



Recognizing Indigenous Peoples' Rights in Canada

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Acknowledge Salish peoples & their lands



THE LIL'WAT HAVE ALWAYS BEEN, AND WILL CONTINUE TO BE, A PEOPLE OF THE LAND.
THE STORIES OUR ANCESTORS FIRST SPOKE IN THE UCWALMICWT'S LANGUAGE OF THE INTERIOR
SALISH PEOPLE CELEBRATE THIS UNDERSTANDING.
WE WELCOME YOU TO OUR LAND.
WE WELCOME YOU TO THE LIL'WAT NATION...

Follow us on:



Skwxwú7mesh Úxwumixw
SQUAMISH NATION NETWORK

Our Mission Statement:

The Skwxwú7mesh Úxwumixw will protect the Amalgamation and enhance the Úxwumixw cultural values and traditions through respect, equality and harmony for all.



**In-SHUCK-ch
NATION**



Overview

- International
- National
- Provincial
- Key Issues





International: UNDRIP & Doctrine of Discovery

UN Declaration on the Rights of Indigenous Peoples, 2007
Canada—2010

FPIC Free Prior Informed Consent

8.2: States to provide effective mechanisms for prevention of & redress for any action that dispossesses Indigenous peoples of lands, territories or resources

10: No forcible removal or relocation from lands or territories without FPIC

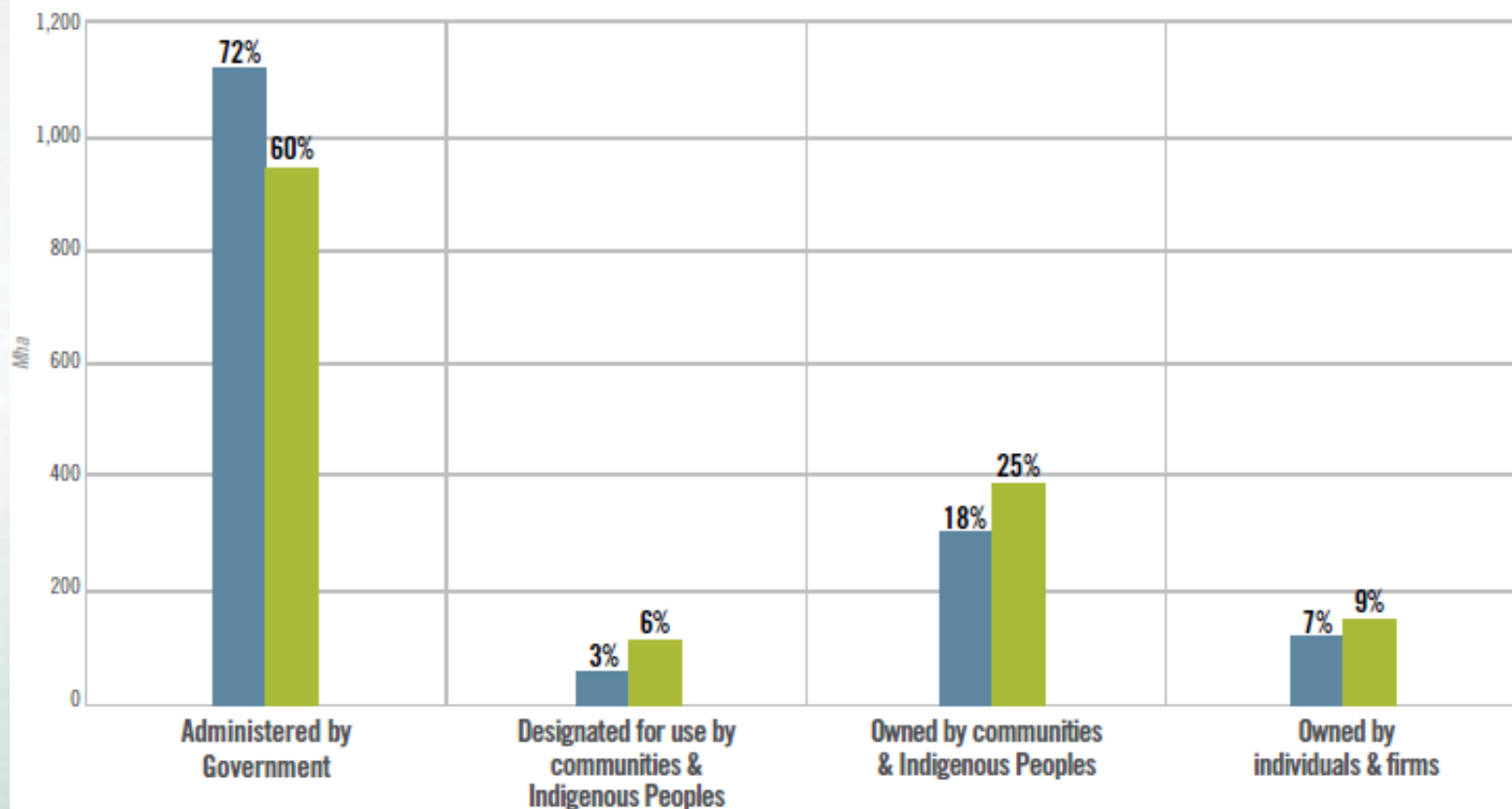
26.1: Right to lands, territories & resources traditionally owned, occupied, used or acquired

