|--|-------------------|----------------------------|
| 1. Carrier Sekani (CS) Collaboration Agreement  | \$ 1.35 M  |                   | \$ 50 K CC                 |
| 2. CS Environmental & Socio-Cultural Initiatives  | \$ 500 K SCWG<br>\$ 2 M Lang<br>\$ 1.5 M Educ<br>\$ 2.5 M Skills |                   | \$ 3 M post-ESI            |
| 3. Cheslatte Framework Reconciliation & Settlement  | \$ 275,000   | \$ 2.3 M          | \$ 350 K MOU               |
| 4. Lake Babine Reconciliation Framework   | \$ 200 K   | \$ 100 K Ref      | \$ 50 K CC<br>\$ 100 K Rat |
| 5. Lake Babine Interim Forestry Agreement   |  |                   | \$ 2.66 M                  |
| 6. Shishalh G2G Framework   | \$ 100 K   |                   |                            |
| 7. Shishalh [aka Sechelt] Reconciliation Agreement  | Land: 148 Ha   | 40 Ha             | 100 Ha                     |
| 8. Tsilhqot'in Nenquay Deni Accord  | \$ 4.2 M   |                   |                            |
| 9. Ahousaht Protocol (Economic Diversification)   | \$ 300 K 2016/17<br>\$ 250 K/Yr:5 Yr's                           |                   |                            |
| <b>LEGEND</b><br>M = Million<br>CC = Carbon Credits<br>Ha = Hectares<br>K = 1,000<br>Ref= Referrals<br>Rat = Ratification |  |                   |                            |

# Building the Framework

- Hereditary Chiefs called on BC to negotiate a Gov't-to-Gov't Agreement in *good faith* in December 8, 2014
- Minister John Rustad tabled a **Letter of Intent** on February 17, 2015 that was grossly inadequate when contrasted with agreements signed with other First Nations in 2016; at least 13 Agreements signed in 2016 that can be viewed at: <https://goo.gl/13GM36>
- Hereditary Chief's directed that analysis be conducted of *all* the precedent agreements, then considered the findings, then confirmed the creation of a comprehensive ***Wet'suwet'en Recognition & Reconciliation Framework Agreement*** (WR&RFA)
- 4 meetings held between Wet'suwet'en and BC - last on September 28, 2015 until December 2, 2016, when the **WR&RFA** was officially tabled



# Building the Framework

## Gov't-to-Gov't & Other Agreements – Analyzed

1. Gitanyow Huwilp Recognition & Reconciliation Agreement (2013 & 2016)
2. Carrier Sekani Collaboration Agreement (2016)
3. Carrier Sekani Environmental & Socio-Cultural Initiatives Agreement (2016)
4. Carrier Sekani Interim Forestry Revenue Sharing Agreement (2016)
5. Lake Babine Nation Reconciliation Framework Agreement (2016)
6. Lake Babine Nation Interim Forestry Revenue Sharing Agreement (2016)
7. Haida Nation Kunst'aa guu-Kunst'aayah Reconciliation Agreement (2016)
8. Haida Nation Reconciliation Protocol Agreement (2009)
9. Tsilhqot'in Nenquay Deni Accord (2016)
10. Shishalh Gov't-to-Gov't [Framework] Agreement (2016)
11. Shishalh Reconciliation Agreement (2016)
12. Shishalh Nation Interim Forestry Agreement (2016)
13. Ahousaht Protocol (2016)
14. Cheslatta Framework for Negotiation of the Reconciliation Settlement (2016)
15. Tahltan Central Council Revenue Sharing Agreement (2014)
16. "X" First Nation & BC Hydro Negotiation Protocol

# Key Framework Elements

## Wet'suwet'en Elements, Initiatives & Associated Agreement Commitments (See WR&RFA Section 4)

### 1. Recognition of Wet'suwet'en Rights & Title

### 2. Natural Resources: Decision-Making & Yintah Management

2.1 Develop a Shared Decision-Making Model

2.2 Develop a Shared Decision-Making Matrix (Level 3 Consensus/Consent)

2.3 Clan & House Group Rights Based Management Project (Needs Assessment)

2.4 Legislative & Regulatory Amendments per 2.3

2.5 Regulatory Management: Timber Harvest, Wildlife

### 3. Natural Resources Agreements

3.1 Interim Forestry Revenue Sharing Agreement

3.2 Mining, Water & Other Natural Resource Development Agreements

3.3 Comprehensive Forestry Agreement (Term Sheet created)

3.4 Explore Atmospheric Benefit Agreement (feasibility study)

# Key Framework Elements

## Wet'suwet'en Elements, Initiatives & Agreement Commitments – Cont'd

### 4. Wet'suwet'en Wellness Framework: Research & Development

- 4.1 Expansion of ANABIP program to include the full spectrum of “child safety/welfare” services across the *Yintah* (eastern communities) & wherever Wet'suwet'en Members reside (lower mainland)
- 4.2 Community & Members Health & Wellness Indicators
- 4.3 Wet'suwet'en Children & Families Jurisdiction Model
- 4.3 Justice: establishment of a First Nations Court & pilot to have jurisdiction for Child Welfare cases

### 5. Wet'suwet'en ANABIP Program: Early Implementation Initiatives

- 5.1 Language & Training (“Wet'suwet'en Languages Program”)
- 5.2 Education Pilot Program (access trades & other skilled employment: needs assessment)
- 5.3 Clan & House Groups Revitalization Program

# Key Framework Elements

## Wet'suwet'en Elements, Initiatives & Agreement Commitments – Cont'd

### 6. Economic Development & Diversification Action Plan (ED&DAP)

- 6.1 Feasibility study to create the ED&DAP
- 6.2 Carbon Credit feasibility study
- 6.3 Land Transfer Opportunities

### 7. Wet'suwet'en Self-Government Agreement Legislation

### 8. Independent Monitoring, Review & Evaluation of the Wet'suwet'en Gov't-to-Gov't Process

- 7.1 Establish an independent body (e.g. Auditor General, BCTC, ?)

### 9. Other TBD

# Not a Treaty & Non-Derogation

**12.1 Not a Treaty.** The Parties agree that this Agreement:

- a) does not constitute a treaty or land claim agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982*;
- b) this Agreement does not define, limit, amend abrogate, or derogate from any Wet'suwet'en Aboriginal title or rights;
- c) this Agreement does not limit, amend, abrogate or derogate from any position the Wet'suwet'en or British Columbia may take in any court actions.

**12.2 No Admissions.** Nothing in this Agreement or the subsequent associated agreements contemplated and agreed upon by the Parties:

- a) prevents the Wet'suwet'en from initiating or proceeding with a claim seeking a court declaration or finding about any Aboriginal right or title recognized and affirmed by section 35 (1) of the *Constitution Act, 1982*.
- b) in any way limits the position the Wet'suwet'en may take in any negotiations or in any potential court actions with respect to Wet'suwet'en rights and title recognized and affirmed by section 35 (1) of the *Constitution Act, 1982*.

# Negotiations, Leadership & Technical Groups

- **Negotiations** are a dialogue between two or more parties intended to reach a beneficial outcome. This beneficial outcome can be for all parties involved, or just for one or some of them. It is used to resolve points of difference, to gain advantage for an individual or collective, or to craft outcomes to satisfy various interests
- There are 3 Gov't-to-Gov't structures established for the planning, negotiations & implementation of the Wet'suwet'en Recognition & Reconciliation Framework Agreement which are:
  - Political Leadership Group
  - Negotiation Team
  - 3 Technical Working Groups