26.2: Right to own, use, develop & control lands, territories & resources through traditional ownership or occupation or use

28.1: Right to redress for lands, territories & resources confiscated, taken, occupied, used or damaged without FPIC

International

FIGURE 5: Forest tenure distribution in developing countries, 2002-2012



■ 2002 ■ 2012

Note: The countries included here contain 80 percent of the total forest estate of developing countries.

For full details see: www.rightsandresources.org/tenuredata



International

- $< 1/3$ (18 of 59) are minimally consistent with rights required by UNDRIP land rights (i.e., unlimited duration of rights to access, withdrawal & exclusion)

International: Doctrine of Discovery

- 15th Century Papal Bull: Right to claim lands for Christian monarchs—"terra nullius"

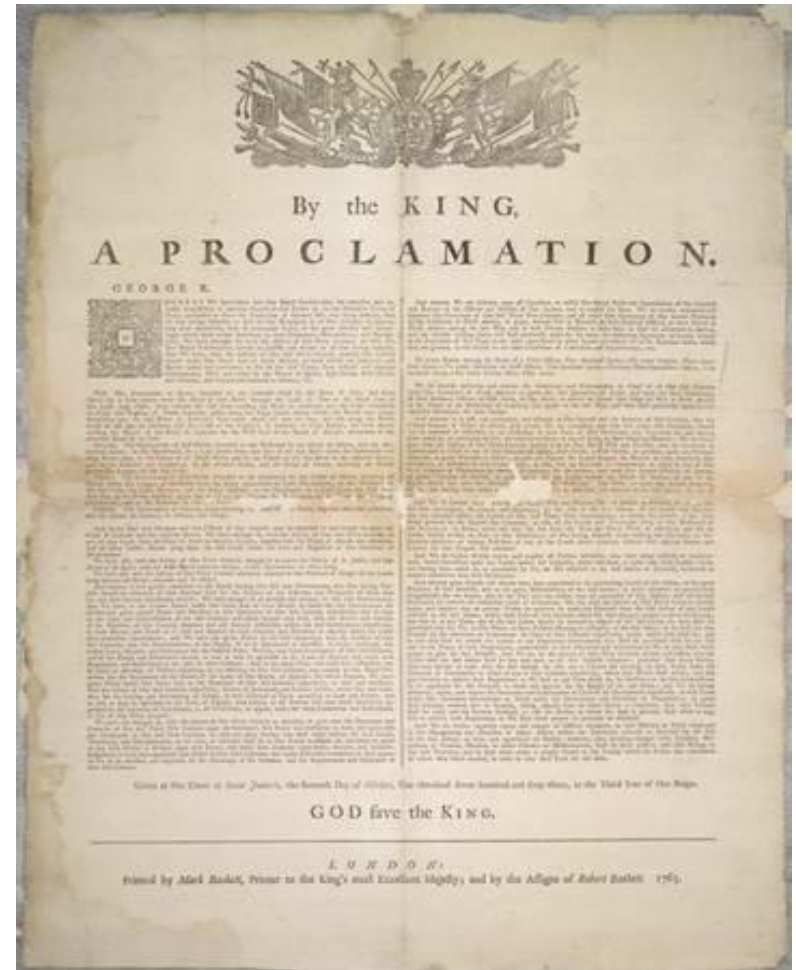
Let's celebrate Columbus day by walking into someone's house and telling them we live there now



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Royal Proclamation, 1763

- Acknowledged Aboriginal people's occupation & use ("hunting grounds")
- Provided that only Crown could enter into land surrenders/agreements—"the honour of the Crown"
- Development & settlement to take place only after agreement reached
- Treaties—conflicting interpretations: surrender or sharing?



National

- > 1 million
“Aboriginal peoples”
- < 4% of total
Canadian population

Library of Congress Prints and Photographs,
Photograph by Frank E. Kleinschmidt



1828 FRAZER RIVER, YALE, B.C. by Sherriff Scott

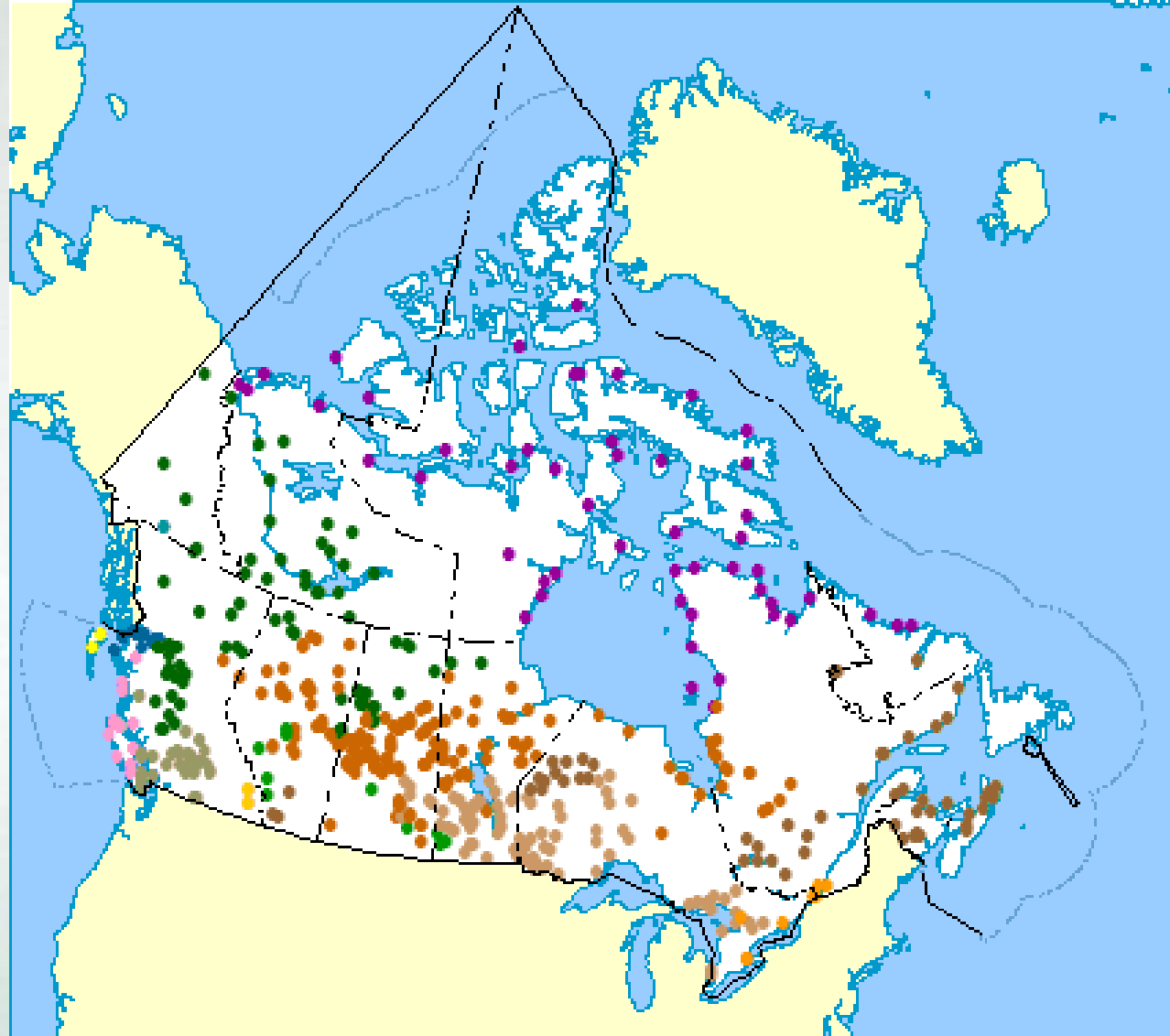
Credit: National Archives of Canada, C30195



s. 35

Constitution Act, 1982

- 1) The existing aboriginal treaty rights of the aboriginal peoples of Canada are hereby recognized affirmed
- 2) “Aboriginal Peoples of Canada” includes the Indian [First Nations], Inuit & Métis



Major Language Families

- Ojibway
- Cree
- Other Algonquian Families
- Inuktitut
- Athapaskan
- (Siouan) Dakota
- Salish
- Tsimshian
- Wakashan
- Iroquoian
- Haida
- Tlingit
- Kutenai

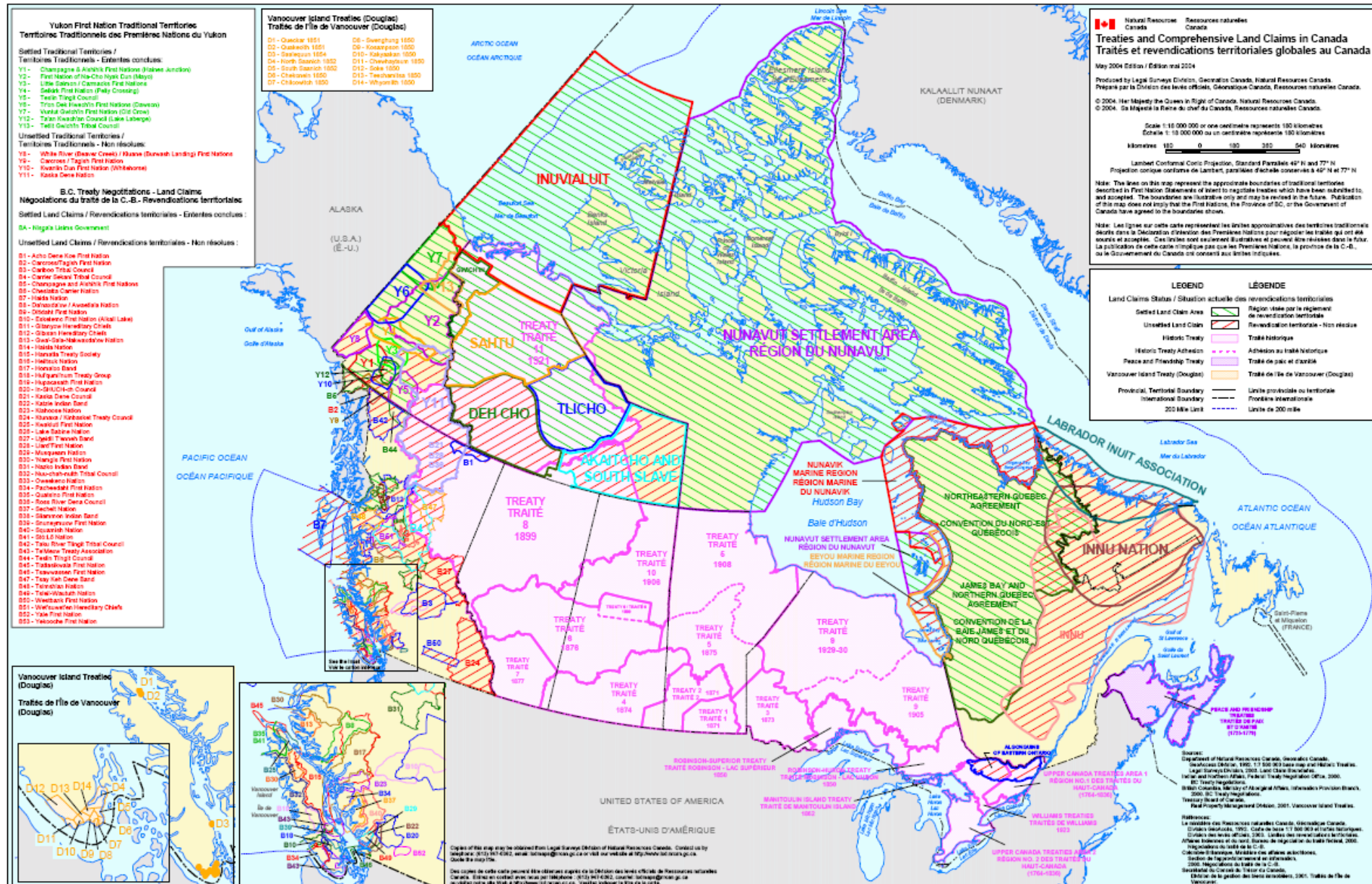
- 50 languages belonging to 11 major language families—10 First Nations & Inuktitut
- ~ 650 First Nations (Indian Act “Bands”)



Tenure

- Conditions under which land is held or occupied
- For forest lands: the process by which provincial governments who “own” Crown land give access to others for use of that land
- Historically, provinces gave long-term (20-25 years), “evergreen” licenses to large forest companies in exchange for royalties & some management responsibilities
- System ignored Aboriginal peoples’ tenure of land

First Nation Tenure in Canada





GOVERNMENT OF CANADA

Indians, and Lands
reserved for the Indians
s. 91(24)

Aboriginal & treaty rights
s. 35, 1982

PROVINCIAL GOVERNMENTS

Natural Resources
s. 92

Supreme Court of Canada Decisions on Aboriginal & Treaty Rights

| CASE | DATE | OUTCOME |
|--|------|--|
| Calder | 1973 | Recognition of Nisga'a "ownership" or "Aboriginal title"; led to land claims |
| Constitution Act, 1982, s. 35(1): "The existing aboriginal & treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. S. 35(2): "aboriginal peoples of Canada" includes Indian, Inuit and Métis peoples | | |
| Sparrow | 1990 | s. 35 must be interpreted liberally; the Sparrow test |

Supreme Court of Canada Decisions (cont'd)

| CASE | DATE | OUTCOME |
|----------------|------|--|
| Delgamuukw | 1997 | Duty to consult; oral evidence given equal weight with historic written evidence in land claim cases, standards for proving rights based on historic use |
| Haida | 2004 | Crown (province & federal governments) has major duty to consult, not private companies |
| Mikisew | 2005 | Duty to consult applies to treaty areas, not just Aboriginal title areas (Treaty #8) |
| Sappier & Gray | 2006 | Mi'kmaq have right to harvest timber on Crown land for personal use |



Duty to Consult

- A government obligation
- To protect Aboriginal & treaty rights
- More than minimum acceptable standard
- Carried out in “good faith”
- Intent: to substantially addressing concerns of Aboriginal peoples whose lands are at issue
- Case-specific—each community has to negotiate with the Crown



Provincial Governments

- Struggling to address Aboriginal & treaty rights
- Passing buck to federal government
- Struggling to find a way to create shared understanding with Aboriginal communities
- Struggling with “consultation” that is more than “minimum acceptable standard”
- Not providing Aboriginal communities the means to participate
- Not consulting on certain key decisions affecting Aboriginal & treaty rights—allocation of timber resources and licenses



Key Issues

- Conflicting jurisdictions—need co-operation between federal & provincial governments
- Having Aboriginal & treaty rights provide the foundation for relationships—economic development & capacity building are then an outcome
- Reconciliation & respect—acknowledging & overcoming our colonial history
- Negotiations to share tenure/power